

# Key Topics to Cover in Voir Dire in Transportation Cases

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In trucking cases, jurors' prior experiences, beliefs and values are highly predictive of their verdicts. During trial, jurors filter all information presented to them in the case through these attitudes and pre-dispositions. Therefore, jurors are not simply basing their verdict on the facts presented to them, but rather processing the facts through the filter of their prior experiences. For example, in our jury research, we frequently observe mock jurors discussing their own personal experiences while deliberating.

The key objective of voir dire is to identify and de-select biased jurors. De-selection questioning allows us to expose jurors' prior experiences, values, beliefs and attitudes that run contrary to the themes in our case. The following methodology should be employed to assure de-selection.

- Open-ended questions: When asking a de-selection question make sure that it is open-ended. Open-ended questions allow jurors to share their beliefs with you and hopefully divulge information that can assist in de-selection.
- Reinforce: Complement jurors for giving honest answers that reveal their biases. This will encourage other jurors to also give honest answers.
- Survey: Immediately after you reinforce – ask the other jurors whether they agree with a particular juror's response. Your goal in asking for jurors who agree is to identify jurors with similar biases. You should then ask these biased jurors to share their experiences.
- Confirm: Confirm jurors' biases and get jurors to commit to their bias. To successfully challenge a biased juror, you must highlight his or her prejudice for all to see.
- Eliminate: Once you confirm a juror's bias they should be struck for cause immediately. Don't let bias jurors hang around.

Voir dire questions should be structured to elicit bias and de-select jurors. As described above, if jurors answer in such a way as to display bias, follow up questions should reinforce the juror's honesty. Next, encourage other pool members, by means of a simple survey question, to say whether they agree with that "honest" juror. Finally, jurors who reveal such biases should be asked to confirm their views and commit firmly to their inability to be fair, so that they cannot be "rehabilitated" by your opponent.

## **Voir Dire Introduction**

In everyday life, the word "bias" has a bad meaning. But in the courtroom, the word "bias," like a lot of words, has a special, legal meaning that's different than the everyday meaning. In court, legal

bias is another word for strong feelings, opinions, and experiences that we bring to a case that more likely than not are going to influence the way we look at the parties, evidence or key case issues. Our constitution guarantees everyone a fair and impartial jury. Each and every one of us has some experiences, commitments, opinions, feelings, etc. that make us start out partial in certain situations or when certain issues are at stake. [*Give an example from your own life*] There's nothing right or wrong about that; it's just the way it is, it's being human. But if you're someone who starts out partial to one side or another in this case, for whatever reason, you need to let the Court know so that the parties can be assured of getting a fair trial. That's why we're here, asking you these questions. And we trust you to look into your hearts, to consider the questions and the situation, and to do what it takes to uphold the integrity of our Constitution and our justice system. So I apologize in advance if I have to ask any questions that may seem too personal or probing. My intention is not to embarrass you or to put anyone on the spot. I'm doing my best to represent my client. If I ask any questions that you do not want to answer in front of everyone, please just let me and we can talk further in private.

### **Prior Experience with Automobile Accidents**

Does anyone or your family or close friends ever been injured in a motor vehicle accident? Were you/they found at fault?

- (a) Whose fault was the accident? Ask if it was with a truck/auto
- (b) Did you / they file a claim? Was a claim filed against you/them?
- (c) Was there a lawsuit?
- (d) Did you/they receive compensation? Do you think it was unfair that you/they did not receive more? Did the person(s) with whom you had a car accident receive compensation?
- (e) Do you believe that your experience in an accident would make you biased against a truck driver in this lawsuit?

### **Media Coverage Involving Truck Accidents**

Has anyone heard of recent automobile accidents with trucks in the media?

- (a) Have you heard about the accident involving actor Tracy Morgan with a Walmart truck?
- (b) Have you read about or seen in the news any other accidents involving trucks?
- (c) Do you believe that what you have seen in the news would make you biased against a truck driver in this lawsuit?

