intrusions by other persons in the court facility, shall have suitable furnishings, equipment, and supplies, and shall also have restroom accommodations for male and female jurors.

(b) If the board of supervisors neglects to provide the facilities required by this section, the court may order the sheriff, marshal, or constable to do so, and the expenses incurred in carrying the order into effect, when certified by the court, are a county charge.

(c) Unless authorized by the jury commissioner, jury assembly facilities shall be restricted to use by jurors and jury commissioner staff. Leg.H. 1988 ch. 1245 §2.

§217. Food and Lodging for Jurors.

In criminal cases only, while the jury is kept together, either during the progress of the trial or after their retirement for deliberation, the court may direct the sheriff, marshal, or constable to provide the jury with suitable and sufficient food and lodging, or other reasonable necessities. In the superior, municipal, and justice courts, the expenses incurred under the provisions of this section shall be charged against the county or city and county in which the court is held. All such expenses shall be paid on the order of the court. Leg.H. 1988 ch. 1245 §2.

§218. Jurors Excused From Service.

The jury commissioner shall hear the excuses of jurors summoned, in accordance with the standards prescribed by the Judicial Council. It shall be left to the discretion of the jury commissioner to accept an excuse under subdivision (b) of Section 204 without a personal appearance. All excuses shall be in writing setting forth the basis of the request and shall be signed by the juror. Leg.H. 1988 ch. 1245 §2.

§219. Random Selection of Jurors for Jury Panels.

The jury commissioner shall randomly select jurors for jury panels to be sent to courtrooms for voir dire; provided that no peace officer, as defined in Section 830.1 and subdivision (a) of Section 830.2 of the Penal Code, shall be selected for voir dire in a criminal case. Leg.H. 1988 ch. 1245 §2.

§220. Number of Persons Comprising Jury.

A trial jury shall consist of 12 persons, except that in civil actions and cases of misdemeanor, it may consist of 12 or any number less than 12, upon which the parties may agree. Leg.H. 1988 ch. 1245 §2.

Ref.: W. Cal. Pro., "Trial" §86.

§221. Number of Jurors—Trial Jury Pilot Project.

(a) A trial jury in civil actions in municipal and justice courts may consist of eight persons in the County of Los Angeles, pursuant to rules adopted by the Judicial Council, as an experimental project operative until July 1, 1989.

(b) The Judicial Council shall appoint an advisory committee which shall include at least one judge of each court or courts in which the project will take place, one court administrator from that court or courts, or his or her designee, and one member of the Los Angeles County Bar Association, Trial Lawyers Section, who practices in the municipal or justice courts, to make recommendations regarding the design of the eight-person jury experiment. The Judicial Council shall adopt rules for the implementation of the project, including rules governing the assignment of cases to eight person juries during the experimental period, and establish procedures for the collection and evaluation of data.

(c) The Judicial Council shall report to the Legislature no later than January 1, 1990, comparing the performance of eight and 12 person juries. The comparison shall include, but not be limited to, the following factors:

(1) Cross-sectional representation of the community.

(2) Numbers of verdicts favoring plaintiffs or defendants, and size of awards.

(3) Accuracy, consistency, and reliability of awards.

(4) Time required for impanelment, trial, and deliberations.

(5) Public and private costs of the jury.

(d) Notwithstanding the provisions of Section 206, the project courts shall collect and provide to the Judicial Council the data required for a proper evaluation of the experiment. Any bona fide researcher or research organization shall be permitted access to any data regarding the conduct or evaluation of the pilot project. Leg.H. 1988 ch. 1245 §2.

§222. Random Selection of Jurors for Voir Dire.

(a) Except as provided in subdivision (b), when an action is called for trial by jury, the clerk, or the judge where there is no clerk, shall randomly select the names of the jurors for voir dire, until the jury is selected or the panel is exhausted.

(b) When the jury commissioner has provided the court with a listing of the trial jury panel in random order, the court shall seat prospective jurors for voir dire in the order provided by the panel list. Leg.H. 1988 ch. 1245 §2.

Ref.: Cal. Fms Pl. & Pr., "Juries & Verdicts."

§222.5. Examination of Prospective Jurors in Civil Jury Trials.

To select a fair and impartial jury in civil jury trials, the trial judge shall examine the prospective jurors. Upon completion of the judge's initial examination, counsel for each party shall have the right to examine, by oral and direct questioning, any of the prospective jurors in order to enable counsel to intelligently exercise both peremptory challenges and challenges for cause. During any examination conducted by counsel for the parties, the trial judge

should permit liberal and probing examination calculated to discover bias or prejudice with regard to the circumstances of the particular case. The fact that a topic has been included in the judge's examination should not preclude additional nonrepetitive or nonduplicative questioning in the same area by counsel.

The scope of the examination conducted by counsel shall be within reasonable limits prescribed by the trial judge in the judge's sound discretion. In exercising his or her sound discretion as to the form and subject matter of voir dire questions, the trial judge should consider, among other criteria, any unique or complex elements, legal or factual, in the case and the individual responses or conduct of jurors which may evince attitudes inconsistent with suitability to serve as a fair and impartial juror in the particular case. Specific unreasonable or arbitrary time limits shall not be imposed.

