

"The trial court shall not permit questions which the trial court concludes would, as their sole purpose, do any of the following:" [California Penal Code section 1078(a)(4) (Emphasis added).]

A clearly troublesome area in applying *Williams* was encountered where voir dire questions were directed to matters of law. *Williams* held the trial court in a murder prosecution prejudicially abused its discretion in refusing to allow defense counsel to ask prospective jurors on voir dire "reasonable" questions about their "attitude," if so instructed, in following the legal doctrine that a person has the right to resist an aggressor by using necessary force and has no duty to retreat (*Williams, supra*, 29 Cal.3d 398).

"We therefore hold that in general a reasonable question about the potential juror's willingness to apply a particular doctrine of law should be permitted when from the nature of the case the judge is satisfied that the doctrine is likely to be relevant at trial. Reversal will be required, however, only if the doctrine is actually relevant, and the excluded question is found substantially likely to expose strong attitudes antithetical to defendant's cause." [*Id.* at p.410 (Emphasis added).]

The Supreme Court revisited this last emphasized portion of *Williams* in *People v. Balderas* (1985) 41 Cal.3d 144, 222 Cal.Rptr. 184, 711 P.2d 480. *Balderas* cited *Williams* as providing this voir dire standard for questions involving jurors' attitudes toward relevant legal principles: "questioning need be allowed only on a doctrine both material to the trial and controversial" (*Balderas, supra*, 41 Cal.3d 184). Barred questions concerning jurors' willingness to apply instructions on circumstantial evidence were held not to be an abuse of discretion "since an average juror would probably not disagree with the court's instructions." (*Id.*) Conversely,

Curtailment of all voir dire by counsel for the purposes of aiding exercise of peremptory challenges may be a statewide reality after January 1, 1992 [Cal. Pen. Code section 1078(d)]. . . .

the court said that, since it was well known a substantial segment of the public looked with disfavor on diminished capacity defenses (now abolished by Penal Code section 25), "the court would have erred had it unduly restricted counsel from probing jurors' attitudes toward that doctrine." (*Id.* at p.185) *Balderas*, then, apparently applies *Williams* as requiring a trial judge to

make a threshold determination that a legal doctrine included in a voir dire question is controversial before allowing the question, i.e., one on which jury members could be reasonably expected to disagree.

Since *Williams*, the appellate courts have considered whether trial courts abused their discretion in barring or curtailing voir dire examination undertaken

pending reversal.

(*Wells, supra*, 149 Cal.App.3d 726-727.)

Wells has apparently not been subsequently cited in any opinion not decertified for publication as precedent for reversal on similar grounds.

The same Second Appellate District in *Helton, supra*, by a different division, took this view of restricted voir dire.

There is probably no phase of trial more frequently a source of exasperation to the courts and of frustration for counsel than voir dire.

for the purpose of assisting in the exercise of peremptory challenges.

People v. Wells (1983) 149 Cal.App.3d 721, 197 Cal.Rptr. 163, a post-*Williams*, pre-*Balderas* case, applied *Williams* to the following excluded voir dire questions in a murder case with a black defendant and a white female victim. Defendant's attorney claimed the right to explore attitudes of veniremen for racial bias:

Question: "What do you think of Playboy Magazine?"

Holding: Held properly excluded as irrelevant.

Question: [Two questions regarding Proposition 8 and the motivation for juror's vote thereon.]

Holding: Held properly excluded as infringing on a juror's right to privacy (Cal. Const. Art. I, sec. 1); too tenuous, broad and unfocused to elicit answers exposing racial bias.

Question: [Questions regarding juror's attitude toward cutbacks on the administration civil rights programs; hiring of minorities as prerequisites to obtaining government contracts; whether Los Angeles Police Chief Gates should have apologized for his remarks concerning effect of police choke holds on minorities.]

Holding: Properly excluded. Although possibly relevant, so unfocused, overbroad and intertwined with other concerns that answers were not substantially likely to uncover racial bias.

