Voir Dire: So Many Questions, So Little Time – Civil & Criminal

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MODEL JURY SELECTION QUESTIONS FOR CRIMINAL TRIALS

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MODEL JURY SELECTION QUESTIONS FOR CRIMINAL TRIALS

I. Introduction

A. Opening Remarks

Good morning *[afternoon]*. I am Judge _____. We are here to choose a fair and impartial jury from among you to decide the case of State versus _____.

We understand that jury service interrupts your daily life. But, jury service is not only a duty of United States citizens, it is also a right protected by the United States and Maryland Constitutions. The right of each eligible citizen to be considered for jury service helps preserve the right to an impartial jury representative of this community.

By participating in this jury selection process today, you will help to safeguard Constitutional rights and liberties for all of us.

To ensure a fair trial, we must choose a fair and impartial jury. And, the jury must decide the case entirely on the basis of the evidence received and the court's instructions on the law.

B. Non-Disclosure

Committee Note: Although videos and speakers usually present these requirements to prospective jurors, judges may wish to include this information because of its importance and the increasingly common use of social media in everyday life.

We will need your full attention throughout this process. If you have a mobile phone or device with you, you must turn it off now, and you may not turn it on again

until I give you permission to do so.

If we take a break, you may report to your work or family that you are on a jury panel, but you must not tell them anything about the jury selection process or this case.

From this moment on, you must not discuss or investigate anything or anyone connected with this case until you are excused from this panel. You must not discuss anything about this case with other members of the jury panel, your friends, family, employer or anyone else. You must not go to the scene of the alleged incident. You must not use the internet or any other means to contact anyone, post anything or look up anyone or anything connected with this case.

These rules apply to you now, throughout all breaks and recesses, and until you are excused from this panel. If you are selected as a juror, you must follow these rules throughout the jury selection process and throughout the trial, until the trial ends or you are excused by the court.

Let me repeat:

You must not discuss anything about this case with anyone, including a fellow juror or prospective juror. And you must not contact or investigate anyone or anything connected with this case, mention it in any social media, or try to find out any information about anyone or anything connected with this case—over the internet or by any other means—until the court excuses you from further service.

C. Recess and Adjournment

Committee Note: If the jury selection process will include breaks, the judge may use this section to explain additional procedures and to remind jurors of their obligations before each recess or adjournment.

We may take a recess during the selection process. If you need an immediate break, please stand to be recognized.

You may not leave the courtroom unless I excuse you *[and you give your juror identification card to our bailiff]*. If you are excused from further consideration, you will be relieved of these obligations *[and are free to leave/must return to the Jury Assembly Room.]* If you are instructed to return to the courtroom after a recess, please *[further instruction/get your card back from the bailiff]* when you return to the courtroom so that we know you have returned. We cannot resume questioning the full jury panel until all members of the jury panel are back in their seats.

Committee Note: Judges may add the following paragraph before each recess or adjournment until the conclusion of the jury selection process.

We will now *[recess/adjourn]* until *[time]*. Remember that you must not discuss or investigate anything or anyone connected with this case during this recess.

You must not discuss anything about this case with other members of this jury panel, your friends, family or anyone else, and you must not use the internet or any other means to contact anyone, post anything or look up anyone or anything connected with this case.

If you see or hear anything you shouldn't, or see or hear anyone else doing or saying anything that breaks these rules, please notify the court staff immediately.

D. Procedure

Committee Note: Before proceeding, judges should advise counsel whether the judge will ask all general questions before asking any follow-up questions. If the judge will take follow-up responses during the general questioning, the judge

should also advise counsel whether they may ask follow-up questions directly to prospective jurors or must request that the judge ask specific follow-up questions.

Judges (and counsel) must conduct all juror questioning on the record—both general questions of the full jury panel and follow-up questions of individual prospective jurors. Follow-up questioning of a prospective juror should usually be conducted out of the hearing of the full panel.

To improve the efficiency of juror questioning and to accommodate persons who may have difficulty walking or standing, judges may choose to ask all general questions first, noting affirmative responses for follow-up questions after the general question period. Judges may conduct individual questioning at the bench or in a conference room where the record and security will be maintained.

