

Jury selection: Choosing the right audience

BY AMY GROVES LOWE

The commonly held idea that jurors make up their minds by the end of the opening statement is not entirely true. However, research does suggest that jurors, at the earliest stages of a trial, do adopt some type of conceptual framework that serves as an organizing vehicle for incoming information. This conceptual framework, or frame of reference, becomes a filter for information; new facts are adopted or rejected depending on how consistent the information is with their frame of reference. This is essentially selective perception of incoming information. Jurors accept and attend to those things that fit their initial orientation and “forget” or fail to hear inconsistent information.

People do not attend equally to every bit of information presented to them. Rather, perceptions are organized, either based on previous experiences, beliefs and attitudes, or upon conceptual schemes presented. Jury selection, then, should focus on (1) the conceptual framework by which information is processed and (2)

previous beliefs, experiences and attitudes of potential jurors.

Because jurors develop an organizational reference for incoming information, it is essential that attorneys provide jurors with a frame of reference favorable to his or her position. Counsel must identify central themes that can be used by the jurors as reference points for organizing incoming information. All argument and evidence should be presented to jurors in a way that stays within the framework of your themes.

Questionnaires and voir dire allow the attorney to become informed of a prospective juror’s pre-trial attitudes and beliefs. Often jurors feel more comfortable revealing personal information on paper than in front of a group of strangers, so a questionnaire can provide them with that opportunity. However, voir dire also allows counsel to observe baseline behavior in early non-sensitive questioning and then compare it to later behavior on more sensitive questioning to see if there is any change. Thus,

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GAIL'S GRAMMAR

Which sentence is correct? The plaintiff *has proved* every element of his case. OR The plaintiff *has proven* every element of his case.

It's a trick question; both answers are acceptable in American English as the past participle of *prove*. If you are writing for a particular purpose, however, you might want to check the style manual. For example, the AP Stylebook and the Chicago Manual prefer *proved*, unless used in an expression like "innocent until *proven* guilty."

When used as an adjective, the correct choice is *proven*, as in "The discredited witness was a *proven* liar."

Thanks to Wendy Shea for suggesting this topic.
Send suggestions for future Gail's Grammar columns to Gail Stephenson at GStephenson@sulc.edu, or call Gail at 225.771-4900 x 216.

some of the most important information an attorney can obtain during voir dire is related to jurors' case-relevant attitudes and life experiences. Research has shown that a verdict is highly predictive when the jurors have had case-relevant life experiences or have significant relationships with others who have had such experiences.

The most fundamental aspect of planning an effective voir dire is to develop a set of appropriate questions for the prospective jurors. This set of questions can be used both in setting up the conceptual framework through which you want your jurors to perceive your case and in identifying the beliefs, attitudes and previous experiences of jurors that will influence how they organize these perceptions. An excellent starting point for developing questions is to list your case themes. All of your questions should in some way aim to elicit responses that tell you which prospective jurors will be favorably disposed to your case — and which ones you should strike from the panel. ■

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