

On Better Jury Selection: Spotting UFO Jurors Before They Enter the Jury Room

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Our historically valued institution of trial by jury is now under attack, and yet relied upon with steady frequency in courts across the country. Recent celebrity trials and anomalous, but widely reported, high jury damage awards have spawned criticisms and the scrutiny of the jury trial process. I believe it is the abiding goodness of our citizenry and our national commitment to ensuring a truly just resolution of conflicts that keeps us relying upon the jury system. And, rather than rejecting the jury, many courts and communities across the land are figuring out ways to revitalize trials by jury and improve a basically sound democratic cornerstone.

I am proud to report that our nation's capital has joined the growing wave of jurisdictions that are seriously and methodically examining how we have traditionally been conducting jury trials in our land. Many are taking practical steps to promote the fairer, more efficient, and more effective use of citizens as jurors.

In March 1998, a unique collaboration of judges, trial lawyers, former jurors, and civic leaders released its study report, *Juries for the year 2000 and Beyond— Proposals to Improve the Jury Systems in Washington, DC.*² I enthusiastically commend the entirety of the report to our readers. The thirty-two recommendations contained in that report cover a wide spectrum. Some are completely practical, suggesting nuts and bolts steps for jury commissioners to obtain more accurate juror source lists. Others express simple, common-sense guides to promoting citizen comfort, pride and security. Another, Recommendation 19, urges major revisions in the jury selection process. I took the latter recommendation to heart, trying to implement a portion of it in my courtroom during the last nine months of 1998. When I recorded my efforts in a careful and studied way, I obtained some remarkably revealing and, I hope you'll agree, useful results.

Recommendation 19 said:

The D.C. Jury Project recommends that the fairness, efficiency and utility of the voir dire process in the trial courts of the District of Columbia be enhanced by:

a. *Increasing relevant information about jurors available*

to the Court and parties by use of a written jury questionnaire completed by all jurors and given to the Court and parties upon the jury panel's arrival in the courtroom;

- b. *Improving the ability of parties to ascertain grounds for strikes of jurors for cause by requiring that each juror be examined during the voir dire process and by giving attorneys a meaningful opportunity to ask follow-up questions of each juror;*
- c. *Assuring to the extent possible that prospective jurors who may be biased or partial are stricken for cause by establishing that when a prospective juror's demeanor or substantive response to a question during voir dire presents any reasonable doubt as to whether the juror can be fair and impartial, the trial judge shall strike the juror for cause at the request of any party, or on the court's own motion; and by*
- d. *Reducing improper discrimination against jurors, unnecessary inconvenience to them, needless delays in the trials, and excessive costs by eliminating, or drastically reducing the number of peremptory strikes.*

The D.C. Jury Project members believed that improved courtroom practice in jury selection (subsection b), combined with better information about the jurors at the start of voir dire (subsection a), would promote a more informed jury selection process, including the requirement that each juror be individually examined at least once during the voir dire with attorney follow-up questioning.

Recognizing that there are as many ways in our vast land to conduct voir dire as there are pronunciations of that French moniker, I want to explain the epiphany I experienced when I adjusted my jury selection practices (which already included attorney questioning following upon my general, open-court questioning of potential jurors) to include the individual interview of every citizen in the venire panel regardless of whether he or she responded to the generic opening questions.

Footnotes

1. The author expresses special gratitude to Professor Phoebe C. Ellsworth, the Robert B. Zajonc Professor of Psychology & the Kirkland & Ellis Professor of Law at the University of Michigan, for her encouragement and insights in the preparation of this article.
2. What made this assembly and report uncommon was that the recommendations for jury trial reforms targeted implementation in both local and federal trial courts. Unique also, the effort was

inspired and principally funded through a citizen-based, non-profit corporation, the Council for Court Excellence, Inc. A copy may be obtained by contacting the Council for Court Excellence at 1150 Connecticut Avenue, N.W., Suite 620, Washington, D.C. 20036-4104, phone (202) 785-5917, fax (202) 785-5922, or email jury@courtexcellence.org. The Council has an Internet site at <http://www.courtexcellence.org>.

