

Conducting an Effective Voire Dire

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Each issue will be dedicated to trial practice skills

The Voire Dire is one of the most critical steps toward success in a criminal trial. Most of the time we will not change individual jurors minds but we must instead educate them on our theory of the case, get their opinions on the issues related to our case and then select those jurors more likely to render a verdict in our favor. The Voire Dire process remains fertile ground for sowing the seeds of success in a criminal trial.

To conduct a successful Voire Dire you should do several things. Be thoroughly prepared in your case. That means having a theory of the case. The theory of the case is nothing more than the facts, which if the jury concludes are true they will render a verdict in your favor. Although it is obvious, be cognizant of how much time you have to work with in your case. This will allow you to prioritize what you wish to discuss. Understanding how much you can do in the allotted time is also critical. You must also identify the dominant emotion in your case.

The three issues that the Voire Dire should focus on are 1. The theory of the case 2. Reasonable doubt 3. and credibility. The credibility that we are talking about here is not of any witness but the lawyer. This can be done in a variety of ways. Example telling a juror what scares you about a case, discussing something personal about your self. Stories that illustrate the themes, theories and issues in your case are also effective.

The theory of the case is by far the most difficult to discuss in Voire Dire. Most of the time we cannot give the jury our verbatim theory. But you can discuss the sub themes. Ex. Why witnesses lie, people who lie to get something (snitch) confusing one person for another (eyewitness identification). Tying generalized concepts like these to juror experiences will allow you to both educate the jury panel and make advocates for your cause out of jurors.

Voire dire should have a format. It has an introduction, middle, and an ending. Consider that the introduction in the Voire Dire process is where you establish your credibility. Talk about your client using only her first name. Consider the middle is where you will question individuals and the group about specific issues Burden of proof, Presumption of innocence, theory of the case. Ending you Voire Dire with a statement related to how important it is that they be fair can be effective. But the jurors should be empowered.

They must feel that you are serious about your case and in turn it is an important duty for them. One of the best ways to empower a juror is to relate an issue in your case to a personal experience of the juror. Keep in mind if the experience is too good the prosecution probably will challenge the juror but not before you have used her to educate your prospective panel.

Use the introduction to establish the dominant emotion you want the jury to have in your case. But keep in mind the jurors may have their own emotion that drives their decision. Many lawyers feel what drives the court room is emotion. A jury can shut you down because of emotion. For example they are angry at your client. Understanding why they are angry and diffusing that anger in Voire Dire is key. As lawyers we understand that perception is filtered by emotion. You can also use this segment to talk about any special issues with your client i.e. race, sex nature of the charges, age of the case, type of victim etc. Also consider explaining to the jury how important it is to be fair in your case. Tell them that the principles you are about to talk about with them are so important that if at any time in the trial they believe they can't follow them they can tell the judge and they could be excused from the jury. Make sure they understand at any time during the trial this can happen and that their ability to be fair in your case is that important.

The middle or the heart of the Voire Dire is reserved for what I call the commitments and the theory of the case. The commitments are Burden of proof, Presumption of innocence, Defendant may not testify, reasonable doubt and any other basic legal points the jurors must accept in your case. Here is the time to use the open-ended questions. Ending sentences with Why is that, could that affect you in this case, should that affect you in this case. Keeping in mind the goal is to get more information. Your ending should allow jurors to voice their concerns about serving on your jury.

Having prepared and conducted a thorough Voire Dire the jury will more understanding, accepting and receptive to your opening statement. You will have then created an atmosphere conducive with a successful result. Whether you have 5 minutes or an hour educating the jurors on your cause can make all the difference in your case.

In the August meeting, lawyers will give examples of Voire Dire techniques