

APPENDIX B

Proposed Voir Dire Questions for a Gang Case

The purpose of questioning prospective jurors is to determine whether those jurors harbor any biases, prejudices or opinions such that they could not well and truly try the cause pending before the court. To that end, it is the prosecutor's responsibility to uncover those biases, prejudices or opinions. Without question, the issue of street gangs is a hot-button point for many members of the community. The gang prosecutor, therefore, seeks during *voir dire* to explain some of the terms and concepts that the jury is expected to encounter during the upcoming trial in order to reveal potential juror bias. The tangential effect, of course, is to educate the jury on the law upon which they will be instructed.

The gang prosecutor is saddled with another task, however. Many jurors will honestly state that they do not like gang members. Defense attorneys will, therefore, move to excuse those jurors, citing "cause." If, however, every juror who dislikes or disapproves of gang members were excused from the panel, the only jurors left would be other gang members. It is vitally important for the gang prosecutor to assertively rehabilitate jurors who offer strong opinions on gangs and gang members. Only then will the *voir dire* process truly result in a fair pool of jurors, representative of the community.

The following proposed questions are merely examples of approaches a gang prosecutor may take to expose certain jurors' biases and rehabilitate others.

Direct the juror's attention toward the legal definition of a criminal street gang:

If you were asked to define the term 'gang,' how would you do it?

(This is a good opportunity to correct the jurors' misimpression of the actual definition.)

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If the court gave you an instruction that defined ‘criminal street gang,’ would you promise to apply that definition in this case?

Would any of you ignore the court’s definition in favor of your own?

Face the issue head on (then rehabilitate):

Does anyone think that it’s okay to be a gang member?

(A “yes” answer here should immediately bar that juror from the prosecutor’s case. No amount of rehabilitation or explanation will suffice. That juror should be gone. Period.)

Does anyone (juror # _____, do you) have negative thoughts toward gangs or gang members?

(Most will answer in the affirmative. That’s okay. See the next questions.)

Does everyone agree that it is okay (acceptable) to dislike gangs and gang members?

(Here, the jurors must be reminded that it is acceptable to dislike gang members, just as it is acceptable to dislike murderers. The jurors’ inherent dislike of gang members is not grounds for their disqualification. Get them used to the idea that gang membership is a bad thing, and it is okay to say so. Jurors are perfectly qualified to sit on a gang case as long as they agree that they will not convict the defendant of the crime *solely* because of his gang affiliation. The juror should be reminded to listen to the facts of the case with an open mind, and then apply the law to those facts. The following questions address these points.)

That you do not like gang members does not mean that you will automatically find the defendant guilty of _____ crime, does it?

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If you are not convinced beyond a reasonable doubt that the defendant committed the crime of _____, you would not convict him of that crime just because he is a gang member, would you?

(“No” answers to these questions serve to rehabilitate the juror who doesn’t like gangsters, yet explain that jurors do not have to hide from the fact that gang members offend them.)