

Voir Dire

TELL ME HOW YOU WOULD SCREW MY CLIENT (IN 30 MIN. OR LESS)

What is your objective?

Min. Strikes for Cause

- 4-6 SFC per 40 pp

Frame your case

Basic facts

Preempt bad stuff

- Get it off your chest (chiro, gap in treatment, p&s, paid expert, plaintiff's lawyer, etc...)

Do you have a liability or damages case?

First things 1st: Know your court/judge (local counsel!)

- Call the clerk. Talk to them about Voir dire and what the judge wants and how he operates.
- Questionnaires? Does the court allow them, if so do one. Find out what is required. Does the case require a questionnaire?
- What does the court require for strikes for cause and how hard will the court work to rehabilitate a panelist in follow-up?
- Get a record.

No Apologies/ Emphasize the Process

Make no apologies—thank your audience for their citizenship

- Recognize the difference of their service
- They are the solution to an intractable problem between P & D

The Process

- This is part of the process
- Your role as advocate
- Their role

Be the T.E.A.M. Leader

- Every potential juror is looking for a leader. Be that leader.
- The room belongs to you, invite them in, be their host.
- Greet them sincerely with a smile.
- Be yourself and be courteous.
- Be direct and plain spoken.
- Look people in the eye and listen to them when they talk.
- Never interrupt or speak over a panelist.
- Do not try to be funny/avoid sapp.

T.E.A.M.

Teach—Educate your audience about the process, the core facts of the case, your role and their role

Evaluate—You cannot effectively Voir dire alone. Other trial team members must evaluate the panel as you conduct the exam.

Ancor—Anchoring and looping allows you to reinforce your client's position.

Marginalize—Marginalize detractors (claims adjusters, defense lawyers, TRLers) after identifying them and those that agree with them, and magnify your plaintiff's voices.

Words & Themes to Avoid

Words to avoid—

- "Fair." Everyone is fair, has good taste in music, and works hard. Do not upset these notions.
- "Bias" and "prejudice"
- "Impartial"

Do you have a problem with/Can you set aside X?

- These approaches do not open dialogue or invite open responses
- Replace with "would you say it's difficult to ____" or "what do you think about/feel"?

Teach

Use core facts of the case to relate to panelists experiences

- How many of us have been in a car wreck and were hurt?
 - You were hurt because of someone else?
 - Anytime you can use vagueness to avoid holding potential jurors accountable, do that. Let them confess that they "made a mistake" or "it was my fault"
- My client missed work as a result of the crash.
- Anyone ever been to a chiropractor before?
- Other case specific facts

Preponderance of evidence/negligence

- Do you have a liability case? Spend time of burden of proof.

Evaluate

How big is your panel?

- Try and group panelists in blocks of 8-10 and assign them to a specific member of the trial team.
- Have some basic knowledge of body language and facial language.
 - Turning away from the speaker
 - Putting their head down
 - Crossing their arms
 - Avoiding eye contact
 - Smiling
 - Looking on intently
 - Listening
 - Looking at the speaker
 - Hand to their face

Anchor/Looping

Panelists can be your greatest advocates

- I've used a chiropractor and it was very helpful.
- I had back surgery. It was extremely painful.
- I was car wreck. It was scary.

Spend time and loop these statements to build momentum

- Can anyone else share their experience, or a loved one's experience, that might be similar to Ms. Smith's painful surgery?
- Building momentum creates anxiety for D—how are they going to strike all of these positive plaintiff experiences?

Anchoring/Looping can help carry your trial themes through closing—

"Remember Ms. Smith as she recounted how painful her experience with back surgery was. My client's pain is real."

Marginalize

Do not allow TLRers to takeover your panel. Once identified, get them on the record, identify others that agree with TRL position.

- "Thank you sir for that, I want to make sure I get to everyone. Who agrees with Mr. Smith?"
- "Now, I appreciate everyone who agreed with those statements, but I want to make sure if there are different perspectives we hear from those people."
- No arguing, no confrontation. Let TLRers self-destruct. Remain respectful and thankful for everyone's service.
- Emphasize process when confronted with argumentative responses
 - "Thank you, it is important to have these opinions voiced to ensure all parties get a full opportunity to serve their client."

Pain & Suffering—Fertile S4C Ground

"I will ask those of you seated for jury service for money for my client's pain. What do you think about that?"

- The panel should light up when discussing pain and suffering.

Buzz words/Phrases

- "Lining his pockets."
- "Suck it up."
- "Get rich quick."
- "Who deserves that?"
- "I suffered pain due to X, but no one gave me nothing."

End on your role

Once identifying S4C and probable peremptory strikes— LAY THE GROUNDWORK OF JUSTIFICATION FOR YOUR PLAINTIFF JURORS

- Emphasize process— "This is our only system. We don't take things outside and we're not required to ignore someone's negligence. But all we can do in our civil justice system is make our case for compensation. Money. And many of us take issue with this idea of pain and mental anguish and applying monetary value to that. Please raise your hand if giving someone money for pain concerns you."
- "I'm a lawyer. I was hired to get money on behalf of my client. That is my only job and that is all I was hired to do and that is all I can do. "
- "I'm not Marty McFly. We cannot hop in our DeLorean and avoid this. This is our only means for holding parties responsible for their negligence."