

***THE FOUR
“E”S OF VOIR
DIRE***

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PARENTAL ADVISORY

Immature Content

**May be offensive to those
without a sense of humor**

TAKE A PEEK

VOIR DIRE

- A phrase from Anglo-Norman times.
- Refers to an OATH to tell the truth
- “VOIR” from Old French “that which is true”.
- Typically defined as the process by which prospective jurors are questioned about a variety of issues, including possible biases and prejudices before being chosen to sit on a jury.
- But for us, it is a guided group interview and discussion of the legal, factual and emotional issues involved with your case designed to find and those we want and weed out those we don't want



AND FINALLY, QUESTION
NUMBER 29...

IS EISENHOWER
STILL PRESIDENT?



AM I STILL
DEAD?

NEESEMAN/07
THE LEADER/TIMES

WHAT DO YOU THINK OF THE DEATH PENALTY?

IT'S GREAT!



You can't always get what



YOU CAN'T ALWAYS GET ★ ★

WHAT YOU WANT

YOU CAN'T

always get what

BUT IF YOU ★ *you want* ★
TRY

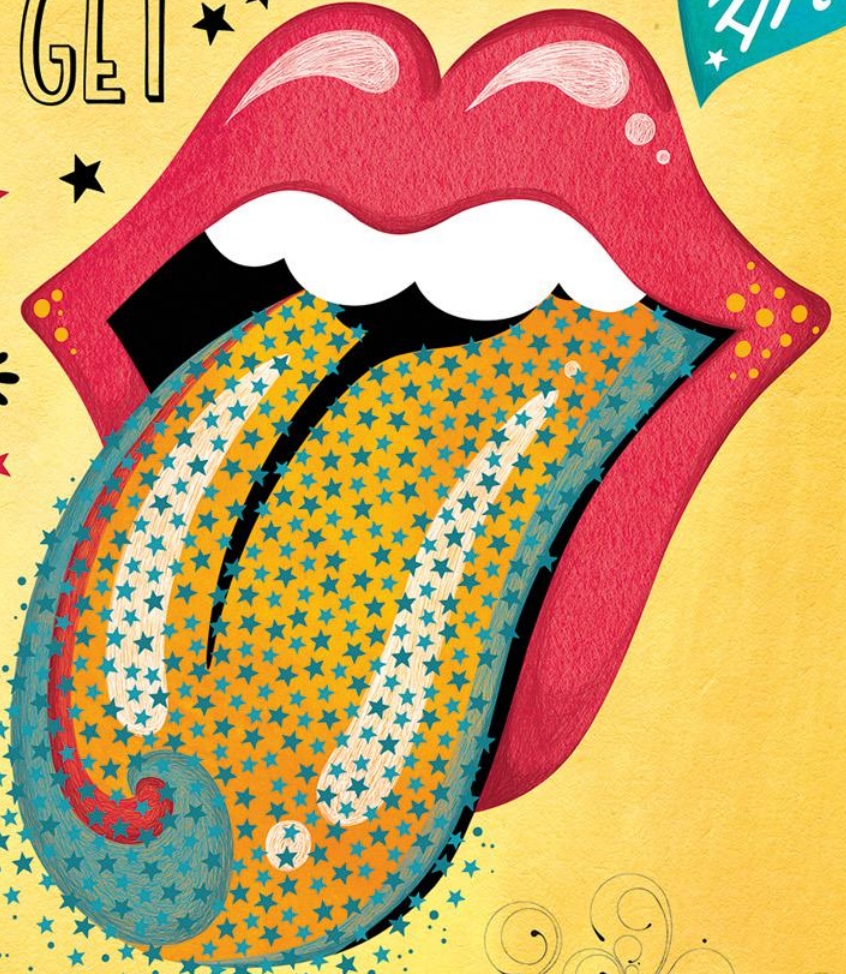
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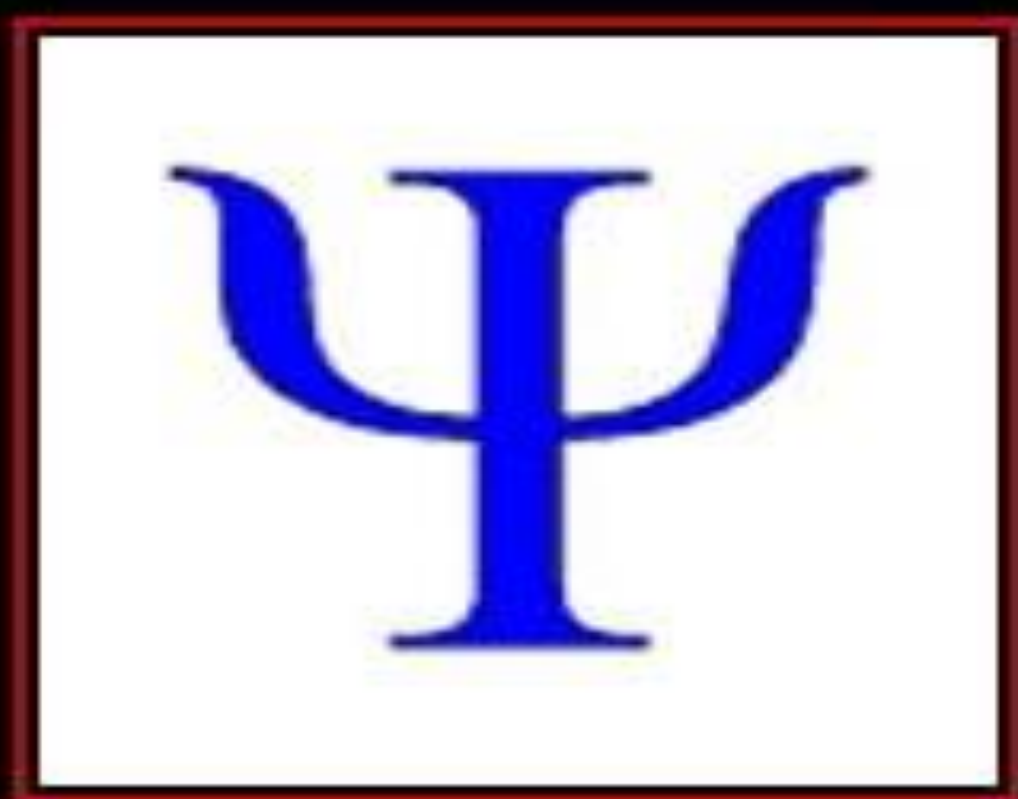
you just might find