The trial judge should permit counsel to conduct voir dire examination without requiring prior submission of the questions unless a particular counsel engages in improper questioning. For purposes of this section, an "improper question" is any question which, as its dominant purpose, attempts to precondition the prospective jurors to a particular result, indoctrinate the jury, or question the prospective jurors concerning the pleadings or the applicable law. A court should not arbitrarily or unreasonably refuse to submit reasonable written questionnaires, the contents of which are determined by the court in its sound discretion, when requested by counsel.

In civil cases, the court may, upon stipulation by counsel for all the parties appearing in the action, permit counsel to examine the prospective jurors outside a judge's presence. Leg.H. 1990 ch. 1232.

§223. Enacted 1988. Repealed by Initiative (Prop. 115 §6) at the June 5, 1990, Primary Election, operative June 6, 1990.

A new §223 follows.

§223. Examination of Prospective Jurors in Criminal Cases.

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. **[Adopted by Initiative (Prop. 115 §7) at the June 5, 1990, Primary Election, operative June 6, 1990.]**

§223.5. Enacted 1988. Repealed by Initiative (Prop. 115) at the June 5, 1990, Primary Election, operative June 6, 1990.

§224. Handicapped Jurors—Use of Attendants.

(a) If a party does not cause the removal by challenge of an individual juror who is handicapped by loss of hearing, sight, or power of speech in any degree and who requires the services of a sign language interpreter, reader, or speech interpreter to facilitate communication, the party shall (1) stipulate to the presence of that attendant in the jury room during jury deliberations, and (2) prepare and deliver to the court proposed jury instructions to that attendant.

(b) If the services of a sign language interpreter, reader, or speech interpreter are required during the course of jury deliberations, the court shall instruct the jury and that attendant that the attendant for the disabled juror is not to participate in the jury's deliberations in any manner except to facilitate communication between the disabled juror and other jurors. Leg.H. 1988 ch. 1245 §2.

§225. "Challenge" Defined.

A challenge is an objection made to the trial jurors that may be taken by any party to the action, and is of the following classes and types:

(a) A challenge to the trial jury panel for cause.

(1) A challenge to the panel may only be taken before a trial jury is sworn. The challenge shall be reduced to writing, and shall plainly and distinctly state the facts constituting the ground of challenge.

(2) Reasonable notice of the challenge to the jury panel shall be given to all parties and to the jury commissioner, by service of a copy thereof.

(3) The jury commissioner shall be permitted the services of legal counsel in connection with challenges to the jury panel.

(b) A challenge to a prospective juror by either:

(1) A challenge for cause, for one of the following reasons:

(A) General disqualification—that the juror is disqualified from serving in the action on trial.

(B) Implied bias—as, when the existence of the facts as ascertained, in judgment of law disqualifies the juror.

(C) Actual bias—the existence of a state of mind on the part of the juror in reference to the case, or to any of the parties, which will prevent the juror from acting with entire impartiality, and without prejudice to the substantial rights of any party.

(2) A peremptory challenge to a prospective juror. Leg.H. 1988 ch. 1245 §2.

§226. Challenge to Individual Juror—In General.

(a) A challenge to an individual juror may only be made before the jury is sworn.

(b) A challenge to an individual juror may be taken orally or may be made in writing, but no reason need be given for a peremptory challenge, and the court shall exclude any juror challenged peremptorily.

(c) All challenges for cause shall be exercised before any peremptory challenges may be exercised.

(d) All challenges to an individual juror, except a peremptory challenge, shall be taken, first by the defendants, and then by the people or plaintiffs. Leg.H. 1988 ch. 1245 §2.

Ref.: W. Cal. Pro., "Trial" §145.

§227. Order of Challenges.

The challenges of either party for cause need not all be taken at once, but they may be taken separately, in the following order, including in each challenge all the causes of challenge belonging to the same class and type:

(a) To the panel.

(b) To an individual juror, for a general disqualification.

(c) To an individual juror, for an implied bias.

(d) To an individual juror, for an actual bias. Leg.H. 1988 ch. 1245 §2.

§228. Grounds for General Disqualification of Juror.

Challenges for general disqualification may be taken on one or both of the following grounds, and for no other:

(a) A want of any of the qualifications prescribed by this code to render a person competent as a juror.

(b) A loss of hearing, or the existence of any other incapacity which satisfies the court that the challenged person is incapable of performing the duties of a juror in the particular action without prejudice to the substantial rights of the challenging party. Leg.H. 1988 ch. 1245 §2.

§229. Challenge for Implied Bias.

A challenge for implied bias may be taken for one or more of the following causes, and for no other:

(a) Consanguinity or affinity within the fourth degree to any party, to an officer of a corporation which is a party, or to any alleged witness or victim in the case at bar.

(b) Standing in the relation of, or being the parent, spouse, or child of one who stands in the relation of, guardian and ward, conservator and conservatee, master and servant, employer and clerk, landlord and tenant, principal and agent, or debtor and creditor, to either party or to an officer of a corporation which is a party, or being a member of the family of either party; or a partner in business with either party; or surety on any bond or obligation for either party, or being the holder of bonds or shares of capital stock of a corporation which is a party; or having stood within one year previous to the filing of the complaint in the action in the relation of attorney and client with either party or with the attorney for either party. A depositor of a bank or a holder of a savings account in a savings and loan association shall not be deemed a creditor of that bank or savings and loan association for the purpose of this paragraph solely by reason of his or her being a depositor or account holder.

