



# Jury selection: Strong personalities

*Identifying the “poison” jurors and getting both the good and bad jurors talking*

By **ROBERT SIMON**  
AND **SEVY FISHER**

Regardless of what kind of case you have, I have some general philosophies about jury selection that I would like to share with everyone. I've been selecting juries for years, but in order to get a better feel for the process it has been beneficial to watch the masters of their craft.

One of the greatest trial lawyers of our generation simply displays a board with five questions, and tells the jurors to just answer the questions. He has an innate ability to read people, allowing him to have a simplified selection process.

Another emotionally invests himself with the jurors from the very beginning and asks for “brutal honesty.”

Yet another uses focus groups to produce scientifically honed questions specific to each case. Whatever the style, it's important to be yourself.

I am a big believer that jury selection serves one main purpose – to identify the strong personalities on your jury, and explore which way they lean. These key jurors can, and will, sway multiple votes. Jury selection is not the time or place to ingratiate yourself with the jury or argue your case, but you can plant the seeds with one or two carefully chosen questions. Once you identify the “poison” jurors on your panel, try to get them off for cause.

## **Juror personality types**

Most jurors can be placed into three categories: Good Plaintiff, Poison, or Go-with-the-Flow-ers. You should be observant not only when individuals are answering questions, but also when they

are interacting with others. Which jurors are already conversing with each other, which are making friends? These are the people you want to speak with, to flush out the issues at hand. If you can get three Good Plaintiffs and no Poisons, you have won your case. It's critical to weed through the group to find these people: cases truly are won, or lost, in jury selection.

Typically it's fairly simple to spot Good Plaintiffs. They are friendly, outspoken, and usually have no problem with lawsuits in general, or (perhaps more important), people being compensated for harms. I've adopted Gary Dordick's line as my go-to first question in every case: “We just heard from a lot of people who did not want to serve. But let me ask you this – who is actually really excited to sit on this jury for the next few weeks?” You will always receive two things from this question: a laugh and some hands.

Pay attention to those hands, as they are good indications of the Good Plaintiff jurors happily wishing to serve. I usually start by talking with them, why they want to be here, and dive into other issues. Another added benefit to asking this question is that when the defense strikes these people from the jury – others remember. “Why would that nasty defense lawyer kick off someone that actually wants to be here? What a jerk!” Those are the exact thoughts you want running through the others' heads. While the judge questions, you likely already have an idea of who the Good Plaintiffs will be. But have follow-up questions prepared just to be sure.

Now, it's the Poison that is a bit trickier to weed out. The Poison doesn't like to

give anyone money for harms and losses. The Poison thinks people are too quick to sue, that verdicts are always too high, and that there should be a cap on how much someone should receive for general damages. It's the type of person who causes a car crash, and then thinks the people they hit are scammers. Most of the time, the Poison will not reveal this unless they are personally asked the question. You can direct questions to the entire panel, but the Poison will remain silent.

Here is when you play into that “brutal honesty” I mentioned above. Allow this individual to be brutally honest about their opinions, their feelings. Don't be afraid to let the rest of the panel hear this: most will disagree, but you will often find other Poisons nodding their heads in agreement. Once you've located the Poisons, move onto questioning them with the goal of getting them off for cause, and, in my experience, to accomplish this all you need to do is just to let them speak.

The Poison will become irate over certain questions. Try “if the evidence in this case supports a verdict for \$20 million for pain and suffering, even though I'm not going to ask for that amount, but if the *evidence* proves it with the standard the judge just mentioned, will you be able to do it?” Or, you can ask “As you sit here today, what is the cap on the amount you would give for pain and suffering without knowing any of the evidence?” The response is just as important as the reaction from the rest of the panel.

And then we have the Go-with-the-Flow-ers. They are quiet, initially have



indifferent opinions and are open to listening to the evidence. The majority of jurors can be lumped into this category. Before the end of the first day, you'll see that a Good Plaintiff has already taken the Flowers under their wing and had lunch with them. By day two, the Good Plaintiff will have found another Flower to join them for lunch.

My formula is to get two to three Good Plaintiffs with the Poison. People are often surprised at how often I pass, and how often I don't strike any jurors.

### Issues in jury selection

Don't be afraid of the bad facts of your case. Embrace them. Talk about them. And talk about them in jury selection. You would be surprised how many jurors you can get off for cause because they cannot see past a bad fact of your case no matter what.

