


**THE ART AND SCIENCE
OF JURY SELECTION**



05 - 17 - 13

ROADMAP OF YOUR AFTERNOON

- Building rapport and credibility with your prospective jury;
- Presentation from Trial Partners, Inc. a jury consultant firm that specializes in the science of jury selection; and
- Mock jury presentation with non-attorney prospective jurors.

YOUR GOAL IN JURY SELECTION

Build rapport

Establish credibility

Pick a jury that will convict

Establish a relationship:
Jury selection is nothing
more than forming
connections

RAPPORT

(MOST) IMPORTANT PART OF YOUR TRIAL

- ▣ Jury selection is the time where you set the tone for **your** trial.
- ▣ Different styles determine the mood in the courtroom;
 - ▣ Judge's personality;
 - ▣ Attorney personality;
 - ▣ Formality of the courtroom;
- ▣ Your personal connection style is the first step in forming **your** relationship with the jurors.
 - ▣ your confidence;
 - ▣ your comfort in the space;

WHY DO YOU NEED TO BUILD RAPPORT?

What makes people open up to you?

You have a short period of time and you want your jurors to tell you (or show you) if there is anything that will keep them from voting guilty in your case.

SHORT TIME TO GET TO KNOW SOMEONE

- What are the common things you see/do in getting jurors to open up and talk to you?

Small talk

These are all subtle efforts to connect with other people, make them comfortable and encourage them to open up.

If word answers that won't help you.

It one

WHAT DO YOU KNOW ABOUT THEM?

- You may not know much about these people, their background, their lives, but ...
- Everyone in your jury pool is human.
- Most humans share many emotional triggers.

HOW DO YOU BUILD RAPPORT IN A SINCERE WAY?

- Prosecutors are presenters. We present a theory to an audience. We are public speakers.
- In terms of communicating feelings and attitudes, research studies have concluded:
 - 7% of message pertaining to feelings and attitudes is in the words that are spoken.
 - 38% of message pertaining to feelings and attitudes is paralinguistic (the way that the words are said).
 - 55% of message pertaining to feelings and attitudes is in facial expression.

(Mehrabian, A. (1981) Silent messages: implicit communication of emotions and attitudes. Belmont, CA: Wadsworth (currently distributed by Albert Mehrabian, email: am@kssj.com))

EYE CONTACT

- The movements of your eyes, mouth, and facial muscles can build a connection with your jury. Alternatively, they can undermine your every word.
- Eye contact is the most important element in this process. No part of your facial expression is more important in communicating sincerity and credibility.
- Nothing else so directly connects you to your jury.
- Effective presenters engage one person at a time, focusing long enough to complete a natural phrase and watch it sink in for a moment. This level of focus can rivet the attention of a room by drawing the eyes of each member of the audience and creating natural pauses between phrases. The pauses not only boost attention, but also contribute significantly to comprehension and retention by allowing the listener time to process the message.*

Andrew Diugan, author and public speaking coach

WHAT DOES YOUR BODY LANGUAGE SAY ABOUT YOU?

- **Hands:** They don't belong in your pockets or folded across your chest either or held behind your back. Use them to help emphasize a point, to express emotion and to engage your jury.
- **Gestures:** Most people have a gesture at their disposal that supports common words. It's a universal way of connecting with other people.
- **Stance:** don't hide behind the podium.
- **Notes:** leave them on the podium. come back if you need to.
- **Comfort in the courtroom:** this is "your" case, feel comfortable in the space.
- **Especially when you go up against someone who is more experienced.** Example.

IT'S SOMETHING YOU WILL WORK ON FOR THE REST OF YOUR CAREER

"Tiny Tweaks = Big Changes"

Amy Cuddy TED Talk
http://www.ted.com/talks/amy_cuddy_your_body_language_shapes_who_you_are.html

When your audience feels an emotion, they are motivated to act.

CREDIBILITY

WHY IS IT IMPORTANT TO BUILD CREDIBILITY FROM THE BEGINNING?

