

Outline for Voir Dire

- A. Ice Breaker, Power Statement and Introduction**
 - 1. Ice Breaker - “Good morning” routine**
 - 2. Power Statement**
 - 3. Introduce team**
 - 4. Explain not every case is right for every juror. Give a personal example.**
- B. Burden of Proof - Greater weight of the Credible Evidence (51%)**
- C. OnTime Bus Line**
- D. Driving on Icy Roads**
- E. CDL and Experience with Commercial Drivers**
- F. Damages**
- G. “Yeah, But “ [Defenses]**
- H. Inoculation**
- I. Miscellaneous**
- J. Catch - all**

A. POWER STATEMENT

The judge has given you an overview of this case. I will tell you that this case is as simple as A-B-C:

A

Bad

Crash

A Bad Crash that has 3 simple truths: 1) OnTime Bus; 2) OnTime Bus was being driven too fast on the icy road; and, 3) OnTime is responsible for the injuries to the passengers. This accident has changed Carol Parker's life.

Tell the panel that, "Being a good juror and a good citizen means that if this case is not the right one for you to serve on, just let the lawyers and Judge know." Tell the jurors there are no right or wrong answers to the questions you will be asking. All that you are asking of the jury is that they be honest and forthright in their answers.

Do not tell the jurors that you are looking for 12, "...fair and impartial jurors." This will condition the jurors to give the *fair and impartial* response rather than the *honest* response. Let the jury know that many times jurors want to talk privately about an answer to a question. Tell them if any juror would feel more comfortable sharing an answer in private, that person should simply let you know.

Tell the jurors that it's been your experience that many jurors believe that if they don't talk, they won't be selected. Then tell the jurors that the quickest way to be selected is *not* to say anything. In other words, jurors who talk, walk. Jurors who have nothing to say, stay!

INTRODUCTION:

[Pick a juror] [Juror's name], I am going to be talking about a number of issues in this case and if at any point you feel that you are favoring OnTime, would you feel comfortable raising your hand and saying, "Lisa, I feel like I'm favoring the Defendant in this case."? **[Go to another juror]** [Juror's name], would you feel comfortable raising your hand and saying, "Lisa, I feel like I'm favoring OnTime in this case?" **[Ask the entire panel]** Is there anyone on the panel who would not be willing to raise their hand and let me know if at any point they feel like they are favoring the Defendant?

Explain to the jurors that when lawyers refer to a juror having a bias or prejudice, they mean pre-judgement or strong opinions. Tell the jurors that if they have any pre-judgment or strong opinions about any of the issues, to please let you know.

B. BURDEN OF PROOF

In a civil case, the party bringing the case must prove their case by a preponderance of the evidence. Here is what that means: **[Pick up a ream of paper]** As you can see, I have a ream of paper in my right hand. Let's say I present this amount of evidence, and let's say the defense presents **[pick up another ream of paper]** this amount of evidence. If the amount of evidence is equal, we have not proven our case by a preponderance and the Plaintiff loses. However **[pick up a single sheet of blue paper]**, if we present even a single sheet more of evidence **[place the blue sheet on the right ream]**, then by law, we have proved our case by a preponderance of the evidence and the jury must find in favor of the plaintiff. Now let me ask you a few questions. **[Pick a juror]** **[Juror's name]**, the law says that a Plaintiff in a civil case only has to prove their case by a preponderance of the evidence, but there are some people who feel that a person coming to court in a civil case should have to prove their case by more than a preponderance. How do you feel about this?

Is there anyone on the first row who feels that a Plaintiff should have to prove their case by more than a preponderance of the evidence? **If any juror raises their card, thank the juror for his/her honesty.**

Follow up with: **[Juror's name]**, so what you are telling us is that on this issue of preponderance of the evidence, you are telling us that you recognize that the law only requires us to prove our case by a preponderance but you would require us to prove our case by more than a preponderance of the evidence, is that fair to say?

C. OnTime Bus Lines:

1. Has anyone on the jury panel ever worked for OnTime Bus Line or any other transportation company?
2. Has anyone ever worked as any type of bus or truck driver?
3. Has anyone on the panel ever done business with or owned stock in OnTime Bus Line?
4. I want to ask each of you this question, in the past 10 or 15 years, how many times have you or a family member ridden on a OnTime bus?
5. Let me go row by row and ask this question - who uses public transportation at least once a month?
6. Now, please raise your hand if you have not used DART or other public transportation in the past year.
7. On a scale of 0 - 10, with 0 being very negative and 10 being very positive, what is your opinion, in general of OnTime bus drivers?
8. Same scale of 0 - 10, now the question is, in your opinion, how unsafe or safe are OnTime bus drivers?
9. What would you consider to be characteristics of a good bus driver?
10. What would you consider to be characteristics of a bad bus driver?

