

tice, which long has served the selection of an impartial jury, should be abolished because of an apprehension that prosecutors and trial judges will not perform conscientiously their respective duties under the Constitution." (*Batson v. Kentucky*, *supra*, 476 U.S. at p. 99, fn. 22 [90 L.Ed.2d at p. 89].)

Under the standard of giving great deference to the trial court's determination, we affirm the ruling in this case. The dissent, in our view, unjustly faults the trial court for not making a sincere and reasoned determination regarding the genuineness of the prosecutor's reasons. There is no indication in the record that the court did not do so. The dissent seems to believe that inquiry by the court is required to demonstrate compliance with its obligation under *Wheeler*. We do not read *Wheeler* or *Hall* as establishing such a requirement. The dissent also misinterprets a remark by the trial court as indicating that the court had determined in advance that it would accept as true anything the prosecutor said. The court simply rejected the defense argument of the necessity for placing the prosecutor under oath before hearing his reasons. The court's remark cannot reasonably be interpreted as anything more than that. Although the court's explanation of its ruling was inartfully phrased, the record clearly reveals that the court understood the distinction between specific and group bias and had that distinction in mind when it made its ruling.

(8) Defendant finally contends that the prosecutor's use of peremptory challenges against death penalty skeptics violated *People v. Wheeler*, *supra*, 22 Cal.3d 258. We recently rejected that argument in *People v. Miranda*, *supra*, 44 Cal.3d at page 80. (See also *People v. Turner* (1984) 37 Cal.3d 302, 313-315 [208 Cal.Rptr. 196, 690 P.2d 669].)

#### B. Peremptory Challenges.

(9) Defendant contends that section 1070.5, which limits jointly tried capital codefendants to 5 individual and 26 joint peremptory challenges, but gives the prosecutor 36 unrestricted challenges, operated to deny him due process and equal protection of the law because his codefendant was not "realistically" exposed to the death penalty and thus had different interests. We have recently upheld the statute against virtually identical attacks based on denial of due process and equal protection. (*People v. Miranda*, *supra*, 44 Cal.3d at pp. 79-80; *People v. Ainsworth* (1988) 45 Cal.3d 984, 1004-1007 [248 Cal.Rptr. 568, 755 P.2d 1017].) Contrary to defendant's assertion, his situation is no different from that in *Ainsworth* where both defendants were charged with murder with special circumstances and there was no indication that the death penalty was not being sought as to the codefendant. Indeed, the *Ainsworth* situation was arguably more extreme in that each

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ANNEX C

"WHEELER" PROCEDURES CHECKLIST

PEREMPTORY CHALLENGES

- I. PRIMA FACIE SHOWING
  - A. MUST RAISE IN TIMELY FASHION
    1. Must make as complete a record of circumstances as feasible.
    2. Must establish that the persons excluded are members of a cognizable group.
    3. Must show a strong likelihood that such persons are being challenged because of their group association rather than because of any specific bias. [Group bias]
- II. COURT MUST DETERMINE WHETHER A REASONABLE INFERENCE ARISES THAT CHALLENGES ARE BASED ON A GROUP BIAS ALONE.
  - A. ISSUE IS REASONABLENESS OF BELIEF OF GROUP BIAS
    1. Focus is objecting party's contentions and the record.
    2. Burden is on objecting party.
    3. Justifications are premature at this point.
  - B. WOULD YOU CARE TO EXPLAIN? MR. DA?
    1. Implied findings/Preference for express findings
  - C. COURT CANNOT RETURN TO REASSESS RULING (NO SECOND THOUGHTS)
- III. JUSTIFICATION
  - A. NEED ONLY IF PART I HAS BEEN SATISFIED BY OBJECTING PARTY
    1. Burden shifts to other party to show that the challenges are not predicated on group bias alone.
    2. Need to satisfy the court they are exercised on grounds reasonably relevant to particular case or its parties or witnesses, i.e., for reasons of specific bias.
      - a. Trial Judge must use sincere and reasoned attempt to evaluate the explanation of objected to party. No rubber stamp.
        - 1) Circumstances of case as then known.
        - 2) Knowledge of party's trial techniques.
        - 3) Observation of party's manner of voir dire and how peremptory and for cause challenges exercised.
- IV. COURT RULES ON ADEQUACY OF JUSTIFICATION
  - A. PRESUMPTION OF VALIDITY IS REBUTTED UNLESS JUSTIFICATION IS SUSTAINED AS TO ALL JURORS
    1. Court must dismiss Jurors thus far selected.
    2. Court must quash remaining Venire.
    3. Selection begins anew with new Venire.
      - a. If any of above not done, reversal per se.
  - B. COURT FINDS JUSTIFICATION - SELECTION CONTINUES
    1. Until next objection/motion.

