

VOIR DIRE AND PROSECUTION TIPS FOR SEXUAL ASSAULT CASES

Before you pick a jury, review the myths and facts about sexual assault, and reacquaint yourself with the preconceived ideas our society members operate out of every day. Design your voir dire to address, and hopefully dispel, the myths which are affecting your case.

Many prosecutors report that women jury members are often the most critical of victims. An understanding of the psychological dynamics in which women jurors might engage in order to distance themselves from the reality of the rape and its chances of ever happening to them, can help you understand why these jurors sometimes blame the victim, resulting in an acquittal for the rapist. In addition, remember that we all grew up in the same society and have operated under similar myths. A case can be won or lost at this stage.

Understanding the span of difficult issues confronting your jury panel, you must use this opportunity to indoctrinate them (and your judge) to the pertinent issues in these cases. Following are some examples of voir dire questions which address some of the inherent problems in sexual assault cases.

Victim Reporting/Inconsistency

Has anyone here ever had to fill out a report for the police or for an insurance company following an event?

Did you fill out that report, or provide information to the police, insurance company, as best you could?

Were there things which you remembered later which were not included in your original report?

In omitting some of those details which you later remembered, were you being untruthful?

Do you agree that it is human and even expected that as we reiterate an event there are variations in the telling of that event?

Has anyone here ever seen a parade? Let's say that in that parade, there are 20 floats, 10 marching bands and 5 people on horseback. You are alert and sober.

Later that evening, you tell your spouse about the parade 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 a friend and tell her about the parade you attended. Would you tell her the exact things you told your spouse? Would you tell her that you had told your spouse about having seen the parade?

Six months later, the subject of the parade comes up at work, and you mention that you saw this particular parade. Do you believe that the details you provide will vary from the original version of the parade you spoke to your spouse about? Why?

Your spouse talked to his friend about what you had seen. Their version of what you said was different. Do you think it is fair to conclude that you were lying when you talked to your spouse? Or that your spouse lied in talking to a friend?

Trauma Response

Is there anyone here who has ever been through a traumatic event, such as a car accident or physical injury, perhaps even a mugging or burglary?

How did you respond right after it occurred? (Ask more than one juror to explain their responses to the trauma; you should get varying responses.)

Mr. Jones, you described a response to your situation which was different than Ms. Green's response to hers. Do you think different people react in different ways to stress?

After the traumatic event, were you able to think clearly?

Did you rely on your instinct to get through it?

After the emergency was over and you had some time to reflect, did you come up with things you wish you would have done differently?

Did you react the same way you had thought you would?

Do you think that rape victims might respond in a variety of ways to trauma as well? Can you make a room in your mind for that possibility and not judge the victim based on the way you think she should react?

Delayed Outcry

Do you think all sexual assaults are reported?

What are some of the reasons a victim of sexual assault might not report the crime? (threats, guilt, embarrassment, fear)

Do you think it is unusual for a victim of sexual abuse not to report it?

Is there anyone here who knows someone who has been the victim of some kind of a sexual assault? (There should be more than one person raise their hand.) In any of these situations, did the victim either never report the crime, or report it after some time has passed?

Can you think of any reasons why a victim might not report a rape to the police immediately after it occurs?

Do you agree that discussing the intimate details of such a humiliating act with total strangers might be more than a traumatized rape victim is capable of right after the rape?

Mr. Jones, could you run to Ms. White and tell her about the last sexual experience you had with your wife? (Obviously, you interrupt him before he does.) Do you see how difficult it is to talk about an event involving sex, even when the sexual act is performed with consent and love? Can you understand how difficult it is for a rape victim to discuss a rape with total strangers?

Is there anyone here who has ever had someone come to them and disclose that they were sexually assaulted?

Did the person provide proof to you?

Did you believe him or her? Why?

Appearance of the Defendant

Do you think you can tell by looking at someone whether he committed a sexual assault?