D. DRIVING ON ICY ROADS

1. I want to ask each one of you the following question - In the past 10 years, how many times have you driven on roads that were icy?
2. For those of you that have driven on icy roads, please raise your hand if you did not have an accident?
3. There are some people who believe that if the roads are icy and there is an accident, there is no one to blame. Please raise your hand if you feel this way.
4. Let me ask this question a different way. Using my scale of 0 - 10, how strongly do you disagree or agree with the following statement: **A person should drive slower and more carefully when the roads are icy.**
5. How strongly do you disagree or agree with this statement: **When it comes to icy roads, even a professional driver should be driving cautiously and slower.**
6. Is there anyone who feels that if the roads are icy, bus companies should not be held accountable or responsible if their driver causes an accident and passengers are injured?
7. Why should a bus company be held accountable in that situation?

E. CDL and EXPERIENCE DRIVING TRUCKS

1. **Ask the panel:** Who on the panel has a Commercial Driver's License?
2. **Ask the panel:** How many of you drive a company vehicle as part of your job?
3. How many people in the first row who drive a company vehicle, drive that vehicle to and from work...second row...?
4. **Ask a jurors who drive company vehicles:** Has anyone ever had an accident in that vehicle? Any juror who has had an accident in a company vehicle:

A. Was the accident your fault or the other driver's fault?

B. If an accident was the fault of the company driver, do you agree that the company would be responsible for paying the full cost of repairing the other vehicle?

C. Does everyone on the panel agree that if the company driver caused an accident, the company must pay the cost to repair the damage to the other car?

D. What if it was a real expensive car, should the company be required to pay the full amount of the repairs, even if the repairs are really expensive?

E. Who disagrees and feels the company should not be required to pay the repairs if they are expensive?

In addition to paying for the damage to the car, should the company have to pay for all the harm suffered by the driver of the other car. By harm I'm talking about medical bills, lost wages and pain and suffering. Let's talk about each of these.

F. DAMAGES

Moral Opposition

1. Are there any members of the jury panel that have any personal, moral, or religious opposition to awarding money in a personal injury case, even when supported by evidence?

Limits on Damages Awards

1. Is there anyone on the panel who feels that there should be limits on the amount of money that a jury can award in a personal injury case. Please raise your card if you agree with tort reform and feel that the amount of money that a jury can award in a case should be limited?

If any juror raises their card, follow up with:

A. [Juror's name], so what you are telling us is that you would put a limit on the amount of money that should be awarded in this case, even if the evidence proved that a greater amount of money should be awarded?

B. It's clear that you feel strongly about this. What you are telling us is that you know the law says that damages to be awarded should be based on the evidence and caps or limits should not be imposed, the truth is, no matter what I would say, the defense lawyers or even the judge, you are telling us that you would impose a cap or limit on damages, regardless of the evidence, is that fair to say?

REPEAT QUESTIONS A and B with EVERY juror who raised their hand on this issue.

Medical Bills

1. One category of damages that we will be seeking in this case are past and future medical bills. Is there anyone on the jury that would be unwilling to awarding past and future medical bills?
2. There are some jurors that have a problem with awarding money for future medical. On a scale of 0 to 10, with 0 being uncomfortable and 10 being comfortable, how uncomfortable or uncomfortable would you feel awarding money, if supported by the evidence, for future medical bills?

Lost Wages (If Applicable)

1. Another category of damages that we will be seeking in this case are past and future wages. Is there anyone on the jury that would be unwilling to awarding past and future wages?
2. There are some jurors that have a problem with awarding money for future wages. On a scale of 0 to 10, with 0 being uncomfortable and 10 being comfortable, how uncomfortable or uncomfortable would you feel awarding money, if supported by the evidence, for future wages?

