

**Team Martinis – 10 Rules for Voir Dire**  
**Willamette Valley American Inn of Court**  
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1. **First Rule:** Many judges have their own “rules for the courtroom” which you should get and read and apply. Sometimes a judge’s own rule might conflict with these tips and you should then forget any of these tips that conflict in that courtroom. The judge is right – everyone else is wrong (until you file the Notice of Appeal).
  
2. **Second Rule:** Do your instructions early enough before trial to use them as a guide for questioning jurors. Do not ask them if they would agree with the legal instructions – but imagine what kind of information truly honest jurors would give you if they could first study the instructions before coming to the courthouse. What kinds of life experiences could affect their ability to see it your client’s way or see it from the other side? Make your notes for jury questions with that in mind. Do not ever ask if they can be *fair*. You are instead asking, inferentially, if they have any preconceptions about the type of case or your type of client such that they will volunteer that they cannot be fair. Always set up at least one question that is intended to flush out the “stealth juror” – the one who wants to get on to forward a long-held belief or an agenda once deliberations start, but who just has to chime in with a response to your “stealth” question. You will have all the jurors thinking about their fairness if you get one of them to take a strange or counter-intuitive position during voir dire.
  
3. **Third Rule:** Do not try to emulate another litigator’s style in the courtroom. The jury will recognize it even if they don’t know who you are trying to emulate. You have to be yourself – even if you are not as pretty as the other side’s lawyer. You must be honest from the outset because the jury will be evaluating everything you do throughout the trial and will recognize falseness at some point. If you are false at first, you will appear to be false (or run the risk of appearing to be false) throughout.
  
4. **Fourth Rule:** Don’t pander to the jury. If you want to thank them for their service coming in under subpoena – fine, say Thank You for appearing here today and let it go at that. Even that much might be too much for some of the jurors who definitely don’t want to be there and they might wind up on the jury and will remember being pandered to. I like to thank them for their service and *patience* in closing. They might understand a little better then why you need them. (But make it short). Don’t ever call a juror by their first name. If you try to ingratiate yourself at this stage, the other side might hand you your head. One of my mentors, Bob Petersen, once tried a case in Vale, Malheur County, where the local lawyer had a comment for many jurors about how his cousin or aunt or friend must live very close to that juror. Petersen got up and told the jury, “You know why he’s doing that don’t you? You know that it’s just his way of trying to get you to think his case is better because he has family around here. Is that how you think

trials ought to be decided?" I had a condemnation trial in Medford where the judge introduced the lawyers and the clients as usual. I had an empty chair next to me since I was representing ODOT. I invited the jury in voir dire to imagine my client in that chair, just like John Junkin's property-owner client in the chair next to him. I invited them to imagine my clients, the citizens of the State of Oregon in that chair next to me. Junkin then spent an inordinate (my word) amount of time getting every potential jury to admit that they did not see themselves as "my client" at all just because they were citizens. They all agreed they didn't see themselves in that chair. Bottom line – don't try to be cute and don't pander in any way shape or form. Let your facts and the law guide your case and your consistent story about your case; not your familiarity with family, locale, taxpayer status or personality.

5. **Fifth Rule:** Don't fret about not having much background information on the jurors' lives. Don't spend your energy the first morning of trial worrying about everyone's employment, state of birth, marital status, how long they've lived in the county, etc. Focus instead on what information in the juror information sheet or questionnaire might be most important in your case. It might be their occupation. It might be where they have lived for the past 10 years. It might be something to do with their family status. Choose one thing you think is most important and highlight that issue on the form and asterisk it on your sticky note (see, Seventh Rule). Most jurors want to do the right thing. If you don't believe that, give up litigation and become a transactional lawyer.
6. **Sixth Rule:** If possible, have with you another person, not necessarily another lawyer, who is better than you at reading peoples' reactions and general demeanor. You will not be able to check every juror questionnaire adequately and you will not see every smile, grimace or yawn while conducting voir dire. The other person might. I am clueless about personal reactions (ask my wife) but I know enough to have someone better than me judging for likely peremptory challenges. Use a "star" for someone you might want and an "X" on the note for someone to look at more closely (next rule).
7. **Seventh Rule:** Be organized. The worst thing is trying to keep track of jurors by using the court-supplied questionnaires/information sheets. Do not try. Here is the best way I have found to keep track of jurors:
  - a) Have an old legal pad cardboard backing available – one or two sheets of paper left on it. Before trial, know what "juror number in the box" goes with what seat. Does #1 in the box start at the front left or the back left? Are there six seats in each row? Where is 13 and 14 if you have two alternates?
  - b) Once you know that, sketch the layout of the jury box on the cardboard using squares for the seats (you may need to put the alternates at the bottom even if they are next to row 1). Make the squares big enough to contain the seat number and a small size sticky note turned on the long edge – sticky side on the left or right side. As the jurors are called forward, put their juror number (not seat number) at the top

