

**Stack & Sway vs. Strike & Sing:
Litigation Research and Jury Selection**

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Stack & Sway vs. Strike & Sing: Using Focus Groups in Litigation

The contrasting phrases “stack and sway” and “strike and sing” are metaphors for two different approaches to trial preparation and jury selection. The distinctions are subtle, but meaningful. The first reflects a long tradition of litigation practice; the second reflects an evolving approach becoming more common today.

Stack and Sway

The phrase stack and sway,¹ sometimes used pejoratively,² represents the traditional approach in which counsel attempt to “stack” the jury with people who fit the profile of their “best” jurors and then rely on their persuasive powers to sway the jury, convincing them of the justness of their cause.

This approach is Aristotelian; persuasion requires logical reason and an understanding of human nature and emotions.³ Persuasion is accomplished through the use of syllogisms, providing logical proof, and an appeal to jurors’ emotions.⁴ Law school trains attorneys to focus on facts and to analyze those facts in the context of legal rules. In addition, courts have traditionally treated jurors as *tabulae rasae*, capable of listening to evidence open-mindedly and reevaluating the case as new information is presented or at the end of the presentations.⁵ Consequently, lawyers tend to overvalue the legal interpretation of facts⁶ and the importance of analytical argument in trial. Thus, preparation is primarily analytical and relies on assumptions about jurors’ rationality and emotionality.

Jury selection is also often based on the lawyer’s past experiences with jurors and other laypersons. One attorney avoids women “because they don’t like me;” another shuns teachers “because they are too conservative;” a third wants minority members “because they’ll relate to plaintiff” [also a member of a minority group]. Clarence Darrow made similar recommendations in a 1936 article, entitled “How to Pick A Jury.” For instance, he counseled, “If the client is a landlord, a banker, or a manufacturer, or one of that type, then jurors sympathetic to that class

¹ We have been unable to trace the origin of this phrase, but it may be derived from the phrase “packing” juries. See, e.g., Jeremy Bentham, *The Elements of the Art of Packing, as Applied to Special Juries, Particularly in Cases of Libel Law* (1821) available at <<http://www.constitution.org/jb/packing.htm>> (last visited 12/1/02).

² The phrase was used as the title of a book published in 2002 criticizing the field of jury consulting. (Neil J. Kressel & Dorit F. Kressel, *Stack and Sway: The New Science of Jury Consulting* (2002).) We note that many of its criticisms are based on misconceptions of the work of litigation consultants.

³ Aristotle, *Rhetoric*, Book 1, Part 1. “There are, then, these three means of effecting persuasion. The man who is to be in command of them must, it is clear, be able (1) to reason logically, (2) to understand human character and goodness in their various forms, and (3) to understand the emotions—that is, to name them and describe them, to know their causes and the way in which they are excited.”

⁴ *Id.* (Aristotle also cites the speaker’s character as a mode of persuasion.)

⁵ This is evidenced by the judge’s admonishment that jurors should refrain from deciding issues or discussing the case until all evidence has been presented.

⁶ William Ury referred to this focus on facts in relating his Uncle’s revelation: “... [W]hat I learned at Harvard Law School is that all that counts in life are the *facts* It’s taken me twenty-five years to learn that just as important as the facts, if not more important, are people’s *perceptions* of those facts.” William Ury, *Getting past no: Negotiating your way from confrontation to cooperation* 18 (1993) (emphasis in original). This discussion dealt with negotiations and deal-making, but jurors’ perceptions of facts are equally important.

will be wanted in the box; a man who looks neat and trim and smug.”⁷ He advised against Presbyterian jurors, saying, “If a Presbyterian enters the jury box ... and calmly and critically sits down, let him go. He is cold as the grave; he knows right from wrong, although he seldom finds anything right.”⁸

Although these characterizations seem shallow, even bigoted, today, attorneys frequently try to identify the jurors who fit a profile of the “best” or “ideal” juror.⁹ Often today, the ideal is defined in terms of more specific demographic characteristics, such as a Republican male aged 55 or over, with an income of at least \$150,000 per year, or a single female Democrat with one or more children living at home. But when such research is unavailable to counsel, general profiles, such as those defined in terms of occupation or similarities to a party, are still used to select the “best” jurors. This sort of juror profiling has been part of American trial practice for more than a century,¹⁰ and much of it has been, as then Justice Rehnquist described, “based upon seat-of-the-pants instincts.”¹¹ *Batson v. Kentucky*, 476 U.S. 79, 138 (1986) (Rehnquist, J. dissenting).