I. VOIR DIRE FORMAT DURING THE TEST

During calendar year 1998, I was assigned to the felony branch of the Criminal Division of our general jurisdiction trial court.³ My cases typically demanded that I call at least a sixty-citizen venire panel from the jury lounge into my courtroom. Prior to their being seated in the courtroom in the order they were randomly listed on the jury commissioner's computer printout, I invited counsel for the prosecution and defense to review my standard voir dire questions, which are meant to be posed to citizens in open court at the beginning of jury selection. I entertained suggested additions or deletions to my proposed questions and usually settled upon approximately twelve to fifteen questions⁴ posed to the incoming panel of prospective jurors. These questions are designed to get an initial measure of whether any citizen's background or relevant life experience

would stand in the way of the juror candidate being fair and impartial in the instant case.

I customarily open each voir dire with a warm greeting and a plain-English, very abbreviated explanation of the purpose of the voir dire part of a trial. I emphasize the importance of the oath to tell the truth in response to each question I am about to ask in open court. The oath is administered slowly and clearly⁵ to all sixty persons standing with right hands raised. The venire panel is then seated again and told that, if the answer to any of the questions is "yes for you," then they should place the stated number of that question on a sheet of paper, which has been previously distributed by courtroom staff.⁶ The entire, open-court questioning procedure usually consumes ten to fifteen minutes. Thereafter, the prospective jurors are told that they will be called individually to the jury deliberation room adjoining the court-

3. D.C. Code §11-901 *et seq.* establishes the Superior Court of the District of Columbia as a consolidated trial court of general jurisdiction. Accordingly, every species of litigation, from landlord tenant disputes to divorces, to homicide prosecutions, to commercial controversies must come through the door of our courthouse. We judges divide our work by rotating each calendar year into one of the four main divisions of the Superior Court: Criminal, Civil, Family or Probate and Tax.

4. The typical format and questions asked in a felony narcotics or firearms case are:

Ladies and gentlemen, I will ask you a series of numbered questions, which are summarized on a sheet of paper which you have. After each question, if you have an affirmative response, I ask you to circle that question number on the paper which you are holding. After all questions have been posed to you in open court, I will then interview each of you in the jury room to find out how and why your answers to the circled questions are "yes."

Before any questions are asked, I first want to introduce persons who will have a role in this case. The attorneys representing the parties in this case are _____, on behalf of the government, and _____, on behalf of the defendant, _____.

This case involves a charge of _____. This offense is alleged to have occurred on _____ at the location of _____, in Washington, D.C.

TO THE ASSISTANT U.S. ATTORNEY: Counsel, would you bring in your potential witnesses so that they may be introduced to the jury panel?

TO THE DEFENSE ATTORNEY: Counsel, would you bring in your potential witnesses so that they may be introduced to the jury panel?

TO THE JURY PANEL:

- a. Do any of you know or in any way acquainted with any of the other jury panel members sitting there with you?
- b. Do any of you know or in any way acquainted with me, any of the parties, witnesses or attorneys in the case?
- c. Have any of you heard of the alleged offense(s), or do you live or work within a ten block radius of where the offense(s) are alleged to have occurred or are any of you peculiarly familiar with the immediate vicinity of where these alleged offenses occurred?
- d. Have any of you or a close relative or close friend, ever been employed to do criminal prosecution or defense work, for example, as a prosecutor or defense attorney, or investigator for either side in a criminal case?
- e. Are any of you, a close relative, or close friend, now or for-

merly employed by any law enforcement agency? By this I want you to include any police departments, inside or out of the District of Columbia, special police entity, security company, the U.S. Drug Enforcement Administration, the FBI, CIA, U.S. Marshall's Service, Internal Revenue Service, or the Secret Service.

