BENEFITS OF JURY SERVICE

"What's In It For Me"

If you perform your duties as jurors conscientiously, the community should derive lasting benefits from your services and you will have the satisfaction of knowing that you have done your duty as a citizen.

You will have learned something of how the judicial branch of your government works.

You will have had an important part in seeing that justice was done.

You may have had the responsible and difficult task of finding the needle of truth in a haystack of conflicting evidence.

You will be in a position, when you are through, to enjoy the gratifying feeling that your faithfulness in the discharge of your duties as a juror has strengthened the faith of the people in our form of government and in democracy.

KINDS OF CASES

Generally Speaking, a Jury May Be Called Upon to Try Two Kinds of Cases

— Civil

A civil case ordinarily is one for money damages. The party suing is called the "plaintiff," and the party sued (or against whom action is brought) is known as the "defendant." In a civil case, a person who brings the suit against another does so by setting out his claim in a written "complaint." The person being sued, if he disputes the claim, usually does so by filing an "answer."

— Criminal

In a criminal case the action is brought in the name of the people of the State of California as "plaintiff," against the person charged with a crime, who is called the "defendant." The defendant is brought before the Superior Court either by an "indictment" or an "information," (both of which are written documents) and in Municipal and Justice courts by a written complaint. If the charge is brought by a grand jury, it is known as an indictment. If the charge is made by the District Attorney, it is known as an information. The person charged with an offense, if he/she admits the charge, does so by entering a plea of "guilty." If he/she denies the charge, he/she does so by pleading "not guilty." A defendant may also plead not guilty by reason of insanity, in any of the trial courts.

WHO IS QUALIFIED FOR JURY SERVICE

From time to time lists are made up of prospective jurors selected from among the citizens of the county. Persons on the jury lists are notified to appear in Court as they are needed.

Under the law, a juror must be a citizen of the United States of the age of 18 years or more; in possession of mental faculties and of ordinary intelligence, and physically able to serve, and must be possessed of a sufficient knowledge of the English language.

Certain definite disqualifications are also set up by the legislature. One cannot serve who has been convicted of malfeasance in office or any felony or other high crime. Other special rules applicable to the various classes of counties in California are also set up.

HOW THE TRIAL JURY IS CHOSEN

A group of citizens qualified to serve as jurors has been summoned. This group is called a jury panel. The names of these persons are each written on a separate piece of paper and put into a box, and from this box by lot the clerk, in civil case, draws 12 names. These names are called and those 12 persons take seats in the jury box. They, and often the remaining prospective jurors in the courtroom, are then sworn to answer truthfully all questions affecting their qualifications as jurors. The jurors are then told the nature of the action, the parties and attorneys who are interested in the case, and in a general way what the case is about. They are then questioned by the judge and by the lawyers concerning their qualifications to sit as jurors in the case then before the Court.

There are many reasons why a person originally on the panel might not be selected as a juror, such as: close relationship to one of the litigants; have a business relationship with one of the lawyers; or have personal knowledge of the case to be tried. The person may show some leaning, one way or the other, regarding the type of case being tried that would make that person an undesirable juror. It is very important to the rights of litigants that jurors answer the questions put to them frankly and truthfully.

Lawyers are within their rights asking questions to test a jury's state of mind. If a juror's qualifications are challenged by a lawyer, and if the juror is excused by the judge for cause, the challenge must not be taken as a reflection on the juror's integrity or intelligence. It simply means that, in one particular case, the judge may deem it proper to excuse the juror. What everyone wants, and is entitled to, is a jury of 12 disinterested persons who will try the case on the law as stated by the judge, and on the evidence admitted at the trial. In civil cases a jury may be fewer than 12 if both parties agree.

After the questioning is over each side may excuse a certain number of those who have been called into the jury box, without giving any excuse or reason. This is known as the peremptory challenge. The number of "challenges" varies with the nature of the case—civil, criminal involving the death penalty, and other criminal cases.

After these processes have resulted in the selection of 12 jurors, an oath to try the case impartially, according to the law and the evidence, is administered.

HOW JURY CASES ARE TRIED

After the jury has been sworn in, each lawyer has the right to outline the evidence that will be offered by the respective sides. This is called an "opening statement." It is not intended to be an argument. Then witnesses are usually called on behalf of the plaintiff.

After the plaintiff has put in evidence, the lawyer for the defendant then produces witnesses. When all of the evidence is in, the next order of business is generally the arguments of the lawyers. The party having the burden of proof (generally the plaintiff) has the opening and closing arguments. It is the duty of each attorney to tell the jury what his/her client contends the evidence shows and to analyze that evidence in the light of the instructions to be given by the Court. After the attorneys have argued the case, the Court then reads to the jury its instructions on their duties and gives them the law applicable to the case.