(c) Having served as a trial or grand juror or on a jury of inquest in a civil or criminal action or been a witness on a previous or pending trial between the same parties, or involving the same specific offense or cause of action; or having served as a trial or grand juror or on a jury within one year previously in any criminal or civil action or proceeding in which either party was the plaintiff or defendant or in a criminal action where either party was the defendant.

(d) Interest on the part of the juror in the event of the action, or in the main question involved in the action, except his or her interest as a member or citizen or taxpayer of a county, city and county, incorporated city or town, or other political subdivision of a county, or municipal water district.

(e) Having an unqualified opinion or belief as to the merits of the action founded upon knowledge of its material facts or of some of them.

(f) The existence of a state of mind in the juror evincing enmity against, or bias towards, either party.

(g) That the juror is party to an action pending in the court for which he or she is drawn and which action is set for trial before the panel of which the juror is a member.

(h) If the offense charged is punishable with death, the entertaining of such conscientious opinions as would preclude the juror finding the defendant guilty; in which case the juror may neither be permitted nor compelled to serve. Leg.H. 1988 ch. 1245 §2.

Ref.: Cal. Fms Pl. & Pr., "Juries & Verdicts"; W. Cal. Pro., "Trial" §131A.

§230. Challenges for Cause.

Challenges for cause shall be tried by the court. The juror challenged and any other person may be examined as a witness in the trial of the challenge, and shall truthfully answer all questions propounded to them. Leg.H. 1988 ch. 1245 §2.

§231. Number of Peremptory Challenges.

(a) In criminal cases, if the offense charged is punishable with death, or with imprisonment in the state prison for life, the defendant is entitled to 20, and the people to 20 peremptory challenges. Except as provided in subdivision (b), in a trial for any other offense, the defendant is entitled to 10 and the state to 10 peremptory challenges. When two or more defendants are jointly tried, their challenges shall be exercised jointly, but each defendant shall also be entitled to five additional challenges which may be

exercised separately, and the people shall also be entitled to additional challenges equal to the number of all the additional separate challenges allowed the defendants.

(b) If the offense charged is punishable with a maximum term of imprisonment of 90 days or less, the defendant is entitled to six and the state to six peremptory challenges. When two or more defendants are jointly tried, their challenges shall be exercised jointly, but each defendant shall also be entitled to four additional challenges which may be exercised separately, and the state shall also be entitled to additional challenges equal to the number of all the additional separate challenges allowed the defendants.

(c) In civil cases, each party shall be entitled to six peremptory challenges. If there are more than two parties, the court shall, for the purpose of allotting peremptory challenges, divide the parties into two or more sides according to their respective interests in the issues. Each side shall be entitled to eight peremptory challenges. If there are several parties on a side, the court shall divide the challenges among them as nearly equally as possible. If there are more than two sides, the court shall grant such additional peremptory challenges to a side as the interests of justice may require; provided that the peremptory challenges of one side shall not exceed the aggregate number of peremptory challenges of all other sides. If any party on a side does not use his or her full share of peremptory challenges, the unused challenges may be used by the other party or parties on the same side.

(d) Peremptory challenges shall be taken or passed by the sides alternately, commencing with the plaintiff or people; and each party shall be entitled to have the panel full before exercising any peremptory challenge. When each side passes consecutively, the jury shall then be sworn, unless the court, for good cause, shall otherwise order. The number of peremptory challenges remaining with a side shall not be diminished by any passing of a peremptory challenge.

(e) If all the parties on both sides pass consecutively, the jury shall then be sworn, unless the court, for good cause, shall otherwise order. The number of peremptory challenges remaining with a side shall not be diminished by any passing of a peremptory challenge. Leg.H. 1988 ch. 1245 §2, 1989 ch. 1416.

Ref.: Cal. Fms Pl. & Pr., "Juries & Verdicts."

§232. Acknowledgement and Agreement Concerning Perjury.

(a) Prior to the examination of prospective trial jurors in the panel assigned for voir dire, the following perjury acknowledgement and agreement shall be obtained from the panel, which shall be acknowledged by the prospective jurors with the statement "I do":

"Do you, and each of you, understand and agree that you will accurately and truthfully answer, under penalty of perjury, all questions propounded to you concerning your qualifications and competency to serve as a trial juror in the matter pending before this court; and that failure to do so may subject you to criminal prosecution."

(b) As soon as the selection of the trial jury is completed, the following acknowledgment and agreement shall be obtained from the trial jurors, which shall be acknowledged by the statement "I do":

"Do you and each of you understand and agree that you will well and truly try the cause now pending before this court, and a true verdict render according only to the evidence presented to you and to the instructions of the court." Leg.H. 1988 ch. 1245 §2, 1989 ch. 1416.

Ref.: Cal. Fms Pl. & Pr., "Juries & Verdicts."

§233. Discharge of Juror; Substitution of Alternative Jurors.