Helton involved a claim of prejudiced restriction of voir dire in the court's refusal to allow defense counsel to ask prospective jurors if they would automatically, before hearing the testimony of defendant's girlfriend, an alibi witness, "say she's lying because she's the girlfriend" (*People v. Helton, supra*, 162 Cal.App.3d 1145). The court's bar of this line of questioning "on the ground that the defendant was trying to educate the jurors and induce them to prejudice the evidence was upheld (*Helton, supra*, 162 Cal.App.3d 1145).

People v. Fields (1983) 35 Cal.3d 329, 197 Cal.Rptr. 803, 673 P.2d 680, following *Williams*, dealt with a prosecutor's voir dire as to an insanity defense. Objection to the following question was sustained: "On the other hand, do you feel that the defense of insanity is the last refuge of a scoundrel?" (*People v. Fields, supra*, 35 Cal.3d 358.) The prosecutor's reframed question, "[D]o you feel there could be such a thing as a person who is legally insane?" (*Id.*) was held to be proper in scope and nonexcludable by the court "since the juror's views on the insanity defense was a suitable subject for voir dire." (*Id.*) The trial court was said to have acted properly in requiring questions regarding this subject, and proper in scope, to be "phrased in neutral, nonargumentative form" (*Id.*).

Fields seems to make it clear that both prosecution and defense can ask voir dire questions testing jurors' attitudes toward relevant legal principles to be embodied in anticipated instructions, subject to *Williams* and *Balderas*.

In *People v. Kronemyer* (1987) 189 Cal.App.3d 314, 234 Cal.Rptr. 442, an attorney was prosecuted for perjury and grand theft arising from acts he committed while attorney and conservator for an elderly man. The appellate court held that the trial court erred in refusing to allow voir dire as to whether the prospective jurors . . .

"could imagine that a competent, but lonely, elderly client might

voluntarily make a substantial gift to his or her attorney.

"[W]e find the inquiry is directly relevant to the defense, i.e., that a lonely, elderly, wealthy client gave the major share of his liquid assets and bequeathed a substantial portion of the remainder of his estate to his attorney. . . . In fact, with the publicity surrounding the reported defalcations of attorneys toward their clients and client's (sic) property, we believe it is a matter falling within the category of those [strong feelings] "which either the local community or the population at large is commonly known to harbor . . . that may . . . significantly skew deliberations in fact."'" [Kronemyer, *supra*, 189 Cal.App.3d 336-337.]

Kronemyer, however, found no *prejudicial* error in such voir dire restrictions because the court's rulings did not completely foreclose defense inquiry into the relevant area. Voir dire of most jurors was cursory, and defense accepted the jury with only one peremptory challenge.

People v. Blackwell (1987) 191 Cal.App.3d 925, 236 Cal.Rptr. 803, reversed a murder conviction because concealment of relevant information by juror during voir dire constituted prejudicial juror misconduct. Defendant shot and killed her husband in their home, claiming to be a battered wife who shot the victim to prevent further beatings or her own death. In commenting on the propriety of questions to a female juror regarding alcoholism and domestic violence in her family, the court said they were:

"[C]learly relevant to the issues in the case. (Citation.) Appellant's defense was that her husband's abusive conduct caused her to entertain an honest, even if unreasonable, belief in the necessity to defend herself against imminent bodily injury." *People v. Blackwell*, *supra*, 191 Cal.App.3d 931.

The foregoing authorities suggest that the line between proper and improper voir dire is not only a fine one, it is frequently almost indistinguishable. The amendment of Penal Code section 1078, coupled with recent expressions of appellate support for deferring to the trial judge's mitigation of voir dire, indicate trial judges will be curtailing and aggressively controlling improper voir dire examination.

What constitutes "improper" voir dire

examination is largely left to the trial court's exercise of discretion, which seems increasingly less likely to be found to be prejudicial error on appeal. However, these conclusions seem warranted:

1. The drumfire of criticism directed at counsel's voir dire examination of jurors in aid of peremptory challenges continues unabated after nearly 80 years. In fact, it may be increasing to the point where total curtailment of lawyers' voir dire examination of jurors for such purposes may well be established by the Legislature in the next decade.

2. Except in the courts of Fresno and Santa Cruz counties [from July 1, 1988, to June 30, 1991 (California Penal Code section 1078(b)), the rules governing counsel's voir dire of jurors require that all voir dire questions designed to aid the exercise of peremptory challenges must

to which the local community or population at large is *commonly known* to harbor strong feelings; which feelings fall short of compelling a presumption of bias, but may significantly skew deliberations in fact.

