



CREATING YOUR VOIR DIRE QUESTIONS

1. Start by identifying 3-5 areas of case related issues that you want to explore. In most cases you'll want to find out bias against: 1) you and your office, 2) police officers, and the 3) criminal justice system. You'll also want to find jurors who are more inclined to be 1) sympathetic to the defendant, and 2) anti-authoritarian.
2. In addition to the general bias you will want to find in all cases, identify the case specific "high-risk" experiences and attitudes unique to your specific case (abuse, guns, drugs, domestic violence, etc.)
3. Create a set of questions starting with the broad questions and getting more detailed within each category.
4. Do not look for demographics alone. Write questions that identify experiences, and more importantly opinions that are likely to prevent a juror from convicting.
5. Focusing on finding bias; do not write questions that find your "good jurors."
6. Write enough questions to fill your allotted time. You may have to make tough choices in limited voir dire.

CONDUCTING ORAL VOIR DIRE

1. Introduce yourself and your role as representation of the people.
2. Explain the goal of voir dire – to ensure that everyone can be fair and that both sides start on an even playing field.
3. Ask each of the questions to the entire panel, and have the jurors answer by raising their hands. Then, ask appropriate follow-up questions with those jurors who raised their hand.
 - a. "Tell me more about that?"
 - b. "Why do you feel that way?"
 - c. "Have you had an experience that has led to that opinion?"
4. Keep track of the jurors who raise their hand to the questions. The more a juror raises his or her hand, the stronger candidate he or she should be for a peremptory strike. A key question checklist is a helpful tool.
5. When you ask the jurors to raise their hands, encourage the response by raising your own hand in demonstration.
6. When following up with jurors, thank them for their answer and their candor. This will encourage other jurors to speak up. Do not argue with jurors or try to change their minds.
7. Try to refer to potential jurors by name rather than by number.

8. Ask a variety of questions
 - a. General questions:
 - i. *“How many of you have ever filed a lawsuit before?”*
 - ii. *“Have any of you ever been convicted of a crime?”*
 - iii. *“Raise your hand if you feel you have been wrongfully accused of a crime?”*
 - iv. *“I’d like to see a show of hands from those of you who have had a negative experience with law enforcement.”*
 - b. Agreement questions
 - i. *“Raise your hand if you agree with the statement, ‘Most prosecutors seem more inclined to get a win than to seek justice’.”*
 - ii. *“Raise your hand if you agree that the criminal justice system is unfairly biased against minorities.”*
 - c. Forced-choice questions (generally a good way to “soften” a negative question or a way to get one of your themes out without actually identifying the jurors who agree with your themes.)
 - i. *“Some people believe there are far too many lawsuits today. Others feel that the number of lawsuits is completely justified. How many of you fall into the former category of people who believe there are just far too many lawsuits today? Please raise your hand.”*
 - ii. *“There are a lot of different opinions when it comes to punishment. Some people think our criminal justice system works exactly as it should – the punishment fits the crimes most often. Others think that our punishment for crimes is unreasonably harsh. How many of tend to think this way – that sentences tend to be too harsh?”*
9. Don’t worry about “poisoning the well.” One juror’s negative comment is not going to influence the opinions of others on the panel. It is better to “out” a bad juror in voir dire than to risk negative opinions becoming part of deliberation.
10. Try to hear from every juror. If your general questions do not elicit responses from everyone, take some time to ask general questions of those who have not talked. Ask about their job, education hobbies, etc. Then ask the question, *“You have been listening to the questions I’ve been asking. Do you have any thoughts or opinions on what we’ve been talking about?”*
11. End with, *“Thank you for your time today. We’ve been talking about a variety of issues. I want to make sure there is not something that I have missed. Is there anything that any of you would like to share with me before I sit down?”* You might be surprised to get a hand or two.
12. Do not try to “rehabilitate” a bad juror. Rather make a strong case for cause when you discover strong negative attitudes. You need to work up to a cause challenge by asking a series of questions that set the stage. Otherwise it is too easy for the judge or defense counsel to rehabilitate by eliciting the magic words, “Yes I can be fair.” Go for a preemptive strike by asking the following questions:
 - a. *“On the issue of _____, this seems like a strong feeling or view; would that be fair to say?”*

- b. *"Is this an issue that you have talked to others about or expressed to friends and family?"*
 - c. *"What is the source of these feelings? Are they based on personal experience? Are they based on what you read about or hear about in the news? So, these are views that you seem to hold pretty strongly to, is that fair to say?"*
 - d. *"How long have you held this opinion or viewpoint? Do you see that opinion changing over the next ___ days?"*
 - e. *"Would it be too difficult for you to totally put those feelings aside?" (If the answer is NO, ask, "How will you go about setting those feelings aside?")*
 - f. *"How do you think your experience with _____ will affect you as you sit and listen to the testimony (do not say "affect your ability to be fair")?"*
 - g. *"Do you think that based on your negative views on the issue of _____ that you will expect more from the defendant, such that you will require more from us in terms of evidence, that we prove we did nothing wrong, and that you would be tending to favor the point of view of the plaintiff?"*
 - h. *"Are you saying that because of that experience, you feel the prosecution would NOT start out on an even playing field -- that you would tend to be slightly in favor of the defendant despite your best efforts to be fair?"*
 - i. *"If you were in my position, and were evaluating a person like yourself, with your views and opinions, would it be fair to say that you would be concerned about having you on the jury?"*
 - j. *"Would that [situation or experience] make this a difficult case for you to sit on -- make it uncomfortable for you to judge the issues in this case?"*
 - k. *Do you think it would be better if you didn't sit on this particular jury?*
 - l. *"Would you prefer to sit on another case -- one that didn't involve these issues?"*
13. If a "good juror" outs him or herself, try to preempt a cause challenge by establishing that they can be fair:
- a. *"Realizing your opinions/experience/feelings, do you think you can still be fair? Do you think you can still give both sides a fair trial?"*
 - b. *"Realizing your experience/opinion, do you think you could set that aside and concentrate on the facts of this case in a fair and objective way?"*
 - c. *"All of us have feelings and opinions about nearly everything (a little comic relief). Is this opinion or experience so strong it will prevent you from judging this case in an objective manner?"*
 - d. *"Do you think you could set your feelings aside and look just at the evidence in deciding this case in a fair manner?"*
14. Questions to never ask:
- a. *"Can you be fair?"*
 - b. *"Will you keep an open mind?"*
 - c. *"Do you promise to listen to the evidence?"*

- d. *“If the evidence proves it, will you promise me that you will convict?”*
- e. *“What do you need to hear in order to convict the defendant?”*