After the instructions have been read and the arguments completed, the bailiff is given an oath to conduct the jury to the jury room where the jurors will deliberate on their decision.

HOW JURORS SHOULD ACT DURING THE TRIAL

After You Are Sworn in as a Juror in a Case on Trial There are Some Rules of Conduct You Should Observe

— Don't Be Late for Court Sessions

Since each juror must hear all the evidence, tardiness causes delay, annoyance to the judge, the lawyers, the witnesses and the other jurors.

— Always Sit in the Same Seat

This enables the judge, the clerk, and the lawyers to identify you more easily.

— Listen to Every Question and Answer

Since you must base your verdict on the evidence, you should hear every question asked and the answer given. If you do not hear some of the evidence—for any reason—ask to have it repeated. If you do not understand some phrase or expression used, it is proper to ask the judge to have it explained. You must not doze or read magazines or newspapers while Court is in session. You may make notes on the testimony if you wish.

— Don't Talk About the Case

While you are a juror you should not talk to your fellow jurors or anyone else about the case or permit anyone to talk to you about it until you retire to the jury room for deliberation. If any person persists in talking to you about it, or attempts to influence you as a juror, you should report that fact to the judge immediately. You should be particularly careful not to talk to the attorneys, witnesses, or parties about anything, for irrespective of what is said, other persons may get the wrong impression. Lawyers know the impropriety of talking to jurors, and do not desire to jeopardize their case by allowing jurors to talk to them. Accordingly, if an attorney or judge seems to ignore you, you should not interpret this as snobbishness but merely a desire to observe proper rules of conduct.

— Don't be an Amateur Detective

You are not allowed to make an independent investigation or visit any of the places involved in the lawsuit. If it is proper or necessary for you to inspect a property or place involved in the case, arrangements will be made for the jury to go there as a group with the judge and the attorneys and the parties.

— Control Your Emotions

You should not indicate by exclamation, facial contortion, or any other expression, how any evidence or any incident of the trial affects you.

— When in Doubt Ask the Judge

If you are in doubt about your rights or duties as a juror, you should not ask anyone but the judge for information, and this must be done only in open Court.

If an emergency affecting your services should arise, consult the judge about it in open Court.

You may also consult the judge in chambers under certain situations.

Many words and phrases you are likely to hear during the trial are explained later in this booklet.

HOW JURORS SHOULD ACT IN THE JURY ROOM

The first thing you should do on retiring to the jury room is to select one of your number as foreman. He or she should preside at your deliberations and bring your verdict into Court and sign it.

Your deliberations should be characterized both by a free and fearless expression of your own opinions and a patient and tolerant attention to the opinions of others. You should respect the opinion of your associates, which appear reasonable and yield your own when better reasoning shows them to be unsound. Those views should prevail which, after full and frank discussion and calm and unbiased consideration, appear most sensible and sound.

You must base any decision as to the facts on the evidence in the case. But in considering the evidence you should keep in mind what the judge may have said about weighing the evidence, how to decide what evidence to believe, and the burden of proof. Also, take into consideration the arguments of the lawyers insofar as they are fair and reasonable. And, of course, you must keep in mind the law as the Court instructed you in it.

WHAT IS EVIDENCE

Since Your Verdict Must Be Based on the Evidence You Should Know What You May Take Into Consideration as Evidence.

— Evidence

If a lawyer, during the trial admits some statement of fact made by the other side to be true, or if the lawyers of both sides, either before or during the trial, agree or stipulate that certain things are true, you must accept as true the facts admitted or stipulated.

— Evidence

Answers to questions are evidence.

— Evidence

Exhibits are evidence. A deposition is the written testimony of a witness.

— Not Evidence

Matters offered to be proved but not admitted by the Court are not evidence.

— Not Evidence

Statements made by lawyers on what they expect to prove or what they claim they have proven, are not evidence.

If any statement is made by a lawyer which differs from your recollection of what the evidence was, you must rely on your own recollection.

— Not Evidence

Information on the case, the litigants, the lawyers or the witnesses, gained from sources other than the evidence presented in Court, is not evidence and must not be considered.

— Not Evidence

Sometimes remarks reflecting favorably or unfavorably upon the case or upon someone connected with it, are made in the hearing of jurors. Presumably, you do not know the person who makes the remark. Such person has not been sworn nor cross-examined and you do not know that person's interest, motive, bias or source of

information. The remark may have been made in the hope that a juror would overhear and be influenced by it. Such remarks are not evidence and must be disregarded.

