

## Robinson v. Party City Voir Dire

8.01-358: “if it shall appear to the court that the juror does not stand indifferent in the cause, another shall be drawn or called and placed in his stead for the trial of that case.”

### [Learn the Jurors’ Last Names and Use Them]

#### Introduction

Good morning. My name is Sharif Gray, and I represent Ms. Toewanda Robinson along with my partner Ben Rand.

This is an important case about safety at a retail store.

#### SLIDE 2: Ask Jurors To Talk

Now is the only time during the trial that we get to hear from you. The rest of the trial, you will be listening to everyone else talk. So, for this part of the trial, we want to hear from you, so we are hoping that you will do most of the talking. And I thought that the best way to get the conversation started is to ask you: “would you all please agree to talk?”

Great. And if it gets a bit quiet, would it be okay if I get the conversation going again by asking: “would someone please talk to me?”

#### SLIDE 3: Introduce Jurors To Each Other

The judge asked if you knew any of the parties in this case. I’d like to know if any of you know each other. Go ahead and look around to see if you know anyone.

And please let me know if you do.

#### SLIDE 4: Brutal Honesty

To make sure this a fair trial for both sides, we need to have an open and honest conversation about whether this is the right jury for you to be on. And to do that today, we need to be brutally honest. That is why we asked Ms. Robinson to not be in the courtroom for this part of the trial, because we want you to be brutally honest with us. This is a very important case for her, so she will be here when she testifies and for some of the other parts of the trial. Does anyone have an issue with her not being in the courtroom?

What do the words, brutal honesty, mean to you? Say more? Who else?

#### SLIDE 5: Do You Want To Be here?

Being brutally honest, do you want to be on this jury?

I am going to ask you again at the end. So if you change your mind, please let me know.

**SLIDE 6: Whether This Case Is Right For You**

I am going to ask you questions about any opinions that you may have that could influence how you view this case. And I need to do that so we can help decide whether this is the right case for you to be on the jury. Is that okay with everyone?

And the truth is that not every case is right for everyone, and that is why we take so much time to go through the jury selection process. That is why the judge introduced you to the parties and to the lawyers, because we all know that it would not be fair if there were people on the jury who were friends with Ms. Robinson or the Defendant. Does that make sense?

We are not looking for jurors who are more likely to help Ms. Robinson, and we are not looking for jurors who are more likely to help the Defendant.

**SLIDE 7: Thoughts About Personal Injury Law Suits**

Being brutally honest, before I started doing this type of work, I would not have been the right juror for this case, because I was not a big fan of personal injury cases. I thought that many of them were created by attorneys to make money.

Being brutally honest, how many of you also feel that way? Tell me more? Who else?

[If no response: are you telling me that everyone here likes all of those personal injury billboards and TV commercials?]

**SLIDE 8: Concerning Issue: Trip and Fall**

This is a case about a trip and fall. Being brutally honest, who here is saying in the back of their mind, I don't care what the evidence is, when someone trips and falls, that person must be at least somewhat at fault? They must not have been being careful enough?

**SLIDE 9: Concerning Issue: Sympathy**

I need to talk to you all about sympathy. We are all human, so we all feel sympathy, and that is okay. But what we can't do is let sympathy impact your decision in this case. So if you were to feel sympathy for Ms. Robinson, you cannot give us a free pass and not require us to prove our case. The law requires that we prove our case with evidence—sympathy or no sympathy—that's the law. Is everyone okay with that?

There is another side of sympathy that concerns me. The Defendant did not mean to hurt Ms. Robinson. And my concern is that, because we are talking about a significant amount of

money in this case, is that you might consider sympathy for the Defendant when making your decision. The way the jury is supposed to make a decision in a case like this is like a group of appraisers. The jury's job is to determine what was taken from Ms. Robinson's health and quality of life and then determine the fair value of that without any outside concerns like sympathy. But that is easier said than done. Some people will say, that in all honesty, "I cannot assure the Court that I will put sympathy aside for the Defendant, because the Defendant did not mean to hurt Ms. Robinson and we are talking about a significant amount of money." Being brutally honest, how many of you say that I cannot assure the court that I will not consider sympathy for the Defendant?

Everyone else here agrees that, no matter how much the money, sympathy will not impact their decision even a little bit?

**SLIDE 10: Fair Value of Health and Quality of Life?**

At the end of this trial, it will be your responsibility to determine the full and fair value of what was taken from Ms. Robinson's health and quality of life.

You will be asked to put a dollar amount on 11 different things:

**[Show and Walk Through Damages Easel Board]**

Example: What are your thoughts on putting a dollar amount on the fair value of having to have a knee replacement?

- (1) Any Bodily Injuries She Sustained, And Their Effect On Her Health According To Their Degree And Probable Duration;
- (2) Any Physical Pain She Suffered In The Past;**
- (3) Any Physical Pain That She May Be Reasonably Expected To Suffer In The Future;
- (4) Any Mental Anguish She Suffered In The Past;**
- (5) Any Mental Anguish That She May Be Reasonably Expected To Suffer In The Future;
- (6) Any Disfigurement Or Deformity,**
- (7) And Any Associated Humiliation Or Embarrassment;
- (8) Any Inconvenience Caused In The Past;**

(9) Any Inconvenience That Probably Will Be Caused In The Future;

**(10) Any Medical Expenses Incurred In The Past.**

(11) Any Medical Expenses That May Be Reasonably Expected To Occur In The Future.

**SLIDE 11: High Anchor**

At the end of this case, we are going to ask you for a verdict that does not exceed 3 million dollars. When you hear that number, being brutally honest, who here is saying in the back of their mind, I don't care what the evidence is, I will never come back with a verdict for 3 million dollars?

**SLIDE 12: Opinion Witness Credibility?**

One of the things that you will need to do during this case is decide whether to believe what the witnesses are telling you and that includes paid opinion witnesses. At the end of this case, the judge will tell you that you can use your common sense when deciding whether to believe a witness. And the same goes for paid opinion witnesses: are they telling it like it is or do they seem to be pushing hard for the side that hired them? Some of them are great; they are legitimate experts that we should rely on. Others, really go out of the way to help the side that is paying them and should not be believed. You will get to use your common sense to decide that. Do all of you feel comfortable relying on your common sense when deciding whether to believe a paid opinion witness? Is anyone uncomfortable doing that?

**SLIDE 13: Anything Else?**

Is there a question that I did not ask that I should of? Is there anything else that I need to know to make sure that Ms. Robinson and the Defendant have a fair shot with you on the Jury?

**SLIDE 14: Last Question**

Who would like to be on the jury?

Thank you. We look forward to working with each of you today.

**And, hopefully, since I asked you all a number of questions, the defense will not have to ask nearly as many.**