
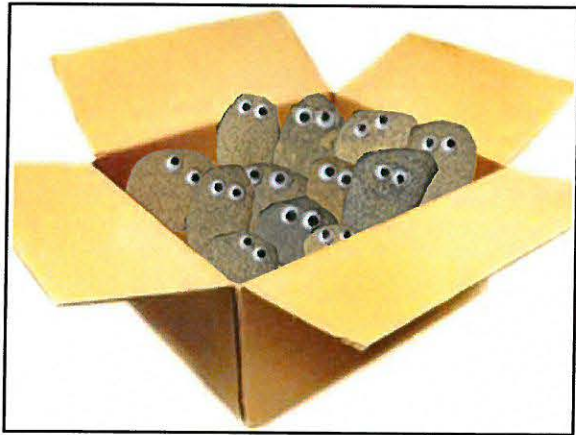


VOIR DIRE 

FELONY PANEL TRAINING
Attorney Training- January, 2018

Heather Brown
Senior Deputy District Attorney



**THIS IS THEE MOST
IMPORTANT PART OF TRIAL**

Don't let anyone tell you otherwise..
You can have all the facts in the world,
but if you've got a whacko on there it
doesn't mean a thing..

PURPOSE OF JURY SELECTION

WIN EM OVER TO YOU & YOUR CASE!
PREPARE THEM FOR WEAKNESSES
WEED OUT THE WHACKOS

WIN THEM OVER!

THIS IS YOUR OPPORTUNITY TO
SHINE!!!! SOMETIMES ON YOUR
GAME.. SOMETIMES NOT...

USE PENCIL!!!!

BEST ADVICE I CAN GIVE YOU

**YOU'VE GOT A FEW
MINUTES TO:**

1. COMMAND THE COURTROOM
2. GET THEM TALKING
3. GET THEM TO LIKE YOU
4. GET THEM TO LIKE YOUR CASE
5. (and want to convict!!!)

**WALK TO THE DOOR WITH
YOUR HANDS FULL...**

DROP SOMETHING! SEE WHO
PICKS IT UP... WHO OPENS DOOR
FOR YOU...

BE YOURSELF!!!!

IF YOU'RE FUNNY... BE FUNNY
IF YOU'RE SMART.... BE SMART
IF YOU'RE A BORING DORK...

WHERE DO YOU START?

Hammer out a clever question that can lead you
into your questioning that you can use in all cases
** never the same jurors twice**
No one will know you used the same schtick in
the last trial!!!

HAVE YOUR OPENING LINE..

WHEN YOU STAND UP... YOU
SHOULD HAVE YOUR OPENING
ZINGER... SO THEY'LL LISTEN TO
YOU.... THIS IS WHERE YOU WIN
THEM OVER...

IF YOU DON'T HAVE A ZINGER.....

GO AND POACH ONE!!!!

**DO NOT ASK GROUP
QUESTIONS AND EXPECT TO
GET PEOPLE TALKING**

ASK INDIVIDUAL QUESTIONS....
NOT YES OR NO Q'S.....
HEAR THEM SPEAK!!!!!!

**EVERYONE LOVES TO TALK
ABOUT THEMSELVES.....**

GET THEM TALKING!!!! I ALWAYS HAVE
JURORS SAY "WHY DID YOU PICK ME?
WHY DIDN'T DEFENSE ASK ME ANY
QUESTIONS?" . ETC.
** they rarely even mention the evidence**

USE HYPOS!!!!!!


It's the most effective way of
demonstrating legal concepts AND it
gets people talking... and thinking..

**IF THEY ANSWER YOU...
LISTEN TO WHAT THEY ARE
SAYING...**

ASK A FOLLOW UP QUESTION!

**INTRODUCE JURY TO
UNFAMILIAR LEGAL
CONCEPTS**

"WHEN WE THINK OF CHILD
MOLEST... WE THINK OF _____
ACTUALLY LEWD ACT ON
MINOR.."





**YOU HAVE READ YOUR
CASE OVER AND OVER...**

They hear it once with the evidence,
and in piecemeal bits and pieces....
What seems obvious to us- isn't
obvious to them!!!

**THE LAW SEEMS OBVIOUS
TO US!!!**

But it's not to them!!!!



**ALWAYS TALK ABOUT
CIRCUMSTANTIAL EVIDENCE**

ALWAYS!!!! ALWAYS!!!!
ALWAYS!!!!

