



Understanding Juror's Nonverbal Communication

By Jeffrey Frederick, Ph.D.

To evaluate potential jurors' opinions and biases, it is important to be aware of what jurors are telling us beyond the answers they give to questions posed during the course of voir dire. The way that voir dire is normally conducted inhibits candor and openness on the part of potential jurors. In addition, there is evidence that potential jurors may seek to deceive lawyers through their answers to questions posed to them.¹ Thus, while the jury selection process places a premium on the information jurors provide, strict reliance on the content of jurors' answers may not reveal the jurors' true feelings and opinions.

Types of Nonverbal Communication

One of the most important ways people communicate has nothing to do with the content of what they say, especially when it comes to their opinions and emotions. Studies have shown that from 60 to 65 percent of people's total communication occurs through what are termed nonverbal behaviors.²

¹ See Broeder, *Voir Dire Examinations: An Empirical Study*, 38 S. Cal. L. Rev. 503-28 (1965); Mize, *On Better Jury Selection: Spotting Unfavorable Jurors Before They Enter the Jury Room*, Ct. Rev. 36, 10 (1999); Mize, *Be Cautious of the Quiet Ones*, *Voir Dire*, 10, 8 (2003); Seltzer, Ventuti & Lopes, *Juror Honesty During Voir Dire*, 19 J. Crim. Just. 451 (1991); and Vidmar, *Case Studies of Pre- and Midtrial Prejudice in Criminal and Civil Litigation*, 26 L. & Hum. Behav. 73 (2002).

² See studies cited in *Judge's Nonverbal Behavior in Jury Trials: A Threat to Judicial Impartiality*, Va L. Rev. (1975).

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This type of communication consists of *kinesic behaviors* (nonlinguistic body motions) and *paralinguistic behaviors* (noncontent aspects of speech).³ Considerable attention has been paid to the presence of anxiety in nonverbal communication, particularly in detecting when someone is lying.⁴ When people are anxious because of sensitivity to the subject matter, general nervousness, or a wish to deceive, they can reveal or “leak” their anxiety (and other feelings) through a variety of kinesic and paralinguistic behaviors. Lawyers can uncover the underlying opinions, feelings and biases of potential jurors during the jury selection process by paying attention to the information contained in nonverbal communication.

Nonverbal indicators of what jurors are feeling or when they are evading the truth are of two types: visual cues (i.e., what we see)

and auditory cues (i.e., what we hear). Several points should be kept in mind when considering visual and auditory cues.

First, there is no Pinocchio effect (i.e., the fictional character Pinocchio’s nose growing longer when he told a lie). No single cue or behavior is universally associated with lying.

Second, although we will consider

these cues separately for the purposes of explanation, in reality the behavior of jurors is rarely this simple. Nonverbal cues usually occur in clusters or combinations of cues that provide the overall meaning to the behavior. Therefore, it is important not to fall victim to simplistic one-clue/behavior interpretations of the nonverbal communication of potential jurors at any given time.

Third, jurors may exhibit individual behaviors or a cluster of behaviors for a variety of reasons. For example, when potential jurors fold their arms, it may reflect animosity toward what is being said or it may simply mean the air conditioning has made them cold. Careful attention to the whole process is necessary in order to glean useful information about potential jurors’ true feelings.

Fourth, in considering what to look for in the jurors’ nonverbal communication, it is necessary to

start at the beginning. That is, we must consider the normal pattern of the jurors’ nonverbal behavior. How do jurors act simply as a function of their being in the voir dire situation? Observing jurors at the beginning of voir dire provides a critical comparison point or baseline for evaluating their subsequent actions. Does the juror’s behavior change in response to what is happening during voir dire (who is asking the questions or what topic is being addressed)? For example, does the

The key to understanding jurors’ answers lies in deviations or breakdowns in their typical behavior.

