

*VOIR DIRE FOR THE
BELL COUNTY BAR
ASSOCIATION*

By:

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81 CRIMINAL JURY SELECTION TIPS

PREPARING FOR JURY SELECTION

1. *Voir dire* begins the day the client walks through your door.
2. Keep a *voir dire* notebook. Issues will arise throughout the discovery process that will help you prepare for jury selection.
3. Every case, like every good book, has a trial theme. The purpose of the trial theme is to grab the jury's attention like a newspaper uses headlines to grab the readers' attention.
4. Use visual aides in *voir dire*. Examples would be: Explaining the burden of proof, showing who the key witnesses are, showing a diagram of the location in question, showing a sample verdict form, etc.
5. Trilogies are a Powerful, Permanent and Profound communication tool.
6. Determine from the Judge the size of the panel in advance of jury selection.
7. Determine from the Judge or other Court staff how the jurors will be seated in the courtroom and prepare a seating chart.
8. Once you know how many jurors the Judge intends to call, make 8½" x 11" cards that contain the juror numbers. The jurors can hold the cards up when answering questions during *voir dire*. Have the cards laminated. Consider leaving the cards with the Court once the case is over.
9. In cases where the jury will be assessing the punishment (i.e., Death Penalty case), decide whether you want a Guilt / Innocence or punishment jury. In our view, it is a fatal mistake to try to combine the two because you'll get the *worst* of both worlds.
10. No matter how many cases you have tried, there are no two trials that are exactly alike. Therefore, regardless of your experience in front of a jury, practice your *voir dire* on laypeople, not your office staff or law partners.
11. Have someone assist you with jury selection. This person will become your eyes and ears. This will allow you the freedom to truly listen to and have a conversation with the jurors. You will not have to worry about remembering or writing down what the jurors have said, someone will be doing this for you.

12. If a juror questionnaire is used, the lawyer should complete one as well. This is another way to humanize yourself in front of the jury.
13. Try to persuade the Judge to deal with challenges for cause at the end of voir dire as opposed to when they arise. It is always more time efficient to do the challenges for cause at the end of voir dire.
14. If the Judge will not allow the use of a juror questionnaire and intends to place unreasonable time limits on voir dire, prepare a Motion for Additional Time to Conduct Voir dire.

DRESSED FOR SUCCESS

15. Remember the wise advice we got from our parents: First impressions are lasting impressions; and, You never get a second chance to make a first impression. You and your client are the center of attention and your goal is to make a favorable and lasting first impression on the jury.
16. Never wear power clothing during voir dire unless you have to give your Opening Statement the same day. Power clothing should be worn when you want the jury to focus their attention on you. Thus, Opening Statements, critical cross examinations and Closing Arguments are the proper time to wear power clothing. During voir dire, warm and friendly colors should be worn.
17. A trial lawyer should not wear a double-breasted suit. Jurors perceive it as too slick.
18. Male lawyers should not wear clear polish on their nails. Jurors perceive it as too slick.
19. Don't wear: Expensive jewelry, diamonds, pinky rings (or more than one ring on each hand), earrings that dangle, fancy rings, Rolex watches, gold bracelets, etc.
20. All of the tips stated above apply to your clients, their spouses and your witnesses.
21. Never have your client wear new shoes. It is a dead giveaway that you've told them what to wear.
22. Research has shown that jurors trust married men who wear wedding bands more than married men who don't wear wedding bands.

23. Tell your clients that they are being observed from the minute they leave their house to the time they get back home. They need to remember to act the same way in the elevator, bathroom and hallways as they do in the courtroom.

JUROR QUESTIONNAIRE

24. With a simple and straightforward case, your questionnaire should be no longer than 2 or 3 pages. The more complex the issues and the more time you have to review the questionnaires, the longer the questionnaires can be.
25. Logically organize your questionnaire. The first section should be biographical, the next section should be issue-specific to your case, the third section should be psychological profile questions, and the final section should contain questions to determine any connections jurors have to the parties, lawyers or witnesses and any hardship issues.
26. At least 10% of the questions should be open-ended, 10% should be scaled, and remaining questions on the questionnaire should be the YES NO variety.
27. Every YES NO question should have a follow-up question (i.e., why, please explain your answer, please tell us why you feel this way, etc.).
28. Provide the Court with black ink pens and clipboards for the jurors.
29. Give the Judge a diskette that contains your juror questionnaire. If the Court has to resolve any disagreement on the questionnaire, many Judges will make the changes right on the disk. It is easier and more time efficient to process and analyze information on a questionnaire that you are accustomed to using.