5. Where voir dire question accomplishes dual results [i.e., (i) a proper result of legitimately obtaining information and knowledge to aid in the intelligent exercise of a peremptory challenge, and (ii) an improper result of indoctrinating or educating the jury], the question may not be excluded because of the incidental "improper" result. However, questions having the "improper" result as their *sole* purpose will be excluded.

6. Subject to the foregoing and pursuant to *Williams, supra*, 29 Cal.3d 408, and Penal Code section 1078(a)(4), counsel should avoid voir dire questions which seek to do the following:

The practices of lawyers in jury selection and the trial court's role in controlling such practices . . . have spawned a panoply of appellate court criticism and comment.

meet these threshold conditions:

a. They must be clearly relevant; and
b. They must expose jurors attitudes antithetical to the case of defendant or People.

3. Both prosecution and defense may address voir dire questions to prospective jurors that deal with legal doctrine if:

a. The question addressed to the prospective juror solicits that juror's attitude toward an announced legal doctrine;

b. The legal doctrine embodied in the question is properly stated;

c. The legal doctrine is relevant at trial to case issues;

d. The legal doctrine can be deemed to be "controversial," i.e., not one with which a juror would be likely to agree. A suggested format for such a question would be:

(i) Mr. _____, if chosen as a juror in this case, would you have any objection to following an instruction of the court advising you that one threatened with an attack justifying the right of self-defense need not retreat?

(ii) Ms. _____, if chosen as a juror in this case, would you have any objection to following an instruction of the court advising you that, where a person voluntarily does that which the law declares to be a crime, it is no defense that he did not know that his act was unlawful?

4. All parties are allowed to ask voir dire questions of jurors which explore a juror's attitude or opinion on matters as

- a. Educate the panel to the case's particular facts;
- b. Compel jurors to commit to a particular vote;
- c. Prejudice a juror for or against any party;
- d. Argue the case;
- e. Indoctrinate the jury;
- f. Instruct the jury in matters of law.

Voir dire should be carefully planned. With the broad discretion of trial judges as to voir dire and the conceded "fine line" between proper and improper examination, equivocal questions regarding the propriety of the subject or method of jury examination in criminal cases may be addressed to the trial court on *in limine* motion. Judicial interference in and curtailment of such examination, in the presence of a jury panel, is not only embarrassing, it may practically denigrate the offending party's case in the eyes of the jury because of a perception of the ineptness of counsel.

The Legislature and appellate courts are mandating active supervision of voir dire examination by trial courts. Judicial intervention, without objection, to preclude proscribed voir dire practices is becoming, and will become, more common. □

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- §215. Enacted 1872. Repealed 1980 ch. 81.
- §§219, 220. Enacted 1872. Repealed 1980 ch. 81.
- §§225-227. Enacted 1872. Repealed 1988 ch. 1245 §1.
- §228. Enacted 1876. Repealed 1988 ch. 1245 §1.
- §§230, 231. Enacted 1872. Repealed 1980 ch. 81.
- §231.5. Enacted 1975. Repealed 1980 ch. 81.
- §232. Enacted 1872. Repealed 1980 ch. 81.
- §233. Enacted 1949. Repealed 1980 ch. 81.
- §§235. Enacted 1872. Repealed 1947 ch. 424.
- §238. Enacted 1872. Repealed 1988 ch. 1245 §1.
- §239. Enacted 1972. Repealed 1978 ch. 718.
- §§239, 240. Enacted 1978. Repealed 1988 ch. 1245 §1.
- §§241, 242. Enacted 1872. Repealed 1959 ch. 501.
- §242a. Enacted 1959 ch. 714. Repealed 1961 ch. 72.
- §243. Enacted 1872. Repealed 1959 ch. 501.
- §§246, 247. Enacted 1872. Repealed 1988 ch. 1245 §1.
- §248. Enacted 1907. Repealed 1988 ch. 1245 §1.
- §§250, 251. Enacted 1872. Repealed 1980 ch. 81.
- §254. Enacted 1872. Repealed 1988 ch. 1254 §1.
- §255. Enacted 1959. Repealed 1988 ch. 1254 §1.
A new Chapter 1 follows.