If, before the jury has returned its verdict to the court, a juror becomes sick or, upon other good cause shown to the court, is found to be unable to perform his or her duty, the court may order the juror to be discharged. If any alternate jurors have been selected as provided by law, one of them shall then be designated by the court to take the place of the juror so discharged. If after all alternate jurors have been made regular jurors or if there is no alternate juror, a juror becomes sick or otherwise unable to perform the juror's duty and has been discharged by the court as provided in this section, the jury shall be discharged and a new jury then or afterwards impaneled, and the cause may again be tried. Alternatively, with the consent of all parties, the trial may proceed with only the remaining jurors, or another juror may be sworn and the trial begin anew. Leg.H. 1988 ch. 1245 §2.

§234. Alternate Jurors—Selection and Role.

Whenever, in the opinion of a judge of superior, municipal, or justice court about to try a civil or criminal action or proceeding, the trial is likely to be a protracted one, or upon stipulation of the parties, the court may cause an entry to that effect to be made in the minutes of the court and thereupon, immediately after the jury is impaneled and sworn, the court may direct the calling of one or more additional jurors, in its discretion, to be known as "alternate jurors."

These alternate jurors shall be drawn from the same source, and in the same manner, and have the same qualifications, as the jurors already sworn, and shall be subject to the same examination and challenges. However, each side, or each defendant, as provided in Section 231, shall be entitled to as many peremptory challenges to the alternate jurors as there are alternate jurors called.

The alternate jurors shall be seated so as to have equal power and facilities for seeing and hearing the proceedings in the case, and shall take the same oath as the jurors already selected, and shall, unless excused by the court, attend at all times upon the trial of the cause in company with the other jurors, but

shall not participate in deliberation unless ordered by the court, and for a failure to do so are liable to be punished for contempt.

They shall obey the orders of and be bound by the admonition of the court, upon each adjournment of the court; but if the regular jurors are ordered to be kept in the custody of the sheriff, marshal, or constable during the trial of the cause, the alternate jurors shall also be kept in confinement with the other jurors; and upon final submission of the case to the jury, the alternate jurors shall be kept in the custody of the sheriff, marshal, or constable who shall not suffer any communication to be made to them except by order of the court, and shall not be discharged until the original jurors are discharged, except as provided in this section.

If at any time, whether before or after the final submission of the case to the jury, a juror dies or becomes ill, or upon other good cause shown to the court is found to be unable to perform his or her duty, or if a juror requests a discharge and good cause appears therefor, the court may order the juror to be discharged and draw the name of an alternate, who shall then take his or her place in the jury box, and be subject to the same rules and regulations as though he or she has been selected as one of the original jurors.

All laws relative to fees, expenses, and mileage or transportation of jurors shall be applicable to alternate jurors, except that in civil case the sums for fees and mileage or transportation need not be deposited until the judge directs alternate jurors to be impaneled. Leg.H. 1988 ch. 1245 §2.

Ref.: Cal. Fms Pl. & Pr., "Juries & Verdicts."

§235. Jury of Inquest—Selection, Compensation, and Obligation.

At the request of the sheriff, concern, or other ministerial officer, the jury commissioner shall provide such prospective jurors as may be required to form a jury of inquest. Prospective jurors so provided shall be selected, obligated, and compensated in the same manner as other jurors selected under the provisions of this chapter. Leg.H. 1988 ch. 1245 §2.

§236. Function of Jury of Inquest.

When six or more prospective jurors of inquest attend, they shall be sworn by the coroner to inquire who the person was, and when, where, and by what means the person came to his or her death, to inquire into the circumstances attending the death, and to render a true verdict thereon, according to the evidence offered them or arising from the inspection of the body. Leg.H. 1988 ch. 1245 §2.

CHAPTER 2
COURT COMMISSIONERS AND STENOGRAPHERS

§258. Enacted 1872. Repealed 1953 ch. 206.

§259. Powers.

Subject to the supervision of the court every court commissioner shall have power to do all of the following:

[1] (a) Hear and determine ex parte motions, for orders and alternative writs and writs of habeas corpus in the superior court for which the court commissioner is appointed.

[2] (b) Take proof and make and report findings thereon as to any matter of fact upon which information is required by the court. Any party to any contested proceeding may except to the report and the subsequent order of the court made thereon within five days after written notice of the court's action. A copy of the exceptions shall be filed and served upon opposing party or counsel within the five days. The party may argue any exceptions before the court on giving notice of motion for that purpose within 10 days from entry thereof. After a hearing before the court on the exceptions, the court may sustain, or set aside, or modify its order.

[3] (c) Take and approve any bonds and undertakings in actions or proceedings, and determine objections to the bonds and undertakings.

[4] (d) Administer oaths and affirmations, and take affidavits and depositions in any action or proceeding in any of the courts of this state, or in any matter or proceeding whatever, and take acknowledgments and proof of deeds, mortgages, and other instruments requiring proof or acknowledgment for any purpose under the laws of this or any other state or country.

[5] (e) Act as temporary judge when otherwise qualified so to act and when appointed for that purpose, or by written consent of [6] an appearing party [7]. While acting as temporary judge the commissioner shall receive no compensation therefor other than compensation as commissioner.