³ For reviews of the area of verbal and nonverbal communication, see Frederick, *The Psychology of the American Jury* (1987); Ekman, *Telling Lies: Clues to Deceit in the Marketplace, Marriage, and Politics* (1992); Zuckerman, DePaulo, & Rosenthal, *Verbal and Nonverbal Communication of Deception*, in 14 *Advances in Experimental Social Psychology* 1-60 (L. Berkowitz ed., 1982); Mehrabian, *Nonverbal Communication* (1972). For its relation to trial practice in general, see Aron, Fast, & Klein, *Trial Communication Skills* (1991); as it relates to jury selection, see Dimitrius & Mazzarella, *Reading People: How to Understand People and Predict Their Behavior-Anytime, Anyplace* (1999); Frederick, *Jury Behavior: A Psychologist Examines Jury Selection*, 5 *Ohio N.U.L. Rev.* 571-85 (1978); Frederick, *Jurors’ Verbal and Nonverbal Communication: What Attorneys Should Look for During Jury Selection*, 39 *Va. L. Rev.*, 24-27 (1990); Suggs & Sales, *Using Communication Cues to Evaluate Prospective Jurors During Voir Dire*, 20 *Ariz. L. Rev.* 629-42 (1978); and judge’s behavior, see *Judge’s Nonverbal Behavior in Jury Trials: A Threat to Judicial Impartiality*, *Va. L. Rev.* (1975).

⁴ For example, see Zuckerman et al., *id.*

juror show signs of nervousness or agitation throughout the questioning or only when the topic of race relations or tort reform is discussed? Is the juror more open and talkative with one lawyer than with another?

Finally, it is important to understand that nervousness and deliberate deception may not produce the same responses within the same individual. Jurors may reveal outward signs of nervousness (e.g., increased blinking or lack of eye contact) in sensitive topic areas, but when it comes to specifically expressing an opinion on the topic that is misleading or a lie, they may exert greater control over their nonverbal communication (e.g., maintaining higher levels of eye contact). This latter activity can arise from stereotypes concerning successful deception held by jurors, e.g., that lack of eye contact is associated with lying.

The key to understanding jurors' answers lies in deviations or breakdowns in their typical behavior. It is through the information these breakdowns provide and the overall patterns or clusters of jurors' behaviors that lawyers can better understand what the jurors are really saying.

Visual Cues: What We See

The first category of cues comprises what is seen in the potential juror's behavior, such as movements, posture and facial expressions. Seven types of cues are important:

- Body movement
- Body posture
- Body orientation
- Inadvertent emblems
- Shrugs
- Eye contact
- Facial expressions

Body Movement

In general, the more movement the potential juror exhibits, the greater the anxiety. These movements can involve the entire body (e.g., shifting body postures) or more limited parts of the body (e.g., wringing hands or tapping fingers). Gross movements such as repeatedly

shifting the body's weight ("fidgeting" or "squirming") reflect anxiety or nervousness on the juror's part, the traditional reaction to being placed on "the hot seat."

More subtle body movements relate to actions that dissipate the nervous energy or arousal produced by anxiety—rubbing the hands together and squeezing them at the same time, strumming the fingers repeatedly on a chair arm or tapping them on a book, newspaper or other object. Strumming and tapping movements, however, can also reflect impatience. While not necessarily an indicator of deception, these body movements often suggest unfavorable reactions to the lawyer asking the questions. Twisting an object such as a tissue, necklace, bracelet, watchband or ring with the hand is often analogous to hand wringing and is a more subtle sign of anxiety.

Other signs of anxiety are what are termed "adaptive" movements,⁵ such as scratching one's head, pulling or twirling one's hair, or briefly touching one's face. Grooming can also reflect anxiety. Anxious potential jurors can be seen brushing their hair back with one hand or quickly shaking the head so that their hair falls in place. This anxious grooming can also lead potential jurors to "pick" at their clothing, removing lint, or they may "straighten" their clothing (dresses, coats, shirts or ties).

Not all of these movements indicate anxiety. For example, scratching of the head also may reflect uncertainty, particularly if the head is tilted at an angle while the scratching occurs. While wringing the hands reflects anxiety, rubbing the palms together in a back-and-forth motion can indicate confidence or anticipation of something desirable. Steepling the hands, where the hands are placed palms together with the fingers pointed skyward, indicates confidence in one's position or in what one is saying. In addition, expressive gestures that complement what is being said generally indicate a greater degree of comfort

⁵ See Hocking & Leathers, Nonverbal Indication of Deception: A New Theoretical Perspective, 47 *Communication Monographs* 119-31 (1980).

or involvement in the process. These cues or behaviors should not be mistaken for anxious reactions on the part of potential jurors.

Body Posture

This cue combines two sources of information: body rigidity and gestures. In general, the more rigid the body posture of a potential juror, the greater the anxiety the juror is experiencing. Signs of rigidity include an erect, stiff posture and the

were addressed. When questioning returned to less sensitive areas, his jaw muscles relaxed.