The emphasis of the “stack and sway” approach is on the lawyer’s skills, intuition and past experiences with jurors. The underlying premise is that the attorney knows how people think and feel, and therefore is able, without further research, to make a persuasive presentation that will sway jurors to choose his or her side. Ultimately, in this view, the attorney’s words and beliefs take precedence over the jurors’ experiences and beliefs.

Strike and Sing

We use the phrase “strike and sing” as a metaphor for a newer, evolving approach to trial preparation and jury selection. In this approach, the attorney strikes jurors whose beliefs prevent them from hearing, so, in trial, she or he is singing to the choir.

This approach emphasizes potential *jurors’* values, knowledge, and experience. It descends from Piagetian theory and the understanding of how people learn and process new information.¹² In this approach, persuasive arguments are based on research of people’s perceptions of a particular case, rather than on the lawyer’s perceptions and his or her past experiences with jurors and other laypersons. This is important because laypersons often have a completely different perception of

⁷ Clarence Darrow, *How to Pick A Jury*, Esquire Magazine (1936) available at <http://www.law.umkc.edu/faculty/projects/ftrials/DAR_JURY.HTM> (last visited 11/30/02).

⁸ *Id.*

⁹ A good description of this method appears in Mike McCurley, *The Ideal Juror Profile and Mitigating the Effects of a Fault-Based Divorce* at <<http://www.aaml.org/ideal.htm>> (last visited 11/30/02).

¹⁰ Solomon M. Fulero & Steven D. Penrod, *The Myths and Realities of Attorney Jury Selection Folklore and Scientific Jury Selection: What Works?* 17 Ohio N.U. L. Rev. 229 (1990)

¹¹ Then Justice Rehnquist was referring to peremptory challenges, observing, “Such use of peremptories is at best based upon seat-of-the-pants instincts, which are undoubtedly crudely stereotypical and may in many cases be hopelessly mistaken.” *Batson v. Kentucky*, 476 U.S. 79, 138 (1986). Chief Justice Burger observed that attorneys “necessarily act on only limited information or hunch.” *Id.* At 123.

¹² Barry J. Wadsworth, *Piaget's theory of cognitive and affective development* (1989 4th ed.); Jean Piaget, *The language and thought of the child* (1926). This is based on the concept of “schemas,” discussed below. Some attribute the origin of the “schema” concept to Frederick C. Bartlett, *Remembering* (1932). Numerous scholars have since elaborated on this foundational idea.

facts than do lawyers simply because they do not share the perspective that lawyers develop in law school.¹³ Jurors draw on their own education and experience in assessing the information presented in court.¹⁴ Therefore, it behooves trial attorneys to learn how laypersons of varying backgrounds interpret evidence. The attorney can then prepare for trial in a manner that reflects the understanding of *jurors*.

Similarly, jury selection is based on jurors' beliefs, values and understanding.¹⁵ In contrast to the traditional method, the emphasis is on juror *de*-selection, rather than juror selection. Since, in reality, the attorney can only deselect jurors, the older approach generally creates false security; decisions are based on broad assumptions rather than real understanding of prospective jurors.¹⁶ Supplemental juror questionnaires and Voir Dire are used to identify potential jurors whose beliefs and values predispose them to decide *against* the attorney's client. This turns the traditional notion of choosing "the best" juror on its head. This distinction is crucial because this process requires that the attorney recognize venirepersons who are likely to be unfavorably biased.

Although this approach represents a subtle shift, rather than a radical departure from the older approach, it is a significant shift. Again, the emphasis of trial preparation and Voir Dire shifts from the *attorney's* knowledge and understanding to the *juror's* knowledge and understanding. As a result, it requires a mental shift on the part of the attorney in preparation for trial. Thus, preparation requires a different kind of research, research based on potential jurors. We typically use focus groups for that research, although, in some significant cases, we also use litigation intelligence surveys to acquire additional information about the members of the jury pool and their attitudes prior to trial.

Why Focus Group Research to prepare for Voir Dire, Jury De-selection and Case Presentation?

Our data suggest that most people have a general preliminary bias for one party or the other—even without knowing the facts. The fact that jurors' preexisting beliefs influence their decisions is widely known.¹⁷ Indeed, many people will ultimately maintain their initial bias regardless of the evidence presented. Research has demonstrated that "even when warned, jurors are often

¹³ See generally, Dan Hunter, *Reason is too large: Analogy and precedent in law*, 50 Emory Law Journal 1197(2001) (using cognitive science models of human thinking to explain analogical and precedential reasoning in the context of law.)