- f. Have any of you ever served on a grand jury panel?
 - g. Are there any of you who would more likely believe or disbelieve a witness merely because he or she is a police officer?
 - h. Ladies and gentlemen, I estimate this case will take approximately ____ days to try. Does anyone have any pressing commitment that would make sitting on this jury a *substantial* hardship?
 - i. Are any of you suffering from any illness, hearing or vision impairment, or taking any medications that might cause you to become drowsy or in any other way affect your ability to give your full time and attention to this case?
 - j. Are there any of you, because of strong personal or religious convictions, who believe it is inappropriate for you personally to sit in judgment of another?
 - k. Have any of you, a close friend or close relative been the victim of, a witness to, or charged with a criminal offense within the past ten years?
 - l. This case involves the allegations concerning drugs. Do any of you have any experience with drug usage involving yourself, family members, friends, or acquaintances that might cause you to have strong feelings, one way or the other, about drug charges such that it would likely be difficult for you to be fair and impartial?
 - m. This case involves allegations concerning a firearm (and ammunition). Do any of you have strong feelings concerning gun control laws, either favoring or opposing such legislation, or strong feelings concerning a person's alleged possession of firearms or ammunition such that it would likely be difficult for you to be fair and impartial?
 - n. Finally, ladies and gentlemen, can any of you think of any reason not already brought out through prior questioning as to why you could not sit fairly, impartially and attentively to this case?
5. Do each of you solemnly swear or affirm that you will give truthful answers to the questions that are about to be asked of you by the court and counsel?
6. Each juror candidate is also directed to write his/her juror badge number on the paper, no matter whether there is an affirmative response to any question.

room. I tell them outright that I do this because I find that the likelihood of obtaining more full and candid responses is increased by hearing from everyone in the smaller circle of the parties and the court reporter in the smaller deliberation room in contrast to the large, heavily populated courtroom.⁷

Upon entering the jury deliberation room with the parties,⁸ I tell counsel that, in order to avoid burning up voir dire time unnecessarily, I will be the first to ask follow-up questions of each candidate after I state aloud which open-court questions, if any, were earlier marked down by that interviewee. If I hear a response that, in my estimation, is a patently good reason to immediately excuse that citizen and send him or her back to the jury lounge, I will simply say, as a code, to counsel, "Is there need for further questions?" If counsel agrees with me, each is to respond, "No." And, thereupon, the would-be juror will be thanked and dispatched. If counsel disagrees with me, they are told to simply ask any follow-up questions of their own, and I will consider any motions to strike that citizen for cause later in the interviewing process after we have thirty-six citizens interviewed who have not been struck by agreement for self-evident cause.

II STUDY RESULTS: WHAT WE LEARNED ABOUT OUR SILENT CITIZENS

In my first jury trial after the *Juries for the Year 2000* recommendations were released, I started to individually interview every potential juror in the jury room, after all general voir dire questions had been posed to the venire panel, regardless of whether they had an affirmative response to the battery of open-court voir dire questions. Prior to this time, I customarily had not called non-responders, *i.e.*, the silent citizens, to the jury room for an individual interview. This practice had been principally based on a desire to save time, the notion being that no news on the general voir dire questions was good news. The results of this study have shown how shortsighted that approach can be.

Under the new procedure, I would ask the jurors who had not responded to any of the general questions, "I notice you did not respond to any of my questions. I just wondered why. Could you explain?" If I did not get much of a response, I would say, "Is it because the questions did not apply to you?" Most jurors simply said that the questions did not apply, but others said they should have responded or that they had something else that they wanted to share.

I undertook this effort in order to test whether the individual questioning of all panelists indeed revealed new information important for making accurate decisions about strikes for cause and whether this new approach significantly affected the

time it took for jury selection to be completed. In a capsule, I found the individual voir dire of all citizens to be an indispensable way of ferreting out otherwise unknown juror qualities. Minimal questioning of each prospective juror has exposed problematic UFOs, so to speak, *without any significant increase in time consumption*. I will now recount some of the more illuminating responses that occurred and then provide a table of other significant findings.