Right now, we know very little about you. To help us choose a fair and impartial jury, we need to ask you some questions, and you must answer these questions truthfully.

We will identify or refer to you only by your juror number, and not use your name.

In a moment, the Clerk will ask you to declare under the penalty of perjury that you will answer truthfully all questions asked of you. I will then ask you a series of questions to help us choose a fair and impartial jury. It is very important that you answer each question honestly, openly and candidly.

If you cannot hear or understand a question, please stand.

If your answer to a question is YES or MAYBE, please stand.

You will not be wasting anyone's time; we must be sure that you hear and understand every question, and that we hear whatever you want to tell us about a question.

Once you stand up, please remain standing until I call on you, but do not speak.

When I call on you, please tell me only your number – the number that you received from the Jury Commissioner.

Alternative 1: If the judge will ask all general questions before individual follow-up responses, continue:

After I finish asking all general questions, I will ask you to come to the bench *[conference room]* to explain your response out of the hearing of your fellow prospective jurors.

Alternative 2: If the judge will ask follow-up questions immediately after initial responses, continue:

After you tell me your number, I may ask you to explain or discuss your response. If you do not wish to answer in open court, please let me know. I may ask you to come to the bench at that time, or at a later time.

Committee Note: If jurors are seated numerically, add:

I have asked that you sit in numerical order, according to the number given to you by the Jury Commissioner, so that I can call on you in numerical order. Because I may not always be able to tell which row you are in, please look around you before answering, so that you can be sure that you are the next person to respond.

E. Jury Panel Sworn

Please stand, face our Clerk, and raise your right hand.

[Clerk swears prospective jurors.]

II. Questions for Jury Panel

A. General Questions

1. Case Familiarity

The State alleges that on *[date]* at approximately *[time]* at or near *[address]*, in *[jurisdiction]*, the Defendant(s), *[name(s)]*, did *[criminal acts or crimes alleged]*. Do you know anything about this alleged incident, or have you seen or heard anything about it from any person or source, including the internet and news media?

2. Scene Familiarity

Do you live or work in the immediate area where this incident allegedly occurred, or are you familiar with this area for any other reason?

3. State's Attorney

a. Are you, or a close friend or relative, familiar with the Assistant State's Attorney(s) *[name(s)]* through any family, social, business or other contact? *[Ask prosecutor to stand and face the jury panel.]*

b. Are you, or a close friend or relative, familiar with the State's Attorney *[name]*, or any employee of the Office of the State's Attorney for *[jurisdiction]* through any family, social, business or other contact?

4. Defense Attorney

Are you, or a close friend or relative, familiar with the Defendant's attorney(s) *[name(s) including law firm(s)]* through any family, social, business or other contact? *[Ask defense attorneys to stand and face the jury panel.]*

5. Defendant

Are you, or a close friend or relative, familiar with the Defendant *[name]* through any family, social, business or other contact? *[Ask the Defendant to stand and face the jury panel.]*

6. Victim

Are you, or a close friend or relative, familiar with *[victim's name, or victim or family]* through any family, social, business or other contact? *[If present, you may ask the alleged victim to stand and face the jury panel.]*

7. Witnesses and Others

> Committee Note: Judges may combine the parties' witness lists alphabetically within each category, to avoid duplication. Judges should consider including other persons whose names may be mentioned during the trial, such as investigators or others familiar with the development of the case before trial. If witnesses have common names, judges may ask counsel to bring any available witnesses to the courtroom, to face the jury panel for possible recognition when calling their names.

Are you, or a close friend or relative, familiar with any of the following people through any family, social, business or other contact? Each of them may be called as a witness or mentioned in this trial:

lay witnesses in alphabetical order;

police/governmental witnesses (full name, rank, department) in alphabetical order;

expert witnesses in alphabetical order, noting office address and expertise of each;

persons who will not testify, but whose names may be mentioned in the trial, including deceased persons.