Rigidity is also apparent when normal head and body movements do not occur during the course of voir dire questioning. This lack of movement can manifest itself in crossed arms, crossed legs and legs crossed at the ankles. However, it is important to consider the above cues in light of other features of the potential jurors' nonverbal communication. For example, crossed arms with a genuine smile

indicate comfort, not anxiety or resistance. Crossed legs with a slight kicking motion can reflect boredom or impatience. Placing the hands in pockets, particularly with the fists balled up, reflects anxiety and sometimes even hidden hostility.

Various gestures can also provide information on potential jurors' feelings.⁷ Placing

Visual Cues to Anxiety and Deception⁶

Source	Examples of Behaviors
<i>Body Movement</i>	Shifting postures, wringing hands, repetitive movements or "adaptive movements"
<i>Body Posture</i>	Greater rigidity and less head and body movement
<i>Body Orientation</i>	Closed orientation, folded arms, crossed legs or leaning away from speaker
<i>Inadvertent Emblems</i>	Nested fist in the crook of the elbow, or clenched hand on leg
<i>Shrugs</i>	Presence of shoulder shrugs
<i>Eye Contact</i>	Less eye contact and greater blinking Exceptions: hostility and cultural norms of reduced eye contact
<i>Facial Expressions</i>	Frowning, skeptical expressions, detached or fixed smiles

tightening of muscles. Tightening of the muscles in the hands and fingers can produce the appearance of "white knuckles" when anxious potential jurors grasp the arms of their chairs or clasp their hands in their laps. More subtle signs of anxiety occur with the tightening of smaller muscle groups in the body, particularly the face. For example, in jury selection for a medical negligence case against a hospital, questioning of a hospital administrator on the issues of hospital liability and size of damage awards led to a subtle but informative nonverbal response. Although his answers were not overtly anti-plaintiff, his jaw muscles tightened whenever liability and damage award issues

fingers in front of the mouth can indicate reluctance or the holding back of the juror's true feelings. Placing a hand in front of the mouth can reflect a lack of confidence or embarrassment at what the potential juror is saying. Jurors who tilt their heads may be evaluating what is being asked or questioning the statement being made (enhanced by the juror's pursed lips). An open hand to the throat can indicate a need to protect oneself from an anxiety-provoking situation, topic or person, such as the criminal defendant.

A final aspect of body posture concerns the concept of "mirroring."⁸ Mirroring refers to the degree that individuals adopt the body

⁶ Adapted with the permission of *Virginia Lawyer*.

⁷ For a related discussion, see Aron et al., *supra* note 3.

⁸ For additional discussions of mirroring, see Bonora, Krauss & Roundtree, *Jury Work: Systematic Techniques* (1999), and Aron et al., *supra* note 3.

postures and mannerisms of those around them (or those of a speaker). Mirroring usually indicates agreement or a positive response to what is being said or identification with the person who is saying it. Potential jurors may mirror the postures or mannerisms of lawyers or other jurors with whom they identify or toward whom they have positive feelings. Mirroring among jurors is useful when considering the development of cliques or relationships that may form in the jury. Potential jurors mirroring each other are revealing potential bonds that may form if they serve together on the jury.

Body Orientation

A third cue concerns the orientation of the potential juror's body to the lawyer. Body orientation refers to the relationship of the front of the listener's body to the speaker. Open orientation can be seen in the "squaring" of the listener's body to the speaker. An open orientation by a juror generally shows lack of anxiety, positive feelings toward the speaker, or agreement with the speaker or his or her position.

In a basic sense, an open orientation leaves the vulnerable parts of the body exposed, a position people are reluctant to take in the presence of someone (or something) that makes them feel uncomfortable. Thus, the degree to which the body is angled away from the speaker, as when the shoulder is turned toward the lawyer or party, reflects the "closed" nature of the relationship or resistance to the speaker or his or her position. This closed orientation can be particularly informative when it reflects an ongoing orientation toward one party or the other.

A related feature of orientation involves whether parts of the body are brought together to close off or "protect" the body. Crossing of the arms or legs can combine with orientation to reflect a further closing

off to the lawyer. Jurors who cross their arms in this manner reveal their resistance or even hostility toward the lawyer or party to which it is directed.