OBJECTIONS TO EVIDENCE

It sometimes happens during trials that the lawyers on one side will object to a question asked, or an exhibit offered, by the other side. Under the rules of law governing admission of evidence, a lawyer is exercising a right and is performing a duty in objecting to the introduction of any evidence which the lawyer believes is not proper in the case. If the judge thinks the evidence objected to is not proper, the judge will exclude it or if the judge thinks the lawyer is mistaken in his objection, it will be admitted. In either event, the matter to be decided is a legal question which the judge alone is competent to decide. Objections by the lawyers, or the ruling of the judge with regard to them, should not cause the jury to draw inferences for or against either side. A trial is not a contest of learning, skill, or tactics between lawyers, but a proceeding to find out the truth according to the evidence received and the law as explained by the judge.

HOW TO JUDGE A WITNESS

In order to reach a correct verdict, you must determine what part of the evidence you will believe and what part you will reject as not worthy of belief.

Unfortunately, there is no "fool proof" way of sifting the true from the false. As yet, no one has discovered an infallible truth detector. In forming your opinions you must take into consideration various factors affecting the credibility of the witnesses, as far as the evidence discloses them. Some of these may be age, education, occupation, or appearance and conduct on the witness stand. Other factors influencing testimony may be a relationship between the witness and the parties in the lawsuit; interest in the outcome of the case; a possible motive for testifying as they have; a bias or prejudice, if one appears; the degree of intelligence displayed; the strength or weakness of the witness' recollection, the opportunities they have had to see, hear, and know the things to which they have testified; their frankness and candor or lack of it; the extent to which their testimony sounds reasonable and is in line with the probabilities.

It is not unusual for witnesses to differ in some details. Such discrepancies may be due to difference in the witnesses' powers to observe accurately, or in their ability to remember or to relate what they saw, heard or did. You should try to reconcile discrepancies as far as you reasonably can, taking into account these differing capacities to observe, to remember, and to relate.

You should consider the possible causes of untrue statements such as confusion, nervousness, mistake, poor memory, thoughtlessness, lack of intelligence and evil intent.

In reaching your conclusions, consider, examine and weigh all the evidence in the case, including the exhibits, if any. Act on the evidence only if you find it reasonable and probable.

Of course, you may disregard such parts of the evidence as you consider unworthy of belief.

THE JURY VERDICT

"We Have Reached A Verdict, Your Honor"

The word "verdict" literally means "truth speaking." It is assumed that the verdict speaks the truth on the disputed points between persons involved in a lawsuit. It is of the highest importance that each juror exercise the utmost of skill, fairness, and honesty to reach a just verdict.

In each case you will be furnished with the forms of the verdict. In California three-fourths of the jurors may reach a decision in a civil case. In a criminal case, the verdict must be unanimous.

When a verdict is reached, it is signed by the foreman and the jury is brought into the courtroom, taking their places in the jury box. The verdict is handed to the judge by the foreman. After the verdict is handed to the clerk, it is read aloud, copies are put into the record, and the jurors are asked if such is the verdict. Upon the demand of either party, each juror may be asked individually whether the verdict as read is his or her own verdict. This is known as polling the jury. In answer to the clerk's question, it is the duty of the juror to answer truthfully.

This procedure may seem rather tediously ritualistic to the onlooker, but it must be remembered that the judicial system guards the verdict of the jury very jealously.

THE FUNCTIONS OF THE JUDGE

The judge has many duties in connection with the trial. The judge sees that the trial is conducted in an orderly manner according to prescribed rules. These rules cover the selection of the jury, the presentation of evidence, the arguments of the lawyers, the instructions to the jury, and the rendition of the verdict. The judge must pass on the propriety of the questions put to prospective jurors as to their qualifications, and on requests to excuse jurors. The judge must see that litigants, lawyers, witnesses and jurors conduct themselves properly. The judge must not permit any disturbances by the public. The judge must see that the lawyers remain within proper limits in questioning witnesses, in arguing to the jury, and in their attitude toward each other and the judge and jury.

The judge must tell the jurors what issues of fact they must decide; by what law the rights of the litigants are controlled; and what their responsibilities as jurors are. The judge must see that the verdict is proper in form. The judge must decide any requests for rulings by lawyers or jurors: If there is no issue of fact for the jury, the judge must direct the jury to return the proper verdict or otherwise dispose of the case in civil cases.

