



# VOIR DIRE

FOR SEXUAL ASSAULT CASES

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## INTRODUCTION

Criminal justice depends on a fair jury. A fair jury is one that will base its decision on facts and law not biases. To diffuse biases that will interfere with a jury's ability to be fair, we must be able to draw those biases out of potential jurors. Effective Voir Dire taps into not only potential jurors' conscious decision-making processes but also biases of which the jurors themselves may be unaware that they have. Thus, effective Voir Dire is essential to obtaining a fair jury.

This handout contains sample Voir Dire questions for sexual assault cases. These Voir Dire questions address juror biases that are created by myths and stereotypes about sexual assault victims, sexual assault defendants, and sexual assaults themselves.

## Consent

- I'm making a cup of tea. I asked if Sam if he wants a cup of tea and he said "yes." Has Sam consented to a cup of tea?
- What if Sam says "no, thank you," has Sam consented to a cup of tea?
- What if Sam says that he is not sure and I make the tea, can I force Sam to drink the tea? Why not?
- What if Sam said yes but fell asleep while I was making the tea, is it ok for me to pour the tea down Sam's throat while he is sleeping? Why?
- What if Sam said "yes," started drinking the tea, but fell asleep before finishing the tea, is it ok for me to pour the remainder of the tea down Sam's throat as he sleeps? Why?

## Consent.... can't

- What if Sam said “yes” to tea on Sunday, Monday, and Tuesday when I asked if he wanted tea on those days, is it ok to force tea on Sam on Wednesday without asking if he wants tea on Wednesday first?
- What if Sam said “yes” but in the time that it took me to make the tea, Sam changed his mind and said “no, thank you” ...can I force Sam to drink the tea? But, why can't I when I went through the trouble of making the tea because he said “yes” initially?
- What if Sam is my husband, can I force him to drink tea?

## Lying vs. Victim Report Inconsistencies

- Has anyone here ever seen a parade?
- Let's say you went to the rose parade. You were so excited because you won VIP tickets and have never won anything before so it was an especially memorable event. The parade had 20 floats, 10 marching bands, and 5 people on horseback. You are alert and sober. Later that evening, you tell your friend about the parade that you saw. Do you think you would mention all 20 floats, 10 bands, and 5 horses? Would you remember all the details of all the floats? The colors of the band uniforms? The colors of the horses and the order in which they appeared?
- One week later you run into another friend and tell her about the parade. Would you tell her the exact things that you told your other friend. Would you tell her that you had told the other friend about having seen the parade? If you told your first friend about one of the ladies on horseback wearing a hat but not mentioned the hat to the other, were you lying about seeing a parade? If when you talked to the second friend you had forgotten that the third band had baton twirlers, were you lying about seeing a parade?

## Lying vs. Victim Report Inconsistencies...can't

- Six months later, the subject of the parade comes up at your workplace and you mention that you saw the parade. Do you believe that the details you provide will vary from the original version that you spoke of with your first friend? Why?
- Do you agree that it is human and even expected that as we reiterate an event there are variations in telling of that event?
- Your first friend talked to yet another friend about what you had seen. Their version of what you said was different. Is it fair to conclude that you were lying when you said that you saw the parade? Why?

## Minimal Resistance

- If you only had the victim's word and no other evidence how would that impact the way you view the case?
- Do you believe a person must show a certain level of resistance to sexual assault? What is that level?
- Do you expect more resistance when the victim is a male?
- Does sexual assault have to involve deadly force or serious injury? Why?
- Does sexual assault have to result in any injury? Why?
- Could a rapist use something besides physical force to cause a victim to submit? What are some examples?
- What might cause a victim of sexual assault to not resist or stop resisting?
- Does a victim of sexual assault have to scream?

## Late Reporting

- During childhood, did anyone experience being bullied at school? Did you immediately report it? Why?
- Have you ever had to tell other people about a traumatic or humiliating experience that happened to you? How did you feel when telling?
- Has anyone had an embarrassing secret that they did not want anyone to know that they told to someone years later? Does fact that you kept that secret all those years make it less true when you finally divulged it?
- What are some of the reasons a victim might not report a sexual assault immediately to the police? (threats, guilt, fear, embarrassment, etc.)
- What are some of the reasons that a victim might report a sexual assault later?

## Late Reporting...can't

- Could discussing the intimate details of a humiliating act with total stranger be more than a traumatized sexual assault victim is capable of handling immediately after the assault?
- Juror X, how would you feel if I asked you to tell us about the last sexual experience that you had with your significant other? Is it difficult to talk about an event involving sexual activity to a group of strangers in a public courtroom even when the act may have been performed with consent and love? Can you understand how difficult it is to talk about nonconsensual sexual acts with a total stranger much more in a public courtroom?