[8] (f) Hear and report findings and conclusions to the court for approval, rejection, or change, all preliminary matters including motions or petitions for the custody and support of children, the allowance of temporary alimony, costs and attorneys' fees, and issues of fact in contempt proceedings in divorce, maintenance, and annulment of marriage cases.

[9] (g) Hear, report on, and determine all uncontested actions and proceedings subject to the requirements of [10] subdivision (e).

[11] (h) Charge and collect the same fees for the performance of official acts as are allowed by law to notaries public in this state for like services. This [12] subdivision does not apply to any services of the commissioner, the compensation for which is expressly fixed by law. The fees so collected shall be paid to the treasurer of the county, for deposit in the general fund of the county.

[13] (i) Provide an official seal, upon which must be engraved the words "Court Commissioner" and the name of the county, or city and county, in which the Commissioner resides.

[14] (j) Authenticate with the official seal the commissioner's official acts. Leg.H. 1872, 1878 p.

VOIR DIRE
GENERAL QUESTIONS

BY

ELLIOTT E. ALHADEFF
DEPUTY DISTRICT ATTORNEY
LOS ANGELES COUNTY

JUNE 18, 1988

1. Credibility:

1. Liars ordinarily have a reason to lie. (M._____, ordinarily, do you believe that normal persons need a reason to lie? That if there is no apparent reason for a person to be lying, then it is reasonable to believe that they will tell the truth?

2. If the People present a witness and there is no evidence that the witness is lying, will that suggest to you that the witness is telling the truth? Will you consider that in evaluating that witness's credibility?

3. (Ask a question involving...) The function of a juror is to determine who is telling the truth and who is not and the juror must be willing to perform that function and feel comfortable in making these kind of decisions irrespective of the consequences.

2. Testimony of a single witness.

1. Instruction: The testimony of a single witness is sufficient to prove any fact if you believe the witness.

2. If a witness testifies about a particular element of this offense, and you believe the witness so that you are convinced of the proof of that element beyond a reasonable doubt, would you require any further evidence of that element? Would you require that the people parade a line of witness or present a series of documents to corroborate that testimony even though you were already convinced beyond a reasonable doubt that it was proved by the testimony of that witness?

3. Do you understand that the same rule applies if the witness testifies and is able to convince you of all the

elements of the offense beyond a reasonable doubt, that no further evidence need be presented? Do you understand that principle? Do you agree with it? Will you apply it as instructed by the court?

3. Testimony of a police officer.

1. Do you think police officers are paid to lie?

2. Do you think police officers will suffer serious sanctions if they lie?...even if the case results in a conviction?

3. Do you think police officers will suffer any sanctions if they tell the truth and it results in an acquittal?

4. Do you think that a police officer can be mistaken without intentionally lying?

5. If you disagree with the investigation of the case by the police, but you are convinced that the defendant is guilty beyound a reasonable doubt, would you acquit the defendant just to teach the police a lesson?

6. Instructions:

1. Would you follow the instructions even if they conflict with your own personal ideas?

2. You understand that the jury room is not a place to legislate. The law has already been determined and both counsel expect that you will apply the law as the judge gives it to you? Now suppose there is an instruction that you strongly disagree with. Could you set aside your own personal feelings and nevertheless apply the law as the judge instructs, reserving your objections for another time to be conveyed to your legislator or other appropriate forum?

3. Can you understand how wrong it would be for both the defense and the people to expect that you will apply the law and find that someone is unwilling to do so? It would mean that despite our efforts to obtain a fair trial based on the law, that could not happen and this whole trial turned out to be a sham? It would be so important for us to discover if any of you have any serious objection to setting aside your personal feelings in applying the law at this stage rather than to subject you to the strain of defending

your personal convictions that may run against the court's instructions.

7. Evidence:

1. You must decide from the evidence presented in court.

2. Do not consider items not introduced into evidence. E.g. M._____, If a juror tries to say that he or she has visited the scene of the incident and that it is different than that testified to, what would be your response?

Do you understand that it would be improper to consider something like that?

Since the statement hasn't been subjected to the rules of evidence, and neither the defense nor I have had an opportunity to ask questions, or cross-examine the juror, and the juror has not been placed under oath, can you see why it is not right to consider such a statement?

(Other examples may be personal relations with individuals or police, expertise with a particular subject.

3. This does not mean that you should be restricted in using your common sense in evaluating the evidence and arriving at all the reasonable inferences and rejecting those inferences that you find are unreasonable.

8. Circumstantial (Indirect) Evidence.

1. The law does not favor one over the other

2. Demonstrate direct and circumstantial.

a. Use of pen in pocket with the inference that it could be stuck with bubble gum.

b. Use of little boy who gets caught with cookie crumbs on his mouth. (Inference that someone flew in the window and put the crumbs on the boy's mouth)

c. Robber who is found with the wallet in his pocket belonging to the victim of a purse snatch. (Somebody put the wallet in his pocket and ran away.)

d. Man who goes to his car and puts keys in the ignition and starts the car and drives away. Inference is

that he intended to drive the car, instead of being forced to do so by believing he was commanded by a martian from outer space.

e. Footprints in the snow. Inference is that a person walked in the area vis. the snow fell coincidently in the pattern of footprints.

f. Lipstick on the collar; inference is that there was an amorous encounter rather than his secretary used his collar as a napkin at lunch that day.

