Although "'voir dire'" mean "'to speak the truth,'" jury selection often degenerates into little more than an exercise in prevarication, particularly in the hands of unskilled lawyers. Lawyers initially lie to jurors by telling them they want a "'fair and impartial jury,'" which sounds good to prospective jurors but isn't true. Some lawyers are a little more forthright with jurors. They say they want jurors who will be fair to their client -- perhaps better phrased, but still not completely true. For example, if you're representing a criminal client whom you suspect is guilty, a "'fair'" jury will convict your client-- not the result you're being paid to achieve.

Jurors reciprocate by providing lawyers with less-than-truthful answers to their questions. Some jurors harbor biases, prejudices, or opinions that could easily wreck your case, but they're reluctant -- understandably so -- to have their own private bigotry unmasked in public. n1 Jurors won't answer truthfully if the truth might embarrass them; instead, they'll offer some socially acceptable response, which tells you nothing about how they really feel. They also feel no shame for doing so, since you're asking about things they believe are none of your business -- and you're doing it in a public place. n2

Studies confirm jurors aren't truthful during voir dire. In several New Jersey cases, jurors who were interviewed after trial gave substantially different answers in private interviews than they gave during jury selection. n3 A survey in a murder case revealed that 71% of eligible jurors had already formed opinions about the defendant's guilt, yet only 15% of them admitted it in voir dire when specifically questioned on the point. n4

This reciprocal dishonesty breeds mutual fear and distrust. It's not easy to sit behind counsel table and talk to a bunch of strangers about their personal lives and private feelings. We don't generally discuss such matters with friends, much less with strangers. But jurors are even more uncomfortable. They're in an alien
environment that isn't particularly cozy or inviting. Worst of all, they're forced to talk to lawyers -- not the sort of people they generally feel comfortable talking with anyway.

If you listen only to what jurors say, voir dire will be a wasted opportunity. But if you're perceptive and have a firm understanding of human nature, you can discern the truth - even when jurors fail to speak it. This makes voir dire an important weapon in your war chest, particularly if you also recognize that your ostensible mission -- to secure an impartial jury -- is not necessarily what a wise advocate wants to achieve. But if your opponent recognizes this as well, the beauty of our legal system is that a fair jury is probably what you'll both obtain.

FOOTNOTES:

(n1)Footnote 1. Fahringer, supra note 143, at 102.

(n2)Footnote 2. Failure to reveal embarrassing information may be judicially sanctioned in certain instances.

(n3)Footnote 3. Fahringer, supra note 143, at 103.

(n4)Footnote 4. Id.