## Trauma Response

- Is there anyone here who has ever been through a traumatic event such as a car accident, physical injury, or mugging? How did you respond right after it occurred? (ask more than one juror to get varying answers)
- Juror X you described a response to your situation which was different from juror Y's response. Do you think that different people react in different ways to stress?
- After the traumatic event were you able to think clearly? After it was over did you come up with things you wish you would have done differently? Did you react the way you had thought that you would?
- Do you think that sexual assault victims might respond in a variety of ways to trauma as well? In what ways might they react? (laugh, shock, calm, hysteria, cry, anger, disassociation, fear, etc.)
- Do all victim of sexual assault cope with trauma in the same way? Please explain.

## Expectations of Victims

- Can you be a victim of sexual assault if your dress or conduct “invites” advances? Why?
- If the victim is wearing provocative clothing or accepts an expensive dinner does that change your opinion? Why?
- How would you feel if I told you that the victim was dressed in a very short skirt and not wearing panties? Does that impact how you view the case? How?
- How would you feel if you were told the victim was an alcoholic?
- What does a sexual assault victim look like? Are they a specific age, sexual orientation, race, or socio-economic status? Are they all attractive?
- Have you or someone you know been a victim of sexual assault, reported or not? How do you know them? Did they report? What happened to the assailant? Did you feel that the outcome of the situation was fair?

## Expectations of Victims...con't

- Has anyone ever had a victim of sexual assault disclose the assault to you? Did that person provide proof to you? Did you believe him or her? Why?
- Why would someone rob a drunk person? (easy target)
- Is it any less of a crime if a rapist chooses an easy target?
- Is it any less of a crime if the victim's actions made them more vulnerable to being sexually assaulted? (going on a date, walking down a dark alley, accepting a ride)
- Do you believe a person can be raped even if they consented to some other sexual contact at some point before the rape occurred?
- Can prostitutes be victims of sexual assault? Why?
- Can a victim of statutory rape be a victim even if they don't see themselves as one? Why?

## Staying with the Assailant

- Has anyone ever stayed at a job with a boss that was mean or mistreating you?  
Why did you stay at that job?
- Why might a victim stay with their assailant? (children, money, fear, etc.)

## Gender Bias

- Do you have any friends that are part of the LGBTQ (Lesbian, Gay, Bisexual, Transgender, Questioning) community?
- What are your feelings on “Don’t ask Don’t tell” policies in the military?
- What are your feelings on gay marriage?
- Do you have any religious beliefs or other strong personal convictions which would make it uncomfortable or impossible for you to fairly and impartially consider a case involving a victim, witness, or defendant that is (homosexual, identifies with a gender to which they were not born, cross dresses, or is transitioning from one gender to another)? If yes, please explain.
- Do you have strong feelings or opinions about homosexuality or gender identity issues?

## Gender Bias...con't

- Do you believe that hate crimes law should apply to issues regarding sexuality and/or gender identity?
- If I held up a picture of two men or two women kissing would it make you uncomfortable? If so, can you gauge your level of discomfort for me?
- This case is an accusation of a male on male (woman on woman) sexual assault. Is there anything about that type of accusation that would make you feel uncomfortable sitting as a juror?
- Politically, are you liberal, middle of the road, or conservative?
- Would anyone be bothered if someone from the LGBTQ community moved in next door to you?
- Do you think employers should be able to refuse to hire someone because of his or her sexual orientation or gender identity?

## Gender Bias...can't

- Would you feel bothered if you had to work closely with someone who was lesbian, gay, bisexual, or transgender?
- Can a man be a victim of a sexual assault? Why? Are male victims less likely to report? Why?
- Can a heterosexual man be sexually assaulted by another heterosexual man? Why?
- Can a member of the LBGTQ community be sexually assaulted by a heterosexual man or woman? Why?
- Can a (describe your victim: heterosexual woman/man, homosexual woman/man, transitioning man/woman, transgender, or asexual) be sexually assaulted by a (describe your suspect: heterosexual woman/man, homosexual man/woman, transitioning man/woman, transgender, or asexual)? Why?

## Expectations of Assailants

- When I say the word “rapist” what images come to mind?
- How would you expect a rapist to act?
- How would you expect a rapist to look like?
- What would you expect a rapist’s life to be like? (a poor sex crazed stranger with a knife or gun)
- Ted Bundy, famous serial rapist, was handsome, had a girlfriend and job, and was a quiet neighbor. How does that affect you opinion?
- Do you think you can tell by looking at someone whether that person committed a sexual assault?
- Does a sexual assault assailant have a specific sexual orientation?
- Does a sexual assault assailant have a specific socioeconomic status?

## Expectations of Assailants...con't

- The defendant is an attractive person, when you look at the defendant do you feel any sympathy for him/her?
- Looking at the defendant, do you have any opinion of the case before hearing any evidence?
- Have you or anyone close to you ever been accused of sexual assault?
- Can it be rape if the two people are married or know each other?
- Can nonconsensual sex exist in a relationship where there is or has been consensual sex? Please explain.
- Who believes that sexual assault is due to an uncontrollable sexual urge? Who doesn't? Why?