**THIS IS THE SINGLE MOST
IMPORTANT THING YOU
CAN TALK ABOUT!!!!!!!**

Every piece of evidence/ every case/
every everything comes down to this
one legal concept

**EVERY SINGLE PIECE OF
EVIDENCE HAS CIRC EV
LINKED TO IT!!!**

NATURE OF WIT'S RELATIONSHIP
BIAS, MOTIVE TO LIE
WEARING GLASSES, FEAR, DRUNK

CIRCUMSTANTIAL EVIDENCE...

HYPO: BANK ROBBERY
COOKIES, RAINING, ETC...

SPECIFIC INTENT??

USING CIRCUMSTANTIAL
EVIDENCE... USE A HYPO!!!
MAN IN NORDSTROM...

THIS IS ALSO A WAY OF WEEDING OUT THE WHACKOS!!!

ASK THEM POINT BLANK IN YOUR
HYPO: CAN YOU DETERMINE WHAT'S IN
THEIR MIND?? I.E. DRIVING DOWN
STREET.. BLINKER (DON'T HAVE TO YELL
OUT WINDOW)

**THE ONLY WAY TO
DETERMINE WHAT'S IN
SOMEONE'S MIND. IS
CIRCUMSTANTIAL
EVIDENCE?**

MAN SAYS HIS WIFE ACCIDENTALLY
FELL OVERBOARD..... YET SHE'S GOT
CEMENT BLOCKS AROUND HER
ANKLES, TRACES OF SEDATIVE IN
HER DRINK, AND GUESS WHO
BOUGHT CEMENT FROM HOME
DEPOT A WEEK PRIOR?

TV SHOWS?

CSI?? Law and Order, Perry Mason, Dexter,
CrimeType, Diagnosis Murder, Blind Justice,
FBI Untold Stories, etc..
659 TOTAL ACCORDING TO WIKIPEDIA

ADDRESS IT!!!!!!

MOCK THE SHOWS!
JUST REAL PEOPLE IN REAL LIFE..
MAKE A JOKE OUT OF IT.. "THEY DON'T SHOW
YOU THIS PART ON LAW AND ORDER DO THEY?"
USE A HYPO

**BUT, USE THOSE SHOWS
TO YOUR ADVANTAGE...**

JURORS WANT LAW AND ORDER,
THEY WANT TO DELVE INTO THE
MIND OF THE PERPETRATOR...

**BRING THE IDEA OF
CIRCUMSTANTIAL EVIDENCE
BACK AROUND IN CLOSING
ARGUMENT**

Reasonable vs. Unreasonable
2 rx = tie goes to runner
Unrx = MUST ADOPT RX
INTERPRETATION

**"DON'T TOUCH ME LIKE
LALO DOES.."**

YOU WOULD HAVE TO BELIEVE:

LIST EVERY MOVE THE PERSON WOULD HAVE TO MAKE FOR THEM TO BELIEVE THE WITNESS IS LYING... (IF INCONSISTENCIES, THIS IS PERFECT!!) THEY MASTERMINDED THEIR STORY, YET THREW IN SOME INCONSISTENCIES TO BE REALLY CONVINCING...

TALK ABOUT THE WEAKNESSES!

- Defendant is good-looking; looks innocent, although she's not.
- Recanting victims (DV) (address in voir dire)
- Unsavory witnesses (address in voir dire)
- Unsympathetic victim (address in voir dire)
- Incomplete investigation (voir dire)
- "Technical" violations of the law (should be dealt with in Voir Dire)

SWEATER VESTS....

DEFENSE LOVES THEM!! ASK THEM "IF HE'S DRESSED IN A SWEATER VEST EVERY SINGLE DAY, ARE YOU AUTOMATICALLY GOING TO FIND HIM NOT GUILTY... BECAUSE HE LOOKS ALL NICE HERE IN COURT???"

**IF YOU KNOW A DEFENSE
ATTNY HAS CERTAIN TRICKS
OF THE TRADE...**

EXPOSE THEM IN YOUR JURY
SELECTION ! LET THE JURY
KNOW IT'S COMING....





SPECIFIC WEAKNESSES

- Unsavory witnesses.
 - Co-defendants, wits with raps
 - Corroborating Evidence
- Your jury selection should address every single weakness in your case... and bring it back home in opening and closing argument... "Remember we talked about this in jury selection. And you agreed to follow the law"
- HAMMER this in closing argument



SPECIFIC WEAKNESSES

- Unsympathetic Victim
 - Voir Dire is very important- point out concept of society as the victim
 - Use voir dire to prepare them for it and let them know you can prove your case anyway!!!