For instance, in a light-impact trial, I asked jurors whether someone in a minor car collision, could get major injuries. Or, would the jurors say "no damage to the car – no damage to the person"? Naturally, the Good Plaintiff would be aware that major injuries could occur; the Poison can never see this happening. A good judge will allow you to get the Poison off for cause, because they cannot, and will not, listen to the evidence, and will just decide the case on property damage alone.

Another issue we all deal with is the cost of medical care. Often, the defense attacks this and says the plaintiff is trumping up the bills to game the system. Be sure to talk about this in jury selection. We can all say that medical bills are too high. But ask the jurors if they think the responsible party should also be obligated for quality medical care, although expensive, or should the injured be forced to get lesser medical care?

Ask the panel if anyone was ever in a car crash and had treatment on a lien (deferred payment so it doesn't go into collections). Ask if anyone had to hire an attorney due to a crash. Ask if that

attorney helped them find quality medical care. Then, ask the panel if anyone has a problem with attorneys helping clients to obtain quality medical care. You want this information to be out in the open; these will be points in the defense's arguments.

### Get the good jurors talking

Often, you know when the defense is going to kick a Good Plaintiff juror. This could be for a variety of reasons, including their own personal experience with a family member that makes them able to relate to your client. When you know they will get "bounced," let them talk. I once had a juror whose husband was in the NFL and underwent multiple spine surgeries, some similar to my client's. She got very emotional and even started crying when discussing the negative impacts it had on their relationship, his mental/emotional health, and even the large-scale impact on their entire family. So I let her talk. This helps to get the jurors on your side right away and engrain in them that your client is not an exaggerator (i.e., the injuries really do cause a lot of pain and suffering to anyone who has them).

### Get the bad jurors talking

Similarly, you also want the bad jurors talking. The first juror that says something horrible about your case or position, thank them. One of the great attorneys tells that juror "if I could, I would hug you right now." This helps get the other bad jurors comfortable to be "brutally honest" and helps me to identify them. After all, nobody wants to defy the judge and the legal system and admit when they can't "follow the law." So embrace the first person who stands up and says they hate your case (or you) because the other "bad jurors" will often follow.

### Take notes

If a juror says something that will get them kicked for cause, write it down – word for word! (This is one good reason to have somebody sitting with you at

counsel table for jury selection.) All too often the judge will call attorneys to sidebar and ask for cause challenges and the attorneys cannot quote the jurors. This is important because not all judges have the "real time" transcript and they, too, are human and can forget what a juror says. If you do not recall the cause-related quote the juror said, you cannot make an effective argument for a cause challenge.

### Don'ts

Don't do the typical defense voir dire – going one-by-one asking every juror the exact same question. This is a waste of time and can often be accomplished by simply asking if the panel agrees with any one answer by a fellow juror (by show of hands). Also, don't argue with the jurors. We had a trial where the defense attorney started arguing with a strongly held belief of a juror and it left a terrible, negative energy in the courtroom. It also more than likely won us the case right then and there. All people have different biases and beliefs. Don't try to change them or criticize them for what they believe in. Accept it, thank them, and move on. If you are arguing with the people deciding your case – you are losing.

### Be genuine

All of us will cover the common topics in jury selection: money for pain and suffering, medical issues, too many lawsuits, etc. These are musts for jury selection topics. However, the most important thing every one of us has in our arsenal is our own uniqueness. Nobody is better than me at being me. The best attorneys are not doing anything "magical" in jury selection when it comes to topics, questioning, or strategy. Oftentimes the best are simply great at being themselves and being real with the jury. As human beings, we can always spot when somebody is not being real or honest with us. So be real and watch the jurors relate to you and your client. All the greatest trial attorneys are experts at being true to who they are, both in and out of the courtroom.



Simon

*Robert T. Simon has tried many cases to verdict, with over 8 figures in judgments/verdicts since forming The Simon Law Group, LLP, with his twin brother, Brad, in 2009. Originally born in Pittsburgh, PA, he's brought*

*his blue-collar work ethic to the world of Los Angeles litigators. Robert is an active member of CAALA and CAOC. He is the current president of the Los Angeles Trial Lawyers Charities.*

*Sevy W. Fisher is a trial lawyer with The Simon Law Group. In his young career, Sevy has already tried seven cases to a verdict, three of which were as lead trial counsel. In addition*

*to trial advocacy he has defeated numerous motions for summary judgment and changed tentative rulings that were not in his favor. He is a member of CAALA and graduate of the CAALA Plaintiff Trial Academy.*



Fisher