

SURVEY GUIDELINES FOR JURY RESEARCH

STEP 1: UNDERSTANDING THE ABCs

Research data, to include our past research and pioneer research, show jurors don't simply deliberate based on facts and argument; jurors deliberate based on their perception of the facts and arguments. The juror's belief system dictates the various ways that particular juror perceives facts and arguments.

In A. Ellis' (1957) ABCs of emotion, A stands for the "activating event", or *any* event that might happen in the environment.¹ B refers to the individual's "belief system". All events are filtered through a set of beliefs and based upon those beliefs, the individual will have a resulting "consequent emotion."



2

In the graphic above, the **Activating Events** are the **Facts and Arguments** used when presenting the case. The **Juror Belief System** is the filter through which the **Facts and Arguments** must pass. The **Story** refers to the way the juror uses their **Belief System** to organize the facts and evidence. Ultimately, the **Story** the juror tells themselves about the case is the entire basis on which they reach a verdict.

Questions for building juror profiles should be designed to identify those belief systems. Our aim is to identify jurors with belief systems which prevent a favorable or even fair hearing of our case.

¹ Ellis, A. (1957) How to live with a neurotic. Oxford, England: Crown Publishers.

² The Psychology of Voir Dire, Matthew L. Ferrara, Ph.D.

<http://www.thejuryexpert.com/2010/11/the-psychology-of-voir-dire/>

STEP 2: BUILDING JUROR PROFILES

The ultimate goal is to build juror profiles by identifying juror beliefs, life experiences and demographics, then cross-referencing those profiles with the likelihood of reaching a favorable or unfavorable verdict.

This will be on both a generalized and individual-specific level. For either, we should adopt the system developed by David Ball (2003), and put it into practical survey format.³ We will achieve this by developing four main types of questions.

1. Develop questions designed to present key evidence and themes for our narrative/case scenario.
2. Develop questions designed to identify juror beliefs.
3. Develop questions designed to identify juror life experiences.
4. Develop questions designed to identify juror demographics.

Now Build...

KEY THEMES FOR DELIVERING NARRATIVE AND CASE SCENARIO

Research indicates the narrative or case scenario should be broken down into a Primary Theme, with ideally no more than three Subthemes. The questions we create should be designed to reveal juror beliefs about our evidence and themes.

IDENTIFY JUROR BELIEF SYSTEMS

Belief System is defined as the totality of an individual's values, attitudes, and opinions. There are two ways to identify relevant juror beliefs.

Rational Approach vs. Empirical Approach.

The correct approach may very well be case-specific. But for best practices, we can draw some conclusions for general guidelines.

³ Ball, David (2003) Theater Tips and Strategies for Jury Trials – Third Edition. Notre Dame, Indiana: National Institute of Trial Advocacy.

As our prior jury survey research has shown, for online panel and focus group settings, the proper approach is a hybrid that favors the latter and seeks to identify profiles as one of the following.

Authoritarianism will express a desire for order, well-defined rules, rely on authority when making decisions, and hold a strong belief in the legitimacy of conventional authority. Research shows authoritarians tend to convict and hand down harsher punishment.⁴ A time-tested study found authoritarians retain evidence from the prosecution more than defense evidence.⁵

The following are examples of potential agree/disagree questions to reveal authoritarian beliefs when expressing agreement.

- The most important virtues a child should learn are obedience and respect for authority figures and institutions.
- An insult to someone's honor should always be punished.
- There is nothing lower than a person who does not feel great love, gratitude and respect for their parents.

Locus of Control refers to location of control: internal vs. external. Individuals with external locus of control believe their actions matter little and what happens in their life is largely the result of external factors, such as fate, luck, or serendipity. Individuals with internal locus of control believe their personal qualities, such as intelligence, perseverance, and so on, determine what happens in their life.

Research finds people with a strong internal locus of control are more likely to convict because they believe in being held accountable for their own actions.⁶ Research also shows individuals with strong internal locus of control recommend more harsh punishment than individuals with external locus of control.⁷

The following are examples of potential agree/disagree questions to reveal internal locus of control beliefs when expressing agreement.

⁴ Narby, D. J., Cutler, B. L., & Moran, G. (1993) A meta-analysis of the association between authoritarianism and jurors' perceptions of defendant culpability. *Journal of Applied Psychology*, 78, 34-42.

⁵ Garcia, L. & Griffitt, W. (1978) Evaluation of recall of evidence: Authoritarianism and the Patty Hearst case. *Journal of Research in Personality*, 12, 57-67.

