

VOIR DIRE

I. I. Preliminary Remarks

Good morning, ladies and gentlemen, my name is Tygh Tone and I am the Common Pleas Judge who will be presiding over this case.

I suspect some of you were not pleased when you received your jury summons to appear here today. I also understand that some of you are nervous, as anyone would be when asked to perform a task for the first time – when asked to spend time with total strangers in an unfamiliar and not always comfortable building, to sit in judgment on a case about which you know nothing. Who wouldn't be a bit anxious under these circumstances?

You are not alone. All of us are a bit nervous, including the lawyers, the parties, and the witnesses because, although we are all prepared, no matter how many trials we have been involved in, we don't know you and no one knows what twists and turns this trial may take and, like you, you don't know what special demands may be made of us. What we do know is that for the next few days or so we will all be part of a special team involved in an important task – you, me, these attorneys, everyone involved are here to seek justice – and this trial will always be a special part of your experience as an American citizen.

All of which is my way of saying “welcome” to the Erie County Courthouse.

As a citizen of this county, you may serve your country in many ways – by joining the Armed Forces, by voting, by paying taxes and by being a juror. Being a juror is perhaps the most direct and most significant. When the door to the jury

room closes behind you, when you deliberate on your verdict – you will be the justice system.

Service as a juror is one of the most valuable civic duties which you can perform. Trial by jury is one of the most valuable of our rights which we all possess here in the United States. The preservation of this right is strengthened by your willingness to respond to the call for jury service. It is our intention that your service as jurors be a rewarding experience, even though your pay not be. We know that your service represents a huge inconvenience to each of you. I hope you all recognize your service is important. On behalf of the Court, counsel, and this community, I commend you and thank you for your public-spirited service over the next few days.

Although all of you have been called as “prospective jurors” in this case, only (8 - 12) of you, and some additional alternates, may serve as trial jurors in this case. Therefore, before our trial starts, our first order of business is the selection of those jurors. We call this jury selection process voir dire (“to speak the truth”). You will be sworn and the Court and counsel will question you to determine your ability to be fair and impartial in this case. Each party is entitled to jurors who approach this case with open minds and agree to keep their minds open until a verdict is reached. Jurors must be as free as humanly possible from bias, prejudice, or sympathy and not influenced by preconceived ideas either to the facts or the law. You are all undoubtedly qualified to serve as a juror in this case; however, there may be something that could disqualify you in this particular case.

****Will the bailiff please administer the oath of the prospective jurors and then call the first (20 / 24) of you to sit up here.

II. II. Exam by the Court

I am now going to begin the questioning of those of you seated up here concerning your qualifications to serve as jurors in this case. All prospective jurors, including those in the rear of the courtroom, should pay close attention to my questions. If you are called to sit in the jury box you will be asked to give your answers to these questions. Remember these questions are not meant to pry into your personal affairs but to assure both sides of this case fair and impartial jurors. If there is any fact or reason why any of you might be biased or prejudiced in any way, you must disclose such reason when you are asked to do so. It is your duty to make this disclosure. After I ask my questions and counsel is permitted to inquire of you. We will then recess for a few minutes. The lawyers will meet with me in my chambers and agree on a jury. The rest of you will be excused and no reason will be given. If you are excused, please don't be offended and don't try to figure out why. We hope that you will have another opportunity to serve.

This trial, we estimate will last _____ days. Do any of you have any medical or personal issues that would make it difficult or impossible to serve as a juror?

The lawyers for each party will now introduce themselves/their firms, and introduce their clients. [They will also list the names of the witnesses they anticipate calling during the trial.]

Do any of you know the lawyers, their firms, the parties or prospective witnesses?

This is a civil/criminal case captioned:

A B C

VS

X Y Z

Have any of you heard or have any prior knowledge of the facts or events of this case?

Pretrial Publicity. You may have impressions or feelings about this case based on publicity you read or heard in the past. However, such news reports are not always accurate.

Further, and more importantly, you have not heard any evidence yet – and your decision in this case **must** be based on evidence in the courtroom and legal instructions given by the Court. TV, radio and newspaper articles are not evidence.

In other words, can you judge this case on the facts and law presented to you in this courtroom and disregard – wipe the slate clean of – any preconceived ideas or conclusions you may have had before you came here today?

Also, during the trial it will be necessary for you to avoid media reports. Don't read the newspaper, don't listen to the morning or evening radio or TV news.

This case concerns

(Criminal indictment – defendant has plead not guilty – the question of guilt or innocence is for you to decide.)

(Civil case – a plaintiff begins a civil case by the filing of a complaint and the defendant either admits or denies the allegations in the complaint by the filing of an answer to the complaint.)

Having heard the nature of this case, is there anything that you feel prevents you from giving these parties a fair trial?

(Criminal) The fact that the defendant is in court for trial, or that charges have been made against him/her, is no evidence whatsoever of his/her guilt. You are to consider only evidence properly received in the courtroom in determining the guilt or innocence of the defendant. The defendant has been arraigned and has entered a plea of “not guilty” which is a complete denial, making it necessary for the prosecution, acting through the prosecuting attorney, to prove beyond a reasonable doubt the case against the defendant. Until and unless this is done, the presumption of innocence prevails.