SPECIFIC WEAKNESSES

- Incomplete Investigation
 - Address issue in Voir Dire: ask potential jurors if they would vote NOT GUILTY solely because the investigation wasn't as thorough as "CSI."
 - Agree the length of time it took to get this case to trial shouldn't determine guilt or innocence... Certainly whether witnesses memories fade, etc. can be considered...

EXPERT WITNESSES

ADDRESS IT!!!
WILL YOU AUTOMATICALLY BELIEVE AN
EXPERT JUST BECAUSE HE IS AN EXPERT...
GARBAGE IN.. GARBAGE OUT... OPINION IS
ONLY AS GOOD AS THE FACTS IT IS BASED ON..

NATURE OF YOUR CASE

SEX CASES, 647.6, 220, ETC. BE SURE TO ASK THEM
ABOUT 1190
(B/C NATURE OF CHARGES... WILL YOU HOLD
ME TO A HIGHER BURDEN OF PROOF???)
NEED DNA? NEED CORROBORATION?

IF YOU HAVE GOOD EVIDENCE...

MAKE THEM THINK YOU ONLY HAVE
ONE WITNESS!!!
ONE WITNESS IF YOU BELIEVE...(1190)
CAN YOU CONVICT?

CHILD WITNESSES

WOULD YOU AUTOMATICALLY
BELIEVE AN ADULT OVER A
CHILD?
KICK THEM!!!!

**NO CHILDREN? OR
EXPOSURE TO CHILDREN**

KICK THEM!!!

**YOU CAN LET THEM KNOW
YOU DON'T WANT ANY
DUMMIES ON YOUR JURY**

YOU WANT JURORS WHO CAN
CALL A SPADE A SPADE...
KICK ALL THE OTHERS.. THE ONES
YOU KEEP WILL BE FLATTERED!!!

**DON'T BE AFRAID TO ASK
THEM POINT BLANK...**

"ARE YOU GULLIBLE?" EASILY
FOOLED OR MANIPULATED???

1,2,3 EXAMPLE...

**HAVE YOU EVER BEEN TO
JAPAN???**

**RESPOND TO DEFENSE
INQUIRIES**

BE CREATIVE... PBJ EXAMPLE..
"PBJ BANDIT" - LAW SAYS
CONSIDER IT.. YOU'LL CONSIDER
IT RIGHT???

PRESUMPTION OF INNOCENCE...

NOT EVIDENCE OF HIS
INNOCENCE... JUST TELLING YOU
IT'S MY BURDEN..

MULTIPLE VICTIMS

MAKE THEM THINK THE REAL
ISSUE IS THE 3RD VICTIM.. OR THE
WEAKEST ONE...

1'S, 2,'S AND 3'S

CAN'T HAVE ALL 1'S
THEY LOVE TO BE FUNNY WITH
THIS ONE..

WEEDING OUT THE WHACKOS

ETHICALLY!

HOW DO YOU KNOW THEY ARE WHACKOS??

- ❑ 1. WATCH THEM!
- ❑ 2. LOOK AT WHAT THEY ARE WEARING, READING, CARRYING, DOING, SAYING
- ❑ 3. DO THEY CHALLENGE YOU?
- ❑ 4. WATCH THEIR DEemeanOR WITH DEFENSE ATTNY
- ❑ 5. THEIR DEemeanOR WITH YOU! CROSSED ARMS, WON'T SMILE
- ❑ 6. TAKE NOTES OF ALL OF IT - ON THE STICKY!!!!

DON'T KICK PEOPLE OFF YOUR JURY JUST BECAUSE...

THEY ARE IN A SPECIFIC GROUP OR CLASS OF PEOPLE..
BUT..... KNOW YOUR CASE AND WHAT LIFE EXPERIENCE THOSE PEOPLE MAY HAVE FOR YOUR FACTS...

People v. Wheeler
(1978) 22 Cal.3d 258

"The use of peremptory challenges to remove prospective jurors on the sole ground of group bias violates the right to trial by a jury drawn from a representative cross-section of the community under article I, section 16, of the California Constitution"

Batson v. Kentucky
(1986) 476 U.S. 79

"The Equal Protection Clause forbids the prosecutor to challenge potential jurors solely on account of their race or on the assumption that black jurors as a group will be unable impartially to consider the State's case against a black defendant."