Like mirroring, body orientation can provide information about potential relationships within the jury. How jurors associate in the hallways, lunch rooms and the jury box during the course of jury selection provides glimpses of the relationships between jurors. Several jurors may stand together in a small group with the outlying members turning their bodies in toward the center of the group, reflecting the "closed" nature of the group. This exclusivity is particularly telling when other potential jurors are standing near the group, yet are not included in it. The orientation of jurors also can reveal relationships in the jury box. When several potential jurors tend to turn toward one another, other jurors can be left "outside," with their bodies oriented either straight ahead or away from these potential jurors.

How jurors associate in the hallways, lunch rooms and the jury box during the course of jury selection provides glimpses of the relationships between jurors.

Finally, leaning forward or away from the speaker can reveal the degree of interest in the lawyer or the position advocated.

Generally, jurors who lean forward reveal their interest, attention or receptiveness, but this is not necessarily a positive sign for the lawyer. A hostile potential juror, whose forward lean indicates attention to the lawyer or party, reflects a more combative interest, not the presence of any positive feelings. Leaning away by jurors, on the other hand, generally indicates less interest or less receptivity. This latter cue also may reflect comfort with what is being said or the fact that a decision has been reached. In either case there is a decrease in the jurors's need to be vigilant or attentive

Inadvertent Emblems

Emblems are gestures that can be made in place of a word. The nodding of the head (yes) or the cupping of the hand behind the

ear (speak up/I can't hear) communicates the intent of the person without the use of words. Like "slips of the tongue" there can be "slips of gestures" or "leaks of emblems."⁹

A key to detecting information contained in the leakage of emblems is that it is exhibited outside the normal presentation area (and oftentimes is present only in partial form). For example, an emblem or gesture such as a clenched or shaking fist is often made in front and away from the body and is a sign of hostility or anger. Generally, such emblems are inappropriate for expression during voir dire questioning. However, a clenched fist tucked in the crook of the elbow is not so obvious, yet can still be emblematic of the jurors' true hostile feelings.

Shrugs

Shrugging the shoulders while answering a question indicates a lack of confidence arising from anxiety (as a result of deception), embarrassment or uncertainty. Shrugs can be the juror's way of qualifying an answer. Potential jurors who shrug when answering a question about the defendant's presumed innocence or awards for pain and suffering are telling lawyers that they are not sure or do not agree with what they are saying.

This information is important to know in evaluating the desirability of these jurors. A shrug may indicate the juror's lack of commitment to what is being said. Under these circumstances, potential jurors are telling lawyers that while they may verbally agree, this agreement may have no impact on their decisions.

Finally, shrugs can also indicate indifference about an issue, as in the case of a juror who shrugs when noting that police may sometimes go too far in subduing potential lawbreakers.

Eye Contact

The willingness or ability of potential jurors

to make and maintain eye contact during questioning can be a measure of the anxiety they feel. If there is anxiety or tension in the interaction between the lawyer and potential jurors, this tension will build up over time. As the tension rises, potential jurors will respond by breaking eye contact (through either averting the eyes or blinking). When eye contact is broken, the tension level temporarily decreases and the jurors can then resume eye contact with the lawyer. If anxiety is not present, potential jurors can maintain a moderate to high level of eye contact with the lawyer or party in the interaction. The same is true when the potential juror has positive feelings toward the lawyer or party or is interested in what the lawyer has to say. However, when the potential juror is anxious

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(possibly as a result of being deceptive), breaks in the normal pattern of eye contact occur, with potential jurors averting their eyes at critical times or blinking more often.

Knowing the relationship between eye contact and anxiety allows lawyers to consider several useful questions. Do potential jurors maintain eye contact with the lawyer or party when they give their answers, or do they avert their eyes at critical times? For example, when potential jurors are asked how they feel about rendering a million-dollar judgment against the defendant, do they say, "I wouldn't have any reservations about rendering a million-dollar verdict [averting eyes] against the defendant [re-establishing eye contact]"? Or in the case of a criminal defendant possibly not taking the stand to testify, do jurors say, "I would not hold it against the defendant [averting eyes] if he chose not to testify [re-establishing eye contact] in his own defense"? Averting the eyes at the last part of the answer reveals the juror's anxiety. Do potential jurors increase their blinking in response to questions concerning certain opinions or when a particular lawyer asks the questions? Are potential jurors able to maintain eye contact throughout the questioning process? A potential juror's failure to maintain eye contact could mean that the juror would

⁹ For a further discussion, see Ekman, *supra* note 3.

not be a desirable choice for the examiner.