## **Bias against Truck Drivers**

Does anyone feel that many truck drivers drive dangerously?

- (a) If yes, elicit reasons for their opinion. Follow up with: Would you have difficulty giving a truck driver the same fair trial as an individual driver?
- (b) Would your concern about truck driver safety not make you the best juror in which the defendant is a truck driver in an accident? So my client would not start out evenly with the plaintiff if you were a juror in this case?
- (c) This case involves an accident that occurred at [STATE LOCATION OF ROAD]. Have any of you seen trucks driving at that location? Can you give my client a fair trial who was involved in an accident at this location?

Are you concerned about your safety when you driving and see trucks also on the road?

Do you believe that truck drivers frequently ignore safety rules?

## **Significant Personal Loss**

Jurors who have suffered from recent significant losses often identify with plaintiffs.

Have you had a significant loss in the last two years?

- (a) Divorce
- (b) Serious injury
- (c) Death in the family

If seriously injured: Would your injury affect your ability to impartially decide a case in which the plaintiff alleges that he suffered from a brain injury as a result of a car accident with my client?

## **Bias Against the Defendant**

1. One bias that I find a lot, as a lawyer who works for defendants, is that a lot of people think my client must have done something wrong for this case to make it to trial. How many of you here share that common view? Does my client start out a little bit behind just because of that, in your mind?
2. How many of you feel that if a case makes it this far, there must be something to the plaintiff's claim and my client probably caused the plaintiff significant damage?
  - (a) Does that mean you start out inclined to award the plaintiff money in this case?
  - (b) Do you start out feeling, then, that my client has to prove that it did nothing wrong?
    - a. You will be instructed that that the burden of proof in a civil case requires the plaintiff to prove his injuries by a preponderance of the evidence, and that my

client does not have to prove anything. Given what you have told me, I am concerned that your feelings are strong enough that the Judge's instructions won't really have an impact. Can you understand my concern?

- b. So is it fair to say that you start off favoring the plaintiff?
- c. And given the way you feel, you are likely to give more scrutiny to the testimony of [defendant's] witnesses than to the plaintiff and to those testifying on behalf of the plaintiff?
- d. And are likely to feel that [defendant] needs to prove that it did nothing wrong?
- e. Given your strong feelings and inability to follow the law, wouldn't you agree that you would be better suited to sit on a different case with different issues?
- f. Therefore, you couldn't necessarily be fair in this case?

### **Familiarity with Plaintiff's Type of Injuries**

Does anyone or your family or close friends have had a **[SPECIFIC TYPE OF INJURY]**? Tell me about them?

- a. How did it occur?
- b. Was any lawsuit filed?
- c. Did he/she recover?

You will be hearing a lot about **[TYPE]** injuries. These types of injuries may be categorized from mild, moderate and severe. For some people, the plaintiff in a lawsuit would not need to prove that he has not recovered from a **[INJURY]** as a result of a car accident. How many people are inclined to agree with that?

### **Juror Preconditioning**

*Key Themes.* When the opportunity presents itself, you should attempt to precondition jurors to the key themes in your case. This should not be done by lecturing the jury, but rather by embedding your themes in the voir dire questions. For instance, in a personal injury case where you are representing the defense and one of your main themes in the case is the plaintiff's failure to take responsibility for his / her own actions, you may precondition jurors to this theme by asking: Does anyone believe that a person should not have to take responsibility for their own actions? Most likely no one on the jury is going to agree with this question. In turn, you have preconditioned the jury to a key theme in your case.

## **Conclusion**

Many jurors feel intimidated admitting that they are biased in open court. The above strategy is designed to best elicit bias among potential jurors. In our jury research, we have found that many people have negative opinions about truck drivers and truck companies. These views stem from their personal experiences, news coverage of truck accidents, as well as the media portrayal of truck drivers. By asking jurors about their personal experiences and what they have heard, defense attorneys have the opportunity to engage in an open dialogue with them to make them feel comfortable indicating any bias they may have towards trucking companies.