BEWARE OF:

- ⊗ ANYONE DISINTERESTED
- ⊗ ANYONE TOO INTERESTED
- ⊗ ANYONE WHO LEANS FORWARD AND LOVINGLY LOOKS AT THE DEFENSE ATTNY
- ⊗ ANYONE WHO'S FAMILY MEMBER IS IN CUSTODY FOR A SIMILAR CRIME
- ⊗ ANYONE WHO'S ANYONE HAS BEEN WRONGFULLY ACCUSED OF A CRIME
- ⊗ LOOKS SLOVENLY AND NOT RESPECTFUL OF COURT..

Peremptory Challenge CCP §§ 225(b)(2) / 231

- ⊗ Limited number
 - Generally 10 per side for Felonies
 - 6 on some misdemeanors
 - 20 if life or DP case
- ⊗ Alternates
 - Same number as alternative jurors called (CCP § 234)
- ⊗ Multiple defendant cases
 - Defense gets 10 or 20 challenges jointly (per above guidelines)
 - Each defendant gets 5 individual challenges
 - DA gets same amount as total defense challenges
 - E.g., 3 co-D mean 15 case
 - Each side gets 25 challenges (10+5+5+5)
- ⊗ Can be used for any reason
 - Can be based on instinct or gut feeling
- ⊗ Well, sort of... Can't be used for an unlawful purpose
 - May not exclude members of a cognizable group based on group bias

SEE HANDOUT

ALL THE LAW ON ONE SHEET!
COMPLIMENTS OF
ROBERT MESTMAN

Race Neutral Reasons

- ❑ Could be combination of factors
- ❑ Change in dynamics of jury
- ❑ Change in mix of jurors -
- ❑ Number of peremptory challenges remaining

Avoid Wheeler Objections

- ❑ Might look bad to jury
- ❑ Throws you off
- ❑ If sustained, you're in trouble
- ❑ If not sustained, need to worry about appeal
- ❑ May be reported to State Bar

Remedy on Appeal Limited Remand

- ❑ Appellate court returns case to trial court for DA to state justifications on the record
- ❑ Allows DA to explain justification(s) during appeal process
- ❑ Could be years later
- ❑ Take & preserve notes!



For Cause Challenge
CCP § 225(b)(1)

- Unlimited number (each side)
- General disqualification
 - Lack of any qualification prescribed by law
 - Doesn't speak/understand English, convicted felon, non-resident, etc.
- Implied bias
 - Blood relation to any party, victim, witness, etc.
 - Involvement in prior case
 - Any interest in outcome
- Actual bias
 - State of mind preventing impartiality
 - Focus of voir dire questioning

"I CAN'T BE FAIR"

- * I HATE COPS, ALL COPS LIE... HAD BAD
- * MY DAUGHTER WAS RAPED, I SEE HIM*
- I HATE ALL CHILD MOLESTERS
- IF IT'S A GANG CASE, I CAN'T BE FAIR

WHAT DO YOU DO WITH THAT JUROR????

- ☐ IF YOU LIKE THEM - REHABILITATE THEM
- ☐ " M'AAM, YOU HAVEN'T HEARD ANY OF THE EVIDENCE... AND YOU HAVE NO IDEA WHAT HAPPENED... IF ALL MY WITS COME IN AND LIE..(NOT SUGGESTING THIS WILL HAPPEN) YOU'RE NOT GOING TO CONVICT HIM JUST BECAUSE YOU DON'T LIKE GANG MEMBERS?" YOU HAVE NO IDEA IF HE IS OR ISN'T... IF HE COMMITTED THIS CRIME..

DEFENSE WILL KICK THEM!

IF YOU DON'T LIKE THEM..

EITHER IGNORE THEM IF YOU THINK THEY'LL TAINT YOUR JURY POOL AND KICK THEM 1ST THING!!!

**OR IF TOTALLY
RIDICULOUS... MAKE AN
EXAMPLE OUT OF THEM...**

SHOW THE JURY JUST HOW
RIDICULOUS THEY ARE..

**"I WOULD NEVER BE A
DISTRICT ATTORNEY"**

"touche"

TRUST YOUR GUT

LISTEN TO JEN CONTINI!!!!