

## The Art of Voir Dire



**Brooke D. Anthony**

In every jury trial, there is a period of time where you will “pick” your jury, a process called voir dire. Contrary to the terminology, a lawyer does not actually choose the jurors. The jurors are selected by random process. The lawyers can then object to jurors for cause or by way of peremptory challenge. A review of the rules and a treatise will give you the basic building blocks of voir dire. But voir dire is an art—and not much is readily available on how to do it effectively.

Voir dire is the only opportunity in any civil trial for the lawyers to speak directly to the jurors. Rule 6 of the Minnesota Civil Trial Handbook provides the process for voir dire, including the timing of challenging jurors and the number of peremptory challenges (2). The clerk swears the entire panel and then the judge provides a basic introduction of the parties and the case. At that point, the court can turn the panel over to the parties for questioning. Alternatively, Rule 6 permits the court to continue with voir dire from the bench.

If the court does so, however, it “shall permit the parties or their lawyers to supplement... by further non-repetitive inquiry... as it deems proper.” R. Gen. Prac., Title II, Part H, R. 4(b).

So, what do you do when it is your chance to question the jurors? Here are some tips for maximizing your time in voir dire.

### **1. Get the names right.**

It seems simple: hear the names, remember the names, pronounce the names correctly. It is amazing how many lawyers get it wrong. You will have an opportunity to hear all of the juror’s names when the jurors introduce themselves. Take advantage of that opportunity. Write the names down phonetically. It also helps to record those names in a manner in which you will remember the names of individual jurors in their specific location. When trying to form a connection with a juror, nothing works better than remembering that juror’s name and saying it correctly. Conversely, mispronouncing a name – or not remembering a name at all – can be viewed as disrespectful and can make it appear as though you are not listening.

### **2. Ask focused questions.**

You should prepare for voir dire just as you prepare for opening statements and closing arguments. Think about your themes. Think about questions that will allow the jurors to connect with your themes while exposing personal experiences that might make it difficult for a juror to render a fair verdict. Your goal should be to learn about the juror’s life experience as it relates to your case so that you can make an informed decision on a peremptory challenge. Your questions should be focused and intentional to that end and you should think about what follow-up

questions are appropriate depending on the answers.

### **3. Pay attention.**

Again, it sounds simple: listen to the juror’s answers. It matters little how prepared you are if you do not hear what the juror said when you asked your thoughtful question. Often, lawyers get so caught up in remembering the jurors’ names and the specific questions that they forget to wait for the answer. The answer is the most important part.

You should also be alert to your opponent’s questioning. Good voir dire walks a thin line between focused, intentional questions and encouraging connection with an advocate’s theme. Some judges will intervene if voir dire becomes unfair. But the lawyer should also be listening for questions that cross the line. Improper questioning includes questions that are intended to predispose jurors to a particular outcome, speculative questions or questions seeking promises. Lawyers cannot ask about race, age, religion or gender. In addition, lawyers should not use voir dire to establish a rapport with the jurors. If you hear these things in an opponent’s voir dire, object.

By no means is this the entirety of advice that could be given regarding voir dire. But following the three tips above will take you a long way toward developing or improving your voir dire technique.

*Brooke D. Anthony is a trial lawyer and shareholder at Anthony Ostlund. She represents clients on matters concerning ownership disputes, business torts, and employment claims and in defending against professional malpractice claims. She regularly presents on subjects related to trial practice in Minnesota state and federal courts.*