

# Voir Dire after #MeToo

Talking to Jurors About the Emotionally Charged Subject of  
Sexual Assault

# How to suck at Voir Dire:

- Give a speech
- Spend your time trying to convince jurors that you should win (manipulate)
- Lecture jurors about their views
- Ask questions that don't matter
- Engage in useless hypotheticals
- Avoid talking about the worst facts in your case
- Worry so much about the next thing you're going to say that you fail to listen
- Ask jurors to commit to do/not do something

# How to WIN at Voir Dire:

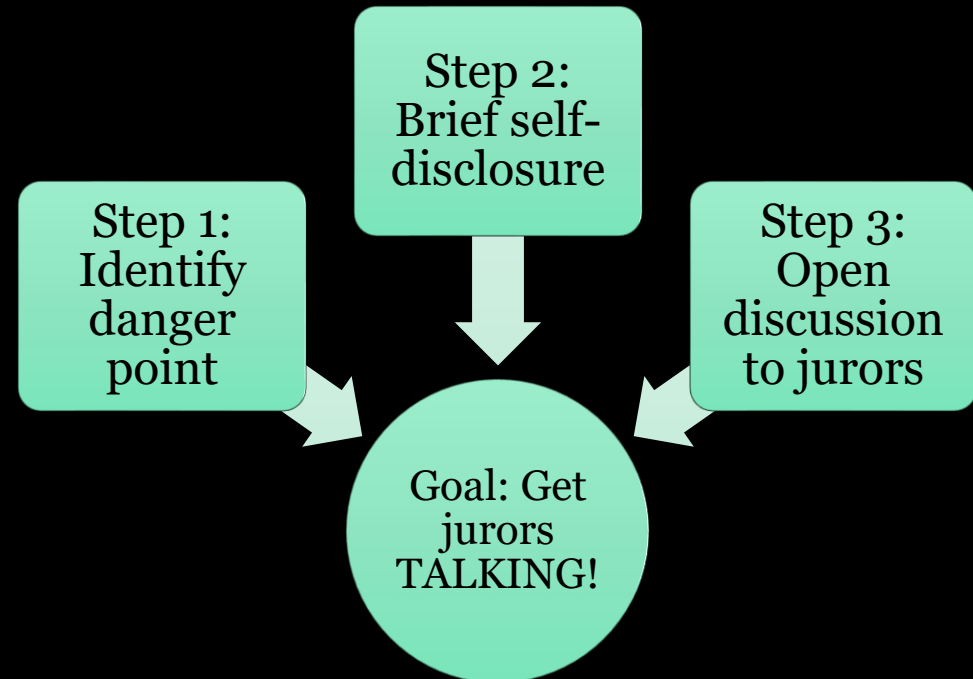


ONE RULE:

BE A  
CURIOUS  
HUMAN.

# Voir Dire in Three Simple Steps

- Identify your danger point(s)
- Brief self-disclosure
- Open the discussion to jurors



# Step 1: Identifying Your Danger Point(s)

Spend some time asking yourself these questions:

- What fact scares me most in this case?
- What about my client / witnesses makes me feel uncomfortable?
- What is the most difficult thing for me to talk about in this case?
- What are my prejudices about this case or my client?
- What are my fears about this case / client?

# Use Danger Points to Develop Topics

## FEARS/DANGER POINTS

- My client looks different than my jurors.
- A child is making the allegations against my client.
- My client has a criminal history.
- I'm afraid that people will automatically believe the accuser because of "Me Too."

## VOIR DIRE TOPICS

- Racism
- Why would a child lie?
- My client has a criminal history.
- Dealing with "Me Too" vs. the presumption of innocence.

# Before you talk to a jury, go have conversations with other humans about your danger points.

- Spouse
- Kids
- Friends
- Co-workers
- Other lawyers
- Strangers
- Focus groups

When you have  
conversations with people  
about your danger points,  
you have ONE JOB.

**LISTEN.**



# Curiosity Phrases:

- “Tell me more.”
- “Say more.”
- “What makes you feel that way?”
- “Could you elaborate on that for us?”
- “Why?”
- “Do you have any experiences that cause you to feel that way?”