How many of you have served previously as a juror in a civil/criminal case?

What was the nature of the case?

What verdict was reached?

Can you set aside whatever you heard in that case and decide this case on the evidence presented by these lawyers in this courtroom and the law given by me.

You understand that there are substantial differences in the rules applicable to the trial of civil/criminal cases. This is particularly true respecting the burden of proof. In a civil case we say that the plaintiff must prove his/her case by a preponderance of the evidence. In a criminal case, the defendant is presumed to be innocent and before he/she may be found guilty, the prosecution must prove his/her guilt beyond a reasonable doubt. Will each of you be able to set aside the instructions which you received in your previous cases and try this case on the instructions given by me in this case?

Have you ever been a (plaintiff / defendant / witness / victim) to a lawsuit?

Have you had any (legal / medical / law enforcement) training or experience?

Would you be able to listen to the testimony of a (police officer / doctor/ expert) and measure it by the same standards you use to test for credibility of any other witness?

Have you had any experience as a lawyer or working in a law office or court?

Are any of you related or were any of you acquainted before today? If so, will it create any problem if you serve on the same jury?

It is important that I have your assurance that you will, without reservation, follow my instructions and rulings on the law and will apply that law to this case. To put it somewhat differently, whether you approve or disapprove of the Court's rulings or instructions, it is your solemn duty to accept as correct these statements of law. You may not substitute your own idea of what you think the law ought to be. Will all of you follow the law as given to you by me in this case?

Have any of you been convicted of a crime which by law renders you disqualified to serve as a juror?

(CRIMINAL) Is anyone a chronic alcoholic or drug dependent person?

Do any of you have an interest in this cause?

(CRIMINAL) Were any of you a member of the grand jury that returned an indictment in this case?

Are any of you a party to another pending court action in which any one of these lawyers is involved?

Have any of you been subpoenaed as a witness in this case?

Do any of you have any belief or feeling toward any of the parties, lawyers or witnesses that would make it impossible or difficult for you to act fairly and impartially as to both parties?

Do any of you have any interest in the outcome of this case?

Plaintiff's counsel may now question the panel.

Defense counsel may now question the panel.

Do you know of any other reason, or has anything occurred during this question period, that might make you doubtful you would be a completely fair and impartial juror in this case or why you should not be on this jury? If there is, it is your duty to disclose the reason at this time.

The Court will now recess for 15 minutes. I will meet with counsel in chambers to agree on 8 / 12 jurors and two (2) alternate jurors. When we return, we will announce the panel, excuse the rest of you and will proceed with opening statements.

III. REMARKS AFTER JURY SELECTION

As you begin your service, I have several basic rules to review with you. It is important that you be fair and attentive throughout the trial. Do not discuss this case among yourselves or with anyone else. Do not permit anyone to discuss it with you or in your presence. Do not form or express any opinion on the case until it is finally submitted to you.

It may be difficult for you to understand why you may not discuss this case among yourselves until it is finally submitted to you. You will receive the opening statements, the evidence, the final arguments and the law in that order. It would

be unfair to discuss the case among yourselves before you receive everything necessary for your decision.

You must explain this rule to your family and friends. Until the trial is over, control your natural desire to discuss the case – both here and at home.

Do not talk with the lawyers, parties or witnesses during the trial. Likewise, the participants in the trial must not talk with you. If anyone should attempt to discuss the case with you, report the incident immediately to my staff.

You may not investigate or attempt to obtain additional information on this case outside the courtroom. It is highly improper for you to attempt to do so. This means no library or internet research, no talking to medical or legal friends or neighbors – no independent research outside this courtroom. Again, avoid any reports about the case – no TV, radio, newspaper or computer stories. Violating these rules may cause a new trial or may require a penalty of disobedience.

In the event you experience a personal problem, you may explain the matter to one of my staff members. These instructions apply to you at each recess and throughout the trial. I will remind you to “remember the rules” instead of repeating them at each break.

You may take notes, as a memory aide, during the trial. No juror is required to take notes; this is a matter of personal choice. You are to keep your notes confidential and personal until your deliberations begin. After the trial, the notes will be destroyed. You should not take notes if it will distract you from listening to the testimony and observing the witnesses. In other words, do not let

note taking interfere with your concentration on the testimony of the witnesses or explanation of exhibits. Please leave notes on your chair at each recess. The Bailiff will deliver them to you in the jury room, along with any exhibits admitted in evidence, when you deliberations begin.

Evidence comes to you by way of testimony and exhibits. Exhibits that are admitted into evidence go back with you for your further review in the jury room when it comes time to deliberate. However, testimony cannot go back with you. Please pay close attention to all testimony as you should not expect to have testimony repeated. If you cannot hear testimony at any point during the trial, please raise your hand immediately so it can be repeated while the witness is still on the stand.

Please note the temperature of our courtroom and dress accordingly. It's an older building and we do our best to regulate the temperature. Feel free to bring reading material for breaks if you wish. You may bring a drink in the courtroom but no eating, please. We shall agree on the next day's starting time at the end of the previous day.