
INTRODUCTION

It is unclear when a lawyer first had the idea to ask a judge to hand potential jurors a questionnaire that addressed case-specific issues, but this occurred at least by the mid-1970s. Over the ensuing decades both Federal and state courts have used supplemental juror questionnaires with increasing frequency. Today it is fairly commonplace to see these questionnaires used in trials, particularly in highly publicized cases or cases that potentially tap into various biases held by jurors. These trials range from criminal trials, such as *California v. Simpson* (murder), *Colorado v. Holmes* (Aurora theater shooting), *United States v. Moussaoui* (terrorism), *United States v. Tsarnaev* (Boston Marathon bombing), *United States v. Hasan* (court-martial, Fort Hood shooting), *United States v. Benyo* (AOL executives, securities fraud), and *United States v. McDonnell* (former Virginia governor and wife, political corruption) to civil trials, including *In re Exxon Valdez Litigation* (environmental damage), *International Paper Co. & Masonite Corp. v. Affiliated FM Insurance Co.* (bad faith), *Royal Palm Resort v. Mitsui Construction Co.* (breach of contract), *Schwaller v. Merck & Co.* (product liability), *Mueller v. Swift* (tortious interference with a contract/assault and battery), and *Washington, Jr. v. Buraker* (violation of civil rights).

This book brings together a collection of supplemental juror questionnaires from a variety of jurisdictions and used in a variety of jury trials and courts-martial. While the goal of this book is to provide examples of quality questionnaires, there is a much-needed qualification. The vast majority of supplemental juror questionnaires are developed by the parties and approved by the trial judge. The result of this process is not one that fosters development of the best possible questionnaire, containing the most useful and skillfully crafted questions, but one that produces questions that survived objections by the opposing parties and scrutiny by the judge. Many times excellent questions and important topic areas are excluded from these questionnaires because of objections by the parties and/or rejection by the trial judge. In many circumstances, questions from previously approved questionnaires appear in current questionnaires not because of their inherent value (in content or phrasing) but because they were approved in a previous case. All these factors come into play to some degree in the questionnaires contained in this book. However, much can be learned by viewing these questionnaires as a whole, seeing how different questionnaires and questions address similar or analogous topic areas, and using them as a guide for the development of future questionnaires. While the issues with constructing and phrasing meaningful questions and overall questionnaire development are covered in detail in the companion volume to this book,¹ some basic information is included here to provide a context for reviewing these questionnaires.

Supplemental Juror Questionnaires: Basic Components

Supplemental juror questionnaires can cover a broad range of types of information depending on their scope and what is allowed. The basic types of information include the jurors' background characteristics, experiences, activities, and opinions and evaluations. These questionnaires can explore many, if not all, of the following possible areas:

- *Background characteristics:*
 - Occupation/employment
 - Education
 - Marital status
 - Income
- *Experiences:*
 - Victimization
 - Involvement in lawsuits
 - Use of firearms
 - Use of commercial products
 - Experience with patents or other intellectual property
- *Activities:*
 - Hobbies and spare-time activities
 - Organizational membership
 - Social media activity
 - Internet usage
- *General opinions, values, and evaluations:*
 - General views concerning legal principles (e.g., presumption of guilt/innocence or standards of proof) and duties
 - Psychological or personality characteristics (e.g., authoritarianism)
 - Trust in law enforcement
 - Views on causes of crime
 - Views on civil lawsuits
 - Views concerning punitive damages
 - Sentencing values
 - Views on the death penalty
- *Case-specific information and opinions:*
 - Case-specific opinions, e.g., certain laws are too strict/lenient or compensation should/should not be provided for certain noneconomic damages
 - Exposure to/awareness of pretrial publicity
 - Favorable/unfavorable impressions of a party or parties
 - Beliefs concerning the guilt of a criminal defendant or liability of a civil defendant
 - Connections to witnesses, critical locations, parties, and their representatives

The length of supplemental juror questionnaires can vary considerably based on the number of questions asked and the type/form of these questions.

Questionnaires have varied in length from only one page containing 10 to 20 questions to 80-plus pages and more than 200 questions.

The jurors' answers to the questions posed in the questionnaire serve as a starting point for the examination of jurors by the judge, the lawyers, or both. Follow-up questions may be allowed by the court to clarify answers or to pursue important areas of concern revealed by the jurors' answers.

Methods for Using Supplemental Juror Questionnaires

There are two basic methods for employing supplemental juror questionnaires. These methods differ based on whether jurors complete the questionnaires off-site before trial (off-site method) or at trial (on-site method).

OFF-SITE METHOD. One method for obtaining information requested on supplemental juror questionnaires is to mail copies of the questionnaires to potential jurors before the trial. The court or jury administrator sends the questionnaire to potential jurors with instructions contained in a cover letter or in the questionnaire itself for *how* jurors are to complete and return the questionnaires and *when* the questionnaires must be returned. The questionnaires are accompanied by postage-paid, self-addressed mailers for their return.

Questionnaires are usually mailed to jurors three to six weeks before the trial begins. Jurors return the completed questionnaires by mail to the court or, in some jurisdictions, to a printing company where the questionnaires are photocopied. Copies of the completed questionnaires are made available to the parties (and the judge) at some designated time prior to trial that may range from the day of trial to one or more weeks before trial.

ON-SITE METHOD. The second method of obtaining information on supplemental juror questionnaires takes place when jurors report for trial or at a designated time and place for the purpose of completing these questionnaires. Jurors complete the questionnaires upon their arrival either en masse for jury service or in groups reporting at different times. The completed questionnaires are then photocopied by the court for use by the parties and the judge. The resulting time available for attorneys to review the jurors' answers varies from a few hours to several days to several weeks.

CHOOSING A METHOD. There are four major considerations in choosing a method for administering supplemental juror questionnaires or, in jurisdictions where procedures are already in place, seeking changes in the methods employed.

Time allotted for review. It is important that the parties be allowed sufficient time to review the jurors' responses to the questionnaires. For the average-length questionnaire administered to fifteen or more potential jurors, allowing only a few hours of review time is inadequate for effective consideration of the jurors' answers. At least an overnight review of this information is necessary whether using the off-site or on-site method. When the jury venire contains large numbers of potential jurors, or when the supplemental juror questionnaire contains many questions, additional time will be necessary.