If they trust and respect you, they will follow you.

Your demeanor, your words and your relationship with them will carry through to the verdict and sometimes even after

DO YOU LOOK THE PART?

- What is the message you are conveying in your appearance?
 - Shine your shoes;
 - Wear a suit, doesn't have to be expensive to look put together;
- Clear your work space;
 - The courtroom "is not a buffet." Steve McGreevy
- Be on time;
- Professional;

If they like how you look, and how you present yourself, they will trust that you know what you are talking about.

BEGIN TO INTRODUCE YOUR THEME

You can begin to subtly introduce your theme in opening because this is the time that you are developing your relationship with them.

In closing, you can remind them of that

THEMES TO INTRODUCE IN VOIR DIRE

- Think about the weaker aspects of your case and touch on them in jury selection so that you can highlight in closing:
 - Single witness testimony, open them for this instruction.
- When you introduce themes, how are they reacting to the concepts that you are introducing?
 - victim and they can't get over it, that's a problem.
 - Can you follow the law,
- TV shows- set the expectations by highlighting this is real life.
- Direct/circumstantial evidence. Example.

You are not simply looking for twelve fair and impartial jurors.

SELECTION

PICK JURORS WHO WILL CONVICT

- Ultimately, you want jurors who have no hesitation rejecting the unreasonable and convicting;
- You want to make sure there are no biases, obvious or not, that will keep them from convicting.
- Do you rely on stereotypes? Do you trust your gut?
- Kick them if they are an obvious juror that you don't want. Don't waste time with questions;
- "Can this juror get along with everyone else? Too "over-the-top" on issues, either side."
- Nonverbal cues.
- Don't play games with your challenges, you might get surprised and stuck with a jury you don't like.

"Be tireless, you may be fired. Stay on your game"

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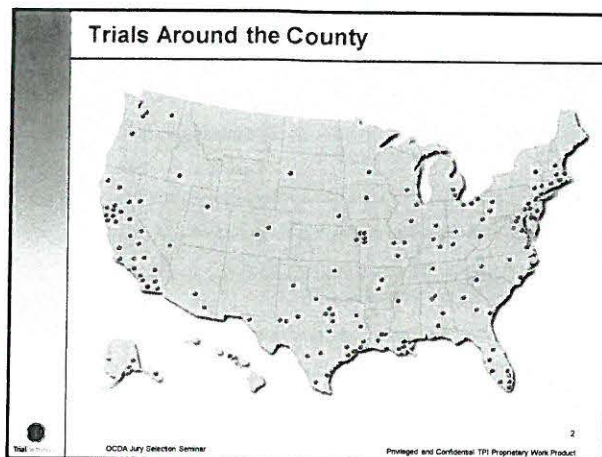
Jury Selection Orange County District Attorney's Office

J. Lee Mehlis, Ph.D.
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Vice President and Senior Consultant

May 17, 2013

TrialPartners
Los Angeles | Chicago



Trial Partners, Inc.

- National trial consulting and jury research firm
- Experience in over 4,500 cases, including over 1,500 jury selections in 44 states, plus Washington D.C. and the Commonwealth of Puerto Rico
- Experience in all types of civil and criminal cases (both federal and state courts)
- Work includes jury trials, bench trials, private trials, mediations, and arbitrations

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What We Do:

- Develop and test trial themes
- Analyze the strengths and weaknesses of your case and help formulate an effective strategy
- Design and conduct telephone attitude surveys
- Formulate and test trial strategies, arguments, and themes through focus groups, issues analyses, and mock trial research
- Prepare witnesses (fact and expert)
- Assist in writing openings and closings
- Work with counsel to improve communication skills

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What We Do:

- Acting in neutral capacity, facilitate private trials
- Recommend and coordinate the preparation of demonstrative exhibits
- Develop jury selection strategies and profiles
- Write *voir dire* questions and pretrial questionnaires
- Assist, in court, with jury selection, and prepare selection materials
- Monitor trials to assess jurors' reactions
- Conduct shadow jury research during trial
- Interview jurors post-verdict