8. **Juror Qualifications**

This next question has seven parts. When I finish reading all seven parts, please stand if you:

(1) are not yet 18 years old,

(2) are not now a resident of *[jurisdiction],*

(3) are not a citizen of the United States,

(4) have ever received a sentence of more than six months for any crime *[even if all or part of it was suspended],*

(5) have a charge pending against you for a crime punishable by imprisonment for six months or more,

(6) have a disability preventing you from serving on a jury, for which you brought written documentation from a health care provider, or

(7) do not read, write or understand English well enough to serve as a juror.

If your answer to any part of this question is YES, or if you are not sure how to answer this question, please stand.

9. **Capacity to Serve as a Juror**

Please stand if you have trouble hearing or understanding my questions, or if you think you may not understand the spoken or written evidence and instructions well enough to serve as a juror.

Committee Note: Judges may wish to encourage potential jurors to help identify jurors who may not understand the proceeding by continuing:

Please turn to the person sitting next to you and ask the name of the street the

person lives on, whether the person has any brothers or sisters or children, and whether the person can hear and understand my questions.

Committee Note: The judge should allow the jury panel to talk for a minute or two before continuing.

I do not want to know anyone's answers. If you believe that the person sitting next to you doesn't understand you well enough to respond, please ask that person to stand. If that person does not stand, please stand so that the court may ask additional questions.

10. Legal Knowledge

Have you or a close friend or relative ever been trained or employed in the law, law enforcement, or a law-related field? In other words, have you or a close friend or relative ever:

a. been trained or employed as a law clerk, paralegal, judge, legal secretary, lawyer, or court employee;

b. been trained or employed as a law enforcement, corrections, security, parole or probation officer or investigator; or

c. studied law, criminology, forensic science, or any similar field of study, or worked in a related occupation not already identified?

11. Court Experience

a. Are you or a close friend or relative now a plaintiff or defendant in a civil or criminal case which may be tried in a Maryland court?

b. Have you ever been the plaintiff, defendant or witness in a civil trial involving *[issue in this case]*?

c. Have you ever served as a juror or grand juror, in this court or any other court?

12. Other Prospective Jurors

Do you know or recognize any other member of this jury panel?

13. Crime Experience

Committee Note: Judges should ask this question in its entirety, to encourage candid responses that may reveal bias. This question differs from Question 8 regarding statutory qualifications.

Have you or a close friend or relative ever been:

(a) the victim of a crime *[of violence/similar to the crime charged]*,

(b) a witness to a crime, or

(c) arrested for, charged with or convicted of a crime, other than a minor motor vehicle violation?

B. Defendant and Witnesses

Committee Note: Each question in this group should be considered separately and asked or modified to fit specific trial circumstances.

14. Court Interpreter

a. Interpreter Bias

One or more witnesses in this trial may testify with the assistance of a certified court interpreter. Would you weigh the testimony of a witness speaking with the aid of

a court interpreter differently than you would the testimony of any other witness?

b. Language Fluency

Do you speak or understand *[language interpreted]*?

Committee Note: If any member of the jury panel responds affirmatively to Question 14b, the judge should ask at the bench:

> "Will you immediately send a note to the court if you believe the interpreter made an error?"

15. Defendant's Personal Traits

Committee Note: Judges may not ask either part of this question unless specifically requested by the Defendant; judges must take any affirmative responses out of the hearing of the jury panel.

a. If identified and requested by Defendant

The Defendant has identified *him/her* self as *[racial, religious, sexual preference, national origin or other category of potential bias identified by Defendant]*. Do you have strong feelings about the Defendant's *[category of potential bias]*?

b. If requested by Defendant because of possible juror perceptions

Do you have strong feelings about the Defendant's *[personal appearance/other characteristic identified by Defendant]*?

16. Law Enforcement Officer

Would you tend to believe or disbelieve the testimony of a law enforcement officer more than the testimony of any other witness?

17. Prosecution Witness

Would you tend to believe or disbelieve the testimony of a witness called by the prosecution more than the testimony of a defense witness?

18. Defense Witness

Committee Note: Judges should not ask any part of this question unless requested by the Defendant.