GENERAL VOIR DIRE PRINCIPLES

30. During voir dire, a lawyer should only have with him/her a seating chart of the jurors and the questions that are going to be asked of the jury.
31. Use your seating chart to address the jurors by name rather than by juror numbers.
32. Never do your voir dire from behind a podium or counsel table unless required to do so by the Judge or local rule.

33. Don't flirt with jurors. The other jurors will notice it and punish you and your client for it.
34. Studies suggest that most people tend to favor (speak to) one side of a room over the other. During voir dire, be sure to speak to jurors on both the left and right sides of the courtroom. This also applies to Opening Statements and Closing Arguments.
35. Jurors will remember the first and last things they hear and see. This is known as *primacy* and *recency*. Therefore, it is critically important that you start and end your voir dire on strong points. This concept also applies to Opening Statements, cross and direct examination of witnesses and Closing Arguments.

BEGINNING YOUR VOIR DIRE

36. Don't talk like an attorney, talk like a person.
37. Begin your voir dire with your trial theme.
38. Concisely explain your theory of the case in the beginning of voir dire. The theory of the case tells a jury, in a nutshell, why you should win. Reinforce your theory in Opening Statements, examination of witnesses and Closing Arguments.
39. Before you begin questioning the panel, explain to the jurors that when lawyers refer to bias or prejudice, they mean pre-judgment or strong opinions. Tell the jurors that if they have any pre-judgment or strong opinions about any of the issues, to please let you know.
40. Let the jury know that many times jurors want to talk privately about an answer to a question. Tell them if any juror would feel more comfortable sharing an answer in private, that person should simply let you know.
41. Tell the jurors there are no right or wrong answers. All that you are asking is that the jurors be honest and forthright. Never tell the jurors that you are looking for 12 (or 6), "...fair and impartial jurors." This will condition the jurors to give the *fair and impartial* response rather than the *honest* response.
42. Tell your panel that, "Being a good juror and a good citizen means that if this case is not the right one for you to serve on, just let the lawyers and Judge know."

43. Tell the jurors that it's been your experience that many jurors believe that if they don't talk, they won't be selected. Then tell the jurors that the quickest way to be selected is *not* to say anything. In other words, jurors who talk, walk. Jurors who have nothing to say, stay!
44. At some point during the beginning of voir dire, a lawyer should employ an effective communication technique called self-disclosure. If a lawyer wants (and expects) to learn about his/her jurors, those jurors will feel more comfortable if the lawyer reveals something about herself/himself.

THE BODY OF VOIR DIRE

45. If a lawyer has a habit, trait or any other characteristic that is obvious or noticeable (i.e. stuttering, nervousness, sweating, stumbling over words, loud voice, soft voice, object often, bald, overweight, ponytail, etc.), share that up front with the jury. Ask one or two jurors if this habit, etc., will affect them or cause them any discomfort if they serve on the jury in this case. This will eliminate the distraction and allow the juror to focus on the issues.
46. Never be condescending or dismissive to a juror.
47. Your voir dire questions should be short, simple and to the point.
48. Don't ask the same question in voir dire that you ask on the questionnaire. For example, do not ask a juror, "Where do you work?" or "How many children do you have?", when the juror has shared this information on his/her questionnaire.
49. Follow up in voir dire on information you obtain from the questionnaire.
50. Listening is an active skill, not a passive skill. You should focus on the jurors' answers and not worry about your next question.
51. If your defense is reasonable doubt, never end your voir dire by talking about the State's burden of proving their case beyond a reasonable doubt. Jurors will think you are more interested in winning on a technicality than justice.
52. Use this as a measuring stick: One open-ended question for every 15 minutes of voir dire. Pick 4 to 6 people to specifically answer the open-ended question, then go row by row and find out who agrees and who disagrees.

53. Another type of question that can be asked very quickly of each juror is called a "scaled question". An example would be as follows: "I want to ask everyone on the jury panel the following question: in general how reliable do you think eyewitness testimony is- very reliable, reliable, unreliable or very unreliable?" Another example would be: "how likely is it that the police would arrest and charge an innocent person: very likely, likely, unlikely or very unlikely?" Still another example would be, "When you hear that a person is accused of [insert the type of crime], how likely is it that the person is guilty, very likely, likely, unlikely or very unlikely."