Pain and Suffering

1. The final category of damages that we will be seeking in this case are pain and suffering damages. There are some people who do not believe in awarding money for a person's pain and suffering or mental anguish. Is there anyone on the jury that does not believe in awarding money for pain and suffering, even if such pain and suffering is supported by the evidence?
2. On a scale of 0 to 10, with 0 being uncomfortable and 10 being comfortable, how uncomfortable or uncomfortable would you feel awarding money, if supported by the evidence, for pain and suffering?

Inability to award a lot of money for Pain and Suffering

1. There are jurors over the years that have said to me, "Lisa, I could award some money for pain and suffering but I could not award hundreds of thousands of dollars for pain and suffering, even if such an award was supported by the evidence. Please raise your hand if you feel this way?"
2. So once again, let me use my scaled question to find out how each of you feel about this. On a scale of 0 to 10, with 0 being uncomfortable and 10 being comfortable, how uncomfortable or uncomfortable would you feel awarding hundreds of thousands of dollars, if supported by the evidence, for pain and suffering?

More than a Preponderance to award money for Pain and Suffering

1. This is my final category on damages so I need y'all to be completely honest with me. Jurors have said to me, "Lisa, I can award money for pain and suffering and I could even award hundreds of thousands of dollars but you would have to prove it by more than a preponderance of the evidence. Please raise your hand if you feel like you are the kind of person that would require us to prove our damages by more than a preponderance of the evidence.
2. Ok, you know what's coming. This is the final scaled question. On a scale of 0 to 10, with 0 being uncomfortable and 10 being comfortable, how uncomfortable or uncomfortable would you feel awarding a lot of money damages based on a preponderance of the evidence?

G. “YEAH, BUT . . . “ (DEFENSES) [WE NEED TO ANTICIPATE AND DIFFUSE THE ANTICIPATED DEFENSES (I CALL THE DEFENSES “YEAH, BUTS”)].

1. We expect the defendants will say, “It’s not the driver’s fault because the road was icy”. Is there anyone on the panel who feels that if a road is icy, a company should not be held accountable for how their driver drove?
2. We expect the Defendant to say, “Yeah, but this was an act of God and it is not their fault”. If the defendant claims they are not responsible because ice is an act of god, is there anyone who would automatically side with the defendant and not consider all the evidence in the case.
3. The defendant may say “yeah, but” the driver did the best he could. Is there anyone who would automatically side with the defendant and not consider all the evidence if they simply say the driver did the best that he could.
4. I think the defendant may also say, “yeah but” the plaintiff’s are not that seriously hurt and you should give them a lot less money. Is there anyone who would automatically side with the defendant and not consider all the evidence if they simply the injuries are not that bad?

H. INOCULATION

Sympathy

I believe that the Defense lawyer will ask if any of you would start the trial favoring the plaintiff because you feel so much sympathy for her. The law says that you can not decide who should win the case based on sympathy. I want to be the first one to tell you that the plaintiffs are not seeking any sympathy, they are seeking fair and just compensation for their injuries. If the defense lawyer asks about sympathy, can everyone assure the Defense lawyer that you will decide this case on the evidence and the law and not on sympathy?

Favoring Plaintiffs over the Company

The law requires jurors to treat parties to a case the same. That means that a juror can not start the trial favoring the Defendant more than the Plaintiffs and the Plaintiffs can not be treated more favorably than the Defendant. If the defense lawyer asks if anyone is starting out favoring the injured plaintiffs over OnTime, will everyone assure the defense lawyer and the judge that you will start the parties off even and you will not start the trial favoring the Plaintiffs?

On behalf of the Plaintiffs, we do not want anyone on the jury panel to start the trial favoring us over the Defendant. If you tell us that you are favoring us over OnTime, the Judge will not allow you to serve as a juror in this case. Will everyone on the jury panel promise the lawyers for the Defendant that you will treat the parties equally and not start the trial favoring us over the Defendant?

Negative Experience with OnTime or any other transportation company

The lawyers for OnTime will be asking you questions to see if anyone has ever had a bad experience with OnTime or with any other bus or trucking company. Is there anyone who has had a bad experience? If so, the law will still allow you to serve as a juror in this case if you can set that experience aside and decide this case based on the evidence and the law. Can you assure the defense lawyers and the Judge that you will set aside that experience and decide this case based on the evidence you hear and the law given to you by the judge?

If we have gotten this far, the case must be valid

The Defense lawyers may ask you if anyone believes that this case must be valid because we have gotten this far. Will each of you assure us that if the Defense lawyer asks you this question that you will tell him/her that you will wait to hear the facts and evidence before deciding if this case is valid?