In a criminal case, like this one, each side may present arguments about the evidence, but the State has the only burden of proof. The defendant need not testify in *his/her* own behalf or present any evidence at all.

a. Would you be tend to believe or disbelieve the testimony of a witness called by the defense more than the testimony of a prosecution witness?

b. Would you hold it against a defendant if *[he/she]* chooses not to testify or present any evidence?

19. Expert Witness

One or more of the witnesses in this case may be qualified to offer expert opinions in the area(s) of *[area of expertise]*. Would you tend to accept or reject any part of the testimony of that witness because of the witness's area of expertise?

C. Specific Trial Issues

Committee Note: Each question in this group should be considered separately, and asked only if requested and relevant to the pending trial.

20. Charge(s)

The State alleges that the Defendant committed the crime[s] of

_____. Do you have strong feelings about *[that/those]* crime[s]?

21. Drug or Alcohol Use

a. Have you or a close friend or relative ever been trained, employed, or served as a volunteer in the counseling or treatment of persons involved in substance abuse, or sought counseling or treatment for substance abuse?

b. The evidence in this case may include information about the use or abuse of *[alcohol/drug]*. Do you have strong feelings about *[the abuse of alcohol or drugs/the use of illegal drugs]*?

22. Firearms

The evidence in this case may include information about the use or possession of a handgun or other firearm. Do you have strong feelings about handguns or firearms?

23. Graphic Images

The evidence in this case may include images of *[specific photographic evidence]*. Do you have strong feelings about viewing those images?

24. Medical Knowledge

Have you or a close friend or relative ever been trained or employed in medicine or any health-care field? In other words, have you or a close friend or relative ever:

a. been trained or employed as a physician, physician's assistant, nurse, nurse practitioner, laboratory or other medical technician, or emergency medical technician;

b. been trained or employed in a medical office or hospital, or as a health or accident claims investigator, or in any similar occupation; or

c. studied medicine, nursing, emergency medical treatment or any similar field of study, or worked in a related occupation not already identified?

25. Mental Illness, Impairment or Disability

a. Have you or a close friend or relative suffered from, or been diagnosed or treated for, a mental illness or disability, including *[dementia, Alzheimer's disease, or other illness relevant to this case]?*

b. Have you or a close friend or relative been trained or employed in the treatment or care of a person with *[dementia, Alzheimer's disease, or other illness relevant to this case]?*

26. Organizational Bias

Do you support or share the views of any organization or group that seeks changes in the criminal laws, the sentencing of offenders, the rights of victims of crime, or the rights of persons accused of committing a crime? *[Such organizations may include the NRA, ACLU, MADD, NAACP, NORML, Stephanie Roper Committee, and other similar organizations.]*

27. Sexual Abuse

Have you or a close friend or relative ever been the victim of any kind of sexual abuse, been accused of committing any kind of sexual abuse, or been trained or involved in the counseling or treatment of victims or perpetrators of sexual abuse of any kind?

28. Special Knowledge or Expertise *(Other than Medical Field)*

Have you or a close friend or relative ever been trained or employed in the field

of *[specific area of expert testimony or controversy in case]*?

D. Final Questions: All Criminal Trials

29. Presumption of Innocence

You must presume the defendant innocent of the charges now and throughout this trial unless and until, after you have seen and heard all of the evidence, the State convinces you of the defendant's guilt beyond a reasonable doubt. If you do not consider the defendant innocent now, or if you are not sure that you will require the State to convince you of the defendant's guilt beyond a reasonable doubt, please stand.

30. Trial Duration

The trial of this case is expected to last ____ days. Each day, we will usually begin at ____ a.m. and adjourn at ____ p.m. *[Add any other scheduling information.]* In addition to a lunch recess each day, we will usually recess once in mid-morning and once in mid-afternoon. Because our Constitution requires that we convene a jury representative of the community to ensure a fair trial, I must ask you to reschedule anything that would interfere with your service on this jury.

Do you have any urgent personal or business obligation that you cannot reschedule, or any health issue or other concern that could interfere with your ability to give your full attention to this trial?

31. Personal Beliefs

Do you hold any moral, religious or ethical conviction or belief that would prevent you from weighing the evidence and returning a fair and impartial verdict?