¹⁴ R. P. Abelson, *The psychological status of the script concept*, 36 American Psychologist 715-729 (1981); D. G. Bobrow & D. A. Norman, *Some principles of memory schemata*, Representation and understanding: Studies in cognitive science, 131-150 (1975); D. E. Rumelhart & A. Ortony, *The representation of knowledge in memory*, Schooling and the acquisition of knowledge, 99 (1977).

¹⁵ Jeffrey T. Frederick, *Effective Voir Dire*, The Compleat Lawyer, 26 (Summer 1977).

¹⁶ Indeed, we have seen attorneys ignore real information provided by venirepersons about their own biases and strike jurors based on common stereotypes instead, simply because they are not accustomed to the newer approach.

¹⁷ Kurt A. Carlson & J. Edward Russo, *Biased Interpretation of Evidence by Mock Jurors*, 7 Journal of Applied Experimental Psychology, No. 2, 91 (2001) (citing A. J. Hart, et al., *Injuries, prior beliefs, and damage awards*, 15 Behavioral Science and the Law 63 (1997); V.L. Smith, *Prototypes in the courtroom: Lay representations of legal concepts*, 61 Journal of Personality and Social Psychology, 857-872 (1991); and V.L. Smith, *When prior knowledge and law collide—Helping jurors use the law*, 17 Law and Human Behavior 507(1993).

unable to ignore their preconceptions when evaluating trial evidence.”¹⁸ In addition, their views of which side is leading distorts their perception of additional evidence as it is presented, resulting in their viewing it more favorably for the party they already perceive to be leading.¹⁹

For these reasons, it is critical to identify biased individuals. Doing so requires developing an understanding of the experiences and assumptions that lead to biases against a party. We emphasize the use of focus groups because they allow for the in-depth exploration necessary to understand those experiences and assumptions as they apply to the facts of a particular case.

Understanding Biases

Part of that exploration involves learning about people’s biases. Typically, we think of biases as prejudice, as in racial or ethnic prejudice, biases that do exist and do affect verdicts.²⁰ Our tradition of jury selection and change of venue motions have long recognized that some people cannot be fair jurors.²¹ *Batson v. Kentucky*, 476 U.S. 79 (1986) dealt specifically with concerns of racial prejudice. But biases, in terms of cognitive biases, are much broader and their implications are much broader. Although this topic has been frequently addressed elsewhere,²² a brief explanation is warranted in the context of this paper.

Cognitive biases arise out of how we process information. People tend to process information based on previously formed paradigms or constructs of the world, called “schemas” in psychological research.²³ Research has shown that numerous biases arising from schemas affect how people evaluate new information. For example, we generally resist changing our schemas; this has been described as “perseverance bias.”²⁴ We also tend to search out confirmatory information and reject disconfirming information;²⁵ this is referred to as “confirmation bias.” Confirmation bias is especially strong when we are motivated to reach a particular conclusion,²⁶ as we are when the inquiry involves our moral or political ideologies.²⁷ In addition, we have

¹⁸ Carlson & Russo, *supra*. (citation omitted).

¹⁹ *Id.*

²⁰ See, e.g., L. A. Foley, & M. H. Chamblin, *The effect of race and personality on mock jurors decisions*, 112 *The Journal of Psychology* 47-51 (1982).

²¹ See, e.g., *Strauder v. West Virginia*, 100 U.S. 303, 309 (1879) (“It is well known that prejudices often exist against particular classes in the community, which sway the judgment of jurors.... Prejudice in a local community is held to be a reason for a change of venue.”) See also, *Batson*, *supra*, at 121 (Burger, C.J., dissenting) (“Common human experience, common sense, psychosociological studies, and public opinion polls tell us that it is likely that certain classes of people statistically have predispositions that would make them inappropriate jurors for particular kinds of cases.”)

²² See, e.g., David A. Wenner & Gregory S. Cusimano, *Combating juror bias*, 36 *Trial* 30 (2000).

²³ For a simple overview of cognitive theory, see H. Andrew Michener & John D. DeLamater, *Social Psychology* 101 (4th Ed. 1999).

²⁴ L. Ross, R. Lepper, & M. Hubbard, *Perseverance in Self-Perception and Social Perception: Biased Attributional Processes in the Debriefing Paradigm*, 32 *Journal of Personality and Social Psychology* 880 (1975).

²⁵ C. G. Lord, L. Ross, & M. R. Lepper, *Biased assimilation and attitude polarization: The effects of prior theories on subsequently considered evidence*, 37 *Journal of Personality & Social Psychology*, 2098. (1979); C. R. Mynatt, M. E. Doherty, & R. D. Tweney, *Confirmation Bias in a Simulated Research Environment: An Experimental Study of Scientific Inference*, 29 *Quarterly Journal of Experimental Psychology* 85 (1977).