YOU JUST MIGHT FIND



WHAT YOU NEED ♥





SCHOOLS OF THOUGHT

4 MAIN GOALS – THE 4 “E”S

- **ELICIT INFORMATION**
- **EDUCATE JURORS &
YOURSELF ABOUT THEM**
- **ESTABLISH YOUR CREDIBILITY
WHILE TRYING TO BUILD
RELATIONSHIPS**
- **EXCUSE/ELIMINATE THOSE YOU
DON'T WANT (DESELECTION)**

THE STARTING POINT

- **THE THEORY OF YOUR CASE**
- **“TOC” IS THE ORGANIZING FOUNDATION THAT COMBINES FACTS, LAW & EMOTIONS IN A WAY THAT PERSUADES A JURY TO CONCLUDE THAT IS WHAT HAPPENED and WHY**
- **“TOC” HAS FACTUAL, LEGAL & EMOTIONAL COMPONENTS ALL OF WHICH MUST BE ACCOUNTED FOR AND DEALT WITH DURING VOIR DIRE**

THE “TOC” COMPONENTS

- **FACTUAL** – You must know them all but with a *non-judgmental eye*, don't draw conclusions or attribute meaning to them at first.
- **LEGAL** – Must be understandable to everyone, legal phrases and legalese diminish and fail to accurately and completely convey to jurors the core or essence the case.
- **EMOTIONAL** – It brings the theory to life and brings viability and believability to the facts and law. **Archetypes** – Love, betrayal, hate, despair, anger. **Themes** – A simple phrase or sentence that captures the dominant emotion of the theory.
- Once all are identified, you can structure how it will be conveyed to jurors throughout the trial.

THEORY OF THE CASE!! But now what in voir dire??