3. Indicate all the alternatives are "possible" but one is reasonable. They must be prepared to select the reasonable and reject the unreasonable even though the unreasonable alternative may be possible.

4. The use of circumstantial evidence requires the application of common sense.

9. Reasonable doubt.

1. Jurors must determine facts.

2. The facts are determined from the evidence, and evidence may be truthful, or untruthful, reasonable or not reasonable, possible or impossible, and so on.

3. Do you expect that in a trial there will be such evidence, i.e., truthful, untruthfull, reasonable or unreasonable, possible and impossible?

4. The determination of facts often means that you must evaluate the truth of evidence that is in conflict. I.e., which version is truthful, reasonable, possible, etc.

5. Resolving conflicts may mean that as between two conflicting versions in the evidence, one pointing to guilt and the other pointing to innocense, you are convinced beyond a reasonable doubt as to that version that points to guilt, notwithstanding the existence of the version that points to innocense. Can you understand that the mere existence of a conflict of the testimony does not mean the existence of reasonable doubt?

Or, do you believe that the mere existence of a conflict of the evidence necessarily means the existence of reasonable doubt?

6. Do you understand that if a mere conflict in the

evidence meant reasonable doubt then in every case a defendant said he was not guilty he would be entitled to an acquittal even if you did not believe him? Can you understand it is important that you evaluate all the evidence and reject that evidence which may be in conflict that you do not believe is trustworthy?

10. Single juror holdout.

1. If you are the only juror voting for a particular position, will you listen to the other jurors to see if you may be wrong?

2. Do you believe it is possible for you to be wrong in evaluating the evidence in this case? Is there anyone on this jury who has never been wrong before?

3. If you are convinced that you are wrong after listening to your fellow jurors, will you unhesitatingly reverse your position in order to avoid what may be an injustice?

4. At the same time, will you discuss your position with your fellow jurors and give them the benefit of your thinking as to the evidence in this case?

11. Use of common sense.

1. You understand that being in a courtroom is no reason to use your common sense any differently than you would use it in any other place?

2. If you happen to be outside the courtroom and you hear something unreasonable it should seem as unreasonable to you as if you were to hear it inside the courtroom, don't you agree?

12. Standards of conduct.

1. Will you hold the defendant to the same standards of conduct that you believe are applicable to any other citizen?

2. Do you think that the defendant is entitled to a fairer trial than are the People?

3. Will you apply the rules of evidence and the law as the judge instructs equally as to the evidence presented by the people as well as that presented by the defendant?

evidence meant reasonable doubt then in every case a defendant said he was not guilty he would be entitled to an acquittal even if you did not believe him? Can you understand it is important that you evaluate all the evidence and reject that evidence which may be in conflict that you do not believe is trustworthy?

10. Single juror holdout.

1. If you are the only juror voting for a particular position, will you listen to the other jurors to see if you may be wrong?

2. Do you believe it is possible for you to be wrong in evaluating the evidence in this case? Is there anyone on this jury who has never been wrong before?

3. If you are convinced that you are wrong after listening to your fellow jurors, will you unhesitatingly reverse your position in order to avoid what may be an injustice?

4. At the same time, will you discuss your position with your fellow jurors and give them the benefit of your thinking as to the evidence in this case?

11. Use of common sense.

1. You understand that being in a courtroom is no reason to use your common sense any differently than you would use it in any other place?

2. If you happen to be outside the courtroom and you hear something unreasonable it should seem as unreasonable to you as if you were to hear it inside the courtroom, don't you agree?

12. Standards of conduct.

1. Will you hold the defendant to the same standards of conduct that you believe are applicable to any other citizen?

2. Do you think that the defendant is entitled to a fairer trial than are the People?

3. Will you apply the rules of evidence and the law as the judge instructs equally as to the evidence presented by the people as well as that presented by the defendant?

4. Imagine, if you will yourself being asked to perform the same crime that the defendant is being charged with. Can you imagine what your response would be? Do you think that the response by the defendant or any one else should be any different that yours?

12. Sentencing:

1. Do you understand that sentencing is not an issue the may enter into your deliberations?

2. Do you understand that sentencing is a matter that rests exclusively with the judge and other governmental agencies that can evaluate the appropriate sentence, if any, that the defendant may serve?

3. Do you believe you will have the ability only to determine whether the defendant is guilty of the charge? You understand that you must not consider the consequences. If the defendant is found to be guilty, then the court, together with other governmental agencies are charged with the responsibility to determine what, if any sentence should be administered. Do you believe this is proper?

14. Appearance, etc. of deft.

1. Do you think the defendant is entitled to any consideration of leniency because of his youthful appearance?

2. Do you think there is anything in the law that says that if the defendant is young looking or nice looking, or has nice hair or a friendly smile that he is less likely to be guilty?

