



## The Art of Voir Dire

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A primary concern during voir dire is to elicit the genuine beliefs and feelings about the issues at hand from potential jurors. People have a host of reasons for wanting or not wanting to sit on a jury panel. Instead of stating their true beliefs, they will often answer according to whether they want to be selected or to their perception of what is the socially acceptable response.

This falsifies the process for the questioning attorney. Eliciting full and truly responsive comments, therefore, is rarely achieved with direct "yes/no" questions, but instead relies on a combination of the attorney's approach, attitude and style of response to a potential juror's statements.

Attorney approach: If you want people to reveal their true selves to you, start by being willing to disclose some of your true self to them. Be a role-model for your jurors.

As you make your introductory comments, include something like: "Everyone wants to be seen as a fair and impartial person, yet all of us have had experiences in life that may make us have feelings about certain kinds of people, certain kinds of situations: prejudgments if you will. I know I do--it's human nature. So I'm certainly not going to lose respect for any of you for any prejudgments you might have. And I do appreciate knowing about the prejudgments as we go along."

By disclosing that you also have prejudgments, you make it acceptable for the jurors to disclose theirs.

Similarly, it's important to appreciate a potential juror's candor. Use self-disclosure to make your appreciation more impactful. When a potential juror expresses an unpopular belief, you can respond by saying, for example: "Thank you. I value your honesty. I know how difficult it is for me to disclose feelings that may not be the popular opinion of the day, and I appreciate your willingness to do so."

Your self-disclosure makes it more acceptable for the person to have expressed an unpopular opinion, and encourages the other potential jurors to speak their truth.

Attorney attitude: It is up to the attorney to put the jurors at ease. Voir dire is not the time for the attorney

to practice his or her cross examination tactics! All too often, jurors tell me during debriefings how offensive it is to have the attorney conduct voir dire as if it were an inquisition.

Your jury panel sits within that group of potential jurors. Build credibility and rapport right from the start. Think of voir dire as a conversation rather than a question/answer session, even if that is what you are actually doing. Your attitude when you are asking questions within the context of a conversation is very different from one's attitude when conducting a Q&A.

Adopting an internal conversational mode is friendlier, warmer, and facilitates better listening on your part. In turn, this makes it easier for potential jurors to give more truthful answers.

Secondly, have an attitude of genuinely wanting to get to know the jurors, being interested in who they are as people, not just in what they think about your issues. Design your questions so the specific issue you are asking about is embedded within a larger context of interest in the juror's beliefs and feelings in a certain area. For example, ask: "When you think about your local hospital, what's the first thing that comes to your mind?"

This is likely to elicit a much more genuine response about how the juror feels about the hospital care than asking the juror flat out "Do you think hospitals generally provide adequate or less-than-adequate care?" You will also discover how jurors think, what is foremost in their mind, i.e., quality of medical care, cleanliness, promptness of care, number of personnel, available technical services, personal experience with that hospital. Such concerns might never come up within your list of specific "yes/no" questions.

Style of response to potential juror's statements: If you want people to open up to you, they must feel that what they have to say is of value. Acknowledgment is key to assuring people of their value. Use head nods and "uh-huhs" liberally. As people are answering your questions, nod your head from time to time to let them know "I'm listening, I hear you, I'm following what you are saying."

Keep your eye focus clearly and directly on the person as they speak. Resist taking notes. Have co-counsel or your paralegal take notes while you interview the jurors. Eye focus is critical to people wanting to feel valued and listened to.

Before you go on to your next question, be sure to in some way take into account what the potential juror has just said. When the person has completed an answer, say either "uh-huh" or some other non-committal sound that shows, once again, the potential juror has been heard.

From time to time, restate a portion of the person's answer in your next question, again to reinforce that you are truly listening. For example, a potential juror has stated that the first two things that come to mind when thinking of the local hospital is the quality of care given there and that the hospital has really great doctors who are well-known specialists.

As you go on to your next question, you might begin with the restatement: "Quality of care is important to you in a hospital. What has your experience been with quality of care in hospitals?" The potential juror will be pleased that you valued the response, and thus be more willing to reveal more true feelings.

Do more listening than you do talking. Good listening prompts better questions. Good listening will enable you to hear possible conflicts in a potential juror's response. For example, Ms. Smith has stated earlier to the judge that she could decide fairly in the alleged police brutality case, yet now reveals that the police mistook her neighbor for a local drug dealer and unjustly arrested him until the mistake was cleared up. There may be a problem here.

Once a problem is apparent, maintain your conversational approach. Do not attack Ms. Smith, rather seek clarification. For example, say: "Ms. Smith, earlier you told the judge that you could decide fairly in this alleged police brutality case, and now you say that your neighbor was mistaken for a local drug dealer and unjustly arrested. How do these two things fit together in your mind?" Be sure to maintain a tone of curiosity and genuine interest in asking the question. Be truly invested in wanting to know how the person thinks.

Any trace of accusatory tone will cause the potential juror to get defensive. You may not care, since you may not want this person as a juror, anyway, but how you treat this person is important to your future credibility with the empanelled jurors.

You can obtain the information you need without turning into an inquisitor. This approach encourages other potential jurors to be truthful. They do not have to fear your attack should they contradict themselves. Seeking clarification makes you seem interested in the reality of how jurors think and feel. You will be perceived as a seeker of truth, therefore a credible guide for the jurors on your mutual journey through the trial.

**About the author:** Noelle C. Nelson, Ph.D., is a Southern California trial consultant who provides trial/jury strategy, witness preparation and focus groups for attorneys. Her published works include "A Winning Case" (Prentice Hall), "Connecting With Your Client" (American Bar Association), "The Power of Appreciation in Business" (MindLab Publishing), and the booklet, "101 Winning Tips: How to Give a Good Deposition and Testify Well in Court." <http://www.dr.noellenelson.com>, e-mail: [nnelson@dr.noellenelson.com](mailto:nnelson@dr.noellenelson.com).