- Once you have the TOC, ask yourself who are the people I'm looking for that could be receptive or unreceptive, but in the end can **ACCEPT** it.
- Then ask what kind of questions do I need to ask to find out who these people are **RECEPTIVE OR UNRECEPTIVE?**
- Then you structure your **VOIR DIRE** questions and topics around those areas to help you decide who you want to keep and who have to go.

The logo features the word "ELICIT" in a bold, black, sans-serif font. To its left are three horizontal, yellow, brush-stroke-like lines of varying lengths, suggesting motion or speed. Below "ELICIT" is the word "Information" in a black, italicized, sans-serif font.

ELICIT
Information


TELL THEM FROM THE JUMP!

I need to know your opinions about issues in this case, and the only way I can learn your opinions in the time I have is to ask you directly. There are no political-correctness police in this courtroom. Any answer that tells us how you think and feel is the right answer.

ELICITING INFORMATION

- Its all about **THEM**, *not you!*
- How **THEY** *feel* and *think!*
- Create an ***Atmosphere*** to talk
- By showing of honesty, respect, self disclosure, and genuineness to the jurors.
- Done by **OPEN ENDED QUESTIONS!** Not cross! (unless for locking down a cause strike situation)
- Done by **LISTENING** to their answers and our responses back to them, not arguing, not judging and praising their honesty.

- **No WRONG ANSWERS!!! (MUST CREATE A “NO JUDGEMENT ZONE AND NO POLITICALLY CORRECT ZONE!”)**
- General to Specific questions
- Looking for Life experiences that create their **ATTITUDES** (and attitudes are generally **FIXED**)
- Zero in the issues or topics related to your case, good, bad and ugly!



You can't catch a
fish by lecturing
it onto the hook

THE SECOND “E”



EDUCATING JURORS – THEORY BASED VD METHOD

- Open ended questions that specifically deal with the 3 components of the TOC.
- What are the facts you want them to talk about?
- What about the law that will be in play?
- What emotions exist in the case that need to be talked about?
- How do I get the to see and who can accept my TOC?

THE DANGERS

- **PROMISES** we don't deliver
- Wolves in sheep's clothing
- Giving the State a **BULLSEYE** on the jurors who agree with us

THE THIRD “E”





ESTABLISHING CREDIBILITY AND DEVELOPING RELATIONSHIPS

- Its about being yourself but not being the show, (i.e. think of it as a social or talk show host), as simple as just remembering a person's name.
- Remove barriers (don't hide behind the lectern)
- Looking people in the eye when talking, not interrupting, being interested in what is being said (ACTIVE LISTENING), *not being judgmental*, praising their honesty (Thank you!), empathy, personalization of everyone and your own confessions.
- Remember, its about how you **TREAT** people and how you are perceived treating people, your **CREDIBILITY** is always on display.
- Also RELATIONSHIPS aren't always mutually beneficial!

Powers v. Ohio (89-5011), 499 U.S. 400 (1991)

- The voir dire phase of the trial represents the "jurors' first introduction to the substantive factual and legal issues in a case." Gomez, supra, at 874. The influence of the voir dire process may persist through the whole course of the trial proceedings. Ibid.
- Voir dire permits a party to establish a relation, if not a bond of trust, with the jurors. This relation continues throughout the entire trial and may in some cases extend to the sentencing as well.



TYPES OF QUESTIONS FOR VOIR DIRE

- **Back to Basics** – Use open end questions, “W, W,W,W, W and How” questions like, “What was the first thing that came to you mind when you heard...?, What do you feel when you hear...? Have you ever heard others say..? Have you ever heard of a situation where? Ask questions that address the issues unique to your case!
- **Opinion Poll** – Make a statement of a fact or facts related to case and ask what they think about it and why?
- **Spectrum/Scaled Q’s** – With 1 being not strong at all and 5 being very strong what where do you fall on the scale?
- **Self Disclosure Questions** – I’m concerned that (race, drugs, drinking, whatever) may affect how someone would view the evidence in the case, why do you think that I might feel that way? Do you think that’s a legitimate view I should have? Why?
- Using jurors answers as next question to the group, **GET IT SPREAD IT (JUICING)**.
- And ALWAYS!! FOLLOW UP questions to answer the “whys”



