

VOIR DIRE

[condensed version]

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Cat's Guidelines for an Effective Voir Dire

Your Primary Goal: Getting a jury that is receptive to you AND your case. You want jury to look to YOU for guidance, and as the source of accurate information. Project to the jury at all times that you are confident in your case, in control, professional, and that your honesty and integrity are above reproach. This is very rewarding when it comes to arguing your case in closing...you have subtly guided the jury into trusting you and giving you more credibility than the defense attorney.

How to Accomplish Goal:

1. Make a Solid First Impression

- Manage Expectations: what are they expecting?
- What do they see of you when they first walk into the room?
 - They are sizing you up when they first walk in – You should do the same!
- Body language (yours and theirs): eye contact, posture, hands, arms, location
 - People communicate their true feelings not just in what they say, but more in *how* they say it
- Have a strong start and finish to your voir dire

2. Have a Discussion

- Talk WITH the jury, never at them
- Get them talking with open ended questions....not just yes/no questions

3. Keep it Interesting

- Vary your questions, jump around the panel, don't ask every single juror the same set of questions – they will shut down on you, stop thinking, and provide canned answers if you don't.
- Vocal inflection and movement

4. Air Your Dirty Laundry

- Identify the weaknesses in your case ASAP
- Reveal the negative aspects of your case as soon as possible so you can learn about jurors' attitudes and how they feel about it
- You will feel a million times better about your jury knowing you've already received assurances from them that your biggest concerns aren't going to be a problem with them after all

5. When In Doubt, Kick 'em Out (don't let your intellect get in the way of your instincts)

- Intuitive and individualistic decision
- Jury has to be receptive not only to facts in the case, but to YOU the attorney trying it
- Pick jurors with whom YOU can relate and communicate

Suggested Format For Questioning Jurors

1. Clarify who you are (a strong start)
 - This is not the same thing as an introduction
 - Who is your client? Why do the People deserve to have a representative in court? Under what circumstances do you represent the People? Do the People have the right to a fair trial as well?
 - Without this explanation, you are just the vague face of the government.
 - Done right, jurors will start to understand that you are their lawyer, and that you represent them because they are part of “the people.” You better represent them well – they are watching their tax payer dollars at work!
 - Be careful about overdoing it or you will draw an objection. Make your point as smoothly and concisely as possible, and then move on to the important stuff.

2. Discuss legal principles and dirty laundry – this is where you will spend the most time in your voir dire
 - Only discuss legal concepts that are of sincere importance to your specific case
 - Don’t get bogged down in the minutia
 - Talk about issues that make you nervous/anxious about your case (self defense, mutual combat, excessive use of force, jury nullification, etc.). You will feel a million times better about your jury knowing you’ve already received assurances from them that your biggest concerns aren’t going to be a problem with them after all.
 - Remember that every case is different, even though the charges may be the same – tailor your voir dire questions accordingly

3. Burden of proof: BRD (a strong end)
 - Simple explanation of your burden of proof – what it is (BRD) and what it is not (100% proof, beyond a shadow of a doubt, etc.). Be careful not to overcomplicate the explanation or jurors will end up confused and you will draw an objection.
 - Ask each juror, “If I prove BRD that Δ committed the crimes he’s charged with, what will your verdict be?” If they waffle, are apprehensive, overly condition their response, or ask you questions instead, kick them! It is not a complicated question, so the answer should come easily to them. If not, you should be concerned. Essentially, you are asking the juror if he or she can follow the law and convict the defendant if you prove the case beyond a reasonable doubt.

Basic Mechanics of Jury Selection

1. Panel is brought to courtroom & sworn
2. Questionnaires handed out (if being used)
3. Judge hardships the entire panel
4. 12 or 18 potential jurors seated at random
5. This first panel of jurors is questioned by court
6. Defense counsel questions the first panel
7. DDA questions the first panel
8. Exercise of challenges
 - a. Cause
 - b. Peremptory
 - i. **6** Challenges: If charged offense is punishable with max term of 90 days or less [CCP § 231(b)]
 - ii. **20** Challenges: If charged offense is punishable by death or life in state prison [CCP § 231(a)]
 - iii. **Multiple Defendants Scenario**
 1. If punishment is 90 days or less: 6 joint + 4 each
 2. If D's charged w/same offense:
 - a. Life/death case: 20 joint + 5 each
 - b. All other cases: 10 joint + 5 each
 3. DDA gets same number of peremptory challenges as defense
 - iv. **10** Challenges: In all other cases that do not fall into the categories described above
9. Panel is accepted by both sides
10. Selection of alternates
11. Jury and alternates are sworn

Challenges For Cause

1. **General Disqualifications** [CCP §§ 228(a), 203]
 - Not a U.S. citizen
 - Under 18
 - Does not live in CA
 - Not a resident of Ventura County
 - Does not speak English well enough to understand proceedings
 - Disability makes juror incapable of performing duties w/out prejudicing rights of either party [CCP § 228(b)]
 - Simultaneously serving as a grand juror
 - Subject of a conservatorship
 - Has a felony conviction and has not had civil rights restored

2. **Implied Bias** [CCP §§ 225(B)(1)(B), 229]:
 - When shown, no further proof of prejudice is required; it is inferred as a matter of law (*People v. Wheeler* (1978) 22 Cal.3d 258).
 - Examples:
 - Related to one of the parties or witnesses
 - Has had attorney-client relationship with attorney/party within one year of the filing of the complaint
 - Has an interest in the action, beyond that of a citizen or taxpayer

3. **Actual Bias** [CCP § 225(b)(1)(C)]:
 - “The existence of a state of mind on the part of the juror in reference to the case, or to any of the parties, which will prevent the juror from acting with entire impartiality, and without prejudice to the substantial rights of any party.”
 - Examples:
 - Difficulty to keep an open mind b/c of the nature of the case
 - Admits bias for or against a group involved in the case
 - Admits having settled opinions about issues in the case
 - Cannot assure the court that case would be decided by reference exclusively to the law and evidence, or admits that there is significant likelihood that extraneous matters will enter into the decision making process
 - Juror has an opinion on the defendant’s guilt or innocence
 - The mere fact that juror does not wish to sit on case because it would be too emotional does not justify excusing juror for cause on grounds of actual bias. (*People v. Sanchez* (1989) 208 Cal.App.3d 721).

Improper Voir Dire Questions [CCP §§ 223(d), 223(e)]

- Educating the jury as to the particular facts of the case
- Trying to compel jurors to vote in a particular way
- Prejudicing the jury for or against any party
- Arguing the case
- Indoctrinating the jury
- Instructing the jury in a matter of law
- Attempting to accomplish an unlawful purpose
- Questioning is not reasonably calculated to lead to a challenge for cause

Pointers on Objections:

- If you follow the Discussion Format, you won't receive many objections because the jurors are doing all the talking and the defense does not want to ever interrupt the jury, lest they look bad.
- Magic Phrase that Often Saves the Day: How do you think that would affect you as a juror in this case?
- Just because you can object to questions as irrelevant to a Challenge for Cause does not necessarily mean that you should.
 - You may have as much, or even more, interest in learning information about a potential juror that might make them problematic
 - Remember, we need all 12 jurors to agree, while the defense only needs one wing-nut to block a conviction.