**CHAPTER 1
TRIAL JURY SELECTION AND
MANAGEMENT ACT**

- Title. §190.
- Policy statement. §191.
- Applicability of chapter. §192.
- Kinds of juries. §193.
- Definitions. §194.
- Jury commissioner—Salary, term, and duties. §195.
- Duties and powers. §196.
- Sources for selection of jurors. §197.
- Creation of master and qualified juror lists. §198.
- Counties where superior court sessions are held in place other than county seat—Use of juror lists from judicial districts. §198.5.

- Trial jury selection in El Dorado County. §199.
- Trial jury selection in Santa Barbara County. §199.5.
- Use of same juror pool in municipal and superior courts—Alameda County excepted. §200.
- Separate panel for each judge. §201.
- Selection of jurors by mechanical device. §202.
- Persons eligible to serve as jurors; exceptions. §203.
- Grounds for exemption from jury service. §204.
- Juror questionnaires. §205.
- Discussion of verdict; attorney's contact with jurors. §206.
- Maintenance of records by jury commissioner. §207.
- Summons of prospective jurors. §208.
- Failure to respond to jury summons: penalty. §209.
- Contents of jury summons. §210.
- Completion of jury panel by immediate summons, service, and attachment of persons qualified to be jurors. §211.
- Availability of jurors on one-hour notice. §213.
- Juror orientation. §214.
- Jury fees. §215.
- Jury deliberation room; assembly facilities. §216.
- Food and lodging for jurors. §217.
- Jurors excused from service. §218.
- Random selection of jurors for jury panels. §219.
- Number of persons comprising jury. §220.
- Number of jurors—Trial jury pilot project. §221.
- Random selection of jurors for voir dire. §222.
- Examination of prospective jurors in civil jury trials. §222.5.
- Examination of prospective jurors in criminal cases. §223.
- Handicapped jurors—Use of attendants. §224.
- "Challenge" defined. §225.
- Challenge to individual juror—In general. §226.
- Order of challenges. §227.
- Grounds for general disqualification of juror. §228.
- Challenge for implied bias. §229.
- Challenges for cause. §230.
- Number of peremptory challenges. §231.
- Acknowledgement and agreement concerning perjury. §232.
- Discharge of juror; substitution of alternative jurors. §233.
- Alternate jurors—Selection and role. §234.
- Jury of inquest—Selection, compensation, and obligation. §235.
- Function of jury of inquest. §236.

§190. Title.
This chapter shall be known and may be cited as the Trial Jury Selection and Management Act. Leg.H. 1988 ch. 1245 §2.
Ref.: Cal. Fms Pl. & Pr., "Juries & Verdicts"; W. Cal. Pro., "Trial" §118.

§191. Policy Statement.
The Legislature recognizes that trial by jury is a cherished constitutional right, and that jury service is an obligation of citizenship.
It is the policy of the State of California that all persons selected for jury service shall be selected at random from the population of the area served by the court; that all qualified persons have an equal opportunity, in accordance with this chapter, to be considered for jury service in the state and an obligation to serve as jurors when summoned for that purpose; and that it is the responsibility of jury commissioners to manage all jury systems in an efficient, equitable, and cost-effective manner, in accordance with this chapter. Leg.H. 1988 ch. 1245 §2.

§192. Applicability of Chapter.
This chapter applies to the selection of jurors, and the formation of trial juries, for both civil and

criminal cases, in all trial courts of the state. Leg.H. 1988 ch. 1245 §2.

§193. Kinds of Juries.

Juries are of three kinds:

- (a) Grand juries established pursuant to Title 4 (commencing with Section 888) of Part 2 of the Penal Code.
- (b) Trial juries.
- (c) Juries of inquest. Leg.H. 1988 ch. 1245 §2.

§194. Definitions.

The following definitions govern the construction of this chapter:

(a) "County" means any county or any coterminous city and county.

(b) "Court" means the superior, municipal, and justice courts of this state, and includes, when the context requires, any judge of the court.

(c) "Deferred jurors" are those prospective jurors whose request to reschedule their service to a more convenient time is granted by the jury commissioner.

