

ADMISSIBILITY OF DNA EVIDENCE

- If scientific technique has been approved at appellate court level, case by case adjudication is unnecessary.

– *People v. Brown* (1985) 40 Cal.3d 512, 530

– PCR-STR testing is accepted-

– No prong one *Kelly* hearing is necessary!

– *People v. Jackson* (2008) 163 Cal.App.4th 313

– *People v. Cordova* (2015) 62 CA.4th 104

– *People v. Cua* (2011) 191 Cal.App.4th 582

ADMISSIBILITY OF DNA EVIDENCE

The Admissibility Of Various Types Of DNA Typing Technology Has Been Well Established In California And Federal Courts

Y-STR analysis of mixtures is generally accepted

People v. Stevey (2012) 209 Cal.App.4th 1400

Use of capillary electrophoresis instrument for PCR/STR testing is generally accepted

People v. Smith (2003) 107 Cal.App.4th 646

Calculation of population frequency statistics for DNA profiles using the product rule.

People v. Nelson (2008) 43 Cal.4th 1242

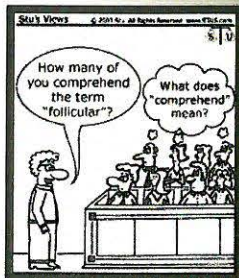
Kelly test applies to new methodologies, not to new devices that implement established scientific methods

People v. Garlinger (2016) 247 Cal.App. 4th 1185

VOIR DIRE

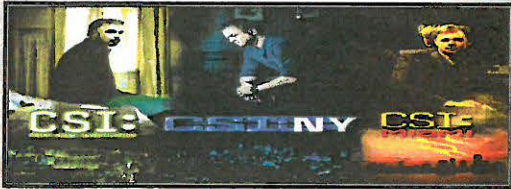
Determine juror's knowledge and expectations

Use this information to educate them on issues that could come up in your case and manage their expectations



VOIR DIRE

- Training in DNA, Statistics, or genetics
- Heard of court cases involving DNA (OJ, GSK)
- Watch TV shows involving DNA
 - Jurors who watch CSI shows may expect DNA to be present and collected in every case
 - Educate jurors about the differences between TV and the workings of the criminal justice system.



VOIR DIRE

Educate about the limitations of DNA evidence

- Absence of DNA-If an expert testified that touching an object does not necessarily leave DNA behind would that surprise you?
- If expert testified that DNA testing can't determine when a biological sample was left would that surprise you?



VOIR DIRE

- Relevance of DNA testing
 - Do you understand that not every item in a criminal case is tested for DNA because some items are cumulative and some are not relevant or probative
 - Understand that many factors affect the feasibility of collecting DNA: type of crime being prosecuted, financial resources, ability to test certain evidence
 - Consider calling a DNA analyst to explain why it would not be reasonable to obtain evidence in a particular case. Example: collecting DNA from heavy traffic areas in store/bank

VOIR DIRE

- Do you think DNA evidence is reliable if done properly?
- Have you heard of DNA evidence being used to exonerate potential suspects and wrongfully convicted people?
- If a juror believes evidence is strong enough to be used to exonerate, should also be strong enough to convict
- If DNA evidence is the only evidence that connects this defendant to the crime, would that bother you?

PRESENTING DNA EXPERT TESTIMONY IN COURT



KEEP IT SIMPLE

KEEP IT SIMPLE:

Confidence in the Expert

A jury or judge must be confident that your expert has the requisite training and experience that creates a reasonable reliance in their test results. This is especially true in a jury trial and as a result warrants more time and emphasis on the expert's qualifications during direct examination.