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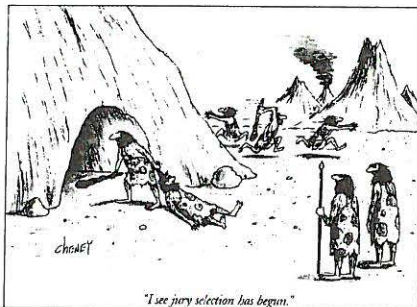
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Part I: Effective Jury Selection for Prosecutors



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Jury Selection



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Before Jury Selection: Develop Customized Profiles

- Identify the strengths and weaknesses in your case
- Identify your themes
- Write a mini-opening that you can give in 2 to 3 minutes
- Develop your Juror Profile (i.e., characteristics of the best and worst jurors)



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Before Jury Selection: Know the Law

- Proper versus improper *voir dire* questions
 - CA Code of Civil Procedure §223 "Examination of prospective jurors shall be conducted only in aid of the exercise of challenges for cause."
 - "Preconditioning" jurors – know when to object
 - Cannot ask for a promise, commitment, or prejudgment
 - Cannot instruct on the law/misstating the law
- Research your judge's interpretation of cause challenges from past cases



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Before Jury Selection: Know the Rules

- Pre-*voir dire* Conference (CA Rule of Court 4.200)
 - "Before jury selection begins in criminal cases, the court must conduct a conference to determine: ...
 - The procedures for deciding requests for excuse for hardship and challenges for cause;
 - The areas of inquiry and specific questions to be asked by the court and by counsel and any time limits on counsel's examination"
 - "The court may require counsel to submit in writing, and before the conference, all questions that counsel requests the court to ask of prospective jurors."



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Before Jury Selection: Know the Questions

- Judge's standard *voir dire* questions
 - CA Rules of Court, Standards of J Admin 4.30(b)
- Juror Questionnaire (JQ) for Criminal Cases
 - Form MC-002 not recommended for the prosecution
 - Even if Form MC-002 is used, a supplemental case-specific JQ is highly recommended
 - Be prepared to submit a standalone, case-specific questionnaire (try to get opposing counsel on board before submitting to court)



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Before Jury Selection: Ask for a JQ

- Benefits
 - Research shows jurors provide more candid responses in a JQ
 - Predictive value for identifying bias
- Rationale for Court
 - Efficiency/Time saver (but keep your promise!)
 - Identification of jurors with biases that can "poison" the panel
 - Protects juror privacy
- Mechanics of use
 - Try to avoid adding work to court staff



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Summary of JQ

115 BOWLEY, CAROL

Gender: Female; age: 70; Occupation: Currently married for 45 yrs.
 State of birth: British Columbia, Canada; (Legal/Political) Civic: Yes;
 race: 65 yrs. Old; Education: R.H. (Registered Nurse);
 Family size: Retired for 35 years

Rank: 8 -
 Cause: 22, 21, 22, 22
 Membership: 26, 27, 26, 29

1. Defendant: Represented twice, Upjohn (1970 - 1977)
 2. Current residence type: Family suburban
 3. Service employee: Yes, Upjohn Company Owner for 32 years
 4. Children: Female, 47, female, 46, 46, female, 47, 47, 47, 47
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Notes: To be noted: Do not stop to come back to Q&A and argue that you're not a decision maker.