(d) "Excused jurors" are those prospective jurors who are excused from service by the jury commissioner for valid reasons based on statute, state or local court rules, and policies.

(e) "Juror pool" means the group of prospective qualified jurors appearing for assignment to trial jury panels.

(f) "Jury of inquest" is a body of persons summoned from the citizens before the sheriff, coroner, or other ministerial officers, to inquire of particular facts.

(g) "Master list" means a list of names randomly selected from the source lists.

(h) "Potential juror" means any person whose name appears on a source list.

(i) "Prospective juror" means a juror whose name appears on the master list.

(j) "Qualified juror" means a person who meets the statutory qualifications for jury service.

(k) "Qualified juror list" means a list of qualified jurors.

(l) "Random" means that which occurs by mere chance indicating an unplanned sequence of selection where each juror's name has substantially equal probability of being selected.

(m) "Source list" means a list used as a source of potential jurors.

(n) "Summons list" means a list of prospective or qualified jurors who are summoned to appear or to be available for jury service.

(o) "Trial jurors" are those jurors sworn to try and determine by verdict a question of fact.

(p) "Trial jury" means a body of persons selected from the citizens of the area served by the court and sworn to try and determine by verdict a question of fact.

(q) "Trial jury panel" means a group of prospective jurors assigned to a courtroom for the purpose of voir dire. Leg.H. 1988 ch. 1245 §2.

§195. Jury Commissioner—Salary, Term, and Duties.

(a) In each county, there shall be one jury commissioner who shall be appointed by, and serve at the pleasure of, a majority of the judges of the superior court. In any county where there is a superior court administrator or executive officer, that person shall serve as ex officio jury commissioner. The person so appointed shall serve as jury commissioner for all trial courts within the county. In any municipal or justice court district in the county, a majority of the judges may appoint the clerk/administrator to select jurors for their court pursuant to this chapter. In any court jurisdiction where any person other than a court administrator or clerk/administrator is serving as jury commissioner on the effective date of this section, that person shall continue to so serve at the pleasure of a majority or the judges of the appointing court.

(b) Except where the superior court administrator or executive officer serves as ex officio jury commissioner, the jury commissioner's salary shall be set by joint action of the board of supervisors and a majority of the superior court judges. Any jury commissioner may, whenever the business of court requires, and with consent of the board of supervisors, appoint deputy jury commissioners. Salaries and benefits of such deputies shall be fixed in the same manner as salaries and benefits of other court employees.

(c) The jury commissioner shall be primarily responsible for managing the jury system under the general supervision of the court in conformance with the purpose and scope of this act. He or she shall have authority to establish policies and procedures necessary to fulfill this responsibility. Leg.H. 1988 ch. 1245 §2.

§196. Duties and Powers.

(a) The jury commissioner or the court shall inquire as to the qualifications of persons on the master list or source list who are or may be summoned for jury service. The commissioner or the court may require any person to answer, under oath, orally or in written form, all questions as may be addressed to that person, regarding the person's qualifications and ability to serve as a prospective trial juror. The commissioner and his or her assistants, shall have power to administer oaths and shall be allowed actual traveling expenses incurred in the performance of their duties. Such traveling expenses shall be audited, allowed, and paid out of the general fund of the county.

(b) Response to the jury commissioner or the court concerning an inquiry or summons may be made by any person having knowledge that the prospective juror is unable to respond to such inquiry or summons.

(c) Any person who fails to respond to jury commissioner or court inquiry as instructed, may be summoned to appear before the jury commissioner or the court to answer such inquiry, or may be deemed to be qualified for jury service in the absence of a response to the inquiry. Any information thus

acquired by the court or jury commissioner shall be noted in jury commissioner or court records. **Leg.H.** 1988 ch. 1245 §2.

§197. Sources for Selection of Jurors.

(a) All persons selected for jury service shall be selected at random, from a source or sources inclusive of a representative cross section of the population of the area served by the court. Sources may include, in addition to other lists, customer mailing lists, telephone directories, or utility company lists.

(b) The list of registered voters and the Department of Motor Vehicles' list of licensed drivers and identification cardholders resident within the area served by the court, are appropriate source lists for selection of jurors. These two source lists, when substantially purged of duplicate names, shall be considered inclusive of a representative cross section of the population, within the meaning of subdivision (a).