A. Responses from Silent Jurors Who Were Excused Immediately for Cause

The information received by individually interviewing the prospective jurors who had not responded to any general voir dire questions was so illuminating that many were promptly excused by agreement of the court and all parties. Below is a brief synopsis of separate responses which caused that candidate to be excused:

- *I do not understand your questions or remember the past very well. I am afraid to answer questions and cannot remember dates very well.*
- *I definitely don't want to be here. I'd be resentful if I'm here.*
- *I'm the defendant's fiancée.*
- *I can't stand to talk about guns. My grandson was killed with a gun so the topic of guns makes my blood pressure go up.⁹*
- *We should not waste time prosecuting people just for gun possession charges. I was on a hung jury before - I don't know if I can follow instructions of the court for gun possession - that was the problem in my other trial.¹⁰*
- *I can't judge; I'm predisposed against the police.*
- *I have eight- and nine-year-old children I am not sure I can get child care.*
- *I don't want to be a juror - I've lied already. My mom was a juror and died on Christmas day. My back hurts and I am supposed to be in therapy at noon.*
- *Eight years ago I was a juror but I was excused because my brother committed suicide as a heroin and cocaine addict. He got drugs easily. Therefore I was and am angry. I'd start out with a bias in this case.¹¹*
- *I have leg trouble and need to go to a doctor in ten days. I can hardly walk to or inside the courthouse.*
- *I tend to feel that the system works in a biased way, for example I heard the defense attorney say to the defendant, "Just take your wife to a nice place for lunch."*
- *I was frightened to raise my hand. I have taken high blood pressure medications for twenty years. I am afraid I'll do what others tell me to do in the jury room.*

7. Again, I am trying to reinforce to them the need to be forthcoming and honest.

8. The room is a rectangle, approximately fifteen feet by nine feet in dimension, with a large rectangular table that can accommodate at least fourteen chairs. I sit at the head of the table nearest the doorway leading into the room. An empty chair for the prospective juror to occupy promptly upon entering the room is placed near me and the entryway. The official court stenographer is also

nearby. The prosecutor, defense counsel, defendant, and deputy U.S. Marshall are seated around the table but further away from the citizen than I am. My goal is to keep everyone in easy listening distance to each other, but to avoid any uncomfortable or unfair proximity of the parties to the would-be juror.

9. In this case, the defendant was charged with gun offenses.

10. In this case, the defendants were charged with gun offenses.

11. The defendant, in this case, was charged with narcotics offenses.

- I should have raised my hand - my grandfather was an FBI agent, therefore *I tend to believe cops*.
- I was hospitalized for headaches three months ago at Washington Hospital Center. (The juror had a very strange affect and strange speech patterns.)
- I'm in high school and don't want to miss any classes and affect graduation.
- *My religion tells me I cannot judge*. It is hard to believe people unless you are there. *I like videotape - it tells everything*.
- Two of my family members were locked up on drug charges. I heard they were roughed up by the cops. Therefore, I am more skeptical of police witnesses.¹²
- I have been in a Narcotics Anonymous Program for the last 4 years. *My past drug use may affect me. I am incapable of giving clear answers or making up my mind about drug charges*. I feel uncomfortable about talking about drugs.¹³
- *I know defendant*. He's a member of my church. I did not understand some of the questions.
- I take medicines for high blood pressure. *I am from Haiti. I only understand a few words of English*.
- *I have been harassed by police often*. So there is a cloud over police officers. *The hard part for me is what cops have to say*. [All five prosecution witnesses were police officers.]
- [In a drug case, a middle aged woman said she did not understand any of the questions asked in open court. She appeared to be mentally impaired by virtue of her speech pattern and unusual facial expressions.]
- [In a gun prosecution, a young adult gave blank stares to my initial questions in the jury deliberation room as to why she did not respond to the open-court inquiries. She could not even say yes or no without great prompting by me. I concluded she could not hear and likely could not comprehend my words spoken in the courtroom or in the deliberation room even though I was at a distance of four feet from her.]
- I don't want to be here. *I don't judge anyone without knowing everything that is outside of the paper*.