## JURY SELECTION

### JENNIFER CROSSLAND, DEPUTY DISTRICT ATTORNEY

#### I. AFTER PROPOSITION 115 - DOES IT STILL EXIST?

- A. CCP Section 223
- B. Federal cases - "good cause"
  - 1. *U.S. v. Jones* (1983) 722 F.2d 528
  - 2. *U.S. v. Washington* (1987) 819 F.2d 221
- C. In Limine Motions - see sample

#### II. WHAT KIND OF JUROR DO YOU WANT?

- A. Stake in the community
  - 1. Homeowners
  - 2. Married
  - 3. Children
  - 4. Steady employment
- B. Leaders and followers
  - 1. Can't have all leaders
  - 2. Experience working with others
  - 3. Committees/volunteer work
- C. Life experience
  - 1. Mature enough to respect laws
  - 2. Have made significant life-changing decisions
  - 3. Someone who can recognize when they are being lied to
- D. All/None of the above
  - 1. Look at each case on its own
  - 2. Sometimes need liberals on jury

### III. HOW TO CONDUCT VOIR DIRE

- A. Set stage
  - 1. Introduce self/job
  - 2. Establish rapport
- B. Ask open-ended questions
  - 1. No one does this!
  - 2. Have you ever been lied to? Were you suspicious? Why? Do you feel comfortable making this type of decision?
  - 3. Follow-up questions
- C. Take notes
- D. Trust your instinct

### IV. WHEELER: IT GOES BOTH WAYS

- A. Prima Facie showing of discrimination
  - 1. Cognizable group
  - 2. Strong likelihood jurors challenged solely because they belong to the cognizable group
  - 3. *People v. Wright* (1990) 52 C3d 367, 398-400  
*People v. Sanchez* (1992) 6 CA4th 913, 916-22 - NOT FINAL!
- B. Justification
  - 1. This is why you took notes
  - 2. ONLY if court makes finding there has been a prima facie case of discrimination established
  - 3. Have a juror profile of what type of juror you want on this case
  - 4. Don't be afraid of *Wheeler*
  - 5. Courts have upheld many reasons for challenge:
    - a. Arrest record
    - b. Hair/clothes suggest unconventional lifestyle
    - c. Smiled at defendant/glared at D.A.
    - d. Unsatisfactory jury service in prior criminal case
    - e. D.A. wanted balance of men and women, young and old on jury
    - f. Close relatives had been charged with crimes
    - g. Familiar with crime scene
    - h. Not mentally alert
    - i. Loner
    - j. Clothes, demeanor and reading of newspaper in jury box indicated disdain for proceedings
- C. Remedy

Update on *Wheeler* - 11/8/91

The *Wheeler* case prohibits exercising peremptory challenges to jurors based on group bias. *Wheeler* is still very much alive after the advent of judicial voir dire. Deputies should not give any reasons to justify challenges until after the court has made a finding that a *prima facie* showing of discrimination has been established. For further information, please refer to *People v. Cervantes* (1991) 233 CA3d 323, 335-37; *People v. Fuentes* (1991) 54 C3d 707, 711-21; and *People v. Johnson* (1989) 47 C3d 1194, 1214-22.

*Wheeler* alert - 5/27/92

Most of the recent California cases interpreting *Wheeler* [which prohibits bias in jury selection] have been favorable. In particular, exercising one or two peremptory challenges does not, by itself, indicate presumptive group bias which requires the deputy to state reasons justifying the challenges (*P. v. Wright* (1990) 52 C3d 367, 398-400; *P. v. Christopher* (1991) 1 CA4th 666, 669-73; *P. v. Howard* (1992) 1 C4th 1132, 1153-57; *P. v. Wimberly* (1992) 5 CA4th 773, 781-84; see also *P. v. Rousseau* (1982) 129 CA3d 526, 536-37). One recent case which went the other way - *P. v. Sanchez* (1992) 6 CA4th 913, 916-22 [finding discrimination based on one peremptory] - was decertified on 8/13/92 and thus is not citable as authority.

IRA REINER  
District Attorney  
By:  
Deputy District Attorney  
Criminal Courts Building  
Room 18000  
210 West Temple Street  
Los Angeles, California 90012  
(213) 974-

Attorney for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF LOS ANGELES

THE PEOPLE OF THE STATE OF CALIFORNIA, )  
 )  
 ) Plaintiff, ) BA  
 ) v. )  
 ) MOTION TO SUPPLEMENT  
 ) VOIR DIRE UNDER  
 ) C.C.P. SECTION 223  
 )  
 ) Defendant. )  
 )

TO: \_\_\_\_\_ AND ATTORNEY OF RECORD.

PLEASE TAKE NOTICE that on \_\_\_\_\_ or as soon thereafter as this matter can be heard in \_\_\_\_\_ of the above-entitled court, the People will move this honorable court to supplement voir dire as provided by Section 223 of the Code of Civil Procedure.

This motion will be based upon the attached points and authorities, supporting declaration, the pleading, records, files,

documents, and evidence, whether oral or written, presented at the hearing on this motion.

