

LEARNING FROM EXPERIENCE: An Outline for Conducting Post-Trial Interviews

I. PREPARATIONS

- A. Establish the purpose(s) of the interviews.

Are you interested in investigating possible misconduct or obtaining general feedback in preparation for future trials on the same issue.

- B. Ascertain the local rules of court.

Courts vary on the rules about contacting jurors. Be sure you research this issue carefully before proceeding.

- C. Choose the right person to conduct the interviews.

The interviewer should be someone other than the attorney who conducted the trial in order to avoid introducing bias into interviews. Ideally, he or she would be someone who was not too closely tied to the case and will be relatively objective. The interviewer should avoid telling the juror on whose behalf the interview is being undertaken until after the interview is completed. Most jurors will agree to the interview, if they are assured that they will be told at the end of the discussion who requested it. If necessary, the interviewer can explain to the juror why he or she prefers to discuss this at the end of the interview by stating, "I want you to feel free to give your opinions on a number of topics. It is usually most helpful if we wait until the end of the interview to talk about who will be getting the feedback." In practice, this is not a very big issue. Most jurors are satisfied with the explanation of the importance of their remaining naive.

D. Deciding who to interview.

The most important jurors to interview are the "persuaders" - the three or four most verbal (influential) people on the panel. These individuals are usually the most willing to voice their opinions to an attentive listener.

Next, seek out "participants," - those who were undoubtedly talkative during deliberations, but probably weren't the leaders or coalition builders. Don't waste time contacting "non-participants."

E. Setting up the interviews.

An effective strategy for eliciting cooperation from jurors is to have the interviewer on hand in the courtroom to meet jurors after they are excused from their service. The interviewer can quickly approach jurors and ask for permission to call and ask for jurors' phone numbers. This brief introduction facilitates future contact and saves hours of tracking down jurors' contact information later. The interviewer should then initiate contact about a week after the trial. This gives jurors time to unwind, but not enough time to exhaust their desire to talk about the trial. Most jurors enjoy the opportunity to have someone's undivided attention as they recount their experiences on jury duty.

F. How and where to conduct interviews.

Telephone interviews are certainly the most efficient method of conducting interviews, but much can be gained from face-to-face interviews. Jurors will almost always permit recording of the interview, which is very helpful for the

interviewer.

II. THE INTERVIEW

The interviewer should start with very broad, open-ended questions. Jurors often have pressing thoughts and reactions they want to share. These are likely to be the most salient issues which guided their thinking and analysis of the case.

The order of the remaining questions can vary widely, depending upon objectives of the interview. In general, jurors don't remember who introduced what evidence. Instead, they form global, cumulative impressions of the case over time. Thus, the interviewer may want to explore global issues first, then move to the specifics of the case.

A. Order of topics

1. Broad 'overview' questions.
2. Questions about specific pieces of evidence and/or exhibits
3. Questions about the witnesses.
4. Questions about the 'process of deliberations.'
5. Questions about the reactions other jurors had to the evidence.
6. Questions about how the group divided on the issues.
6. Questions about the participants in the trial (the attorneys and the judge).

SAMPLE INTERVIEW

IDENTIFIED PURPOSE OF SAMPLE INTERVIEW:

Primarily educational, as there may be other, similar cases in which the same witnesses could be called or similar themes addressed. The attorney also wants the interviewer to mildly probe for juror misconduct, although there is no compelling evidence to explore for anything specific.

The following are examples of probing, open-ended questions that could be used in an interview with the above objective. Several questions are merely different ways of asking for the same information, thus not all would be asked. The questions are offered as examples of the types of questions to ask, a suggested order of questioning and different ways of wording the questions to elicit the most information from jurors during post-trial interviews.

- Overall, what did you think of the trial?
- What events or facts stand out most in your mind?
- What left the greatest impression on you (witness, document, behavior of counsel)?
- Was there a "turning point" in the trial for you? What was it?
- Was anything missing? What was left out of the trial that you were waiting to hear?
- What did you assume about the missing information (witnesses, documents)?

(Avoid questions that begin with "did." For example, "Did you think the opening statements were persuasive?" Generally, the answers will be 'yes' or 'no' and will provide little insight.)

- What were your reactions to?
- How did you feel about(the testimony of x, the photographs, etc.)?
- What did you think of?
- Which exhibits stand out in your mind? Which ones do you remember?
- Who do you remember most from the witness stand? Who stood out in your mind? Why?
- Who else?
- What were your impressions of (Mr. Smith)? (Mrs. Johnson, etc.)

(Ask this question using the plural form. If you ask, "What was your impression of Mr. Smith," you'll usually get a single reaction, rather than a more narrative response.)

- How would you describe him/her in terms of his/her credibility?
- How well did he/she (the witness) communicate?
 - What did he/she leave out of his/her testimony that you wanted to hear about? What did you assume about the testimony that was 'left out'?
 - Were there any witnesses who seemed 'unnecessary'? Were there any witness you ignored? Why?
- I know it's difficult to separate the plaintiff's case from defense's case when you take cross-examination into consideration, but just globally, what was missing from the plaintiff's case (documents, testimony)?
- What was missing from the defense case?
- What "promises," if any, did the attorneys make in their opening statements that were left unfulfilled?
- What did you hear in the closing arguments that stuck in your mind?
- What happened during deliberations?

(Even if you've already heard about the process from one juror, ask each juror the question. You get many different perspectives of the same events.)

- How did deliberations get started?
- What documents and/or instructions did folks referred to?
- Did anyone use the blackboard to illustrate his/her point during deliberations?
- What were the various opinions on liability? On damages?
- Where did you find yourself along the continuum?
- Who seemed to share the same or similar opinions during deliberations?
- How many votes were taken? Who changed his/her vote from poll to poll?

- Which jury instructions did the group refer to most?
- What did you think of the instructions?
- Did you draw upon anything from your own experiences (with contracts; with hospitals, etc) to help you in making these decisions?
- Did any of the other jurors relate their personal experiences with similar situations, during the deliberations?
- If you were the sole juror, and the whole case was up to you alone, how would the verdict be different?
- What are your thoughts about the plaintiff's attorney?
- What could he/she have done to be more effective?
- What are your thoughts about the defense attorney?
- What could he/she have done to be more effective?
- What are your thoughts about the Judge?
- Was he/she harder on one side than the other?
- How could the plaintiff's case have been stronger? What would you have needed to hear or see to persuade you that they should have prevailed?
- How could the defense's case have been stronger? What would you have needed to hear or see to persuade you that they should have prevailed?
- What were the weaknesses in the plaintiff's case?
- What were the weaknesses in the defense's case?
- What did you like about the plaintiff's lawyer? Dislike? (including personality, courtroom demeanor, style of speaking, etc).
- What did you like about the defense lawyer? Dislike? (including personality, courtroom demeanor, style of speaking, etc.)
- Thinking back to jury selection, did anything happen that stuck in your mind? Any impressions you remember, or comments by other panelists?

III. ENDING THE INTERVIEW

- A. Thank the juror and express admiration for their contribution to the system.
- B. Ask him/her if they have any questions.
- C. Secure permission to call them back if you have any questions that occur to you later.
- D. Under certain circumstances, the interviewer may want to secure permission for the attorney to call the juror if he/she has other questions.
- E. The attorney who tried the case should send a thank you letter or call the juror to thank him or her for participating in the interview. Jurors feel even more positive about their interviews when they receive an acknowledgment from the attorney.