RULES OF LAW GOVERNING TRIALS

Judges get the law by which they decide the legal questions arising in a lawsuit from many sources: federal and state constitutions; federal and state statutes; and from local ordinances and from previous judicial decisions. The latter state public standards of rights and duties in matters not covered by constitutions and statutes or ordinances. If judges and juries were not bound by these statements of the law—if, in each lawsuit, the judge or the juror could set up a private and personal standard of rights and duties as a basis for deciding that case—no one would know in advance of the decision how he/she should have acted in a particular situation. Cases arising out of similar circumstances would not be decided on settled principles but on the

notions of the trial judge or juror.

Because cases must be tried and determined on established and recognized public standards of right and wrong, we call ours a government of law and not a government of people.

Judges have access to these statements of the law and know which apply to the situation involved in any lawsuit. So that justice may be done according to law, it is imperative that the jurors in each case accept the law as the judge gives it to them. Jurors must base their verdicts on the judge's instructions as to the law rather than on their own notions of what the law is, or ought to be.

For somewhat similar reasons there are rules governing the way a case is to be tried in Court. These rules prescribe what must be stated in the complaint and answer, (in a civil case) in what order evidence must be presented, what evidence is proper, what form questions must take, in what order lawyers are permitted to argue, what is permissible and what is not permissible argument. If it were not for these rules no one could foresee what would happen during a lawsuit. It would be impossible to prepare properly for the trial. No one would know, until the judge had ruled, what he/she would be permitted to say or do, or in what order. Such a situation would inevitably result in confusion and injustice. Consequently, through experience, rules for the conduct of trials have been developed and adopted. These rules come to the attention of jurors primarily through rulings on the admission or exclusion of evidence—and sometimes on motions to dismiss the case or for a direct verdict, in civil cases.

The ruling of the judge involves questions of the law—not of fact—and must neither be questioned by the jury as to their correctness nor made the basis of inferences for or against either side.

The whole purpose of laws and rules is to establish a single standard of rights and duties, applicable to all persons similarly situated; to avoid or reduce uncertainty; and to produce similar results in similar cases.

Definition of Words and Phrases

The following definitions of words and phrases commonly used in trials will be helpful:

1. Action, Case, Suit, Lawsuit

These words mean the same thing. They all refer to a legal dispute brought into Court for trial in civil cases.

2. Answer

The paper in which the defendant in a civil case answers the claims of the plaintiff.

3. Argument

After all the evidence on both sides of a case is in, one of the lawyers on each side is permitted to tell the jury what that lawyer thinks the evidence proves and why that lawyer's side should win. This is usually called an "Argument" or "summing up."

4. Cause of Action

The legal grounds on which a party to a civil case relies to get a verdict against that party's adversary is usually referred to as a "cause of action."

5. Challenge for Actual or Implied Cause

If a lawyer, after examination, thinks a prospective juror's state of mind indicates bias in favor of one side or the other in the case, the lawyer may ask the judge to excuse that juror. This process is called challenging for cause. Disqualification for cause occurs when a juror is closely related to the parties to the action, or stands in some business relationship to one of the attorneys, etc.

6. "Charge" or Instructions

After the taking of evidence has been concluded, and either before or after the arguments of the attorneys, the judge will outline the rule of law which must guide the deliberations of the jurors and control the verdict. This is called "Instructing the Jury." Occasionally instructions are given to the jury during the taking of the evidence; generally such instructions apply to some unexpected incident that has taken place in the courtroom.

7. Civil Case

A lawsuit is called a civil case when it is between persons in their private capacity or relations. It results generally in a verdict for the plaintiff or for the defendant and, in many cases, involves the giving or denying of damages.

8. Complaint

The paper in a civil case or criminal case in which the (plaintiff) sets forth the claims against the defendant, is called a complaint.

9. Counterclaim or Cross Complaint

A "counterclaim" or "cross complaint" in a civil case results when the defendant, in the answer to the complaint, or in a cross complaint claims damages or other relief from the plaintiff.

10. Criminal Cases

A case is called a criminal case when it is between the State of California on one side as plaintiff, and a person or corporation on the other side as defendant. It involves a question of whether the defendant has violated one of the laws defining crimes, and the verdict is usually "guilty" or "not guilty."

11. Defendant

The person against whom a case is brought—in a criminal case the person charged with a criminal offense—is called the defendant.

12. Deposition

The definition of a deposition is as follows: A deposition consists of written testimony in question and answer form, made under oath, with opportunity for cross-examination. This testimony may be read at the trial, subject to the right of opposing counsel to object thereto.