²⁶ Jonathan Haidt, *The emotional dog and its rational tail: A social intuitionist approach to moral judgment*, 108 *Psychological Review* 814 (2001).

²⁷ C. G. Lord, et al., *supra*.

what has been termed a “selective perception” bias: the tendency to remember confirming information that we have actively sought out.²⁸

This is an exceedingly brief summary of an enormous body of social science research, and the data is much more complex than this discussion suggests.²⁹ However, our goal is not to elucidate contemporary knowledge of cognition; it is to show that schemas and cognitive biases affect people’s judgments, even when they sit as jurors.³⁰

Recognizing Schemas and Biases

The ultimate goal of focus groups is to give attorneys insight into the schemas and biases likely to affect prospective jurors’ views of evidence. Unlike other types of research, focus groups give the attorney direct access to complex attitudes and beliefs held by individuals. In the context of a focus group, individuals can freely discuss the facts they find relevant and apply their own experiences to the facts and legal arguments, just as they would as jurors.³¹

Gaining this insight is vital because lawyers have schemas and biases as well.³² Focus groups can, for instance, help them escape from their own biases that prevent them from seeing facts that have significant bearing on a case.³³ For example, in a basic automobile rear-end collision case, a tube of lipstick in the plaintiff’s car became a critical piece of evidence. In a focus group, we asked plaintiff’s counsel to mention that logically irrelevant information. Of all the information presented, that small tube of lipstick was deemed evidence that the plaintiff was not paying attention at the stoplight, and therefore was contributorily negligent. This result gave counsel the opportunity to have plaintiff clarify the presence of the lipstick so the defense would not be able to point to it as evidence of plaintiff’s carelessness.

The lipstick case is a concrete example of jurors’ reliance on their experiences to interpret the facts of a case and how attorneys, without juror research, may fail to anticipate the way jurors’ biases affect their interpretations of evidence. Based on that research, we can prepare questionnaires and develop a Voir Dire strategy, regardless of how limited or extensive it may be, to expose those biases—and who is likely to have them.

In particular, we need to know who has biases that cannot be overcome by other elements of a case. For instance, we know that one of the consequences of the confirmation bias is that

²⁸ C. T. Kydd & L. Aucoin-Drew, *Strategies for Reducing Cognitive Bias in the Design and Implementation of Decision Support Systems*, Northeast Decision Sciences Institute Proceedings, Philadelphia, Pennsylvania, 1983.

²⁹ As an example of the complexity of a small portion of the field, see, Richard E. Petty, et al., *Attitudes and attitude change*, 48 Annual Review of Psychology 609 (1997) (reviewing four years of studies of attitudes and persuasion, attitude change and effects of attitudes.)

³⁰ Carlson & Russo, *supra*.

³¹ Haidt, *supra*. (“[M]ost people have difficulty understanding what evidence is, and when pressed to give evidence in support of their theories they generally give anecdotes or illustrative examples instead.” (Citing D. Kuhn, *The skills of argument* (1991).))

³² Judges do, as well. Hunter, *supra*. (“It is now ... beyond dispute that political orientation plays some role in adjudication”).

³³ The need for an independent consultant often arises for this reason; because they are biased, attorneys often need a neutral party to facilitate the exchange of information and to report information that contradicts the attorney’s schema.

sometimes jurors *hear* what they *believe* and do *not* believe what they hear. As a result sometimes, people find questionable justifications for their beliefs, as we saw in a focus group on a personal injury suit against the owner of a small hotel. In this case, the truck-driver plaintiff suffered a burn injury in an explosion that occurred while he was free-basing cocaine on the premises of a small hotel. He sued for his injuries claiming a gas heater exploded; the single mother who owned the hotel counter-sued for her property damage and lost income. Ample evidence showed the explosion occurred in his lap while he was sitting cross-legged on the bed and contradicted his claim that a gas leak caused the explosion. Evidence suggested that he was using ether to free-base, and a witness testified to smelling it.

In the focus groups, we discovered that most truck drivers and spouses of truck drivers rejected the notion that he caused the explosion. That result was interesting, but the reason they gave was surprising: truckers use ether to start their trucks when it is cold outside. Despite the fact that this occurred in a hot climate, truckers ignored the evidence of the origin of the explosion and interpreted a witness's smelling ether as evidence that plaintiff used it to start his truck. Knowing that these participants were unable to hear the real evidence and were willing to rely on bad evidence to support their preexisting beliefs was critical. Nothing we could say would make any difference because they would not hear it. As a result, we included relevant questions on the Supplemental Juror Questionnaire and in Voir Dire and determined that truckers should be stricken; they were, and the jury awarded the hotel owner damages.

