

## JURY BEHAVIOR

# Who's Who?

Demographics do not make the juror, so be wary of relying on the obvious; instead, use questions and observation to ferret out important information. **By Julie Campanini**

**T**he biggest mistake counsel make in voir dire is to rely on demographics to drive the strike process. Over and over attorneys make comments about never having teachers on the panel or redheads or some other broad demographic category. But counsel is missing the mark if those kinds of categories are the extent of the voir dire analysis.

Over the years, many judges and courts have devised a "voir dire sheet" consisting of between six and 12 basic questions about a person's life, such as where they live, where they work and their marital status.

While this is helpful information, counsel shouldn't pretend that this information, in and of itself, is adequate to make effective strikes. Research has shown that attitudes and experiences, not demographics, drive jurors. One demographic characteristic is never predictive.

In order to master voir dire and the jury selection process, counsel must use demographics appropriately, recognize good questions and know which attitudes and experiences will have a material effect on the way jurors look at the case.

The world is diverse these days. The 24-hour media channels and the Internet provide jurors with information that previously was available only to people in the work force or to people who chose to read a newspaper every day. Consumers today are much savvier than they were 25 years ago. Homemakers, nurses and business executives all have access to any information they want, and many of them take advantage of that.

In venues such as Los Angeles, a juror may not have a steady job, but he or she probably has access to the Internet. And because of the Internet and television shows such as "Dateline" and "60 Minutes," corporations are finding it more difficult to rely on jurors' ignorance of the latest product recall or massive stock drop. Knowing only a juror's name or number of children could not clue counsel in to the juror's understanding about current affairs or feelings about the companies making the headlines.

Demographic information is certainly not useless, but it must be analyzed appropriately — in the context of the matter at trial, in conjunction with the other jurors in the box and along with other information about that juror.

For example, counsel might be wary of a young single female in a sexual harassment case. However, her experiences and attitudes might portray her as suspicious of the women bringing the harassment claims. Counsel may think a retired executive would be pro-company in the same harassment claim, only to find out through questioning him about his experiences that over the course of his career he saw several women harassed without the company stepping in.

What about a homemaker who is 62? Many attorneys automatically conclude this

person would be a follower on the panel and would not voice her own opinions. Only by inquiring about her experiences and attitudes would counsel discover that she has been very active in local volunteer organizations and sits on several planning committees.

The only method for uncovering this type of information is to ask jurors directly about their experiences with companies, management and co-workers. Inquire about their activities and interest in community organizations. Go beyond the basics to find out what really drives juror decision making.

In order to obtain specific information effectively, counsel must go into voir dire with a strategy. Counsel should think about three things before beginning: what questions to ask, how to ask those questions and how to use the resulting information.

What does it mean if a juror in a securities matter has a small stock portfolio? What should counsel do with a chronically ill juror in a medical malpractice case? How can counsel ascertain a juror's attitudes about monopolies without tainting the rest of the panel?

While very few single attitudes or experiences are predictive, they paint a much richer picture of a juror. If voir dire elicits only information about marital status, education and work history, counsel will never know enough to make anything but an uneducated guess.