of the sticky note, then a Mr. or Ms., then their last name, then any signal to yourself that might be useful (see rules five and six) in conducting voir dire. Make short clues to yourself on the rest of the note, either from your own talk or the other side's.

- c) Have another cardboard ready to do the same thing for all the jurors left in the courtroom who are called but not put in the box; the "panel" when they are identified by the judge or bailiff before voir dire starts. Keep them in order by number; e.g., you already know the first 12 or 13 or 14. Next is #15 who might take the place of #6 in the box. If so, you leave the original sticky note for #6 on the jury box cardboard and move #15's sticky note from the "panel" group on to the top of #6. Keep going with all panel members. If you had 50 jurors called you might need two or three extra cardboards. You can use both sides but it is better not to so that you don't knock the notes off.
  - d) Each time a juror is excused (for whatever reason), leave that juror's sticky note in position and put the replacement juror's note over top. If potential jurors are excused from the panel before getting into the box, move them off the panel cardboard onto a separate pad (can be a regular legal pad). Then you can save the paper with the non-jurors on it with the left-overs from the panel, if any.
  - e) If there is an objection for cause granted or an excuse granted by the court, note what it was on the sticky note.
  - f) Use the cardboards to identify and question the jurors in voir dire.
8. **Eighth Rule:** Do not forget to talk to and look at the remaining panel members (often behind you) when making your initial comments and as you ask your general questions. If you can't tell who someone is in the fourth row back and in the corner but you see a hand, just ask them to speak and follow up with a "and you are Mr. \_\_\_\_?" They won't think ill of you for asking.
9. **Ninth Rule:** Try to figure out how far you have to go to get the judge to excuse for cause. Normally, this means laying a decent foundation for bias by getting admissions that whatever bad thing you are asking about has been a long-held precept by the juror. You need to get admissions that it would be very hard for the juror to lay aside those beliefs (not prejudices; not bias, not any perjorative words for their understandings and beliefs) in the course of this trial, even if they said now they would do their best. Instead of asking for "excuse for cause," I like to ask the judge if he or she "would like to inquire?" The judge will likely inquire anyway. Some judges will try to rehabilitate a juror who has made these admissions and some won't – at least for the first two or three or until the judge thinks you are getting lazy with your own inquiries. Whenever someone is excused for cause because they admitted being against your case, always praise that juror, after they've left, for being honest and agree that people are entitled to have all kinds of opinions that the rest of us may not always agree with, right?
10. **Tenth Rule:** Make sure you have a game-plan for your peremptory challenges. I would rather do the peremptories in chambers or in the courtroom without the jury present if

possible. If you have to do it in front of the jury by ballot, try not to let them know what your choices are (as in – don't stare at them and then write on the ballot). You might be bumping off someone's new best friend. They will be like hawks though and often want to know about jury selection at the end of the case. If you are in chambers, take all your cardboards and calculate who is likely to be up for a seat if you both use all your challenges. Decide if the people in the box are better or worse than who is left in the panel with attention to your use of all or some challenges, and the other side's use of all or some. Use your "second-chair" person to help you. One challenge to the alternate(s) is allowed after the 12-person jury is picked. I have had enough instances of having the alternate become a deliberating juror to take that position as serious as the others. Finally, if you haven't been able to get a juror excused for cause because the juror is an expert in a field that is an issue in the case, save a peremptory for that juror. Never leave an "expert" juror on the jury no matter what they tell you – they will become the most important witness in your trial but will never be cross-examined because it will happen in the jury room.

Jurors are regular people who have come in to participate directly in a Constitutional function. It likely will be the only time in their lives when they get to do that. You must respect them and treat them fairly during voir dire and the whole trial. If you are a fair person to them, they will do their best to be fair in their deliberations.