

HOW TO WIN YOUR TRIAL BEFORE OPENING STATEMENT

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Most veteran trial lawyers will agree that while a case is not always won in jury selection, it can easily be lost there. It is one of the three most critical junctures of any trial (the other two being opening statement and cross-examination of the first witness). Yet voir dire usually is relegated to the proverbial back burner, only to be attended to in the waning days – or even hours – just before trial begins.

If You've Waited Until the Weekend Before Trial to Plan Your Voir Dire, You've Waited Too Long

The construction of voir dire needs to start weeks before your case gets to trial, after you've conducted your pre-trial research (you have conducted pre-trial research, haven't you?) and before you start to prepare your case-in-chief in earnest. If you find yourself waiting until Saturday or Sunday before trial, jotting down some questions on a pad, then getting up in court on Monday and conducting your voir dire, without consulting research-based profiles or rehearsing, you could well be missing out on the opportunity to educate your jurors and to weed out those most dangerous to you.

The Purpose of Voir Dire Is NOT To Determine If Jurors Can Be Fair and Impartial!

Sorry, but there is no such thing as an impartial juror. Every person who arrives in the courtroom – juror, lawyer, judge, clerk, court reporter, bailiff – brings two things:

1. Life experiences.
2. The attitudes that are a result of those life experiences.

Key purposes of voir dire are:

- To uncover those attitudes and experiences, get jurors to talk about them and then send home the folks whose attitudes are hostile to your case and/or your client;
- To get the themes of your case in front of jurors; and
- To find out who your jurors are and what they have to say about the issues, so that you have a better idea of how to communicate with them during your case.

Your Goals in Voir Dire

- Get jurors to talk
- Get jurors to discuss your themes
- Get jurors to talk themselves off the jury if they are hostile to your case

If You Only Remember One Thing From This Article, This Is It

Do you go into trial without practicing your opening statement? Then why not spend time rehearsing the part of the trial when you speak to jurors *first*? If you don't practice your voir dire, why not? If you do practice voir dire, do you practice with people in the room? If you practice with people in the room, are these laypeople? If these are laypeople in the room, do you ask them for their feedback on how this voir dire made them feel? If you ask them for feedback, do you apply it to your voir dire going into trial?

The bottom line is, your voir dire – not your opening statement – is when you make your first impression on jurors. Make the most of the opportunity – practice, refine your voir dire.