Three exceptions to the relationship between eye contact and anxiety should be kept in mind. First, although steady eye contact is usually an indication of juror ease or interest, an increase in eye contact can reflect hostility. This phenomenon is captured by the expression “know your enemy” (i.e., “I don’t like you and I am keeping my eye on you”).

Second, an increase in eye contact has also been associated with attempts to deceive or hide one’s true feelings.¹⁰ As such, when jurors choose to lie or mislead and believe that a steady gaze would make them appear more truthful, they may increase their eye contact.

Third, cultures differ in their view of the appropriate levels of eye contact. For example, potential jurors of Hispanic and Asian backgrounds may exhibit lower levels of eye contact, which simply reflects their cultures’ views. These exceptions highlight the need to consider all nonverbal and verbal cues together in order to evaluate potential jurors’ feelings and opinions.

Facial Expressions

Probably the cue that people rely upon most in their interactions with others is facial expressions. Frowning, smiling, looks of concern, or skeptical or incredulous expressions can reveal feelings about a situation or person. The problem with facial expressions is that over the course of socialization, people learn to control their facial expressions more than other aspects of nonverbal communication. Potential jurors may smile or exhibit signs of interest even when their feelings are inconsistent with these expressions. However, unless a potential juror is particularly adept at controlling or manipulating nonverbal communication,

inconsistencies between feelings and outward appearances will leak out. Leakage occurs in two areas: aspects of the facial expressions themselves and inconsistencies with other body cues.

The facial expressions of the potential juror can betray underlying “hidden” feelings in several ways. First, the potential juror may exhibit what are termed “microexpressions.”¹¹ Microexpressions are very short or fleeting expressions, measured in terms of milliseconds. Microexpressions often are inconsistent. For example, when the facial expression of someone who is not happy but is smiling is filmed in slow motion, microexpressions may show a grimace, belying the dominant smiling expression. Unfortunately, microexpressions are unlikely to be seen and responded to on a conscious level. However, microexpressions do influence us on a subconscious level. They can be important sources of lawyers’ “gut” feelings about jurors, where lawyers have a positive or negative reaction to a juror yet cannot give an objective reason for this feeling.¹²

A second way potential jurors can betray their true feelings is through the quality of the facial expression itself. While there are no hard-and-fast rules for lie detection, a fixed smile, one that lasts longer than is appropriate for the situation, can reveal deception. Jurors often use smiles to mask other feelings. The fixed smile appears to linger, where the genuine smile naturally disappears as the situation or feeling changes. This fixed smile can reveal the degree of control the juror is exercising, with the “controlled” face giving the appearance of unemotionality or composure when the juror should be reacting to the situation. For example, when a lawyer inadvertently embarrasses a hostile juror, the juror may adopt a fixed smile to cover his or

¹⁰ Mann, Vrij & Bull, *Suspects, Lies, and Videotape: An Analysis of Authentic High-Stake Liars*, 26 L. & Hum. Behav. 365 (2002).

¹¹ See Haggard & Issacs, *Micromomentary Facial Expressions as Indicator of Ego Mechanisms in Psychotherapy*, in Gottschalk & Auerback, *Methods of Research in Psychotherapy* (1966). See also Aron et al., *supra* note 3.

¹² A note of caution is needed when considering “gut” reactions. It is always important to ask yourself these questions. Why am I reacting to the potential juror in this manner? and “What is it about this potential juror that is either good or bad for my client?” Focusing on the answers to these questions helps separate a truly insightful gut reaction from the more generic positive or negative feelings toward a potential juror. The latter reaction may reflect more on one’s personal likes and dislikes rather than on whether the potential juror holds opinions and values that are beneficial to the client.

her hostile reaction to the lawyer.

In addition, a nongenuine facial expression is often asymmetric, not involving the whole face as a genuine expression normally does. The “crooked smile” is such an expression. In a crooked smile, the lips turn up in a smile on one side while the lips on the other side remain horizontal or turn slightly down, in a frown or grimace.

Finally, leakage occurs through the jurors’ other nonverbal body cues. This leakage occurs when a facial expression communicates some desired effect but the body cues send a conflicting message. For example, potential jurors may verbally express a willingness to treat a party fairly and the facial expression may appear neutral or positive. However, the body cues may reflect resistance or anxiety, with crossed arms and a closed orientation. As will be discussed later, the degree of consistency of nonverbal cues is a major factor in uncovering a jurors’ true feelings.