DATED:

Respectfully submitted,

IRA REINER  
District Attorney of  
Los Angeles County

By:

---

Deputy District Attorney



DECLARATION

I, \_\_\_\_\_, declare that:

I am an attorney licensed to practice law in the State of California;

I am a Deputy District Attorney employed by the County of Los Angeles;

I am assigned to assist in the prosecution of this case;

I am informed and believe that good cause exists to supplement voir dire in this case for the following reason(s):

\_\_\_\_\_ 1. The following areas of questioning requested in the pre-voir dire conference were not addressed by the court;

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_ 2. Follow-up questions from the court are needed to adequately address prospective jurors' responses which suggest actual and/or implied bias as follows:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_ 3. The prosecution requests the opportunity to directly question the prospective jurors for the reason(s) below:

\_\_\_\_\_

\_\_\_\_\_

WHEREFORE, the plaintiff requests the court to supplement voir dire under Section 223 of the C.C.P.

I DECLARE UNDER PENALTY OF PERJURY that the above statement is true and correct.

DATED: \_\_\_\_\_ at \_\_\_\_\_, California.

\_\_\_\_\_  
DECLARANT

## POINTS AND AUTHORITIES

### I

C.C.P. SECTION 223 PROVIDES THAT THE COURT MAY SUPPLEMENT THE VOIR DIRE EXAMINATION UPON A SHOWING OF GOOD CAUSE.

C.C.P. Section 223 provides that the court may permit the parties to supplement voir dire or shall itself further question the prospective jurors upon a showing of good cause. It is not clear what showing would satisfy the "good cause" standard. Neither the federal system nor other states surveyed utilize "good cause" as the standard for permitting additional voir dire.

"Good cause" has been used in another context as the standard which must be met to continue a case pursuant to Penal Code Section 1050. This showing of "good cause" is also undefined by both statute and case law. However, the trial court's determination of "good cause" will not be reversed absent a showing of abuse of discretion. See People v. Johnson (1980) 26 Cal.3d 557; Hollis v. Superior Court (1985) 165 Cal.App.3d 642.

C.C.P. Section 223 also provides that the purpose of voir dire is to aid in challenges for cause. C.C.P. Section 225(b)(1) permits a challenge of a prospective juror "for cause" in the following categories:

A) General disqualification

This rarely used challenge is made on the grounds that a juror is disqualified from serving as a juror in any case.

B) Implied bias

The eight statutory grounds for implied bias are set out in Section 229 of the C.C.P. No further proof of prejudice is

required; it is inferred as a matter of law. California Criminal Law: Procedure and Practice, Section 28.6, CEB, 1986.

C) Actual bias

Actual bias is defined as a state of mind which prevents the juror "from acting with entire impartially, and without prejudice to the substantial rights of any party."

Many, if not most, of the questions formerly asked during voir dire to determine whether there is a basis for a peremptory challenge are still relevant to determine whether implied or actual bias exists as a basis for a challenge for cause. There is no "bright line" distinguishing questions designed to uncover bias from those designed to assist with peremptory challenges.

The trial judge is given wide latitude to determine how best to conduct voir dire and his failure to ask specific questions will be reversed only for abuse of discretion; however, abuse will be found if the questioning is not reasonably sufficient to test the jury for bias or partiality. U.S. v. Jones (1983) 722 F.2d 528.

In U.S. v. Washington (1987) 819 F.2d 221, which reaffirms the standard in Jones, Id., the court held that the trial judge must exercise sound discretion in accepting or rejecting supplemental questions proposed by counsel. Discretion is not properly exercised when questions are not reasonably sufficient to test the jury for bias or partiality.

In the federal system, it has been held that detailed voir dire or attorney-conducted voir dire is appropriate where issues of special or unusual concern permeate the case, such as racial prejudice when race may

be an issue, or jury prejudice based on extensive pre-trial publicity. (See generally United States v. Giese, (9th Cir. 1979) 597 F.2d 1170 for extensive discussion of judicially conducted voir dire.)

## II

THE COURT SHOULD EXERCISE ITS DISCRETION TO PERMIT APPROPRIATE SUPPLEMENTAL QUESTIONS.

The questions asked on voir dire are a matter of the trial court's discretion, but this discretion is "subject to the essential demands of fairness." Alridge v. United States, (1931) 283 U.S. 308, 310. Further, the judge must exercise sound judicial discretion in accepting or rejecting supplemental questions proposed by counsel. "When the trial court undertakes the examination of potential jurors, it has a duty to consider the perspective of informed counsel, as well as its own, in determining what questions will tend to reveal possible juror prejudice." United States v. Baker, (10th Cir. 1980) 638 F.2d 198, 201.

"[A] requested voir dire question should be asked if an anticipated response would afford the basis for a challenge for cause." United States v. Blount, (6th Cir. 1973) 479 F.2d 650, 651.

A thorough voir dire requires careful attention to jurors' responses so that appropriate follow-up inquiry can be pursued.

