

VOIR DIRE

A. PROCEDURAL ASPECTS (CCP § 190-237)

1. ORDER OF EVENTS

- Judge Questions (May excuse jurors for cause or by attorney stipulation)
- Defense Questions
 - Pass\Challenge for Cause
- Prosecution Questions
 - Pass\Challenge for Cause
- Preemptory Challenges
 - Prosecution
 - Defense

**Once you have passed for cause and exercised a preemptory challenge, you cannot re-question original panel of jurors. All questions must be of new jurors.

**When both prosecution and defense accept the jury the selection process is over.

*Note: If you accept the jury, but defense still exercises a preemptory challenge, then you may continue to exercise preemptories (on old or new jurors).

- Selection of Alternates
 - Same procedure

-Time allocation: Not specified, but per CCP § 223 the court must give voir dire in criminal cases.

2. CHALLENGES

-Cause (CCP § 229)

- Unlimited number
- Applicable where juror displays bias\inability to be fair juror
 - *If obvious bias, stipulate to removal
- Reasons for bias must be clear

-Preemptory (CCP § 231)

- 10 preempts per side (cf. life cases--20 preempts)
 - *Multiple Defendants
 - eg. Two defendants: Prosecution= 20 preempts

Defense = 10 joint, 5 per defendant
Three defendants: Prosecution = 25 preempts
Defense = 10 joint, 5 per defendant

-Preempts of Alternates (CCP § 234)
-Number equal to alternates selected

-Preemptory challenges do not require a showing of bias. No basis must be stated for exercising challenge.

***Caution: Wheeler Motions**

If prosecution engages in systematic exclusion of Jurors based upon race, etc.

Burden is on defense to show systematic exclusion

Once burden met, shift to prosecution to justify preemptory challenge

B. SUBSTANTIVE ASPECTS OF VOIR DIRE

1. PURPOSE FOR VOIR DIRE

- Determine if legal cause to excuse juror
- Identify Good\Bad Jurors
- Instruct the jury
 - Sell your case\yourself
 - Id and desensitize jurors to issues in case
 - predispose jurors to view case and issue favorably
- Counter issues raised by defense

2. VOIR DIRE QUESTIONS

(See attached)

C. JUROR PROFILE

1. **AGOOD \cong JURORS V. ABAD JURORS**

(Very subjective)

-Good: Engineers, educated people, stable professionals and attached to community

-Bad: Young women, old men, teachers, professors, artists, dumb people (you have to figure out who they are during voir dire), people with past problems with police or authority, social workers, post office employees

Caution: there are exceptions to every rule. Always go with your initial gut feeling.

VOIR DIRE QUESTIONS

I. GENERIC QUESTIONS

COMMON SENSE

-Most important quality a juror can possess

REASONABLE DOUBT

-Two sides of story automatic RD

-May not believe one side

*Must look at Credibility Of Witnesses

-bias, motive, lack of bias or motive, etc

-Defendant, should he testify, would have bias\motive

-Discrepancies\inconsistencies uncredible

-PIS- Why prior statements may be more reliable (gang cases-hypo)

-Doubt based on reason, NOT Speculation

SPECULATION

-No searching out areas of doubt, theories not presented, defenses, etc.

-Decide case solely upon evidence presented in court

-No Police Reports

-No speculation as to Awitnesses \cong not called

PRESUMPTION OF INNOCENCE

-Hypo with bailiff

DIRECT V. CIRCUMSTANTIAL EVIDENCE

-Hypo! Johnny and the Cookie Jar, Fingerprint, etc

-Circ evid is great evidence, and sometimes the only type of evidence you can have
eg. Mental state, intent, etc

Hypo with Robber, shooting of gun, etc

SYMPATHY

-Case must be decided without sympathy for a defendant nor passion or prej ag. him

-Def in the Ahot seat≅ If feel sorry for him, will affect the way you receive the evidence

PROBLEMS WITH LAW\VICTIMS OF CRIME(THEMSELVES OR REL AND CLOSE FRIENDS

FOLLOW THE LAW

-Hypo with Granny and the pigeons

DELIBERATION

-Stubborn people don=t make good jurors

CAN THEY CONVICT

-No moral, ethical problems with applying evidence received to law given and rendering a decision. (Don=t put this in terms of judging a person, keep it objective)

*Clergy tend to be poor jurors.

2. CASE SPECIFIC VOIR DIRE

TESTIMONY OF A SINGLE WITNESS (ID CASES)

-Can they convict on testimony of a single witness ID if they believe
Some jurors feel they need more, even though law has no such requirement (ID them)

POLICE OFFICERS

RACIAL ISSUES

ADULT V. CHILD WITNESS (SEX CASES)

DUI

- Not ADrunk \cong driving
- No need to show def drunk
- Does anyone feel need to show drunk or that .08 is too low
- Ever seen person under the influence.
 - How could they tell
 - Did they give chemical test
- Do they drink
- Have they felt effects of alcohol
- Do they have preconceived idea re # of drinks for UI
- Do they have any knowledge about how alcohol affects ability to drive
 - Delayed reflexes
 - Divided attention
 - Pupil constriction
 - Balance
 - etc.--try and use symptoms present in your case