

Voir Dire (Jury Selection)

What Happens Before Potential Jurors Get To Courtroom

Selected randomly based on Voter Registration and Drivers License Rolls. (Harris County)

Received Official Jury Summons to complete with appearance date.

Got up early to find parking place and locate Jury Assembly Room.

Waited in JAR until number called for assignment to court.

Put in order by juror number by court baliff.

Walked to courthouse.

Went through Security.

Waited in hall outside courtroom until voir dire is ready to start.

VOIR DIRE Goals

➤ “DE-SELECT” UNFAVORABLE JURORS

Identify and eliminate persons who are unlikely to find in your client's favor.

➤ MAKE A GOOD FIRST IMPRESSTION

It is your first chance to talk with Jurors. Show them to the extent possible that you (and by association your client) are trustworthy and credible.

➤ PERSUADING JURORS OF THE MERITS OF YOUR CASE IS NOT THE GOAL AT THIS STAGE OF THE TRIAL.

Overview of Jury Selection Process

- Procedures vary between Federal and State courts.
- Learn about the panelists
 - Judge Questioning (Federal court)
 - Attorney Questioning
 - Written responses to questionnaires if allowed by Court.
- Challenge for Cause
 - Determination that panelist is disqualified as a matter of law.
- Exercise Peremptory Strikes
 - Eliminate unfavorable panelists not stricken for cause.

Juror Attitudes

- Jurors filter evidence to conform with their own attitudes and beliefs.
 - They accept information consistent with their attitudes.
 - They reject or reinterpret information inconsistent with their attitudes.
- A person's attitudes are the expressions of his or her beliefs formed throughout life based on their own personal experiences.
 - Attitudes rarely change radically or quickly.
 - Do not expect to change a juror's attitudes during trial.
 - Do not worry about "poisoning the panel".
- Discover and test panelists' attitudes and beliefs about important matters (issues, people, evidence) in order to identify panelists with favorable attitudes (and to eliminate those with unfavorable attitudes)

Voir Dire Topics

- Ask jurors about background, interests and life experiences through which attitudes can reasonably be inferred.

Life experiences and personal beliefs – most helpful

- Issues and “Fears”

Identify your parties, theory, themes, and witnesses.

Identify problematic issues in your case and ask for jurors’ opinions/beliefs.

Identify Bias or Prejudice without using those words.



Make a Good First Impression

- Only time you interact directly with the jury.
- Project professionalism, sincerity and respect.
- Non-verbal communication (very important)
 - Professional and neat appearance
 - Open and accepting body language
 - Good eye contact
 - Pleasant and responsive facial expression
 - Humor when appropriate
 - Empathy when appropriate
 - If you cannot remember all of this, be yourself, treating jurors as you would like to be treated.
- Tone and tenor of questions

Create a Positive Environment

- Get the panelists talking! They should talk 80% of the time.
- Create comfortable and safe environment for sharing.
 - Be friendly, but not overly so.
 - Look and act interested! (eye-contact, facial expression, posture).
 - Thank panelists for sharing when sensitive issues are discussed.
 - NEVER criticize, judge or argue with panelists.
 - NEVER embarrass a panelist.
 - Approach bench to discuss potentially embarrassing questions.
- Tactfully steer discussion back to your issues if juror gets you off track.
- Have someone take good notes and observe body language.

How to Question Jurors

- Ask clear, open-ended questions.
- Do not monopolize the conversation. If jurors are talking less than 80% of the time, you are talking too much.
- Use simple, straightforward language.
- Listen. Ask pertinent follow up questions.
- Focus on “why” and “how” questions to elicit panelists’ feelings.
 - How do you feel.... ? What do you think about....?
 - Use one juror’s negative answer to locate like-minded jurors.
- Ask questions of “silent” individuals in first few rows about key issues in addition to group questions.

How to Question Jurors (Continued)

- May use hypotheticals to test attitudes.
 - Do not disclose case facts beyond what is needed to put questions in context.
 - Do not violate the motion in limine.
 - Do not ask for commitments.
 - Do not misstate the law.
 - Do not discuss insurance (unless it is an insurance case).
 - Do not discuss settlement.
 - Do not discuss off limit topics such as religion or race.
- Listen and watch how jurors respond.
 - Signaling candor? Discomfort?
- Rehabilitate and/or inoculate favorable panelists if possible.

Challenges for Cause

➤ Ask judge to strike juror for cause based on juror's:

(1) Bias or prejudice in favor of or against a party, an issue, or subject matter.

Juror would be unable to base verdict on the evidence.

Juror could not follow judge's instructions on the law.

(2) Statutory Disqualification

Examples: witness in case, interest in case, related to party, bias or prejudice. (See Gov't Code 62.105)

Challenge for Cause

- Procedures generally
 - Varies by court and jurisdiction.
 - Typically after questioning of panel has concluded.
 - Done outside presence of the jury.
- Judge or opposing party may rehabilitate.
- Judge has broad discretion generally.
 - Must excuse panelists who are disqualified.
 - However, grounds are often subjective. Juror's entire testimony is considered (Cortez v. HCCI-San Antonio, Inc.)
- Preserve error if denied. Must use all peremptory strikes and be forced to keep juror you wanted stricken for cause.

Peremptory Challenges (Strikes)

- Each party may dismiss a limited number of panelists for any reason, ~~except as limited by Batson and its progeny.~~

- “*Batson*” limitation
 - May not use peremptory challenges to eliminate a potential juror *solely* on the basis of race or gender.
 - *Batson* has been extended to: ethnicity, national origin, religious affiliation, etc. (Check law in your jurisdiction)
- Procedure:
 - Party makes strikes. No explanation necessary.
 - Opposing party may object and make prima facie showing of improper use of challenge in violation of *Batson*.
 - Exercising party must then provide neutral explanation for strike.
 - Objecting party must prove purposeful discrimination (e.g. offered reason is pretext because . . .)