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Strike List

Defendant (Strike #)	Learning Strike (S)	Yes/No (S)	Learning Strike (S)	Definite Strike (S)
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Jurors' Self-Disclosure in *Voir Dire*

- Jurors report high levels of anxiety during questioning and feelings of pressure to conform
 - Particularly when *voir dire* is conducted by the judge
- Jurors report that attorneys are more successful than judges in obtaining candid answers from them when asked in open court



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The Method of *Voir Dire* Affects the Level of Candor

1. **Group questioning**
Questions posed to group and individuals volunteer to answer
2. **Individual questioning**
Questions posed to individuals in a group setting
3. **Sidebar questioning**
Individuals brought to side bar for questioning in front of group
4. **Sequestered questioning**
Individuals questioned in chambers or in court with all other jurors excused

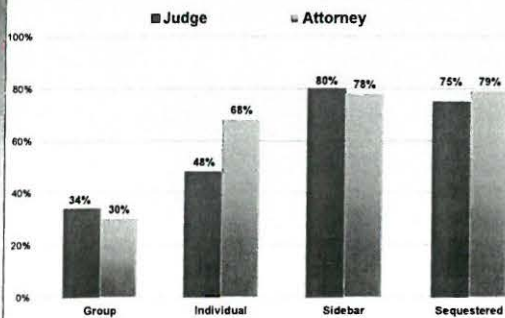


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Results: Mean Percentage of Questions Answered Candidly as Reported by Jurors



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Ways to Reduce Juror Anxiety

1. Get jurors participating early in the process
2. Keep encouraging participation
3. Break up a pattern of non-responses over a series of questions
4. Phrase questions to encourage perception of conformity
 - "How many of you?" vs. "Do you/Do any of you?"
5. Adopt a conversational tone
 - Don't yell
 - Don't cross-examine or conduct an interview
6. Normalize controversial or unpopular viewpoints to reduce inhibitions
 - "Many people believe..."
 - "A number of jurors in the past have told me..."



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Goals of Attorney *Voir Dire*

1. Identify your worst jurors
 - Get everyone talking and involved early
 - Ask questions in the right way to develop cause challenges and identify strikes
 - Detect combative jurors, eccentric jurors, and those with an agenda
2. Be a good representative for the prosecution
 - Your demeanor and questioning style will make a difference
 - Be a good listener and give positive reinforcement
3. Educate jurors about the case from your perspective
 - Have the charges read
 - Don't avoid the bad and ugly facts or the defenses

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Structure of Attorney *Voir Dire*

- Introduction
 - Explain "bias" and "prejudice" mean something different in a courtroom – give examples
 - Encourage everyone to talk (e.g., only chance we have to talk to each other; no right or wrong answers)
 - Encourage interruption
 - Offer individualized *voir dire* for sensitive matters
- Explore biases relevant to your case
 - Anti-government bias
 - Anti-police and anti-prosecutor bias
 - Personal relevant experiences
 - Expectations for forensic evidence, "The CSI Effect"

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Do's and Don'ts During Attorney *Voir Dire*

- **Do:**
 - Listen carefully and show interest
 - Give nonverbal cues (e.g., smile, nod) and verbal reinforcement to keep jurors talking
 - Be conversational and at ease
 - Have someone in court to write things down and assist
 - Talk to everyone in the panel if you can (definitely within strike zone)
 - Identify any leaders as well as combative or eccentric jurors
 - Preview weaknesses in your case
 - Selectively precondition
 - Utilize umbrella rules and themes
 - Appeal to sense of safety and community

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Do: "Get to know those people"



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Do's and Do not's During Attorney *Voir Dire*

• Do (continued):

- Develop cause as much as possible
 - Define what a bias is
 - Identify a feeling or belief held by a prospective juror
 - Use open-ended requests to get juror to talk more about feeling or belief (e.g., Please tell me more/why.)
 - Establish that it has been a long-held or strongly-held attitude
 - Establish that nothing will change the juror's mind about this attitude and, therefore, it is not the right case for him/her
- Take what one juror tells you and try to get others to comment
 - "How many of you agree with/have had a similar experience as Mrs. Jones?"
- Rehabilitate good jurors to make other side use a strike
 - Pre-emptively rehabilitate jurors that you believe are good (based off of answers on the JQ or prior *voir dire*)



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Do's and Do not's During Attorney *Voir Dire*

• Do not:

- Talk more than the jurors or interrupt the jurors
- Apologize for taking a lot of time or for being boring
- Write down jurors' responses yourself
- Be too aggressive or hurried
- Argue your case
- Argue with a juror
- Cross-examine the juror
- Use a lot of legal jargon
- Expose your "keeps" (i.e., best jurors)
- Be afraid of what jurors will say
- Rehabilitate a juror you want off for cause



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Sample *Voir Dire* Questions: Good or Bad?