TOPIC QUESTIONS – CAN OPENERS

- **SELF DEFENSE** – Anyone ever been threatened, beaten, attacked or put in fear by another person?
- **MISTAKEN ID** – What is the difference btw **CERTAINTY VS. ACCURACY**? Anyone a person who was absolutely certain about something and it turned out they were wrong? Can someone be sure or confident and wrong w/o lying?
- **POOR POLICE INVESTIGATION** - Anyone work in a job where you have to follow certain PROCEDURES OR PROTOCOLS, Is that important in your job? why? Is the police's investigation of a crime is imp? Why? Should it be objective, thorough, FAIR? Why?
- **CHILDREN** - Does any feel that are certain things children would never lie about? Why? Any one had an experience with a child that made up something about something serious?

**PRESUMPTION OF
INNOCENCE...
GREAT IDEA...BUT HOW TO USE
IT ?**

***What did you think when you heard
the charge?***

Oh my God, that poor innocent man,
wrongly accused and having to defend
himself from these horrible and false
accusations?

or,

Oh my God, I wonder what he did?



voir deer

PROOF BEYOND A REASONABLE DOUBT GREAT IDEA, BUT WILL YOU DO IT?

Reasonable doubt means a doubt based upon reason and common sense which arises from a fair and rational consideration of all of the evidence, or the lack of evidence, in the case. It is a doubt which is not a vague or speculative doubt, but ***such a doubt as would cause reasonable people to hesitate to act in matters of importance to themselves.***

So convinced you can act ***WITHOUT HESITATION!***

BURDENS OF PROOF

PREPONDERANCE - 51% - More likely than not

CLEAR AND CONVINCING - HIGHLY PROBABLE

BEYOND A REASONABLE DOUBT - SO CONVINCED A REASONABLE PERSON COULD ACT WITHOUT HESITATION IN A MATTER OF IMPORTANCE TO THEMSELVES

**At the close of the evidence you
believe that it is**

(51%)

MORE LIKELY THAN NOT

that the accused is

GUILTY!

but you might still hesitate to act...

Will you let him go free?

**At the close of the evidence
you believe that it is
HIGHLY PROBABLE
the accused is
GUILTY!**

**but you might still hesitate to
act...**

Will you let him go free?

How will you feel?

- In order to be a juror in this case you have to swear to follow that instruction.
- If you can't swear to do that the court will excuse you.
- Can you be sure you would acquit?
- This process is to make sure we don't try to force citizens to do something they feel is morally wrong.
- Are you willing to swear that you will follow that instruction or would that violate your personal moral code or values?

**JURORS MUST
SWEAR TO FOLLOW ORDERS ...
EVEN IF THEY DISAGREE WITH
THEM...SO...**

**Are you the type of person who will
follow orders that conflict with your
personal beliefs or values?**

or

**Are you the type of person who will
NOT follow orders if they conflict with
your personal feelings of justice?**



FIND
HIM
BEFORE
HE
FINDS
YOU



EXCUSING OR ELIMINATING POTENTIAL JURORS

- Potential Jurors are excused by striking them via use of peremptory strikes or for **CAUSE** (either statutory cause or bc of a non statutory bias or prejudice).
- **CAUSE** is better bc you can never run out of those challenges unlike peremptory strikes.
- The **KEY** is getting the juror to express their prejudice/bias to the extent that they cannot be fair and/or follow the law bc their bias or prejudice is so fixed.
- But remember....

**JURORS ARE *NOT BIASED*
*OR PREJUDICED***

THEY HAVE JUST HAVE:

***HIGH MORAL STANDARDS**

***STRONG ETHICAL CODES and VALUES**

***PRINCIPLES THEY WILL NOT COMPROMISE**

THEY WILL **NOT BLINDLY FOLLOW ORDERS
IF THEY CONFLICT WITH THEIR PERSONAL
BELIEFS AND THEIR VALUES. (NAZI GERMANY)**

COOG

NIDIS

TISSON

VEAN

CE



THE IDEALIST

Sometimes people hold a core belief that is very strong. When they are presented with evidence that works against that belief, the new evidence cannot be accepted. It would create a feeling that is extremely uncomfortable, called cognitive dissonance. And because it is so important to protect the core belief, they will rationalize, ignore and even deny anything that doesn't fit in with the core belief.