The purpose of the scaled question is that you can ask every juror to give their answer to the question and it will take very little time. In fact, we would encourage lawyers to write the answers on a flip chart and then ask the potential jurors to tell you which answer reflects their opinion or feeling on the issue. Explain to the jurors that you only have a limited amount of time and as much as you'd like to know the reason for their opinion, you simply don't have the time, so if the jurors would please tell you which answer, you can quickly find out everyone's opinion on this issue.

54. Rather than asking people to raise their hands when posing a general question to your panel, pick one juror to get the ball rolling. After that juror answers your question, go row by row and find out, by a show of hands, who agrees and who disagrees. Jurors who often end up serving on a jury are the ones who don't raise their hands...yea or nay. *Those* are the ones to whom you should go back and talk. Have the person who is helping you give you a list of the jurors who didn't raise their hands.
55. Resist the temptation to stereotype jurors. Jurors will make decisions based on their value system and life experiences. Ask yourself, "What kind of life experiences or value system must a juror have in order to be open to the issues in my case?"
56. Never ask a juror more than 3 questions on one topic. If you don't reach the point you want to get to, thank the juror and say that you may have some more questions for him/her later.
57. Listen and learn. Let your jurors educate each other.
58. Some jurors constantly volunteer their answers preventing you from visiting with other jurors. Thank the talkative juror and tell him/her you want to hear what he/she has to say, but that you need to visit with a few others on the panel. This will acknowledge that person's interest while allowing you to move on. If the juror has previously said something that would subject him/her to a challenge for cause, tell the juror, "If you don't

mind, we are going to visit later so we can talk at that time about this issue as well. Is that all right with you?"

59. Be sure to raise with the jurors potential problems with your case (client's "confession", client not testifying, client's prior criminal record if that will come into evidence, flight, etc). Refer to these "problem" areas as concerns that you have about the case. Also do the problem areas in the middle of your voir dire, and not at the beginning or the end.
60. Try to rehabilitate the cause jurors identified by the Prosecution by explaining the applicable law and find out if the juror's view would prevent him/her from following the law in your case.
61. If a juror gives an answer that is unfavorable or could subject him/her to a challenge for cause, thank the juror for being honest, reinforce that everyone is entitled to an opinion and ask the juror if he/she would mind talking about the issue in more detail a little bit later. This approach allows you to bring closure to the issue with that particular juror and it signals to the other jurors that you really do want to know the feelings and opinions of the jurors.
62. *Looping* is another tool that is critical to effective communication. Looping is when a juror has said something that is extremely helpful to your case. You then want to go to another juror and say, "[Juror's name], you just heard Mrs. Jones say that the police often jump to conclusions. What is your reaction to what Mrs. Jones just said?" There are two key components to looping. First, use the name of the juror who gave the answer. The reason you use the name is because it makes the juror feel important or special. Second, repeat the juror's exact words. This will condition the other jurors to this concept. The more times a jury hears something, the more likely they are going to believe it.
63. If in the process of *looping*, a juror gives an answer you don't like, you can go to the juror who gave the good answer and ask him/her for a response or, you can say to the panel, "You see, that's the beauty of the jury system, we are all entitled to our own opinions and beliefs. You heard Mrs. Jones say that police often jump to conclusions, but Mr. Green said that he believes the police would never arrest an innocent person. I want to see who agrees with Mrs. Jones and who agrees with Mr. Green. Mr. Rodriguez, let me start with you. Who do you agree with, Mrs. Jones or Mr. Green?"

ENDING YOUR Voir dire

64. Consistent with the *primacy / recency* notion, you want to end your voir dire strongly.
65. Another question we like to end with is to ask each and every juror a question such as, “[Juror’s name], can you look [client’s name] in the eye and say, Charlie, I will give you a fair trial.” It is simply amazing how jurors will react to such a question. Some jurors will look to the Judge or the prosecutor before answering, other jurors will give an equivocating response. Some jurors will simply say, “Yes”, and still other jurors will look your client right in the eye and say, “Charlie, I will give you a fair trial.”
66. We have dubbed the final questions in voir dire the, “Oyster” questions. By that we mean, you have to shuck a bunch of oysters before you find a pearl. The same holds true with these concluding questions: “Is there anything else you want to tell us or you feel we should know?”; “Is there any other reason why you might not be a totally fair and impartial juror in a case like this?”; “Now that you have had a few hours (or overnight) to think about the issues in this case, is there anyone on the panel who feels they might be starting out this case favoring the prosecution, or who feels for whatever reason that they would not be totally fair, please raise your hand and let me know.”; or, “Is there anyone who is sitting and thinking, ‘You know, if the lawyer had only asked me this question, he really would have found out something important about me’.”