- How many of you think that district attorneys and prosecutors are often motivated by convicting someone instead of finding out if they're really guilty? Tell me more why you think that? Good
- How many of you feel that the defendant should have to prove that s/he did not do anything wrong? Bad
- Raise your hand if you believe the law does too much to protect the rights of criminal defendants and not enough to help the victims of crimes and their families? Bad
- How many of you feel that the Government wastes too much time and money prosecuting people for misdemeanor offenses? Good



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Sample *Voir Dire* Questions: Good or Bad?

- Have you or anyone close to you ever been [wrongly] accused of a crime? What happened?
Good
- Who thinks that the defendant should testify so you can hear directly from her and so she can tell you her side of the story?
Bad
- How many of you believe that the prosecution wouldn't have filed these charges against the defendant unless we had a pretty solid case?
Bad



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Part II: How Jury Research Helps In Jury Selection

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Impact of Publicity in a High-Profile Case

Cartoonbank.com



"Since you have already been convicted by the media, I imagine we can wrap this up pretty quickly."

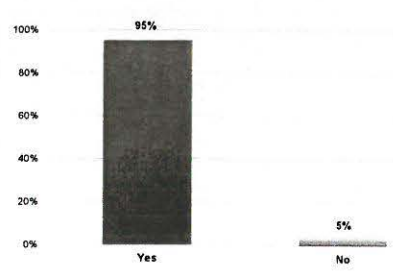
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Impartiality and Bias in High-Profile Criminal Cases

- Jurors often report they can be fair and impartial in criminal cases. Why?
 - Possible social desirability effects
- Research shows jurors who say they can be fair but who are exposed to pre-trial publicity are significantly more likely than others to decide against the defendant
- Be wary of stealth jurors, particularly for highly publicized trials, who are looking for the book deal
- Jurors don't always admit their biases