Strike & Sing Preparation

It is this kind of “inside” information that makes focus groups valuable for designing questionnaires and developing Voir Dire. The key is finding how peoples’ biases and schemas apply in the context of a particular case in a particular community. For this reason, focus groups have become an integral part of preparing for trial.

This is especially true for plaintiffs’ attorneys, who are acutely aware the impact of the Tort Reform movement on prospective jurors. The intensity of those attitudes is reinforced in every focus group. With practice in focus groups and with carefully designed questionnaires and Voir Dire, those individuals who have bought into the tort reform agenda and cannot be persuaded otherwise can be identified and eliminated.

Focus groups also help attorneys prepare for Voir Dire and juror deselection in an applied sense: it gives them practice. One reason that the shift from “selection” to “deselection” is so significant is that it involves a change in the attorney’s traditional schema. Simply changing the emphasis to “deselection” shifts the attorney’s schema from a focus on “good jurors” to a focus on “bad jurors.” In many ways, “bad” jurors are subconsciously threatening to attorney advocates; it goes against the advocate’s nature to acknowledge those with opposing views. The natural tendency is to seek out those who share the attorney’s opinions and to reject those who don’t. It is the confirmation bias at work. Therefore, practicing new techniques with real people can be especially beneficial.

Because Voir Dire provides the opportunity to deselect jurors who cannot be fair and open-minded, the techniques we employ help counsel actively seek out those whose views are biased

and encourage them to expose those biases. The shift away from selecting “good” jurors means we do not need to spend a great deal of time with them in Voir Dire; they are members of the choir. Thus, although it is counter-intuitive for many attorneys, we want to spend most of our limited Voir Dire engaging biased prospective jurors. We focus on those with opposing views and embrace them.

The fear of “poisoning” the jury panel has, in the past, kept many attorneys from shifting their focus this way. However, now that we understand the strength of schemas, we have little concern about “poisoning” the jury. Even if there is a risk of influencing other jurors, the effect of leaving a strongly biased person on the jury to exert his or her influence in deliberations could be far worse.

But a more compelling reason to make this shift exists. Traditional jury selection treats the peremptory challenge, in effect, as the main tool of the attorney.³⁴ But in this approach, the attorney’s primary tool is the challenge for cause; peremptories are for back-up use. Shifting the focus to biased jurors allows the attorney to proactively expose biased jurors and have them admit that they are biased and that they cannot be fair. For only when they show the judge that they cannot be fair will they be stricken for cause. That requires that counsel to draw biased jurors out, a skill that often requires practice.

With the proper design of Supplemental Juror Questionnaire and Voir Dire strategy biases can be exposed without the venireperson recognizing this disclosure is occurring. Some questions can appear so innocuous that opposing counsel does not detect the disclosure of bias. Counsel can also take actions that make admitting bias more socially acceptable in the context of Voir Dire. People, in general, do not want to admit they cannot be fair; this is even truer when the subject might involve a politically or socially sensitive topic.

A wrongful death case we recently focused provides an example. The plaintiff was a member of a minority group, so we knew we needed to be aware of possible racial or ethnic biases. We learned in the focus groups that not only did we need to learn about non-members’ attitudes toward that group, but that we also needed to understand little known aspects of the group’s lifestyle that could have an impact on how others viewed the case. For example, we found that many jurors would actually punish the children of the deceased unmarried mother because extended family members of the orphans had quickly stepped in to give the children new homes, a tradition in that culture. These jurors said, “They almost seem better off now they have two parent families taking care of them” and refused to award appropriate damages.

We designed the Supplemental Jury Questionnaire and proposed Voir Dire to subtly uncover these biases, along with tort reform biases. After reviewing the questionnaire, the judge recognized the bias and dismissed the majority of a sixty-five-member venire for cause. The questionnaire and proposed Voir Dire from that case are included in Appendices I and II.

³⁴ We recently heard an attorney declare, “I’ve been an attorney for 27 years, and I have never seen a juror admit that they cannot be fair.” Judges have had the greater responsibility to excuse jurors for cause. And, because jurors have, traditionally, been reluctant to admit they are biased, attorneys have had to rely on peremptories to remove biased individuals.

Sing to the Choir

When biased jurors are removed for cause, counsel is, metaphorically, singing to the choir. In the best situation, no unfair jurors remain. Even when jurors of questionable or moderate bias remain, you have the advantage of knowing your jurors. You have experience with them; you understand their thinking and you know how to talk to them. You know they hear you.