One type of potential juror highlights the above discussion of facial expressions. The “smiling” juror wears a smile during the voir dire questioning by the lawyer, giving the impression that the juror is receptive to or feels positive toward the lawyer or party. However, this juror is really hostile or in some other way unfavorable. Once selected, this juror smiles at the lawyer during the trial, continuing to foster the impression that the juror is favorable. When the jury returns a verdict against the client, the smiling juror continues to smile (and only later is revealed as having opposed the client’s case).

The key to detecting the smiling juror lies in examining the consistency of his or her nonverbal cues. Are there wrinkles or crow’s feet at the outside corners of the juror’s eyes that should accompany genuine smiling? Is there a softness to the eyes that is associated with positive feeling or are they hard, as would be consistent with the expression “eyes that looked daggers”? Is the smile asymmetrical, i.e., one side of the smile lifts up while the other side of the smile stays relatively flat or

points downward? Is the smile consistent with other nonverbal cues, e.g., body orientation and postures? Always beware of the potential juror who smiles but angles his or her body away and maintains a rigid posture!

Part two of “Understanding Jurors’ Nonverbal Communication” addresses audio cues and will appear in next month’s issue of *The Jury Expert* (Volume 18, Issue 4).

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Indicators of Quality in Pretrial Small Group Research

By Tsongas Litigation Consulting, Inc.

All focus group and mock trial research is not created equal. With the growing prevalence of focus groups and mock trials as assessment tools prior to Alternative Dispute Resolution, it is important that attorneys are aware of what the indicators of quality are in what the American Society of Trial Consultants (A.S.T.C.) refers to as “Small Group Research” (S.G.R.). After all, what your opponent calls a “mock trial” may have been the equivalent of a glorified dinner party with friends and family.

Small group research in legal settings typically takes the form of focus groups or mock trials. The terminology and methodological details used in S.G.R. can vary greatly among practitioners. The A.S.T.C. has adopted the following definition of S.G.R.: “Trial consultants use S.G.R. to study an individual’s beliefs, attitudes and opinions, and behavior relevant to issues in litigation. S.G.R. is characterized by participant interaction in a group setting.”

One of the most important questions to ask about an opponent’s research, particularly when deliberations will be important, is, “How did you get your jurors?” Were they garnered from want ads? Were they a group of “professional” jurors recruited from a focus group facility’s database? Were they obtained from an employment agency? Are they college students?

Understanding indicators of quality in small group research is essential to your ability to be an educated consumer of these important practice areas within the trial consulting profession. This column provides some general guidelines for evaluating the quality of small group research and for determining the weight to give its results.¹

1. Larger sample sizes increase validity.

Sample size, in terms of both the total number of participants and the number of groups/mock juries, is a key consideration in determining the weight to ascribe to research results. A larger sample size or an increased number of groups/mock juries increases the chances that the data observed accurately reflect the true state of affairs. This is particularly true when evaluating verdicts or damage awards. Data from only one group should be viewed with caution since group characteristics cannot be ruled out as the primary cause of the outcome.

2. Random recruiting increases participant quality.

Random recruiting methods, such as random digit dialing (R.D.D.), generally result in a more representative sample than other non-random methods. R.D.D. provides superior coverage of the sampling frame and includes many potential participants that are unattainable in list-based sampling, such as individuals with new or unlisted numbers. S.G.R. participants are sometimes obtained through placing an ad in the newspaper, or from a database of former research participants. These methods are particularly vulnerable to self-selection bias and can produce results that are less generalizable to the population of interest.

¹ These guidelines are derived from generally accepted social science practices and the code of Professional Standards of the American Society of Trial Consultants.

3. Participant characteristics should approximate those of the actual jury pool.

The closer the characteristics of the research participants approximate those expected in the actual jury, the more valid the research results will be. Ideally, participants are recruited from the trial venue, although this is not feasible in some smaller venues. The demographic characteristic of the participants should also correspond to those of the venue in terms of race/ethnicity, age and sex. Quality further increases when participants are screened for probable hardships or other characteristics that would likely prevent them from serving as jurors at trial.

4. The results of the research should be properly reported and not overstated.

The report should provide sufficient information to allow a reader to judge the quality of the research methodology. At a minimum, this information should include:

- sample size,
- participant recruitment and qualifying procedures,
- an overview of how the project was conducted, and
- an explanation of the data analysis.