Have to give money even if we don't prove our case

The Defense lawyers may ask you if anyone believes that these plaintiffs should be given money even if we don't prove our case. Will each of you assure us that if the Defense lawyer asks you this question that you will tell him that you will not award the plaintiffs any money unless we prove our case?

Bad Experience with an accident

The lawyers for OnTime will be asking you questions to see if anyone has ever had any type of accident. I'm certain that some members of the jury panel have had such a bad experience but the question is whether you can decide this case on the

evidence and the law and not base your decision on the bad experience that you had. Can each of you assure the defense lawyers that you will set aside that experience and be fair if you are chosen as a juror?

I. MISCELLANEOUS:

1. Is any one on the jury panel a member of CALA (Citizens Against Lawsuit Abuse) or any other group or organization that favors limiting the amount of money a person is entitled to recover in a lawsuit?

2. A final concern that I have is that Ms. Parker is African American and some people would feel very uncomfortable awarding a large amount of money to someone who was African American. Is there anyone on the panel who feels this way?

3. Along these same lines, I'm concerned that there may be some jurors who might be thinking that even if a company is negligent, the plaintiff should not get a lot of money because the juror doesn't have a lot of money, so why should the plaintiff get a lot of money. Is there anyone on the panel who feels this way?

J. CATCH-ALL QUESTIONS

1. From what you have heard so far about this case, is there anyone who would start the trial favoring the bus company, even if only slightly?
2. Is there anyone sitting out there right now thinking to themselves, from what I've heard so far, I'm already leaning or favoring OnTime Bus Line?
3. I'd like everyone to raise their hand. Please keep your hand up. My question is this, if we are starting out a little bit behind OnTime, put your hand down.
4. Is there anyone sitting in the panel saying, if only Lisa had asked me this question, she would have learned something very important about me?
5. Is there an question I should have asked that would have told me a lot about how you feel about a case like this?

CHALLENGE FOR CAUSE

Inability to Award Money for Pain and Suffering or Mental Anguish Damages

1. [JUROR'S NAME] You told us that you would have a problem awarding money for pain and suffering or mental anguish such as pain and suffering or mental anguish or pain and suffering or mental anguish. I appreciate your sharing that opinion with us. Would you mind telling us a little more about your feelings or opinions about this?
2. Would you agree with me that it would be difficult for you to think of a case where awarding money for pain and suffering or mental anguish would be appropriate?
3. I want you to know that there is absolutely nothing wrong with your having these feelings. Let me ask you this, wouldn't you agree with me that you could probably be a good juror in this case if we were not asking for pain and suffering or mental anguish?
4. What I hear you saying is that you could award money for more concrete losses (like medical bills or lost wages) but you do not think it is fair or right that individuals should receive money for pain and suffering or mental anguish in a case like this regardless of the evidence?
5. Would it be fair to say that you have very strong feelings about this issue and that you have held this view for quite a while?
6. In light of what you told us, wouldn't you agree with me that it would be very difficult - if not impossible - for a person to set aside strong opinions or views that they have held for quite a while?

7. [JUROR'S NAME], even if the law and evidence allowed money for pain and suffering or mental anguish, you disagree with this law, and you have every right to disagree with this law?
8. As much as you would like to set aside your feelings about awarding money for pain and suffering or mental anguish and follow the law that the judge will give you, it's only human nature that you really would not be able to do that. Wouldn't you agree with me?
9. [JUROR'S NAME] I can't tell you how much I appreciate your honesty on this subject. Given what you have told us and how strongly you feel about it, wouldn't you agree with me that the plaintiffs are starting out with a little bit of a disadvantage since you know we are seeking money for pain and suffering or mental anguish and you have negative feelings about that? Wouldn't you agree with me that the plaintiffs are starting out at a disadvantage?
10. And, would you agree with me that in order for a person to be totally fair, neither side should be starting out with a disadvantage?
11. And, therefore, [JUROR'S NAME], wouldn't you agree with me that while you might be perfect in every other case here at the courthouse, that you wouldn't be totally fair to my client if you were chosen as a juror on this case?
12. [JUROR'S NAME], I can't tell you how much I appreciate your honesty on this subject. Under the circumstances, do you mind if I ask the judge to excuse you from serving as a juror on this particular case?