3. Do you think there is anything in the law that says that if the defendant comes from a particular economic class, or area of our community or has achieved a certain level of education, or social status, or that he has failed to do so, that he is entitled to any greater or lesser consideration of leniency in the application of the law than anybody else? Will you apply the law equally as to this defendant irrespective of his race, national origin, religion, economic status, social or educational status?

15. Deft. testifying

1. I don't know whether the defendant will testify in this case. If he chooses not to testify, you understand that you must not consider that decision to have any effect in the determination of his guilt. On the other hand, if he does, do you believe that his testimony is entitled to be judged by a different standard giving him more credibility than the standard used for any other witness?

2. If the defendant chooses to testify, do you think that he is entitled to a presumption of credibility merely because he is a defendant?

3. Do you understand that the person that gets on the witness stand is considered a witness and is to be judged by the same standards of credibility as any other witness?

4. Remember the question I asked whether you believe a person ordinarily has a reason to lie if he is lying? Will you consider that in judging the credibility of all witnesses including the testimony of the defendant if he should testify?

16. Closing

1. Is there any reason that you can think of that would prevent you from giving both sides in this case a fair trial?

1. Popular observation of a juror:

2. What is the most important part of a trial?

As far as I am aware, no one has ever been able to determine what, if any part of a trial is most important in determining its outcome. Not if it is the opening statement, the voir dire, the direct, the cross, the summation, the facts, the preparation, the temperature of the courtroom at any particular moment, the dress of any of the attorneys, their personality, the conduct of the judge, or even the prejudice or bias of any particular or group of jurors. If you win, and are asked why, you may say it was obviously because of your sterling performance and uncompromising devotion to perfection in the exercise of all of your endeavors. A more truthfull and accurate response may be, "Hell, I don't know."

3. The importance of insuring a competent performance of voir dire.

So why try? Why make such a supreme effort in any part of the trial, such as voir dire, if nobody knows the affect it may have in the trial? I think a good enough answer is because it is fun. Trying cases, each aspect of the case, can be a very enjoyable experience and to the extent you can have fun during the process, usually because you feel that you can do it well, then that should be a sufficient reason to try to do a competent job.

Other possible answeres may be that:

(1) It is necessary to try to "educate" the jurors about important aspects of the case, e.g. felony murder rule, aiding and abetting, single witness testimony is sufficient, etc.

(2) To condition them about the unfavorable parts and to have them oriented to receive such aspects favorably to the prosecution, e.g. sleazy witnesses and informants, negligble amount of dope, child and elderly witnesses who have difficulty articulating, viable defenses, bad police work, etc.

(3) To point out obscure but significant legal points, e.g. entrapment, possession, attempts, etc.

(4) To raise their level of consciousness as to certain areas, e.g. not to consider sentencing, both sides have a "right" to a fair trial, treat the defendant's testimony the same as any other witness, appearance of the defendant has no relation to guilt, etc.

(5) The process reflects your concern over the case (for whatever that is worth), it gives you a sense of having done the responsible thing, and who knows, you might be able to discover a juror that is willing to tell you that he or she is a bigot, that they hate police, that they can't understand the English language, that they are within the fourth degree in consanguinity or affinity to the victim or the defendant, etc.

4. So you want to voir dire a jury.

I will assume that you will want to voir dire a jury. Some DAs don't and therefore don't, and from what I know of their track record it does not reflect that they are less able to convict than any other DA. If it did, then we probably would mandate all DAs voir dire in the way that has "proven successful" for the DAs that do, and we would work to eliminate the offensive provisions of P.C. 1078. We don't and we haven't.

5. The importance of non-verbal communication, astrology, and intuition, etc.

I don't know whether non verbal communication has a significant affect on the "success" of voir dire, but I don't consciously try to do anything that I think is going to make the juror mad. I try to smile when it is appropriate, maybe more than usual to assist the jurors in relaxing and feeling good in the voir dire experience I am taking them through. I am not overly concerned with my dress. Sport coat or suit, depending on which I catch first in the closet. I try to get the pants to match the coat and the same color of right shoe with the left. I have the

feeling that most jurors are impressed with a lawyer that is not impressed with what he or she wears in the court so long as it is within the norm of attire that is something more than casual weekend wear. If I picked a juror that is more concerned with whether my shoes match my tie, than the facts of the case, it is further proof that nobody can tell what it is that determines the guilt of a defendant. So, I don't ask juror if they care if my shoes match my tie.

6. "You can avoid Wheeler by picking the first twelve."

I am concerned about covering my rear on Wheeler motions. I don't dump jurors because of their race. I don't believe that I am going to win or lose a case because I left a juror of a particular race on the case. I honestly believe that despite my motives for trying a case, the community has a right to have a trial conducted without an expression of racial prejudice on the part of the DA. I think it is ugly when I see it, I feel good about not having to engage in it, even if I lose, but especially if I win, and I personally favor having a defendant being told by members of his own race rather than from some other race, that they disaprove of his conduct and that they would like to see him in the state prison. So, I try never to have a jury that does not have at least one person that is a member of the defendant's race.

Nevertheless, members of the defendant's race will often be excused for a variety of reasons, and I insure that when the inevitable Wheeler motion is made at the bench, I make my views clear about the necessity of having representatives of the defendant's race sit in judgement, and that the reason for dismissal of the jurors of the defendants race was that they looked funny, or talked funny, or dressed funny, or would not make eye contact with me, or refused to articulate the reasons for their responses, or the like.