# FOCUS GROUPS

## BENEFITS:

- Inexpensive way to practice voir dire
- Gain ease in talking to strangers about your danger points
- Can create a trial-like setting
- Safe opportunity to make mistakes
- Try multiple approaches on the same topic, and see what works best

# Conducting Focus Groups

(1) Locate participants.

- Craigslist
- Facebook
- Assisted living facilities/nursing homes
- Law schools
- Colleges/universities
- Other lawyers

(2) Plan your topics.

(3) Confidentiality agreements.

(4) Designate a focus group leader (the lawyer practicing voir dire)

# Conducting Focus Groups

(5) Designate someone to take notes.

(6) Group leader (lawyer) practices voir dire topics.

(7) Listen to responses.

(8) Attempt a different approach with the same topic.

(9) Repeat as necessary.

(10) If possible, have group leader leave the room, and have new person take over to get honest feedback from focus group participants on the group leader who conducted the voir dire. This can be done by the group leader, but more honest feedback will likely be elicited if they are not present in the room.

We cannot  
expect jurors to  
do something  
that we  
ourselves  
would not do.

SELF  
DISCLOSURE

# How to use self-disclosure to open up a conversation with jurors in Voir Dire

## Keep it brief.

- You don't need to say a lot to have an impact.
- Keep your self-disclosure to a couple of sentences.
- Edit, edit, edit. When deciding on your self-disclosure, try to get the meaning across using as few words as possible.

## Keep it real.

- Your self-disclosure should be 100% truthful.
- Your self-disclosure should demonstrate the same level of emotional vulnerability that you are requesting of jurors.
- Show the jurors what you are asking them to show you. "If I show you mine, will you show me yours?"

# Open Discussion to Jurors

## Be free of an agenda

- Don't be afraid to let go of control of the conversation.
- It's not necessary that you make the jurors agree with your point of view. It is necessary that you gain an understanding of their point of view.
- Let the jurors talk to each other.
- Relax.

## Use your curiosity phrases

- The goal of voir dire is to encourage the jurors to speak the truth.
- Use as few words as possible in order get the jurors to continue speaking.
- Encourage jurors to talk more deeply about their feelings on a topic.
- Give jurors the time they need to open up.

Open Discussion to Jurors

Don't be afraid of silence.



GOAL:

The jurors should be  
doing most of the  
talking.

#MeToo

# Diversity of Views

Sexual assault is a complicated topic. Each individual carries with them experiences that impact their individual views.

The work starts before you start voir dire.

Examine your own life experiences. How have those experiences impacted your views on sexual assault?

How does hearing about the #MeToo movement make you feel? What emotions can you identify when you discuss the movement?

In order to talk to  
jurors about how  
they feel about  
#MeToo, you need to  
understand your own  
feelings.

# Identify your #MeToo Danger Points

What are your  
#MeToo related  
fears in your  
case?

How are your  
own feelings  
impacting your  
danger points?



When formulating  
danger points...

I'm afraid that  
the jury will....

# Reframe your Danger Point

Instead of this:

- I'm afraid that the jury will automatically believe the accuser because of #MeToo

Try this:

- How do we deal with the fact that we want to believe accusers, but also be fair to the accused?



Repeat our earlier discussion – talk to other humans before you try out your danger points on the real jury.

- Spouse
- Kids
- Friends
- Co-workers
- Other lawyers
- Strangers
- Focus groups

**YOUR GOAL IN THESE DISCUSSIONS IS TO LISTEN, LISTEN, AND LISTEN!**

# Brief Self-Disclosure

- Disclosure should be truthful and reflect emotional vulnerability.
- The goal is to assist the jurors in becoming comfortable in disclosing their own truth and vulnerability.



Use your self-disclosure as a conduit to hand over the discussion to jurors.

The goal is to get the jurors talking. Then, your role is simply to facilitate that conversation continuing.

# We facilitate the conversation by relying on our curiosity:

- “Tell me more.”
- “Say more.”
- “What makes you feel that way?”
- “Could you elaborate on that for us?”
- “Why?”
- “Do you have any experiences that cause you to feel that way?”

Thank you for your time today!



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