Oscar Wilde wrote, “Experience is the name everyone gives to their mistakes.”³⁵ Focus groups give you experience. They are practice runs in which you make mistakes *and* correct them. Indeed, trials are focus groups; the only question is, “Is it your first one or your last one?”

³⁵ Oscar Wilde, *Lady Windermere’s Fan*, Act 3 (1893).

IN THE SUPERIOR COURT OF THE STATE OF

) NO.
)
)
Plaintiff,) PLAINTIFF’S PROPOSED
) VOIR DIRE
vs.)
)
)
) (Assigned to the Honorable _____)
)
)
)
Defendants.)
_____)

Plaintiff, by and through his undersigned counsel, hereby submits his proposed voir dire as follows.

1. How many of you would require the plaintiff to prove his case more than what the law requires, which is a preponderance of the evidence?
2. Do you or any close family members work for a utility company or related business, or have you done so in the past? If “yes,” please explain:
3. Do you or any close family members have a connection with or specialized knowledge about utility companies or their suppliers, subcontractors or other business related to the utility supply business? If “yes,” please explain:
4. Do you own any financial interest in any way with Xxx trucking company? If “yes,” please explain:
5. Do you feel your relationship your association with Xxx trucking company would interfere with your ability to sit as a juror in a medical negligence case?
6. Do you have any beliefs that you feel would interfere with you sitting as a juror in a wrongful death case?
7. Do you have any beliefs that would prevent you from awarding a multi-million dollar verdict if it was justified by the evidence?

8. Do you or any of your immediate family have any strong feelings concerning the civil justice system or the people who file or defend lawsuits?
9. Do you or any members of your family have strong feelings for or against a family who files a claim for wrongful death?
10. Do you feel there should be limits as to damages in a civil lawsuit despite what the evidence may show or the instructions that will be given to you by the court?
11. If a person has died because of the negligence of another, could you award compensation to the family for loss of a family member?
12. How many of you, because of your feelings, beliefs or attitudes, think you would start this case with a prejudgment against the plaintiff?
13. Are you or any of your close relatives [X] minority members? If “yes,” please explain:
14. Do you have any friends or acquaintances who are [X] minority members If “yes,” please explain:
15. Do any of you work with or for anyone who is [X] minority members? If “yes” please explain.
16. Which of you may have heard about circumstances where someone claimed to be a victim of discrimination which you may have thought was unwarranted?
17. Some people say that things used to be bad for [X] minority members now they are much better. How do you feel about that?
18. Which of you may have some knowledge about what benefits [X] minority members may have that live on the reservation? Could you tell us about those benefits?
19. Which of you have had an unpleasant experience with anyone who is [X] minority members? Please tell us the factors that made that experience unpleasant.
20. The law requires a plaintiff to prove that a defendant’s negligence was a cause of the death. If you found there were two causes and the defendant’s negligence was only one of the causes, but met the standard of a cause, would you follow the law?
21. We will be asking for between \$x and \$xxx million dollars in damages in this case. Is there anyone who feels they could never consider awarding that amount no matter what the evidence was?
22. How many people believe strongly there are far too many frivolous lawsuits?

23. How many people believe that defendants sometimes raise frivolous defenses?
24. Is there anybody here who feels that the deceased mother did not love her other children or her husband simply because for a few months she was not living with them?
25. This is a claim for wrongful death. Is there anybody here who feels that a parent should not bring a claim of wrongful death for their adult child?
26. Is there anybody who thinks a child who loses his or her mother as a result of negligence, should not bring a claim for wrongful death of his or her mother?
27. In this case, there is only minor claim of any financial loss. These losses you will hear about in this case is called a "human loss" or the loss of the relationship with a mother, a wife and child. Is there anybody who believes that it is not appropriate to bring a claim for wrongful death when there is no financial loss?
28. Does anybody feel they would use sympathy in deciding the case in favor of plaintiff?
29. Does anybody feel they would use sympathy in deciding the case in favor of the defendant?
30. Does anybody have any strong feelings about lawsuits or lawsuit abuse that would make you start out with a prejudgment against the plaintiff in this case?
31. Does anybody feel that awarding a large verdict against Xxx trucking would affect them personally or would be detrimental to them, and, as a result, would affect their ability to judge this case?
32. Is there anything about what you have heard or read about any kind of lawsuit crisis or liability problem that would cause you any hesitation from being totally fair in this case?
33. Have you or anyone close to you had any training and/or worked in any legal field such as lawyer, investigator, legal secretary, court reporter, paralegal, or any other job in the legal area?
34. Have you or anyone close to you had any training in or worked in any area involving insurance, insurance claims or other claims for personal injury?
35. Has anyone taken any courses in law, engineering, medicine or insurance?
36. Has anyone ever been involved in a civil case either as a plaintiff, defendant or witness?
37. Do you or any member of your family have any training, specialized knowledge or practical experience in the medical area?