(c) The Department of Motor Vehicles shall furnish the jury commissioner of each county with the current list of the names, addresses, and other identifying information of persons residing in the county who are age 18 years or older and who are holders of a current driver's license or identification card issued pursuant to Article 3 (commencing with Section 12800) of, or Article 5 (commencing with Section 13000) of, Chapter 1 of Division 6 of the Vehicle Code. The conditions under which these lists shall be compiled semiannually shall be determined by the director, consistent with any rules which may be adopted by the Judicial Council. This service shall be provided by the Department of Motor Vehicles pursuant to Section 1812 of the Vehicle Code. The jury commissioner shall not disclose the information furnished by the Department of Motor Vehicles pursuant to this section to any person, organization, or agency. **Leg.H.** 1988 ch. 1245 §2.

§198. Creation of Master and Qualified Juror Lists.

(a) Random selection shall be utilized in creating master and qualified juror lists, commencing with selection from source lists, and continuing through selection of prospective jurors for voir dire.

(b) The jury commissioner shall, at least once in each 12-month period, randomly select names of prospective trial jurors from the source list or lists, to create a master list.

(c) The master jury list shall be used by the jury commissioner, as provided by statute and state and local court rules, for the purpose of (1) mailing juror questionnaires and subsequent creation of a qualified juror list, and (2) summoning prospective jurors to respond or appear for qualification and service. **Leg.H.** 1988 ch. 1245 §2.

Ref.: W. Cal. Sum., "Constitutional Law" §636.

§198.5. Counties Where Superior Court Sessions Are Held in Place Other Than County Seat—Use of Juror Lists From Judicial Districts.

In counties where sessions of the superior court are held in cities other than the county seat, the names for master jury lists and qualified jury lists to serve in those cities may be selected from the judicial district in which the city is located and, if the judges of the court determine that it is necessary or advisable, from a judicial district adjacent to a judicial district in which the city is located. **Leg.H.** 1988 ch. 1245 §2.

§199. Trial Jury Selection in El Dorado County.

In El Dorado County, trial jury venires for the superior court shall be drawn from residents of the supervisorial district, or a portion thereof, within which the court will sit for such trial and from residents of such other immediately adjacent supervisorial district, or portion thereof, as may be specified by local superior court rules. Such venireman shall serve the court sitting in the geographical portion of the county from which this section and such court rules specify trial jury venires shall be drawn; provided that such rules shall afford to each eligible resident of such county an opportunity for selection as a trial jury venireman. Such court may, in its discretion, order a countywide venire in the interest of justice. **Leg.H.** 1988 ch. 1245 §2.

§199.5. Trial Jury Selection in Santa Barbara County.

In Santa Barbara County, trial jury venires for the superior court shall be drawn from residents of the supervisorial district within which the court will sit for that trial and from residents of such other immediately adjacent supervisorial district, or portion thereof, as may be specified by local superior court rules. The venireman shall serve the court sitting in the geographical portion of the county from which this section and such court rules specify trial jury venires shall be drawn. However, those rules shall afford to each eligible resident of such county an opportunity for selection as a trial jury venireman. The court may, in its discretion, order a countywide venire in the interest of justice. **Leg.H.** 1988 ch. 1245 §2.

§200. Use of Same Juror Pool in Municipal and Superior Courts—Alameda County Excepted.

Except in Alameda County, when authorized by local superior court rules, a municipal or justice court district pursuant to duly adopted court rule may use the same juror pool as that summoned for use in the superior court. Persons so selected for jury service in those municipal or justice courts need not be residents of the judicial district. In Los Angeles County, the municipal courts shall use the same jury

pool as that summoned for use in the superior court. Leg.H. 1988 ch. 1245 §2.

§201. Separate Panel for Each Judge.

In any county having two or more judges of the superior court, or in any judicial district, or city and county, in which a municipal court having two or more judges is established, a separate trial jury panel may be drawn, summoned, and impaneled for each judge, or any one panel may be drawn, summoned, and impaneled by any one of the judges, for use in the trial of cases before any of the judges, as occasion may require. In those counties or judicial districts, when a panel of jurors is in attendance for service before one or more of the judges, whether impaneled for common use or not, the whole or any number of the jurors from such panel may be required to attend and serve in the trial of cases, or to complete a panel, or jury, before any other of the judges. Leg.H. 1988 ch. 1245 §2.