B. Responses from Silent Jurors Who Were Not Excused for Cause¹⁴

Other potential jurors, who ultimately were not excused, gave informative responses that provided the court and the parties with important background information about them. A synopsis of some of these responses is provided below. In some noted instances, several of these potential jurors were not struck for

cause, but were removed by a party through a peremptory strike:¹⁵

- I live twenty blocks away from the scene of the crime.
- *I have some discomfort about people holding guns*.¹⁶
- I am unemployed and looking for jobs. I used to be a mathematician at the Naval Research Lab.
- I have been in DC for three years. I am formerly from New York.
- My husband was mugged in Johannesburg, South Africa, three years ago but I am not biased against the accused.
- I am a lawyer in non-profit work.
- *My dog walker was shot in Georgetown*. I was a witness at the grand jury in a truck driver/ road rage case. I am a CEO in a real estate company. (The jury list said he was a police officer.)
- *My son was shot in the face six months ago*. He's fine now, but no one was ever apprehended. I have no problem judging.¹⁷
- I have presumptions about drugs, such as that *it is stupid to sell to anyone and that anyone found with drug paraphernalia would surely be a user or seller*.
- My uncle works at the Federal Protection Service at L'Enfant Plaza.
- My father worked for a small police department in California.
- My dear friend's husband is a homicide detective.
- I plan to travel Thursday night. *I'd be resentful if I was still here but I'd do my job correctly*.
- The "black bitch" statement jerked me, but I'd keep an open mind throughout.¹⁸
- I work at the U.S. Treasury Department.
- *I was charged with distribution of cocaine in 1991* but the charge was dropped.¹⁹
- I am against gun control and I am a self-employed computer consultant. Therefore, loss of income comes to mind, but will not stand in my way.²⁰
- Members of my husband's family are building contractors in Michigan and New York. My husband used to be in the business, therefore I have a greater understanding about building business than the average person.²¹
- I am a self-employed handy man.
- I know some people with the same last name as the defendant, but I do not know if they are related.
- I have glaucoma.
- I have strong feelings about gun control and have made donations to Handgun Control, Inc.²²

12. In this case, the defendant was charged with narcotics violations.

13. Here too, the defendant was charged with narcotics violations.

14. I decided to include these responses to illustrate the information that can be gathered through the implementation of Recommendation 19(b), rather than to reflect on the specific reasons why these people were not excused.

15. The District of Columbia Code gives each side in a felony case ten peremptories, plus one extra peremptory strike to be applied to alternate jurors. In misdemeanor and civil trials, each side has three peremptory strikes.

16. In this case, the defendant was charged with gun offenses.

17. This case involved gun offenses.

18. In an assault with a dangerous weapon case, a statement allegedly made by the defendant was shared and asked about during general voir dire questioning.