38. Do you or any member of your family own any stock in any insurance company or have any financial interest that you are aware of directly related to insurance?
39. Does anyone feel that most jury awards are not fair and just?
40. Does anyone feel that a parent of an adult child should be allowed to bring a claim for wrongful death?
41. Is there anybody here who is responsible for quality control?
42. Is there anybody here who is personally responsible for supervising others?
43. Is there anybody here who feels that the fact that utility companies have to respond to emergencies, that that excuses their obligation to comply with the standard care other businesses may have to follow?
44. Is there anybody who feels that a utility company is not required to comply with the standard of behavior simply because they are responding to an emergency?
45. How many people feel there are just too many lawsuits?
46. How many people feel that most jury awards are too high?
47. How many people feel that people underestimate the emotional impact of losing a loved one?
48. How many people feel most people are too quick to sue rather than settling disputes?
49. How many people feel that most people who sue others in court do not have legitimate grievances?
50. How many people feel that untold millions are paid out yearly in malpractice suits and therefore the patient should not be allowed to sue their doctors for negligence?
51. Suppose you go into the jury room and you are sitting there thinking that plaintiffs have not proved their case to eliminate all doubt, there is some doubt in your mind, but nevertheless, if you had to decide what happened, you conclude it is more likely that the doctor was negligent, but you still had a reasonable doubt in your mind, would you urge the jury to return a verdict in favor of the plaintiff, or in favor of the defendant?
52. Does anybody have any chronic medical problems that would interfere with your sitting on a jury in this case?
53. Is there anybody here or a close family member who is required to see a physician frequently because of some medical problems?

54. Is there anybody who has been frequently hospitalized in the last ten years?
55. What kinds of questions would you want answered to try to place a value on a human life?
56. Is there some reason why you feel you would not be an appropriate juror on this case?
57. Is there anything you feel would interfere with you being a fair and impartial juror?

DATED this _____ day of.

ORIGINAL and **COPIES** of
the foregoing delivered this ____ day of
to:

IN THE SUPERIOR COURT OF THE STATE OF

) NO.
)
)
Plaintiff,) PLAINTIFF’S PROPOSED
) VOIR DIRE
)
vs.)
)
)
) (Assigned to the Honorable _____)
)
)
)
Defendants.)
_____)

JUROR QUESTIONNAIRE - VOIR DIRE

Ladies and gentlemen of the jury, this portion of the case is referred to as “Voir Dire” which means “speak the truth.” Its purpose is to help the lawyers and the judge select a fair and impartial jury. A fair and impartial jury is one that can be fair to both sides in the lawsuit without prejudgment.

This questionnaire is being submitted to each of you so that the lawyers and the judge can select a fair and impartial jury. It is important that you answer each question truthfully and with frankness. It is the purpose of the Court to insure a fair trial, not to pry. The background information requested is similar, but not the same, as a job application. The job in this instance is to be a fair juror.

Please answer each question as completely and accurately as you can. Complete candor is expected of you. By fully answering each question you will save both the Court and yourselves a great deal of time.

You are required to sign the questionnaire, and the statements you give are considered to be statements given to the Court under oath. Because this questionnaire is part of the jury selection process, the questions must be answered under penalty of perjury; and you should fill

out the questionnaire by yourself. The information you provide will become a part of the Court's permanent record.

If you wish to make further comments regarding your answers, please use the back of the questionnaire.

If you do not understand a question please write **"I DO NOT UNDERSTAND"** and the question will be explained to you in court.

During the questioning by the lawyers you will be given an opportunity to explain or expand your answers if necessary. For any answer or explanation that you want the lawyers to ask in private, please write the word **"PRIVATE"** next to the question.

This questionnaire will be used only by the judge, the lawyers, and their staff members to assist with the voir dire process.

The lawyers, and the Court, appreciate your answers and your service in this matter.