CHALLENGE FOR CAUSE

67. When a juror gives an answer that could well be a challenge for cause, thank the juror for his/her honesty and then say, “[Juror’s name], is it okay with you if we visit (talk) some more about this later?”
68. When a juror has expressed a strong opinion that gives rise to a challenge for cause, ask the juror: 1) “[Juror’s name], would it be fair to say that this is a strong opinion you have about this issue?” and, 2) “You’d agree with me that you have had this opinion or feeling for quite some time?”
69. When doing your challenges for cause, start by repeating the juror’s answer and then ask why he/she feels this way. This should be the only time you ask an open-ended question in a challenge for cause.
70. When doing your challenge for cause, always ask closed-ended questions.

71. Do an analogy such as this: “[Juror’s name], given the opinions you’ve shared with us, would it be fair to say that if this were a race, we would not be starting off even with the other side, that we would be starting a little behind?”
72. Conclude the challenge for cause questioning by asking the juror the following final question: “Given what you have just shared with us, do you mind if I ask the judge to excuse you from serving as a juror in this case?”
73. Always remember you are questioning a juror and not a witness. You never want a juror to feel as if he/she is being cross-examined, since the jury has the final say in the case. Some of your challenges for cause will be denied and if you don’t have enough peremptory strikes, that juror could very well end up serving on the case.

MISCELLANEOUS TIPS

74. Resist the temptation of saying to the jury: “I take it from your silence. . .”; “Can every member of the jury panel promise me that . . . “ ; “ Does anyone have a problem with . . .” and, “Does anyone on the panel have any feelings about . . .”.
75. Humanize your client, even if you represent a corporation. *Never* refer to your client as “...the Defendant” or, “...my client.” Use your client’s name when talking about him or her.
76. Listen for jurors who use equivocating phrases such as “I think”, “I’ll try”, “I hope”, “I believe”, etc. While some jurors simply talk in this manner, many other jurors will be expressing actual hesitation about the case when they use such equivocating words. When you hear a juror express hesitation, be certain to follow-up on the words used by the juror.
77. Do not argue with a juror. It will send a very negative message to the other jurors. Thus, while you can use a challenge for cause or peremptory strike to get rid of that juror, other jurors will remember and resent you for arguing with the juror, especially if the juror’s position seemed somewhat reasonable.
78. In cases involving allegations of violence, do not have your client reading juror questionnaires in front of the jury panel. During *voir dire* the potential jurors have only heard horrible things about the crime and your client. Many jurors are initially apprehensive or frightened. Their fear is exacerbated if they feel your client knows their address, phone number or place of employment.

79. **When exercising your peremptory strikes, you should also analyze which jurors the prosecution is likely to strike. Some jurors are potential strikes by both sides and therefore, you should use your last one or two strikes on those jurors.**
80. **In some cases, a hung jury is your best shot at winning. Therefore, you may want to consider leaving on the jury an otherwise unacceptable juror if you feel that person will alienate or denigrate other jurors.**
81. **Unless prohibited by local rule, you should arrive at the courtroom early enough to claim the counsel table closest to the jury. This is particularly important in cases where your client will not be testifying. Prosecutors understand the tactical advantage to being next to the jury, that is why they jealously guard this sacred ground. When “first come, first serve” was not sufficient to convince the Judge that we should be allowed to sit next to the jury, consider arguing that for the past 1000 trials, the prosecution has had the privilege of sitting at that table, we would like that privilege for this trial.**

TO PROSPECTIVE JURORS

This questionnaire is designed to obtain information from you with respect to your qualifications to sit as a juror in this case. By the use of the questionnaire, the process of jury selection will be shortened. Please respond to the following questions as completely as possible. The information contained within the questionnaire will become part of the Court's permanent record, but it will not be distributed to anyone except the attorneys in the case and the judge. During the questioning by the attorneys, you will be given an opportunity to explain or expand any answers, if necessary. If for any reason you do not want to answer any of the questions asked, please write the word 'PRIVATE' next to the question and we will take this matter up with you in private.

This questionnaire is part of the jury selection process. The questions must be answered by you under penalty of perjury and you should fill out this questionnaire by yourself without consulting any other person.