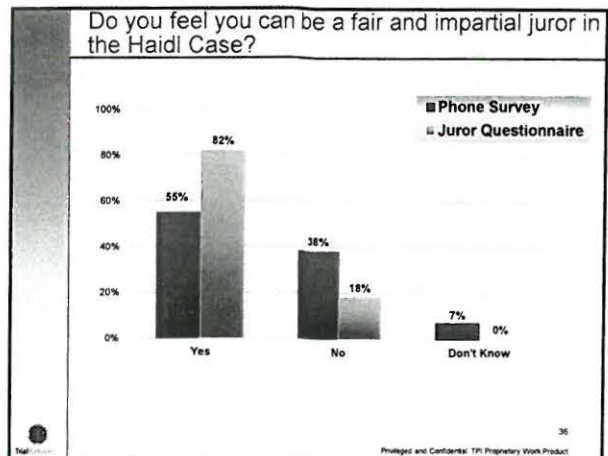
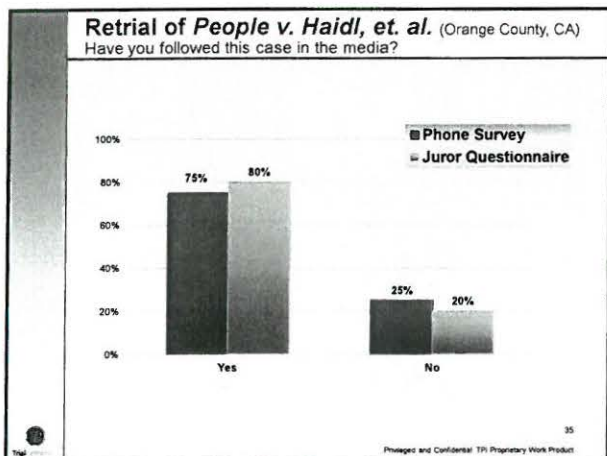
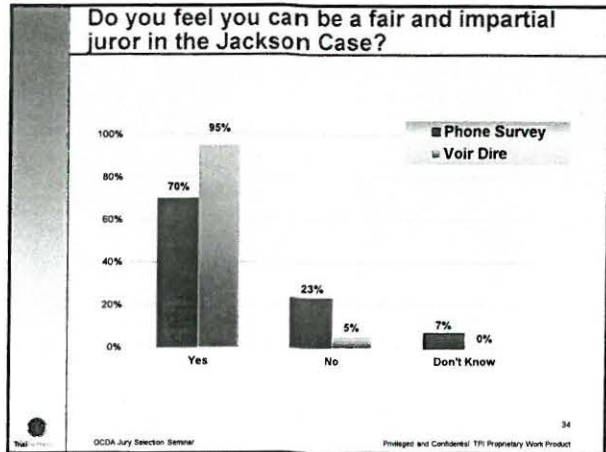
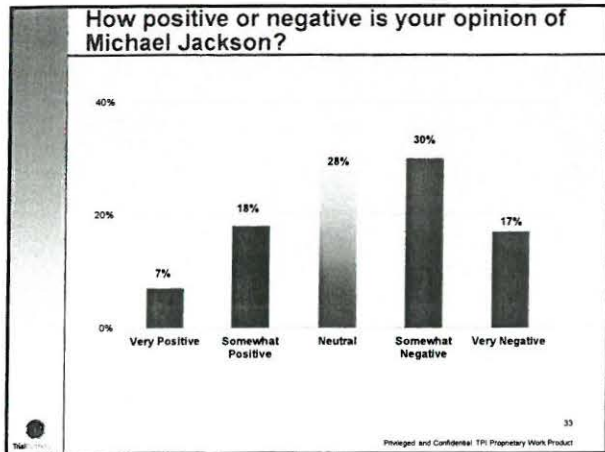
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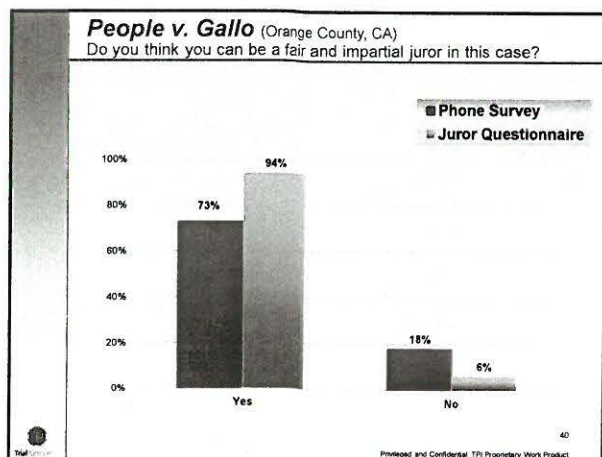
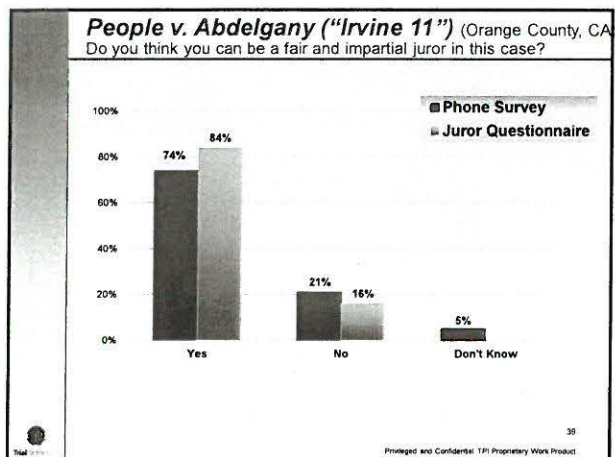
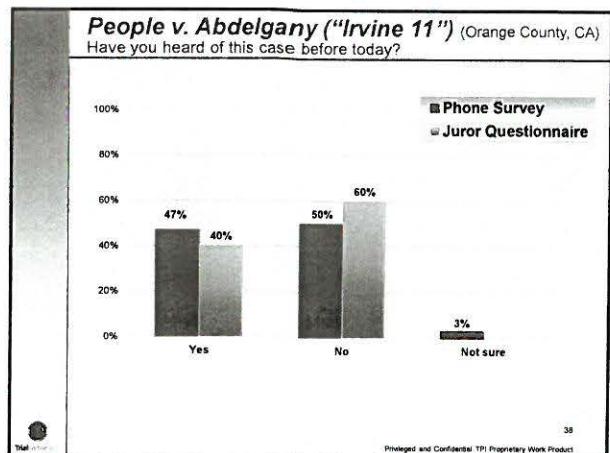
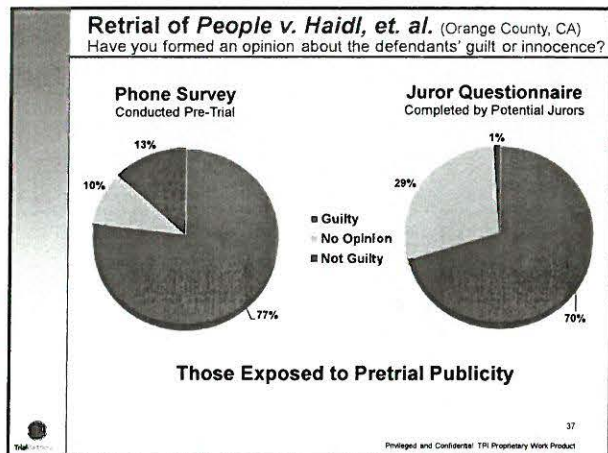
People v. Michael Jackson (Santa Maria, CA)
Have you followed this case in the media?