19. This case involved an armed robbery.

20. This case involved an armed robbery.

21. In this case, the defendant was a home improvement contractor who was charged with offenses relating to his work.

22. This case involved drug offenses.

DISCOVERING INFORMATION FROM INITIALLY SILENT PROSPECTIVE JURORS

Type of Case	Silent jurors/ total in panel	Jurors with relevant comments/ silent jurors	Number of excused jurors/ jurors with relevant comments	Trial Outcome
Gun	15 / 59	3 / 15	2 / 3	Guilty verdict
Gun	26 / 60	4 / 24 ²³	2 / 4	Hung jury ²⁴
Gun (multiple counts)	19 / 60	5 / 19	3 / 5	Acquittal on 1 count & hung jury on other
Gun	12 / 60	5 / 12	3 / 5	Mistrial ²⁵
Narcotics	25 / 59	4 / 25	2 / 4	Guilty verdict
Narcotics	18 / 55	3 / 17 ²³	1 / 3	Not guilty verdict
Assault	19 / 60	4 / 18 ²³	1 / 4	Guilty verdict
Armed Robbery	20 / 60	2 / 17 ²³	0 / 2	Guilty verdict
Theft/ Burglary	9 / 60	1 / 9	1 / 1	Guilty verdict
Theft/ Uttering	11 / 58	4 / 11	2 / 4	Guilty verdict
Gun	16 / 59	4 / 14 ²³	0 / 4	Hung jury
Assault (knife)	29/56	2/24 ²³	0/2	Guilty verdict
Murder	12/59	6/12	4/6	Guilty verdict
Narcotics	17/60	3/15 ²³	1/3	Defendant plead guilty before 1st witness
Receiving Stolen Property & Unauthorized Use of Vehicle	14/55	2/14	0/2	Not guilty on receiving stolen property; hung jury on unauthorized use of vehicle
Narcotics	8/57	0/8	N/A	Guilty verdict Not guilty verdict (2 co-defendants)
Gun	24/54	2/24	0/2	Hung jury
Narcotics	15/57	3/14 ²³	2/3	Guilty verdict
Gun	18/60	4/16 ²³	3/4	Not guilty verdict
Gun & Escape	12/60	2/9 ²³	1/2	Not guilty – gun Guilty – escape
Narcotics (multiple counts) & Failure to Appear	17/60	1/3 ²³	1/1	Guilty verdict on all but one count, jury hung on one drug count
Assault with Intent to Kill & Gun	15/59	4/15	4/4	Guilty verdict
Gun	15/60	2/13 ²³	1/2	Not guilty verdict
Gun	19/60	3/17 ²³	0/3	Not guilty verdict
Assault with Intent to Kill & Gun	13/59	3/12 ²³	2/3	Guilty verdict
Narcotics	19/63	2/15 ²³	1/2	Guilty verdict
Gun	9/46	2/9	0/2	Not guilty verdict
Assault (knife)	21/57	5/17 ²³	1/5	Hung jury (11/1 for guilt)
Narcotics (multiple counts)	12/56	1/12	0/1	Guilty verdict on one count, hung jury on other count (7/5 for guilt)
Narcotics (multiple counts)	15/75	3/15	1/3	Not guilty on 13 counts; hung jury on 4 counts

- I live in the area where the crime allegedly occurred.
- I should have answered two questions. *I was an investigator for the D.C. Public Defender Service from January 1998 to May 1998 while I was in my last semester of law school. At PDS, I worked on cases like this one – assault with intent to kill. [This person was peremptorily struck by the prosecutor.]*
- Spanish is my native tongue. I have been in the United States ten years and speak both Spanish and English.
- *I have multiple sclerosis. It does not affect me currently but heat affects me badly. I hope the courtroom is cool. I also have pressure from my boss, in a two-person office, to get back to work soon. But I want to serve in this case. It appears very interesting. I'll serve anyway. [In this assault-with-intent-to-kill case, this person was struck by the prosecutor's peremptory.]*
- I sell autos. *I would believe a cop more* because I came to America from the Middle East 30 years ago. I admire this country greatly. I believe in the system. But I would follow the court's instructions not to treat a police officer's testimony differently than a civilian's testimony.

C. Other Significant Findings

The accompanying table summarizes data about our inquiries of the silent jurors in thirty trials. It is significant that, on average, about twenty-eight percent of the members of each venire panel did not respond affirmatively to the dozen or more questions posed in open court. Put another way, about sixteen people in an average size venire panel of fifty-nine citizens remained unresponsive. As I repeatedly brought the silent ones into the jury deliberation room for a brief and friendly “why so?” interview, three persons, on average (just under one in five of the quiet ones), had very relevant personal information to share. This resulted in at least one and as many as four persons being promptly struck for cause — by consensus of the parties — in twenty-seven of the thirty trials! That represents ninety percent of the cases. The elimination of these people, who all agreed should not have served on those particular juries, was

made possible by the switch to individualized voir dire even for these previously silent jurors.