If you do not understand a question, please write "I DO NOT UNDERSTAND" and the question will be explained to you in Court. **PLEASE REALIZE THERE ARE NO RIGHT OR WRONG ANSWERS -- JUST HONEST ONES.**

JUROR NAME:

Age:

Juror #

<p>1. How far did you go in school (If college, please tell us all degrees you received)?</p> <p>What jobs have you held in the past?</p>	<p>2. Marital Status:</p> <p>What is the occupation of your spouse?</p> <p>What jobs has your spouse held in the past?</p>	<p>3. List the sex, age & occupation of your children and step-children:</p>
<p>4. Circle any of the following in which you have had training or education:</p> <p>Child development Law Criminal justice Law enforcement Family counseling Psychology Human sexuality Religion</p>	<p>5. Have you ever served as a juror in a: <input type="checkbox"/> Criminal case <input type="checkbox"/> Grand Jury <input type="checkbox"/> Civil case <input type="checkbox"/> Never served</p> <p>What kind(s) of criminal case(s):</p> <p>What was the verdict?</p> <p>Were you the foreperson? <input type="checkbox"/> YES <input type="checkbox"/> NO</p>	<p>6. Have you or any family members ever worked for any law enforcement agency? <input type="checkbox"/> YES <input type="checkbox"/> NO If YES, who and at what law enforcement agency?</p>
<p>7. Have you ever contributed time or money to any crisis center, child abuse agency or any other organization dedicated to helping victims of crime? <input type="checkbox"/> YES <input type="checkbox"/> NO If YES, please explain:</p>	<p>8. Have you or anyone you know ever been the victim of sexual assault, or any other unwanted sexual contact? <input type="checkbox"/> YES <input type="checkbox"/> NO If YES, please explain:</p>	<p>9. Have you or anyone you know ever been accused of sexual assault, sexual abuse, or any other unwanted sexual contact? <input type="checkbox"/> YES <input type="checkbox"/> NO If YES, please explain:</p>
<p>10. What are your thoughts or opinions about people from India?</p> <p>Have you or anyone you know ever had a bad experience with someone from India? <input type="checkbox"/> YES <input type="checkbox"/> NO If YES, PLEASE EXPLAIN:</p>	<p>11. The defendant in this case, Swami Ji, is a Hindu religious leader. Circle the number below that best describes your opinion of:</p> <p>People who follow the Hindu religion</p> <p>1 2 3 4 5 Very negative Neutral Very positive</p> <p>Hindu Religious leaders</p> <p>1 2 3 4 5 Very negative Neutral Very positive</p>	<p>12. Do you recall reading or hearing about this case? <input type="checkbox"/> YES <input type="checkbox"/> NO If YES, what do you recall reading or hearing?</p> <p>Have you formed any opinions on whether the defendant is guilty of the charges? <input type="checkbox"/> YES <input type="checkbox"/> NO If YES, please explain:</p>
<p>13. Have you heard or read about cases where a person was falsely accused of inappropriately touching someone? <input type="checkbox"/> YES <input type="checkbox"/> NO If YES, please explain:</p>	<p>14. In a situation where a man is accused of inappropriate sexual contact, would you always start out believing the accuser? <input type="checkbox"/> YES <input type="checkbox"/> MAYBE <input type="checkbox"/> NO Please explain your answer:</p>	<p>15. Have you ever been indicted or convicted of any crime other than a traffic ticket? <input type="checkbox"/> YES <input type="checkbox"/> NO If YES, please explain:</p>
<p>16. Which of the following describes you [check all that apply]:</p> <p><input type="checkbox"/> Analytical <input type="checkbox"/> Opinionated <input type="checkbox"/> Careful <input type="checkbox"/> Perceptive <input type="checkbox"/> Child Advocate <input type="checkbox"/> Religious <input type="checkbox"/> Emotional <input type="checkbox"/> Sensitive <input type="checkbox"/> Family oriented <input type="checkbox"/> Skeptical <input type="checkbox"/> Feminist <input type="checkbox"/> Snap decisions <input type="checkbox"/> Law and Order <input type="checkbox"/> Visual <input type="checkbox"/> Other: _____</p>	<p>17. Name 3 people that you admire or respect:</p> <p>1. 2. 3.</p> <p>Name 3 people that you do not admire or respect:</p> <p>1. 2. 3.</p>	<p>18. The Defendant is accused of inappropriately touching two young women. Is there anything about the nature of these charges that would prevent you from being a fair and impartial juror? <input type="checkbox"/> YES <input type="checkbox"/> NO If YES, please explain:</p>

The answers contained in this questionnaire are true and correct to the best of my knowledge and ability.

Juror's Name

Date

CONFIDENTIAL