By definition, presumed bias depends heavily on the surrounding circumstances. Therefore, when a defendant is trying to prove presumed bias, the court has the duty to develop the facts fully enough so that it can make an informed judgment on the question of 'actual bias'. This duty cannot be discharged solely by broad vague questions once some potential area of

actual prejudice has emerged. United States v. Nell, (5th Cir.  
1976) 526 F.2d 1223, 1229-30.

DATED:

Respectfully submitted,

IRA REINER  
District Attorney

By:

---

Deputy District Attorney

JUDICIAL VOIR DIRE

Proposition 115 repealed the former Code of Civil Procedure (CCP) section 223 on voir dire and added the new CCP 223 as follows:

"In a criminal case, the court shall conduct the examination of prospective jurors. However, the court may permit the parties, upon a showing of good cause, to supplement the examination by such further inquiry as it deems proper, or shall itself submit to the prospective jurors upon such a showing, such additional questions by the parties as it deems proper. Voir dire of any prospective jurors shall, where practicable, occur in the presence of the other jurors in all criminal cases, including death penalty cases.

Examination of prospective jurors shall be conducted only in aid of the exercise of challenges for cause.

The trial court's exercise of its discretion in the manner in which voir dire is conducted shall not cause any conviction to be reversed unless the exercise of that discretion has resulted in a miscarriage of justice, as specified in Section 13 of Article VI of the California Constitution.

Thus, the trial court, rather than the attorneys, now has the responsibility of conducting the voir dire examination. However, the attorneys for both sides can still have significant input in the voir dire process.

The revised California Rules of Court concerning voir dire provide as follows:

Rule 228.1 Pre-voir dire conference in criminal cases

(a) [The conference] Before jury selection begins in criminal cases, the court shall conduct a conference with counsel to determine:

- (1) a brief outline of the nature of the case, including a summary of the criminal charges;
- (2) the names of persons counsel intend to call as witnesses at trial;

(3) the People's theory of culpability and the defendant's theories;

(4) the procedures for deciding requests for excuse for hardship and challenges for cause; and

(5) the areas of inquiry and specific questions to be asked by the court and, as permitted by the court, by counsel and any time limits on counsel's examination.

The judge shall if requested, excuse the defendant from then disclosing any defense theory.

(b) [Written questions] The court may require that all questions to be asked of prospective jurors, either orally or by written questionnaire, shall be submitted to the court and opposing counsel in writing before the conference.

#### Rule 228.2 Supplemental examination in criminal cases

In criminal jury trials after completion of the initial examination, on request of counsel or on the court's own motion and on a showing of good cause, the court may conduct or permit counsel to conduct supplemental questioning as the court deems proper.

[See Rules 516.1 and 516.2 for the Municipal Court].

Both the statute and the rules contemplate the attorneys submitting voir dire questions for the court to use in examining prospective jurors. Resource materials on voir dire have been provided to each division. Also, Division Chiefs should accumulate voir dire questions on the specific types of cases handled by their division. It is the responsibility of each deputy to prepare appropriate questions tailored to apply to the case being tried.

In addition, the court may permit the attorneys, upon a showing of good cause, to personally question prospective jurors. Deputies should request that both sides be permitted at least limited access to the jurors to personally conduct part of the voir dire. Such personal questioning by the deputy should aid in the process of obtaining a fair and impartial jury and eliminating prospective jurors who may be biased against the prosecution.

Remember that we need all twelve jurors to obtain a guilty verdict; the defense only needs one juror to prevent a conviction. Also, the voir dire examination must be sufficiently detailed to enable deputies to properly comply with the requirements of People v. Wheeler (1978) 22 C.3d 258 and People v. Johnson (1989) 47 C.3d 1194. Deputies can never base a peremptory challenge on group bias.

The new CCP 223 has changed the law in two additional respects. First, the practice of sequestering jurors for individual voir dire has been largely eliminated, including in death penalty cases. This overrules Hovey v. Superior Court (1980) 28 C.3d 1, which required such a procedure. However, CCP 223 still allows some court discretion, and a deputy may request sequestered voir dire if it is appropriate in a particular case.

Second, the purpose of voir dire is to aid in the exercise of challenges for cause. This overrules People v. Williams (1981) 29 C.3d 392, which permitted voir dire to assist in the intelligent exercise of peremptory challenges. Of course, many questions which might assist with peremptory challenges are also relevant to a challenge for cause for implied or actual bias (See CCP 225-231).

To properly implement judicial voir dire, it is essential that deputies think about and prepare for the voir dire process before trial. Deputies must prepare written and oral questions based on the nature of the crime and the facts of the case, taking into account the practice of the court in which the case is being tried. Deputies must vigorously represent our interests during the entire jury selection process. Our goal is to identify and eliminate the unfair or biased person so that the case may be tried before a reasonable and impartial jury.