Name:

JUROR **STRICTLY**
QUESTIONNAIRE **CONFIDENTIAL**

FOR USE WITH THIS CASE ONLY

Last First MI

Age: _____
Marital Status: (Circle One)
 Married Divorced
 Single Widowed
Number of children: _____
City of Residence: _____
Years residing in xxx County: _____

Are you or any of your close relatives [x minority]?
 Yes _____ No _____
If "yes," please explain:

Do you have any friends or acquaintances who are [x minority]?
 Yes _____ No _____
If "yes," please explain:

Describe your education: (Include any specialized training and military experience)

Occupation: (If retired, principal occupation before retiring) (Include job duties and supervisory duties)

Please list any professional or occupational licenses you may have including Chauffeurs or Commercial Drivers License:

Do you or any close family member work for a trucking company or related business, or have you done so in the past?
 Yes _____ No _____
If "yes," please explain:

Do you or any close family member have a connection with or specialized knowledge about trucking companies or their suppliers, subcontractors or other business related to the utility supply business?
 Yes _____ No _____
If "yes," please explain:

Do you own any financial interest in any way with X Trucking?
 Yes _____ No _____
If "yes," please explain:

Do you or any close family member have any special knowledge, education, or interest in any of the following: (Check ALL that apply)

Law _____
Medicine _____
Nursing _____
Psychology _____
Economics _____
Statistics _____
Engineering _____
Accident investigation _____
Workplace safety _____
Automotive safety _____

Have you had any unpleasant experiences with minorities?
 Yes _____ No _____

If yes please explain what factors caused that experience to be unpleasant.

Do you have any general feelings about people who sue or the people who are sued?
 Yes _____ No _____

If "yes," please explain those feelings:

Name:

**JUROR
QUESTIONNAIRE**

***STRICTLY
CONFIDENTIAL
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Last First MI

Do you volunteer in any community, civic or church activities?

Yes _____ No _____

If "yes," please describe:

Political affiliation: (Check one, please)

Democrat _____
Republican _____
Independent _____
No affiliation _____

Please describe any active political involvement:

Are you a member of any community, civic or church organizations, such as Boy or Girl Scouts, Rotary, MADD, NRA, NOW, etc.? (Note: we are not asking about church membership)

Yes _____ No _____

If "yes," please describe:

Do you believe that there should be limits (either maximum or minimum) as to the amount of damages in a civil lawsuit, despite the evidence or the instructions of the judge?

Yes _____ No _____

If "yes," please explain, including what those limits should be:

Please explain how you feel about lawsuits asking for money from the defendant for the death of a family member:

If you were on a jury and the judge told you that it is your duty to follow the law as he instructs. If one or more of the judge's instructions was contrary to your conscience, which would you follow, the instruction of the judge or your conscience?

Instruction _____

Conscience _____

In a civil case, under the law to win, the plaintiff needs only persuade you that his or her claim is more probably true than not true.

Would you require more proof or more persuasion than that law provides?

Yes _____ No _____

If "yes," please explain:

What strong feelings do you have concerning the civil justice system itself, or the people who use that system to claim other people damaged them?

Please explain:

Please state your level of agreement with the following:

Racial discrimination is main reason [x] minorities have not succeeded in society?

_____ Strongly Agree
_____ Agree
_____ Disagree
_____ Strongly disagree

Name:

**JUROR
QUESTIONNAIRE**

**STRICTLY
CONFIDENTIAL
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Last First MI

This case involves a collision of x trucking company truck that killed a mother on *date* .

Do you have any first hand knowledge of this case?

Yes _____ No _____

If "yes," please explain:

Do you think that [x] minorities are given special privileges in our society?

Yes _____ No _____

If "yes," please explain:

If a person has died because of the negligence of another, could you award compensation to the family for the following: (That is, are you philosophically, morally or personally opposed to awarding compensation to the family of the deceased person for the following):

<u>Damage Type</u>	<u>Could Award</u>	<u>Could Not Award</u>
--------------------	--------------------	------------------------

Love, care, affection and companionship for loss of a family member?	_____	_____
--	-------	-------

Mental anguish for loss of a family member?	_____	_____
---	-------	-------

Pain and Suffering?	_____	_____
---------------------	-------	-------

If you answered, "Could not" to any of the above areas please explain why.

SECTION II

The following is a list of people whose names may come up during the trial of this case. If you personally know or have any connection (personal, business or social) with any of these individuals, or have heard of any of them, circle the number in front of their name.

1. *[add names of attorneys, witnesses, experts, plaintiffs, defendants and any other participants.]*

Does your answer to any particular question above or the possibility of questioning about it in open court make you believe you will be forced to reveal to someone, other than the Court and counsel in this case, a matter which is deeply personal and private and which you do not want to reveal publicly?

Yes No

If yes what question or questions concern you?

I certify that all of the answers are true to the best of my knowledge and belief.

Your Signature