



Short Answers for “Things that Give Me the Most Trouble in Voir Dire”

By: Robin Dorman and Sam Benedict*

1. What do you use for an introduction?

Answer: Be yourself and keep it short. Say what is necessary to explain the importance of your questions and the need for honesty. Suggestions: Tell jurors that you will not ask any question that you would not be willing to answer yourself. Tell jurors that you and the Court need their help to select a jury. Tell the jury that you want to give them as much information as possible so that they can decide if they would be a good juror for this particular case.

2. How do you deal with a bad answer from a prospective juror?

Answer: There is no such thing as a bad answer. Always reward honesty. Don't allow misconceptions of the law to go uncorrected but do it gently, possibly with another juror. Use other jurors to “correct” the bad answer or find other jurors that feel differently.

3. How do you deal with jurors that don't respond?

Answer: Ask more open-ended questions. Assume all jurors have an opinion. Ask for individual responses. Don't ask jurors to raise their hands to general questions. If the judge requires general questions, ask a question that is so general that everyone has to raise their hand, or ask those that didn't raise their hand.

4. How do you remember juror's names?

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Answer: Try concentrating. Use a seating chart if you have to. Try to associate names with answers, appearance, occupations, or anything that will help you remember. Refer to them by name for the record.

5. What do you do if the judge imposes a time limit?

Answer: Make a motion for expanded voir dire prior to beginning the jury selection process. Show the judge that more time is needed to deal with the issues in the case and that only you can ask the questions. The judge is not the expert on your case or your theory of defense. The best way to get more time is to do the voir dire and keep the jurors talking. If you do a bad job and don't ask open-ended questions, the judge will feel that you're wasting time. If you are asking questions that cause the jurors to answer and do all the talking, the judge will not interrupt. If the judge does interrupt, explain what questions you have left and that you need to hear the opinions of members of the jury that have not spoken.

6. How do you get individual voir dire or answers to sensitive questions?

Answer: Propose threshold questions in sensitive cases that would give rise to individual voir dire for jurors that answer. This might be appropriate in cases involving child abuse, incest, sexual assault, pretrial publicity, etc. Suggest to the judge and jurors that if the juror is uncomfortable that the answer can be taken in the judge's chambers.

7. How do you strike for cause?

Answer: Get the juror to suggest that they should be excused and that you are willing to ask the judge to do it for them. Ask close-ended questions to narrow the issue. Find out how strongly the juror believes in an opinion and see if they will commit to the idea that they cannot ignore something they believe in, even if the judge asks them to disregard their feelings.

8. How do you establish rapport with the jury?

Answer: Be yourself, **reward** honesty, be willing to disclose things about yourself, don't try to trick the jurors.

9. How do you exercise peremptory strikes?

Answer: Use the information you gathered during the open-ended voir dire. Consult with your client and your co-counsel. Make decisions based upon things you have learned about the jurors through their answers, not necessarily what race, age, sex, or occupation they come from. Be aware of non-verbal communication. Try to eliminate those jurors that are not receptive to your theory of innocence.

10. How do you take advantage of the good juror and the good answer?

Answer: Use the looping technique. Use the good answer of a juror to form a question for another juror. Try to find agreement or consensus among different jurors. Use the life experience of the good juror to instruct the other jurors about an important point in the theory of your defense.

11. How do you ask questions to cover all jurors?

Answer: It may be impossible to ask every single jury member the same question. Try to use different topics to get to groups of the panel. Concentrate on those people that you haven't heard from when you switch topics.

12. What do you do when jurors don't answer honestly?

Answer: If you ask open-ended questions, jurors are less likely to give untruthful answers. An open-ended question will solicit an opinion; it will not suggest the answer you are looking for. Never ask questions that essentially ask a juror "Can you be fair?"

13. How do you ask voir dire questions about legal issues?

Answer: Ask the jurors questions about common sense, life experiences that will help them understand the legal issues. Ask them if they believe in the issue and why they think it is important. Find a way to simplify the issue without using legal terminology. Don't spend a lot of time on legal issues in voir dire.

14. How do I take notes during voir dire?

Answer: Have somebody help you. Don't take notes during your questioning; don't take notes up to the podium; leave your papers behind; ask questions about the topics that you are interested in and listen to the answers. ■