# **Voir Dire - Post Prop. 115**

Prepared by  
**Los Angeles County**

MEMORANDUM

TO: JEFF JONAS, Head Deputy CT-15  
FROM: PAUL PFAB<sup>(512)</sup> Deputy District Attorney  
SUBJECT: VOIR DIRE QUESTIONS IN THE FACE OF PROP. 115  
DATE: OCTOBER 31, 1990

Given the inability of DDA's to personally voir dire in view of the prohibitive mandate caused by Proposition 115, I have compiled a list of voir dire questions that may be helpful for DDA's to use in making sure that (judges) properly canvass a jury during their voir dire.

It is currently the practice of most judges in the CCB to accept questions from (the) attorneys for his consideration and possible inclusion in the voir dire process.

The questions that are attached are not intended to exclusively define all of the areas that a particular DDA might want to suggest to the court. They are just some examples that broadly attempt to cover most of the typical areas included in voir dire and might, therefore, be useful as a general resource.

This effort was motivated by the concern due to Proposition 115's prohibitive effect in allowing prosecutors to directly address the jury at voir dire and the corollary problem caused when judges are not thorough in their questioning.

QUESTIONS FOR PROSPECTIVE JURORS

1. (Per the duties of juror's laid out in the "Juror's Handbook"):  
Do you understand that you have 2 basic duties as a juror?
  - To determine the facts from the evidence that is presented to you &
  - To apply the law that the (judge) will give to you to the facts in order to determine if the defendant is guilty beyond a reasonable doubt?
2. Do you understand that it is not your duty to be an advocate for one side or the other, but to do your best to search for the truth given the facts of the case and your application of the law to them?
3. Do you understand that you should not consider the subject of penalty in determining whether or not the defendant is guilty?
4. Do you understand that sympathy should not affect your judgment in determining whether the defendant committed the (charged) crimes? Similarly, do you understand that sympathy should not affect your judgment in assessing the credibility of any witness?
5. Will all of you apply the law as given to you by the (judge) even if you disagree with it?
6. Will any of you have any difficulty applying the same standards to judge all of the witnesses' testimony, regardless of whether they are called by the People or by the defense?
7. In judging the credibility of each witness, do each of you understand that you will be given instructions at the end of the case that will provide you with standards that you may use to help you measure the believability of (each) witness?
8. Do you understand that it is up to you to determine whether a discrepancy in a witness's testimony - or between witnesses - involves a material fact or is a trivial detail?
9. Do you understand that in weighing conflicting testimony that the final test is not in the (relative) number of witnesses, but in the convincing force of the evidence after a full and fair consideration of it?
10. Do you understand that in helping you to determine the believability of any witness that you may take into account - among others - such things as the demeanor of that witness while he is testifying as well as the character and quality of that testimony?

11. Do you understand that neither side is required to call as witnesses all persons who may have been present at any of the events disclosed by the evidence or who may appear to have some knowledge of these events?
12. Do you understand that a witness, to any evidence used to prove a crime must be judged by the instructions that (I) will give involving credibility, and that any feelings that you may have toward that witness - such as whether that witness would be your friend, whether you like or dislike him, whether you respect or do not respect him - should not be considered in determining whether all or any of that witness's testimony is to be believed? (Suggest follow-up question citing an example)
13. Do you understand that the weight that you give to any so-called expert witness's testimony is up to you to determine given the extent of that witness's training and experience?
14. Do you understand that a police officer witness should be judged by the same standards as any other witness? If, on the other hand, that witness is proved to have some level of expertise, then it is up to you to determine the weight that you will give to such testimony?
15. Would you find the defendant not guilty merely because the witnesses that are used to prove the crimes against him are persons that you personally would not associate with?
16. Realizing that the case before you is not from some dramatic TV show or movie, will you work as hard as you can to determine the facts from the evidence and to apply the law in order to find the truth?
17. Do you understand that the People do not have to prove the case to you "beyond all doubt" or "beyond a shadow of a doubt"?
18. Do you understand that the burden of proof that the People need to prove the case to you is "beyond a reasonable doubt"? And that (like #17) this does not mean that the People need to prove the case to you beyond all possible doubt "because everything in human affairs is subject to some possible or imaginary doubt". (Suggest an example or at least to differentiate that popularized TV standards of the burden of proof are not applicable in the real-life context of a criminal case)
19. Do you understand that if the attorneys "stipulate" to a fact that you must consider that fact proved (and just as though evidence were produced during the case to prove such fact to you)?
20. A party, attorney or witness may come from a particular national, racial, or religious group or have a lifestyle different from your own. Would that fact affect your judgment or the weight and credibility you would give to his or her testimony?