§202. Selection of Jurors by Mechanical Device.

Mechanical, electric, or electronic equipment, which in the opinion of the jury commissioner is satisfactory therefor, may be used in the performance of any function specified by this chapter for the selection and drawing of jurors. Leg.H. 1988 ch. 1245 §2.

§203. Persons Eligible to Serve as Jurors; Exceptions.

(a) All persons are eligible and qualified to be prospective trial jurors, except the following:

- (1) Persons who are not citizens of the United States.
- (2) Persons who are less than 18 years of age.
- (3) Persons who are not domiciliaries of the State of California, as determined pursuant to Article 2 (commencing with Section 200) of Chapter 1 of Division 1 of the Elections Code.
- (4) Persons who are not residents of the jurisdiction wherein they are summoned to serve.
- (5) Persons who have been convicted of malfeasance in office or a felony, and whose civil rights have not been restored.
- (6) Persons who are not possessed of sufficient knowledge of the English language, provided that no person shall be deemed incompetent solely because of the loss of sight or hearing in any degree or other disability which impedes the person's ability to communicate or which impairs or interferes with the person's mobility.
- (7) Persons who are serving as grand or trial jurors in any court of this state.
- (8) Persons who are the subject of conservatorship.

(b) No person shall be excluded from eligibility for jury service in the State of California, for any reason other than those reasons provided by this section. Leg.H. 1988 ch. 1245 §2.

Ref.: Cal. Fms Pl. & Pr., "Juries & Verdicts"; W. Cal. Pro., "Trial" §113.

§204. Grounds for Exemption From Jury Service.

(a) No eligible person shall be exempt from service as a trial juror by reason of occupation, race, color, religion, sex, national origin, or economic status, or for any other reason. No person shall be excused from service as a trial juror except as specified in subdivision (b).

(b) An eligible person may be excused from jury service only for undue hardship, upon themselves or upon the public, as defined by the Judicial Council. Leg.H. 1988 ch. 1245 §2.

§205. Juror Questionnaires.

(a) If a jury commissioner requires a person to complete a questionnaire, the questionnaire shall ask only questions related to juror identification, qualification, and ability to serve as a prospective juror.

(b) Except as ordered by the court, the questionnaire referred to in subdivision (a) shall be used solely for qualifying prospective jurors, and for management of the jury system, and not for assisting in the courtroom voir dire process of selecting trial jurors for specific cases.

(c) The court may require a prospective juror to complete such additional questionnaires as may be deemed relevant and necessary for assisting in the voir dire process or to ascertain whether a fair cross section of the population is represented as required by law, if such procedures are established by local court rule.

(d) The trial judge may direct a prospective juror to complete additional questionnaires as proposed by counsel in a particular case to assist the voir dire process. Leg.H. 1988 ch. 1245 §2.

§206. Discussion of Verdict; Attorney's Contact With Jurors.

(a) Prior to discharging the jury from the case, the judge in a criminal action shall inform the jurors that they have an absolute right to discuss or not to discuss the deliberation or verdict with anyone. The judge shall also inform the jurors of the provisions set forth in subdivisions (b), (c), and (d).

(b) Following the discharge of the jury in a criminal case, the defendant, or his or her attorney or representative, or the prosecutor, or his or her representative, may discuss the jury deliberation or verdict with a member of the jury, provided that the juror consents to the discussion and that the discussion takes place at a reasonable time and place.

(c) Any unreasonable contact with a juror by the defendant, or his or her attorney or representative, or by the prosecutor, or his or her representative, without the juror's consent shall be reported to the trial judge forthwith.

(d) Any violation of this section shall be considered a violation of a lawful court order and shall be subject to reasonable monetary sanctions in

accordance with Section 177.5 of the Code of Civil Procedure.

(c) Nothing in the section shall prohibit a peace officer from investigating an allegation of criminal conduct. Leg.H. 1988 ch. 1245 §2.

§207. Maintenance of Records by Jury Commissioner.