⁶ Phares, E. J., & Wilson, K. G. (1972) Responsibility attribution: Role of outcome severity, situational ambiguity, and internal-external locus of control. *Journal of Personality*, 40, 392-406.

⁷ Sosis, R., H. (1974) Internal-external control and the perception of responsibility of another for an accident. *Journal of Personality and Social Psychology*, 30, 393-399.

- People's misfortunes are the result of mistakes they make.
- Capable people who fail to become leaders have not taken advantage of their opportunities.
- When I make plans I am almost always certain I can make them work.

Belief in a Just World believes people get what they deserve in life, i.e., good things happen to good people and bad things happen to bad people. The research regarding Belief in a Just World (BJW) is mixed.

Lieberman & Sales (2007) found those with a strong BJW are more likely to convict but these same individuals were inclined to blame a rape victim while also being less punitive towards a higher status defendant.⁸

The following are examples of potential agree/disagree questions to reveal JWBs when expressing agreement.

- I feel the world treats me fairly.
- I believe that I get what I deserve.
- I feel that I earn the rewards and punishments I get.

LIFE EXPERIENCES

Juror decision-making is shaped by beliefs and beliefs are shaped by life experiences. So, life experience can be fruitful area of questioning during voir dire, if it is done correctly.

DEMOGRAPHICS

It is self-evidence we seek to collect data on basic demographics to later cross tabulate and reference *against* beliefs, experiences and reactions to key evidence and themes for our narrative/case scenario. But to be effective, we also want to use demographics to probe prospective jurors *about* beliefs.

⁸ Lieberman, J., D., & Sales, B. D. (2007) Scientific jury selection. Washington, DC: American Psychological Association.

STEP 3: CHOOSING QUESTIONS TO ID BELIEF SYSTEMS

If I lose the case, why I am going to lose? (Comment)

By first asking ourselves this question, we can begin to brainstorm about effective questions relevant to the specific case. As a best practice, be painfully honest with our “puss points” or, put more plainly, all the weak elements in our argument.

We should consider weaknesses in the context of the ABCs and, more specifically among belief systems, not just the weakness in our case logically and legally.

It is important not just to elicit more truthful responses, but to be truthful, as well. We want to establish trust with the respondents much in the same manner the lawyer must establish trust with the jury.

STEP 4: FORMATTING SURVEYS TO ID BELIEF SYSTEMS

Thoughts and suggestions on challenges, needed improvements and specifics.

HIGH ABANDONMENT RATES

High abandonment rates create response bias. To combat some of those rates, we took several steps to include:

- Sending prerequisite emails explaining the nature of the survey and asking about interest in participation.
- Reducing the size and amount of burdensome text instructions by adding multimedia prompts, such as pre-recorded video and audio.

These actions did significantly reduce overall abandonment rates, though potentially exposed us to response bias, as interested and more thoughtful respondents participated at higher rates.

But what about those people who were less thoughtful or even flat-out lazy? While we cannot know for sure, there's a real danger of exclusion, and yet this population could still end up on a given jury.

A better way to solve this problem would be through survey order and formatting. In the past, we first presented respondents with case narratives and scenarios upfront, and then prompted them to answer follow up questions.

Instead, begin with the topic-specific opinion questions to identify belief systems, as well as accompanying demographics for profile building.

E.g. Which is more important: protecting people from theories that upset or offend them, or protecting free speech and free press to question the government?

Then, ease them into the case narrative either via text, video or audio to reduce fatigue and response bias at the same time. The initial topic-specific questions will serve as both profile builders and a hook for the case narrative.

To do this, we should make the following simple changes, and present them with two additional options.

- To complete the survey over time.
 - Up to but no more than 48 hours before link expiration juxtaposed to one sitting.
 - While past respondents technically had this option, they were not explicitly made aware. As such, one-time completion was nearly universal.
 - We can easily give them the option to save prior answers and return at a later date, though deadlines should be imposed.

- Account for mind-changing
 - Ensure they have the ability to go back to change ONLY narrative responses on a previous page.
 - As they learn more about the case narrative, they could change their mind.
 - Again, they always had that option, and in fact frequently received instructions. But practically speaking, **the prior format made it a non-issue.**

Again, our ultimate aim is to identify jurors with certain belief systems which prevent a favorable or even fair hearing of our case.

STEP 5: DEVISE RATING SCALE FOR PROBABILITY OF VERDICT

Data collected from panel responses will be used to devise a rating scale to gauge the likelihood of a verdict, regardless of which verdict they chose for the survey.