- Frantz Fanon



COGNITIVE DISSONANCE

This is how it starts.



COGNITIVE DISSONANCE

THAT SUBTLE, CREEPY FEELING THAT WE'RE NOT
QUITE DONE TWEAKING OUR BELIEF SYSTEM.

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DESELECTION METHOD DEALS WITH COGNITIVE DISSONANCE

- Identify, Rate and Eliminate (the worst) jurors who will **NOT** accept your TOC or related themes so we must use **ANTI THEORY Qs!**
- Rehab those you LIKE to keep
- You are looking for jurors who believe exactly the opposite of your TOC, once you ID them then try to get them to express that their beliefs are **FIXED** regardless of the law so you can challenge them for cause
- Use **CAN OPENER Q's** or **SCALE** questioning or **SOME PEOPLE BELIEVE OTHER PEOPLE BELIEVE**

- **SELF DEFENSE:** Who thinks it is never OK to Shoot an unarmed man? Or To shoot someone in the back? I cant imagine a situation where I'd use a gun against an unarmed person
- **ID:** Who believes eye witness identifications are reliable?
- **NO INTENT:** Who thinks that people should be always be held responsible for their actions regardless of their mental state?
- **SAOC:** Who thinks children don't lie about being sexually assaulted? A child could never be mistaken about having been touched in a sexual manner by an adult?
- **COPS:** Who would believe a police officer testimony over a non-police officer testimony?

SLIDING SCALE & SOME PEOPLE

"Some People" believe it is never OK to shoot an unarmed man... "Others" believe it is OK to shoot someone if they threaten anyone in any way...

Where do YOU fall on that continuum?

Strongly disagree-Disagree-Agree-Strongly Agree

- **SOME PEOPLE THINK THAT POLICE OFFICER'S TESTIMONY SHOULD BE GIVEN MORE WEIGHT OR MORE IMPORTANCE THAN OTHER WITNESSES WHILE OTHER PEOPLE THINK ALL WITNESS TESTIMONY SHOULD BE JUDGED THE SAME, WHERE DO YOU LEAN?**
- **AN INNOCENT PERSON WILL ALWAYS TESTIFY IF THEY ARE INNOCENT OTHER PEOPLE THINK BC THE LAW DOESN'T REQUIRE A PERSON TO TESTIFY THEY DON'T HAVE TOO – WHERE DO YOU FALL**
-
- **I CANT THINK OF A REASON WHY A PERSON WOULD ACCUSE ANOTHER PERSON OF COMMITTING A CRIME AGAINST THEM IF IT WASN'T TRUE?**
-
- **SOME PEOPLE FEEL THE LAW MAKES IT TOO HARD ON THE POLICE AND PROSECUTORS TO CONVICT CRIMINALS DOES ANYONE FEEL THAT WAY? OR**
- **Some people think that PBRD is too high or tough a standard and puts too high a burden on prosecutors to convict criminals, how do you feel?**
- **SOME PEOPLE THINK THAT WE ASK TOO MUCH OF THE POLICE IN DOING INVESTIGATIONS OF CRIME?**
-

Rate them on a scale of 1-7 and eliminate them. (1-2-3)

Strongly disagree.....Strongly agree

7 = love = +3 (+)

6 = like = +2

5 = ok = +1

4 = vanilla = 0 or 0

3 = bad vibe = -1

2 = don't like = -2

1 = hate = -3 (-)

BABY STEPS IN GETTING THEM LOCKED IN FOR CAUSE

- You're not going to change your mind about how you feel?**
- Nothing the judge, or prosecutor or I, or anyone else, is going to be able to do anything to change your mind?**
- Nothing anyone says or does is going to make you do something that violates your personal moral code?**
- Is it fair to say that to follow that rule, in this case, would violate your sense of justice, values, etc.?**

REMEMBER!

- **JURORS VOTE
THEIR OWN *VALUES*
AND NOT THE
FACTS!**

**IN THE END-DON'T LEAVE
THEM LIKE THIS!**



LEAVE THEM LIKE THIS....