32. Render Judgment

Is there anything not yet mentioned that could affect your ability to make a fair and impartial judgment in this case? In other words, is there anything you haven't yet told us that could affect your ability to base your judgment solely on the evidence presented in the courtroom, or to follow the law as the court will instruct you?

E. Individual Follow-up Questions

Committee Note: Judges should conduct individual questioning of prospective jurors out of the hearing of the jury panel. Before beginning, the judge should advise counsel whether they may ask follow-up questions directly to prospective jurors or must request that the judge ask specific follow-up questions.

33. Affirmative Responses

a. Please explain why you indicated that . . . *[question answered]*?

b. Can you put aside that incident or experience as you listen to and observe the evidence that will be presented in this case?

c. Are you certain that you can decide this case fairly and impartially, based solely on the evidence presented in the courtroom and the law as I will instruct you on it?

34. No Response

Committee Note: Judges may wish to question a prospective juror who failed to answer any questions affirmatively, to ascertain that person's capacity to serve as a juror. Additional questions may be needed.

You have not responded affirmatively to any of the questions asked. Have you heard and understood all of the questions I have asked?

III. Seating Procedure

Committee Note: Before proceeding, the judge should review the list of qualified panel members with the Clerk and counsel/parties to verify that all excused panel members have left the courtroom. The Clerk should then call the numbers of all excused persons, and ask those identified to stand. The judge should instruct those standing to return to the Jury Assembly Room, or provide other instructions.

We have now concluded our questions, and found that you are all qualified to serve in this trial. Now each side must narrow the list to those who will serve as jurors and alternates.

Each side has the right to excuse a certain number of prospective jurors. Please follow the directions given by our *bailiff/court officer*. You will either be asked to take a seat in the jury box, or be excused.

Committee Note: The judge should explain the procedure (*e.g.*, alternating strikes) or state "The Clerk will explain the process in a moment."

If seated, please take a seat in the jury box. If excused, please return to your seat in the courtroom.

We are confident that, if seated on this jury, each of you will do your best to be fair and impartial. But, we can only seat 12 jurors and some alternates. Some of you must be excused, and the parties must decide whom they will excuse.

If you are excused, please do not feel offended. Without you, we cannot select a fair jury for this trial, and we thank you for your service today.

If you are selected to serve on this jury, you will take an oath to follow the law, and I will give you more instructions on your role at that time.

METHODS COMMONLY USED IN MARYLAND FOR JURY SELECTION

1. Judge reads each question to the panel as a group. If there is an affirmative response to the question by a show of hands or the juror standing and responding briefly, each juror is asked at that time to approach the bench where the court in the presence of the parties and counsel will take a further response and possibly ask other questions on the subject. The juror returns to his seat and after all jurors have responded, the judge asks the next question. A juror who does not give an affirmative response to any question is not brought up to the bench.

2. Judge reads all the questions to the panel as a group. After each question is read, those with an affirmative response are noted by juror number. At the conclusion of the reading of all questions each juror who responded to any of the questions is brought up individually to the bench and questioned specifically about all the questions he responded to. A juror who did not respond to any of the questions is not brought up to the bench.

3. Judge reads all the questions to the panel as a group. Responses are not noted by the court at that time. After all the questions are read, each juror is brought up to the bench individually and asked if the juror has a response to any of the questions asked. If the answer is yes, the juror is asked to give his response. The judge and the lawyers may ask further questions of the juror at the bench. **[Method disapproved in *Wright v. State*, 411 Md. 503 (2009); *Height v. State*, 190 Md. App. 322 (2010); *James v. State*, 191 Md. App. 233 (2010)]**

4. Judge reads all the questions to the panel as a group. Responses are noted. If there are a sufficient number of jurors who did not respond to any question which would allow the jury to be picked then the responders are dismissed without being questioned and the jury is picked only from among the non-responders without any further individual questioning. This method is used by only a few judges in Baltimore City.

5. In rare cases, the judge may use a written questionnaire that the potential jurors complete in advance of the in court jury selection. The judge and counsel review the questionnaire and conduct individual follow up with each juror as needed. At times an initial questionnaire can be combined with additional questions posed to the jurors in the courtroom using one of the above methods.