21. Will you have any difficulty keeping an open mind until you have heard all the evidence as well as hearing all the arguments of both counsel and the instructions that (I) will give you regarding the law that you are to apply to the case?
22. If any of you have any preconceived ideas about what the law is that you should apply to the case (e.g., what murder means, etc.) will you put that idea aside and wait for (me) to give you the law at the end of the case (or when I do)?
23. Each attorney has the right to excuse prospective jurors without showing cause. Would you disfavor the attorney or that side of the case if he excused the prospective juror - even though you may have developed a friendship with that (excused) juror?
24. Each attorney has the right to object to evidence and testimony that is offered during the case. Would you disfavor the attorney or that side of the case if he objected to (such) evidence? What if he continued to object to evidence being offered many times?
25. Have you or any of your relatives or friends ever been involved in any criminal charge or any charge similar to that alleged here?
26. Do you have any feelings about this particular offense that would make it difficult for you to be a fair and impartial juror?
27. Are you a lawyer or have you received any training as a lawyer?
28. If you observe an attorney - out in the hallway/somewhere else - appear to be discussing something with an individual who later appears as a witness in the case before you, would you hold it against that side (because of such fact)?
29. Would the mere fact that the case takes a shorter time than you feel (this) type of case should take affect your judgment in determining whether the case has been proved to you?
30. Do you understand what "direct" evidence is? What about "circumstantial" evidence? (Suggest you differentiate the two forms of evidence by citing examples of each)
31. Do you understand that BOTH direct and circumstantial evidence are entitled to the same weight and that neither form of evidence - by themselves - is entitled to any greater weight than the other?
32. Do you understand that you must decide all questions of fact in this case from the evidence received in this trial and not from any other source? Do you understand that you must not make any independent investigation of the facts or the law or consider or discuss facts as to which there is no evidence?

33. Do you understand that you must not speculate about evidence (that you may wish had been presented to you) but which was not actually presented to you during the presentation of the case in this court?
  34. Do you understand that statements made by the attorneys during the trial are not evidence?
  35. Do you understand that the only evidence that you may consider is that which is produced during the case and that it may consist of testimony of witnesses, writings, material objects, or anything presented to the senses and offered to prove the existence or non-existence of a fact?
  36. Do you understand that it is perfectly reasonable for you to use your common sense in helping you to find the truth in this case?
  37. In this case of murder-with-special-circumstances do you understand that the defendant does not face the death penalty?
  38. In being impartial, will you avoid bending over backwards - over-compensating - should you recognize in yourself that you identify with one class of witness as opposed to another? (E.g., relative of police officer, etc.)
  39. If, after a full and fair comparison of all of the evidence in the case - and after considering its relative convincing force - you determine that the People have proved the case beyond a reasonable doubt, will you be able to vote guilty? Again, will you avoid letting feeling of sympathy or pity for the defendant or for any witness affect your decision? And will you avoid letting any consideration of penalty affect your decision? Will you do your best to avoid being an advocate for one side or the other but rather to be an impartial judge of the facts?
  40. When all is said and done, will you do your best to search for the truth?
- 

41. As an alternate juror will you give this case the same attention as though you were one of the twelve chosen to hear it?
  42. Please ask questions, above. Please note "priority" questions, below.
- 

PRIORITY QUESTIONS: #'s 2, 3, 4, 7, 8, 9, 10, 11, 12, 15, 16, 17, 18, 20, 22, 30, 31, 32, 33, 34, 35, 36, 37, 39, 40.



# COUNTY OF SAN DIEGO

INTER-DEPARTMENTAL CORRESPONDENCE

August 30, 1990

TO: Don MacNeil  
Bob Sullivan

FROM: Richard McCue

RE: Voir Dire  
Sec. 8.5 of Standards of Judicial Administration

I have discovered that the California Rules of Court have a preferred judicial voir dire script. It is sec. 8.5 of the Appendix to Calif. Rules of Court, Division I, Standards of Judicial Administration. It follows in full.

RM/jc

APPENDIX TO  
CALIFORNIA RULES OF COURT  
DIVISION I  
STANDARDS OF JUDICIAL ADMINISTRATION

Sec. 8.5. Examination of prospective jurors in criminal cases

(a) [In general]

(1) This standard applies in all criminal cases.

(2) The examination of prospective jurors in a criminal case should include all questions necessary to insure the selection of a fair and impartial jury.

The trial judge may, upon a showing of good cause, permit supplemental examination calculated to discover possible bias or prejudice with regard to the circumstances of the particular case, relevant to a challenge for cause.

(b) [Examination of jurors] The trial judge's examination of prospective jurors in criminal cases should include the following areas of inquiry and any other matters affecting their qualifications to serve as jurors in the case:

(1) (To the entire jury panel after it has been sworn and seated): I am now going to question the prospective jurors who are seated in the jury box concerning their qualifications to serve as jurors in this case. All members of this jury panel, however, should pay close attention to my question, making note of the answers you would give if these questions were put to you personally. If and when any other member of this panel is called to the jury box, he or she will be asked to answer these questions.

(2) (To the prospective jurors seated in the jury box): In the trial of this case each side is entitled to have a fair, unbiased and unprejudiced jury. If there is any fact or any reason why any of you might be biased or prejudiced in any way, you must disclose such reasons when you are asked to do so. It is your duty to make this disclosure.