7. Analyze and draft. Analyze and draft.

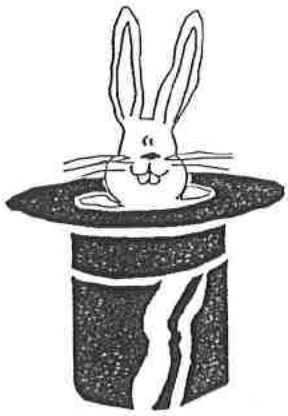
Every case has its own unique problems. I have come to believe that it is important to disclose those special problems to the jury at the time of voir dire to condition the jurors on receiving the information in as favorable light as possible. I am not comfortable trying a case knowing that an evidentiary bomb is going to explode and hoping the jury will be able to understand and accommodate the context of the problem if they first hear of it during the presentation of the case. This means that in every case, you will have to sit and think where the problem is. What is the defense going to be. How can I condition the juror to accept the People's version despite the problem.

How can this be done by asking certain well phrased questions on voir dire? For example, in a simple drop case, the problem may be the credibility of the officers, in a rape case the existence of penetration, in a molestation case, the ability of the child to testify, in any case the sleaziness of the informant, in a narcotics case the attitude of the juror towards narcotics, or in a DUI case the attitude of the juror toward drinking and driving. Each case has its own. Your mission is to detect the problems, expose them in the most favorable light now that you have the opportunity, and reduce them to their lowest level of significance when they comes up in the case. But I believe strongly that it is of paramount importance, though I have no statistical data to verify it, to do this in voir dire.

Ned's

The

COMPLEAT® VOIR DIRE



New Prosecutor's College

1991

MAGIC (Maj'ik), n. The art of predicting or affecting events such as jury trials via supernatural powers. See also, Conjury, Bewitchment, Sorcery, Occultism, Witchcraft & VOIR DIRE.

The art of voir dire has as many experts and theories as exist trial attorneys. Clearly, however, the art of voir dire is a subset of the "art of trial advocacy." An effective voir dire is both consistent and integrated with the theme/theory of the case in order to present a coherent whole.

I hope that the following will serve as a guide to jury selection in misdemeanor cases.

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NED's RULES

1. Don't be an idiot.

2. Ask open ended questions.

3. LISTEN to the answers.

4. First impressions count.

5. Go with your gut.

****

PURPOSE OF VOIR DIRE.

The nominal purpose of voir dire is to "examine the prospective jurors and select a fair and impartial jury." (CCP 223) Right or wrong, in practice, it also fulfills two other functions -- that of establishing a relationship between the attorneys and the jurors, and educating the jurors concerning the important issues of the case.

GOALS OF VOIR DIRE

1) Elicit information from jurors to assist in selecting fair and impartial jury.

2) Establish rapport with jury.

3) Educate the Jury (if made necessary by the defense and permitted by the court).

THE PROSECUTION JURY.

Prosecutors at all levels should decide what sorts of jurors will best be able to decide the case fairly and impartially. In my humble view, the ideal prosecution jury consists of persons who represent the values of the community as a whole. In general, a prosecutor will want to select persons who:

1. Have a stake in the community . . . homeowners, stable renters (> 2-3 years in one place), have children in the home, long-standing job relationships

2. Can work together. . . persons who work with others in "committee-like" environments . . . church committees, PTAs, supervisors, etc

3. Are mature . . . have had significant life experiences . . . have been lied to, are used to making significant decisions

4. Respect the communities institutions and procedures

CHALLENGES

Challenges come in two flavors -- for cause and peremptory.

Prosecutors should be familiar with statutory reasons for implied bias such as being a former juror in same action, related to parties, etc. Former PC section 1074, now CCP 190-276.

Either party may challenge potential jurors for actual bias.

In most misdemeanor cases without multiple defendants, each side receives 10 peremptory challenges. In misdemeanor cases where the maximum punishment is 90 days or less, each side is entitles to 6 preempts.

Remember that there is no limit to challenges for cause.

Exercise a challenge by saying "The People will thank and excuse Ms. Juror (Aside to juror) Thank you, Ma'am."

VOIR DIRE PROCEDURES IN THE POST PROP 115 WORLD

Normally, after *in limine* motions are completed, the trial judge will discuss voir dire with counsel. The judge's discretion in voir dire is broad indeed (see Trends, infra), however, usually the court will disclose what questions it intends to ask of the jurors, and under what circumstances, if any, it will permit the attorneys to enquire.

A sample list of forbidden areas is included as Annex A.

Absent a contrary agreement, a misdemeanor case shall have 12 jurors. The court clerk will draw 12 names and the persons called will be seated in the jury box. The trial judge will then examine the potential jurors. Typically, the judge will ask about:

- business/occupation of prospective jurors and spouses
- general area or residence
- prior jury service and if there was a verdict
- acquaintances with parties, witnesses, attorneys, etc
- physical or time problems which might prevent juror from sitting.
- if juror has been victim/witness/defendant in same/similar crime
- close friends/relatives in law enforcement