The results of the research should not be given greater confidence than the research design and findings warrant.

5. The anonymity of research participants should be protected.

Practitioners should always use their best efforts to protect the anonymity of research participants.

6. The identity of the S.G.R. client should be protected.

Practitioners should use their best efforts to protect the identity of the S.G.R. client.

7. Deliberation versus discussion.

When considering the conclusions and decisions at which participants arrived, it is important to consider the level of facilitator or experimenter involvement. A facilitator, knowingly or unknowingly, can exert substantial influence in the conclusions of a group in subtle ways. Question wording, actively engaging or arguing

with participants, and reframing testimony or evidence are tactics that can be used to influence a group. Although such tactics are not necessarily a sign of poor research quality and can be used for certain purposes, their potential to influence outcomes should be noted and understood by anyone who is evaluating the research.

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**Quick
Courtroom
Tips**

**By
Bob Gerchen**

Silence is Good

There's nothing wrong with silence. Silence is dramatic. Silence is better than talking when you aren't prepared for what's about to come out of your mouth.

When you take a pause, most jurors will use the silence to replay in their heads that which has just been said. Saying nothing for a few moments after a witness has uttered something vitally important adds drama to the moment. It also gives the jurors a few moments to replay and digest what has just been said.

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Jury News

By
Joe Custer, J.D.

Can attorneys prove to be good jurors?¹

An 81-year-old attorney who had been practicing law for over fifty years received a notice in the mail in February 2005 stating his name was being considered for county jury duty. The attorney, Robert M. Green, had plenty of courtroom experience, being appointed by Attorney General Robert F. Kennedy to be the United States Attorney in Wichita. Prior to that he had been a county attorney and served as a probate, county, court, and juvenile judge. After four years serving as United States Attorney, he went into private practice.

Mr. Green turned in his information figuring he would hear nothing more, acknowledging that the trial attorneys would not likely call another attorney to sit on their side of a jury case. To his amazement he was called on March 24, 2005.

Findings:

1. Despite the fact that the attorney made known during voir dire his experience as both defense and prosecution counsel, he was selected.
2. Since the jurors were encouraged to use their life experiences and knowledge to assist them in deciphering the oral testimony, the jury selected the experienced attorney to be jury foreman. The attorney was amazed and encouraged by the thoughtful jury and the seriousness they gave to the deliberations.
3. The penultimate aspect that came across to Esquire Green, next to being selected a juror, was the lack of compelling pleading and explanations on the part of the attorneys. His experience as an attorney helped the jury muddle through some of the attorneys' quizzical arguments.

Despite popular myth, attorneys can be chosen to be jurors and very helpful ones at that.

¹ Based on: Green, Robert M. (2006). "Jury Service—It Was Exciting." *Kansas Bar Association Journal*, 75 (2), February 8-17.

Is there a way for informed people to get involved in events that spread a positive message regarding educating the public concerning the pride and excitement that comes with jury service?²

It has been stated over and over again how jury service can be a life altering experience. Many people feel that they have reached the apex of good experience as a citizen by serving as a juror. They also feel proud to be chosen and to have served. The American Bar Association recognized this and recently created the American Jury Initiative putting forth jury principles and opportunities to educate the general public about the importance of jury service.

Findings:

1. The American Bar Association, under the leadership of President Robert Greg, created the first week of May 2005 as National Juror Appreciation Week, a time to honor and celebrate jurors and the jury systems. Hopefully these programs will be continued.
2. The ABA commission on the American Jury has developed the Juror Appreciation Kit, which includes various appreciation activities to help courts devise programs that will honor local jurors. To obtain the materials in the kit, visit www.abanet.org/jury/jurorkit.html.
3. The ABA's Law Day web site includes Law Day activities from around the country, with state and local programs in 30 states represented. If you would like to know what is happening in your area or obtain information on how to participate in any of the activities, please visit www.abanet.org/jury/events.html. I noticed that the last listed event was in August of 2005. The ABA stated they planned on adding more.

Joe Custer is the Associate Director of the University of Kansas Wheat Law Library. He is also a faculty lecturer at the University of Kansas School of Law and adjunct professor in the Legal Information Management program at Emporia State University. He may be reached at jcuster@ku.edu.

² Based on Grey, Robert J. Jr. (2005). "A Week to Honor Juror," *Bar Association Journal*, 91, May 8.

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