(3) (In lengthy trials): This trial will likely take \_\_\_\_\_ days to complete, but it may take longer. Will any of you find it difficult or impossible to participate for this period of time?

(4) Ladies and gentlemen of the jury: This is a criminal case entitled The People of the State of California v. \_\_\_\_\_. The (defendant is) (defendants are) seated \_\_\_\_\_.

(a) (Mr.) (Ms.) (defendant), please stand and face the prospective jurors in the jury box and in the audience seats. (Defendant complies.) Is there any member of the jury panel who is acquainted with the defendant or who may have heard (his) (her) name prior to today? If your answer is yes, please raise your hand.



(b) The defendant, \_\_\_\_\_, is represented by (his) (her) attorney, \_\_\_\_\_, who is seated \_\_\_\_\_. (Mr.) (Ms.) (defense attorney), would you please stand? Is there any member of the jury panel who knows or who has seen (Mr.) (Ms.) \_\_\_\_\_ prior to today?

(c) (If there is more than one defendant, repeat (a) and (b) for each co-defendant.)

(5) The People are represented by \_\_\_\_\_, Deputy District Attorney, who is seated \_\_\_\_\_. (Mr.) (Ms.) (district attorney), would you please stand? Is there any member of the jury panel who knows or who has seen (Mr.) (Ms.) \_\_\_\_\_ prior to today?

(6) The defendant is charged by an (information) (indictment) filed by the district attorney with having committed the crime of \_\_\_\_\_, in violation of section \_\_\_\_\_ of the \_\_\_\_\_ Code, it being alleged that on or about \_\_\_\_\_ in the County of \_\_\_\_\_, the defendant did (describe the offense). To (this charge) (these charges) the defendant has pleaded not guilty, and it will be the question of (his) (her) guilt or innocence of (this charge) (these charges) that you will be asked to decide if you are selected as a trial juror in this case. Having heard the charge(s) which (has) (have) been filed against the defendant, is there any member of the jury panel who feels that he or she cannot give this defendant a fair trial because of the nature of the charge(s) against (him) (her)?

(7) Have any of you heard of, or have you any prior knowledge of, the facts or events in this case?

(8) During the trial of this case, the following persons may be called as witnesses to testify on behalf of the parties: (The defendant may be excused from disclosing the name of any witness. Do not identify the side on whose behalf the witnesses might be called.) Have any of you heard of or otherwise been acquainted with any of the witnesses just named? You should note that the parties are not required and might not wish to call all of these witnesses, and they may later find it necessary to call other witnesses.

(9) Do any of you have any belief or feeling toward any of the parties, attorneys or witnesses that would make it impossible, or difficult, for you to act fairly and impartially, both as to the defendant and the People? Do any of you have any interest in the outcome of this case?

(10) How many of you have served previously as jurors in a criminal case? (To each person whose hand is raised):

(a) (Mr.) (Ms.) \_\_\_\_\_, you indicated you have been a juror in a criminal case? What was the nature of the charge in that case? (Response.)

(b) Do you feel you can put aside whatever you heard in that case and decide this case on the evidence to be presented and the law as I shall state it to you? (Response)

(11) May I see the hands of those jurors who have served on civil cases, but who have never served on a criminal case? (Response) You must understand that there are substantial differences in the rules applicable to the trial of criminal cases from those applicable to the trial of civil cases. This is particularly true respecting the burden of proof which is placed upon the People. In a civil case we say that the plaintiff must prove his case by a preponderance of the evidence. In a criminal case, the defendant is presumed to be innocent, and before he may be found guilty, the People must prove his guilt beyond a reasonable doubt. If the jury has a reasonable doubt, the defendant must be acquitted. Will each of you be able to set aside the instructions which you received in your previous cases and try this case on the instructions given by me in this case?

(12) The fact that the defendant is in court for trial, or that charges have been made against (him) (her), is no evidence whatever of (his) (her) guilt. The jurors are to consider only evidence properly received in the courtroom in determining the guilt or innocence of the defendant. The defendant has been arraigned and has entered a plea of "not guilty," which is a complete denial, making it necessary for the People, acting through the district attorney, to prove beyond a reasonable doubt the case against the defendant. Until and unless this is done, the presumption of innocence prevails.

(13) Have any of you, or any member of your family or any close friends to your knowledge, ever been arrested for or charged with an offense similar to that in this case?

(14) Have any of you, or any member of your family or any close friends to your knowledge, ever been a complaining witness or a victim in a case of this kind?

(15) Have any of you, or any member of your family or any close friends to your knowledge, had any law enforcement training or experience or been a member of or been employed by any law enforcement agency? By law enforcement agency, I include any police department, sheriff's office, highway patrol, district attorney's office, city attorney's office, attorney general's office, United States attorney's office, FBI, etc.? (If so, elicit the details of the experience or connection.)

