



MEMORANDUM

TO: LAWYERS
FROM: JUDGE WILSON
DATE: September 4, 2012
RE: GUIDELINES FOR TRIAL

Please carefully read the following:

1. Be prepared, during the court portion of the voir dire, to identify your client(s), representatives of your party, your paralegal and others who may be at counsel table during the trial.
2. For voir dire:
 - a. Take long enough, but not too long (20 minutes per party should usually be enough).
 - b. Ask questions of the entire panel, unless there is a reasonable ground for singling out an individual juror (examples: something on the jury questionnaire form, such as former employment if the juror has listed "retired"; juror raises hand in response to a general question, etc.) - but do not single out a juror unless there is truly a reasonable ground for doing so.
 - c. If there are questions you would prefer that I ask, please advise. Do not cover the same ground that I have covered.
 - d. Please let me know, (before trial), if there are any questions you may want to ask which might be in a "sensitive" area (psychological treatment, convicted of crime, etc).
 - e. Ask questions - no soften-'em-up speeches.
 - f. Challenges for cause may be made at the bench. Absent unusual circumstances, these challenges should be made during voir dire, contemporaneously, and may well be denied as untimely if raised, for the first time, during the time counsel are in the process of exercising peremptory strikes.
 - g. Ask pointed - not open ended - questions. No speeches.
 - h. The purpose of a proper voir dire is to ferret out "fixed notions - not to "pump 'em ful of fairness."
 - i. I want to avoid correcting counsel in front of the jury, but I ain't too good to.
3. Objections and motions before the jury should be very spare (examples of improper objections: "I object to that question, Your Honor, because I am sure that Charlie Witness didn't read that document very carefully before he signed

it”; or, “I object, Your Honor, because Charlene Witness has already testified that she can’t remember”. [Obviously these “speaking objections” would suggest an answer]). While bench conferences can be distracting, they are preferable to statements such as those cited above. Most objections should be stated in one to three words (“hearsay”, “asked & answered”, “irrelevant”, etc.) “The question assumes a fact not in evidence” is one of those rare acceptable exceptions to the one to three word rule.

4. To repeat: speaking objections and sidebar comments are strictly inappropriate.
5. With respect to identifying persons whom I will want to voir dire the jury about:
 - a. Please advise opposing counsel and me before voir dire of any person known to you or to your client who may come to counsel table or who may be seen during the trial with you, your client or your witness. Of course, you may not be able to anticipate all such persons, but counsel are instructed to take affirmative action in this regard.
 - b. Please consult with your respective clients and advise opposing counsel and me of the names of family members, friends and others who may come to the trial as spectators (full or part time).
 - c. You will be asked to identify your prospective witnesses to the prospective jurors. You will also be asked to identify your expected (and possible) spectators. If a friend of a juror later shows up during the course of the trial as a spectator and is seen (by the jurors) visiting with you and/or your client, I may conduct a hearing if the spectator wasn’t previously identified.
 - d. If you learn after the trial has started that some such person may attend, please bring this to my attention at once.
6. Please advise opposing counsel, and me, before jury selection starts, of any jurors who may have any “connection” with the case, partners, witnesses, lawyers, your spectators, etc. I want to deal with this on the record before selection starts.
7. Please stand when you speak, in every instance.
8. Please do not address parties or witnesses by her or his first name unless such familiarity is clearly appropriate, and is not likely to be offensive to the witness or any juror. In case of doubt, don’t.
9. Please let me know--in advance--if you think your opening statement will exceed 20 minutes.
10. Please do not “submit” a witness as an expert. When you think you have established a witness’s qualifications, start your substantive questions. Opposing counsel can object, or ask to take the witness on voir dire regarding qualifications. I do not want to “certify” a witness as an expert--this is an unnecessary (and perhaps unwarranted) step.

11. I realize that a trial is not a trial ad course, but counsel are expected to pare their examination of witnesses to the essentials. It is good advocacy to do this, but, be that as it may, jurors are sacrificing to be here. They should not be punished by belabored examination. I recommend, as a starter, listening to, or reading, Irving Younger's Ten Commandments of Cross-Examination. TV programs may be good entertainment, but their witness examinations are not for the real courtroom.
12. Read each of the paragraphs above, and take them to heart.