Does a person who commits this offense have certain characteristics? Such as:

- physical characteristics
- background
- race
- economic level
- type of job
- gender
- age

Do you agree that there is no one certain or specific profile of a person who commits sexual assault?

Ask similar questions about the appearance of a victim and their expectations about how she should look.

Force

Have any of you seen shows on TV about rape?

Agree that it is often portrayed as being very violent?

Do you think that rape is always committed in a violent manner?

What is the difference between sex and rape to you? (consent/force)

What type of force must be used before you can say there has been a rape?

Could the rapist use something other than physical force in order to get the victim to submit to the sexual act? Like what? (threats)

Do you believe that a victim must sustain physical injuries before you can say there has been a rape?

Consent

What are the ways that a person indicates that they do not consent to sexual activity?

Agree that there are different ways of indicating lack of consent?

Agree that a victim's ability to communicate might be affected by things such as fear, personality, age, intimidation?

Is saying "no" enough to indicate there is no consent?

Does a clear, unequivocal "no" mean "no" or does it mean keep trying until it changes?

Does a victim have to physically resist in order to show she does not consent?

Alcohol

Do you believe that we are responsible for our actions and should be held accountable for our crimes?

Do you think that a drunk person can make a reasonable decision about whether to drive while drunk?

If they can't, do you believe it is fair to prosecute them for their actions while drunk? Why?

Have you ever known someone who is pleasant and charming while sober, and has an entirely different personality after he or she drinks?

Should such a person be excluded from prosecution for crimes they commit while drunk?

Do you agree that people can be one way in public, and entirely different in the privacy of their own homes or lives?

Opportunity

Has anyone here ever heard the expression “rolling a drunk”?

What does it mean?

Why would someone chose to rob a drunk person? (won't get caught, easy target)

If a person does something when he or she thinks it is likely they will get away with it, is it any less of a crime?

The victim's responsibility

Do you think that the victim of a rape is ever responsible or deserves what happens to her?

Can she provoke a rape by her appearance? How?

Can she provoke it by being in the wrong neighborhood?

What if the victim's actions made it easier for her to be raped?

For example, what if she got into a car with the rapist?

What if she accepted a date with the rapist?

Is she responsible for the rape?

Is it any less a crime because she made herself vulnerable to the assault?

Suppose your house is broken into and your property is stolen. Is that a crime? Now let's suppose that you left your door unlocked. Do your actions in leaving the house open makes it any less a burglary?

Can you understand why the burglar might choose your house over another house, since it is more vulnerable to the crime?

Opening Statement

Establish a theme for your case, considering the strengths, weaknesses, successful indoctrination of the jury on voir dire and anticipated defense. Stick with the theme throughout the trial.

Demonstrate your belief in your case and your conviction of the defendant's guilt.

Tell the story from the victim's perspective. Help the jury to understand the experience of your victim.

Admit your weaknesses up front.

Be compassionate.

Cross Examination of the Defendant

Show motive for the defendant to exonerate himself with his story.

If the opportunity presents itself, allow him to show his controlling nature and argue it later.

Force him to admit corroborating points made in the victim's testimony.

Be familiar with all versions of his statement and be prepared to impeach.

Limit questions to those areas where you can score points. Do not afford him the opportunity of a second change to convince the jury of his story.

Closing Argument

Argue your theme and argue how the evidence supports it.

Demonstrate corroborating evidence including:

- prior consistent statements
- evidence of injury or trauma
- reaction of your victim to the rape
- outcry statements of other witnesses
- excited utterances and other hearsay exceptions
- excited utterances and other hearsay exceptions of defendant
- details of assault
- peripheral issues lending corroboration
- serology and DNA evidence
- expert testimony

Reiterate what the victim has to "gain" by going through the trial.

Call for accountability, as the jury promised they would do in voir dire.

Show conviction.

– Excerpted from *The Ending Violence Against Women Training Manual*, Colorado Coalition Against Domestic Violence, PO Box 18902, Denver, CO 80218 (303) 831-9632

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on Domestic and Sexual Violence
training • consulting • advocacy

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