(16) Would you be able to listen to the testimony of a police or other peace officer and measure it by the same standards that you use to test the credibility of any other witness?

(17) Would you have any difficulty or embarrassment in returning a verdict for or against the side which had a police or other peace officer as a witness?

(18) (When appropriate). It may appear that one or more of the parties, attorneys or witnesses come from a particular national, racial or religious group (or may have a life style different than your own). Would this in any way affect your judgment or the weight and credibility you would give to their testimony?

(19) It is important that I have your assurance that you will, without reservation, follow my instructions and rulings on the law and will apply that law to this case. To put it somewhat differently, whether you approve or disapprove of the court's rulings or instructions, it is your solemn duty to accept as correct these statements of the law. You may not substitute your own idea of what you think the law ought to be. Will all of you follow the law as given to you by me in this case?

(20) Each of you should now state your name, where you live, your marital status (whether married, single, or widowed or divorced), the number and ages of your children if any, your occupational history, and the name of your present employer. If you are married, you should also describe briefly your spouse's occupational history and present employer if any. Please begin with juror number one.

(21) Do you know of any other reason, or has anything occurred during this question period, that might make you doubtful you would be a completely fair and impartial juror in this case or why you should not be on this jury? If there is, it is your duty to disclose the reason at this time.

(22) (At this point the court asks each side to exercise any challenges for cause.)

(At this point the court calls on each side, alternately, to exercise any peremptory challenges.)

(23) (When a new prospective juror is seated, the court should ask (him) (her)):

(i) Have you heard my questions to the other prospective jurors:

(ii) Have any of the questions I have asked raised any doubt in your mind as to whether you could be a fair and impartial juror in this case?

(iii) Can you think of any other reason why you might not be able to try this case fairly and impartially to both the prosecution and defendant, or why you should not be on this jury?

(iv) Give us the personal information requested concerning your occupation, that of your spouse and your prior jury experience.

(Thereupon, as to each new juror seated, the court should ask counsel whether it has adequately covered the proper subjects of inquiry, ask such additional questions as the court determines are proper, permit counsel upon request to ask supplemental questions, and proceed with challenges as above.)

(d) [Improper questions] When any counsel examines the prospective jurors, the trial judge should not permit counsel to attempt to precondition the prospective jurors to a particular result or allow counsel to comment on the personal lives and families of the parties or their attorneys. Nor should he allow counsel to question the jurors concerning the pleadings, the applicable law, the meaning of particular words and phrases, or the comfort of the jurors, except in unusual circumstances, where, in the trial judge's sound discretion, such questions become necessary to insure the selection of a fair and impartial jury.

1. What is your business or occupation?
2. What is the business or occupation of your spouse if you are now married:
  - a. If you are no longer married or if your spouse is deceased, what was his or her business or occupation during the marriage or during his or her lifetime?
3. Of whom does your family consist?
  - a. If adult children, what are their businesses or occupations and that of their spouse, if any?
4. In what area of San Diego County do you reside? (Do not state your home address.)
5. What prior jury experience have you had?
  - a. How many civil cases have you tried; did any of these cases go to the jury, and did you decide them?
  - b. How many criminal cases have you served on; did they go to the jury, and did you decide them?
    - (1) On the criminal cases that you have served on as a juror, what was the charge or charges filed against the defendant?
6. Would the nature of the charges preclude you from giving the defendant a fair trial?
7. Do you have anything in your mind that would make it difficult or impossible to act fairly and impartially both as to the defendant and the People?
- 7A. Do you have any bumper stickers on your car?
8. Are you acquainted with, or have you had any personal dealings or contacts with, any of the
  - a. parties or attorneys?
  - b. possible witnesses?
9. Have you, or any close relative ever been:
  - a. a victim of a crime?
  - b. a witness to a crime?
  - c. a party or a witness in any lawsuit?
10. Have you had any connection whatsoever with law or law enforcement work?
11. Do you have any relatives or close friends who are, or have been, involved in law or law enforcement work such as:
 

1. Police Officers	5. Judges
2. Deputy Sheriffs/Marshals	6. Probation Officers
3. Lawyers	7. Immigration Officers
4. Deputy District Attorneys	8. Or other similar occupations?
12. Would you be able to listen to the testimony of a peace officer and measure it by the same standards that you would use to test the credibility of any other witnesses?
13. Do you agree to be governed by the Judge's rulings and instructions given by the Court as to the law rather than by any personal view you may have of what you think the law is or what you think the law ought to be?
14. Do you have any quarrel with the rule of law which requires the People to prove their case beyond a reasonable doubt?
15. Do you agree not to make up your mind as to the guilt or innocence of the defendant until you have heard all of the evidence, the instructions and have deliberated with your fellow jurors?

DEPT. #12

- SUPERIOR COURT:

BONNIE RUNDLE - COURT CLERK

ANA REID - COURT REPORTER

ED BARTH - BAILIFF