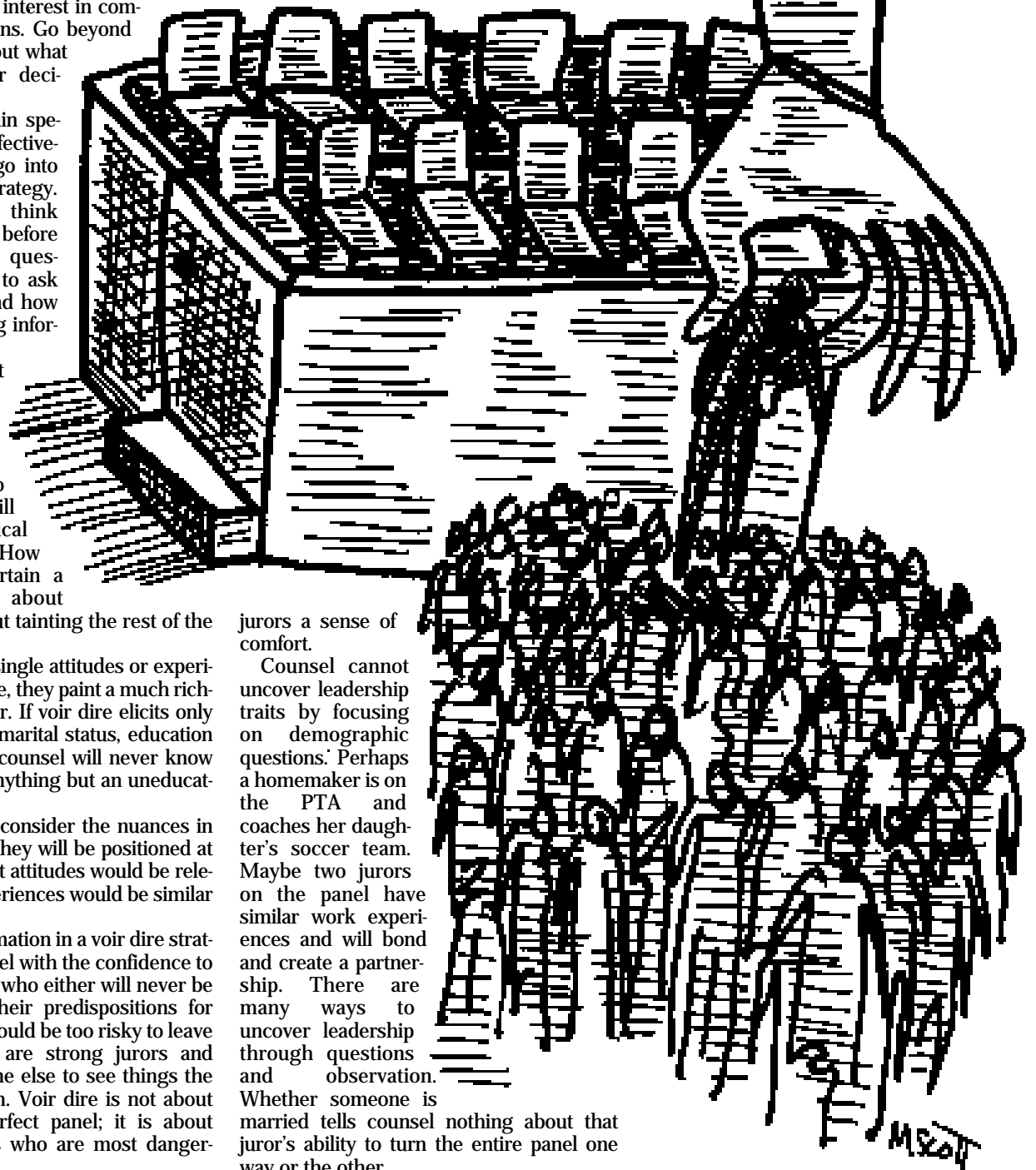
Counsel should consider the nuances in the case and how they will be positioned at trial. Consider what attitudes would be relevant and what experiences would be similar or vastly different.

Using this information in a voir dire strategy will arm counsel with the confidence to strike those jurors who either will never be persuaded from their predispositions for the other side or would be too risky to leave on because they are strong jurors and could turn everyone else to see things the way they see them. Voir dire is not about fashioning the perfect panel; it is about striking the jurors who are most dangerous.

Leadership is another critical piece of information that cannot be deduced from demographics alone and should be a red flag for counsel, no matter which way counsel thinks that juror will vote. It is safer to have jurors who might favor the other side but who are weak than to have even one strong wild card.

Unless counsel is certain about a juror's defense or plaintiff orientation, it is risky to

leave a strong juror, with weaker co-jurors, on the panel. A juror with strong leadership tendencies will take charge of the deliberations when everyone else is floundering and might persuade everyone to vote his or her way. Most jurors are relieved to have someone take charge. Jurors' primary goals are to finish and do a good job. Someone who takes charge and forges ahead gives the appearance of doing a good job and gives



jurors a sense of comfort.

Counsel cannot uncover leadership traits by focusing on demographic questions. Perhaps a homemaker is on the PTA and coaches her daughter's soccer team. Maybe two jurors on the panel have similar work experiences and will bond and create a partnership. There are many ways to uncover leadership through questions and observation.

Whether someone is married tells counsel nothing about that juror's ability to turn the entire panel one way or the other.

In summary, counsel should back away from judging jurors by their titles. In today's world, demographics say very little about a juror's feelings toward big companies, high damage awards, an injured plaintiff or lawsuits in general.

It is true that demographic profiles have been developed through years of jury research, but experienced jury consultants know that those profiles always have excep-

tions. Voir dire is an important part of trial that should not be overlooked. It is a valuable opportunity for counsel to learn what jurors are really made of, not just what society has labeled them.

Julie Campanini is the founder and principal consultant of Trial Insights in Laguna Niguel.