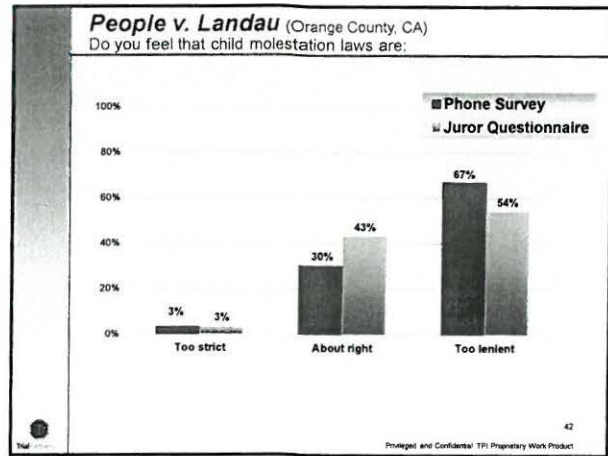
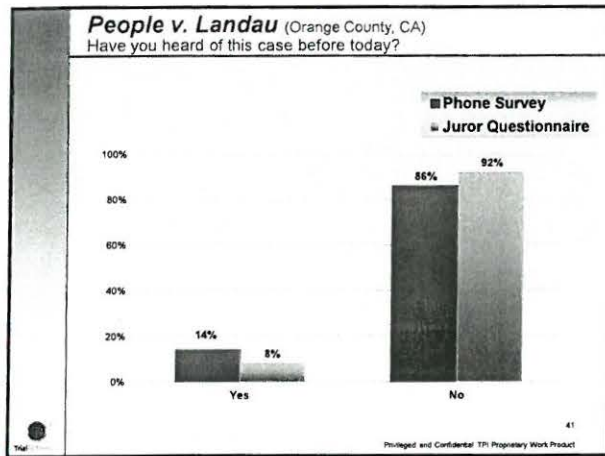


Response	Percentage
Yes	95%
No	5%

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Questions?

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May 17, 2013

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