As I ponder where my research takes me and others who are concerned about improving the voir dire process, I believe this study underlines the importance of pursuing a careful, information-oriented jury selection process. I also believe the data support the larger dimensions of Recommendation 19 of the *Juries for the Year 2000* report,²⁶ which urges greater reliance on reason-based, for-cause elimination of biased jurors, rather than on the inherently irrational use of peremptory challenges.²⁷

In view of these results, one cannot help but get a strong sense of the essential and revealing juror data that can be obtained by interviewing citizens who do not initially respond to open-court voir dire questions. The sometimes shocking, and always noteworthy, quality of the statements given above, have caused me to require that I interview all silent venire members. I am convinced that even if individual questioning took up significant amounts of time (which it has not for me), it would be well worth expending the effort in order to avoid juror UFO's and the consequent danger of mistrials caused by impaneling biased or disabled citizens.²⁸



Gregory E. Mize has been a trial judge on the Superior Court of the District of Columbia since 1990. In 1997, he was co-chair of the D.C. Jury Project, which produced the detailed report, Juries for the Year 2000 and Beyond – Proposals to Improve the Jury Systems in Washington, D.C. Mize is a 1973 graduate of the Georgetown University Law Center

Judge Mize invites any questions, comments, or recommendations that any readers may have regarding findings set forth in this article, their implications, and the prospects for useful follow-up research. He can be reached at the Superior Court of the District of Columbia, 500 Indiana Avenue, NW, Room 2600, Washington, DC 20001.

23. In this case and several others, I did not call all of the jurors who had not responded to the general questions because we had already enough jurors, not struck for cause, to proceed to the peremptory challenge stage. I have calculated that, in felony cases, thirty-six citizens are needed in order to end up with fourteen jurors in the jury box if each party exercised all available peremptory strikes. D.C. Code §23-105 affords each side in a felony case ten peremptory challenges plus one additional peremptory strike for each pair of alternate jurors who are impaneled.
24. A mistrial was declared because of a hung jury, with eleven to one for acquittal.
25. A mistrial was declared because of prejudicial prosecutorial misconduct during opening statement.
26. The D.C. Jury Project members favoring elimination of peremptory challenges enthusiastically adopted and incorporated by reference the scholarly article of Colorado judge Morris B. Hoffman. See Morris B. Hoffman, *Peremptory Challenges Should Be Abolished: A Trial Judge's Perspective*, 64 U. CHI. L. REV. 809 (1997). After charting the history of peremptories in medieval England and the United States, Judge Hoffman demonstrates that

the peremptory challenge has neither a democratic lineage nor a Constitutional underpinning. He argues forcefully that the peremptory challenge is inconsistent with fundamental principles of an impartial jury because: (1) it reflects an inappropriate distrust of jurors, causing “perfectly acceptable, perfectly fair and perfectly impartial prospective jurors to be excluded in droves” and to become frustrated and cynical about the justice system, *id.* at 854-859; (2) it improperly shifts the focus of jury selection from the individual to the group, *id.* at 860-865; and (3) it injects an inappropriate level of adversariness into the jury selection process, tending to result not in the selection of impartial jurors, but jurors biased for one or another side, *id.* at 865-870.

27. I am speaking only for myself and not on behalf of the court on which I proudly serve.
28. I do not believe that these results are especially attributable to my mannerisms or style of interviewing. The methods I have used and described in this article are really quite simple. These kinds of revelations await any judge or attorney who wants to take an extra moment to ask a citizen, in a calmly neutral way, why he or she did not respond to any of the general questions posed in the beginning of voir dire.