(a) The jury commissioner shall maintain records regarding selection, qualification, and assignment of prospective jurors.

(b) The jury commissioner shall maintain records providing a clear audit trail regarding a juror's attendance, jury fees, and mileage.

(c) All records and papers maintained or compiled by the jury commissioner in connection with the selection or service of a juror may be kept on an electronic or microfilm medium and such records shall be preserved for at least three years after the list used in their selection is prepared, or for any longer period ordered by the court or the jury commissioner. Leg.H. 1988 ch. 1245 §2.

§208. Summons of Prospective Jurors.

The jury commissioner shall estimate the number of prospective jurors that may be required to serve the needs of the trial courts, and shall summon such prospective jurors for service. Prospective jurors shall be summoned by mailing a summons by first-class mail or by personal service or, in urgency situations, as elsewhere provided by law. The summons, when served by mail, shall be mailed at least 10 days prior to the date of required appearance. Once a prospective juror has been summoned, the date, time, or place of appearance may be modified or further specified by the jury commissioner, by means of written, telegraphic, telephonic, or direct oral communication with the prospective juror. Leg.H. 1988 ch. 1245 §2.

Ref.: W. Cal. Pro., "Trial" §122.

§209. Failure to Respond to Jury Summons; Penalty.

Any prospective trial juror who has been summoned for service, and who fails to attend upon the court as directed or to respond to the court or jury commissioner and to be excused from attendance, may be attached and compelled to attend; and, following an order to show cause hearing, the court may find the prospective juror in contempt of court, punishable by fine, incarceration, or both, as otherwise provided by law. Leg.H. 1988 ch. 1245 §2.

§210. Contents of Jury Summons.

The summons shall contain the date, time, and place of appearance required of the prospective juror or, alternatively, instructions as to the procedure for calling the jury commissioner for telephonic instructions for appearance as well as such additional juror information as deemed appropriate by the jury commissioner. Leg.H. 1988 ch. 1245 §2.

§211. Completion of Jury Panel by Immediate Summons, Service, and Attachment of Persons Qualified to Be Jurors.

When a court has no prospective jurors remaining available for voir dire from panels furnished by, or available from, the jury commissioner, and finds that not proceeding with voir dire will place a party's right to a trial by jury in jeopardy, the court may direct the sheriff, marshal, or constable to summon, serve, and immediately attach the person of a sufficient number of citizens having the qualifications of jurors, to complete the panel. Leg.H. 1988 ch. 1245 §2.

§213. Availability of Jurors on One-Hour Notice.

Unless excused by reason of undue hardship, all or any portion of the summoned prospective jurors shall be available on one-hour notice by telephone to appear for service, when the jury commissioner determines that it will efficiently serve the operational requirements of the court.

Jurors available on one-hour telephone notice shall receive credit for each day of such availability towards their jury service obligation, but they shall not be paid unless they are actually required to make an appearance. Leg.H. 1988 ch. 1245 §2.

§214. Juror Orientation.

The jury commissioner shall provide orientation for new jurors, which shall include necessary basic information concerning jury service. The jury commissioner shall notify each juror of the provisions of Section 230 of the Labor Code. Leg.H. 1988 ch. 1245 §2, 1989 ch. 1416.

§215. Jury Fees.

Unless a higher fee is provided for each day's attendance by county or city and county ordinance, the fee for jurors in the superior, municipal, and justice courts, in civil and criminal cases, is five dollars (\$5) a day for each day's attendance as a juror. Unless a higher rate of mileage is otherwise provided by statute or by county or city and county ordinance, jurors in the superior, municipal, and justice courts shall be reimbursed for mileage at the rate of fifteen cents (\$.15) per mile for each mile actually traveled in attending court as juror, in going only.

(b) In criminal cases, the board of supervisors of each county shall make sufficient appropriations for the payment of the fees provided for in this section. Leg.H. 1988 ch. 1245 §2.

§216. Jury Deliberation Room; Assembly Facilities.

(a) At each court facility where jury cases are heard, the board of supervisors shall provide a deliberation room or rooms for use of jurors when they have retired for deliberation. Such deliberation rooms shall be designed to minimize unwarranted

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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 non-duplicative 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.

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§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