

A Socratic Method with which to Approach Jury Selection

A Method for Addressing and Eliminating Potential Bias, Prejudice and Predisposition

Question No. 1

[DO NOT introduce the lawyers and parties at the outset; introduce them after the “Exercise” on next page]

What do you think is the most important characteristic for a person who is going to serve on a jury? (Every juror must answer/Each juror should give a “new” characteristic – build a list.)

Answers may include:

- Honest
- Fair
- Open-Minded
- Attentive
- Patient
- Good Listener
- Wait Until Everything is Received
- Decision Only on Facts
- Unbiased/Not Prejudiced/Impartial [Constitutionally Required]
- Objective
- Intelligent
- Analytical
- Not preoccupied/able to devote full attention

Answers to Discuss (remember, no answer is “wrong”):

- Compassionate
- Sympathetic
- Religious/Christian/Loving/Caring
- Well informed

With these answers follow up with – What do you mean by that? (to get back to more objective characteristics)

Question No. 2 (Bias/Prejudice Questions)

What is an example of a characteristic as to which a person may have bias or prejudice? [ask each juror to state a characteristic as to which some people may have a bias or prejudice/each juror should state a “new” characteristic — build a list]

Answers may include:

- Sex/Gender
- Appearance
- Age
- Race
- Religion
- Economic Status
- Ethnicity
- National Origin
- Prejudice Based on Personal Experience/Preconceived Notions
- Where a person lives
- Educational Background
- Job/Profession
- A person’s accent
- A person’s size (this can be height, weight, etc.)
- Tattoos/Piercings
- Clothing/How a person dresses

Ask each potential juror: **The Constitution requires that a jury be impartial, that is, not biased or prejudiced. Can you decide the case without being influenced by any of these illegal/unconstitutional factors?**

The Juror Exercise (modify as needed)

Exercise (using four jurors): Before telling the jury pool whether the case is a civil case or a criminal case, looking at the individuals sitting at counsel table, have juror #1 “pick out” who he/she thinks is the attorney for the party bringing the claim; have juror #2 “pick out” the defense attorney; [after juror #2 answers, tell juror #3 whether it is a civil or a criminal case], have juror #3 “pick out” the defendant; and have juror #4 “pick out” the person bringing the claim (plaintiff in a civil case or the government representative in a criminal case).

Introduce lawyers and parties AFTER the exercise.

After the four choices are made “just by looking at the people at counsel table,” ask juror in seat #5 **what is wrong with this methodology? What did we do wrong?** [several jurors can be asked this question – have a discussion]

Answer: Cannot judge a book by its cover; appearance is an invalid and analytical method, etc. (have several potential jurors answer – get different expressions of relevant concepts).

Question No. 3

Ask Jurors [perhaps jurors #8, 9, and 10]:

How do you decide the case without being influenced by bias, prejudice or preconceived notions, that is, any illegal or unconstitutional consideration?

Answer: [have a discussion] Decide the case solely on the facts/the evidence in the case.

Question No. 4

Do you think a jury can really decide the case free from bias, prejudice and preconceived notions?

What makes a jury different [from decisions in everyday life]? [Ask a series of jurors]

Answers:

- A jury is under oath.
- A jury has 12 people, all of whom must agree.
- A jury has to decide based on evidence.
- A jury decision is based on the law.

Question No. 5

What are you going to do if a juror says, “I just don’t like the way [he looks], etc.? (or some other comment about a protected characteristic)”

a. Should you say something?

- b. What should you say?** [Have a discussion with several jurors. Answers should include, “We cannot consider that,” “We have to decide based on the evidence,” or “That is not relevant, we have to decide based on the evidence and the law.”]
- c. Are you willing to speak up?** [get commitments to speak up]
It is important that each of you think about what you should say.

Question No. 6

[After each potential juror has reconfirmed that they can decide the case solely on the evidence and the law, read the Summary of Case or Indictment]

Does knowing the nature of the allegations affect your ability to decide the case solely on the evidence?

Has something like what is alleged happened to you and/or a member of your family or a friend?

Ask additional “prejudice questions” based on the nature of the case. [This is the place in voir dire where (1) there will probably be a number of sidebars as jurors describe their individual experiences, and (2) this is the opportunity to explore each potential juror’s background. Much of this is best done at sidebar to preserve confidentiality.]

Question No. 7

Any questions from Counsel?