13. Directed Verdict in a Civil Case

In a civil case after the evidence presented by both sides has been heard and no issue of fact for the jury to pass on has been disclosed, the judge will instruct the jury regarding the kind of verdict to return. The jury must return such a verdict. This is called a "directed verdict."

14. Exhibit

Articles such as pictures, books, letters and documents are often received in evidence. These are called "exhibits" and are generally given to the jury to take to the jury room while deliberating.

15. Issue

A disputed question of fact is referred to as an "issue." It is sometimes spoken of as one of the "questions" which the jury must answer in order to reach a verdict.

16. Jury Panel

The whole number of prospective jurors, from which the trial jury of 12 is chosen.

17. Opening Statement

Before introducing any evidence for each side of the case, each lawyer is permitted to tell the jury what the case is about and what evidence they expect the testimony to show. These are called opening statements.

18. Parties

The plaintiff and defendant in the case—also called the "litigants," in a civil case.

19. Passed, Passed for Cause

These are expressions used by lawyers while examining prospective jurors. They indicate that the lawyers do not intend to challenge the prospective juror on any claim for implied or actual bias.

20. Peremptory Challenge

In all cases the law provides that the lawyer on either side may demand that a set number of prospective jurors be excused, without being required to give a reason for the demand. The judge must excuse the jurors designated. This is called peremptory challenge.

21. Plaintiff

A person who starts a civil lawsuit, or the People of the State of California in a criminal case.

22. Pleadings

The parties in a civil lawsuit must file Court papers, such as a "complaint" or an "answer," stating their claims, denials or defenses. These are called "pleadings."

23. Record

Often the judge or the lawyers may declare that something is, or is not, for "the record" or "in the record." This refers to the word-for-word record made by the official reporter in shorthand of all the proceedings at the trial.

24. Rest

This is a legal phrase which means that the lawyer has concluded the evidence that lawyer wants to introduce at that stage of the trial.

25. Trial Jury

The 12 jurors sworn in as the jury to try a particular case.

JUSTICE UNDER LAW

After you have read this booklet you should have a fairly clear idea of the duties and responsibilities of a juror. You should have a better understanding of the way in which the courts do their work. You should have a higher opinion of the privilege enjoyed by the free citizens of our country to participate in the administration of justice.

It is hoped that as you surrender your office as a juror and return to the affair from which you were called, you will do so with the conviction that you have discharged a serious responsibility in a conscientious manner—that you have dealt out evenhanded justice according to the evidence and the law.

NOTES

SELECTING A JURY

KERRY WELLS, DEPUTY DISTRICT ATTORNEY
CHIEF, DOMESTIC VIOLENCE UNIT

I. WHAT TYPE OF JUROR DO YOU WANT

- A. MAY DEPEND ON TYPE OF CASE
- B. IN GENERAL
  1. TYPE OF PERSON YOU FEEL COMFORTABLE WITH
  2. HAPPY
  3. SMART-COMMON SENSE
  4. WORK WELL WITH OTHER PEOPLE - NO LONERS

II. GOALS OF VOIR DIRE

- A. SELL YOURSELF
- B. SELL YOUR CASE
- C. EDUCATE/INDOCTRINATE

III. SELLING YOURSELF

- A. FIRST IMPRESSIONS LAST
- B. IMPRESSION - YOU ARE COMPETENT, THEY CAN TRUST YOU, AND YOU CARE ABOUT YOUR CASE
- C. DON'T HAVE TO BE THE MOST EXPERIENCED ATTORNEY TO PROJECT THIS IMAGE

IV. SELLING YOUR CASE

- A. BY TIME VOIR DIRE IS OVER JURY SHOULD KNOW JUST ABOUT EVERYTHING THERE IS TO KNOW ABOUT YOUR CASE
- B. DIFFUSE ANY PROBLEMS

V. EDUCATING

- A. THE LAW IN YOUR CASE

B. DEVELOP UNINDOCTRINATING QUESTIONS

1. PRESUMPTION OF INNOCENCE

2. BURDEN OF PROOF

3. CHARGED DOESN'T MEAN GUILTY

4. REASONABLE DOUBT

VI. DO'S AND DON'TS - SPECIFIC TECHNIQUES

A. DO MEMORIZE THEIR NAMES

B. DO LOOK AT YOUR JURORS

C. DO LISTEN TO THEM

D. DO ASK QUESTIONS FOR A REASON

E. DON'T ASK LEADING QUESTIONS

F. DON'T TALK TO JURORS IN ORDER

G. DON'T ASK GROUP QUESTIONS

H. DON'T GET INTIMIDATED BY WHEELER MOTIONS

VII. THE PRACTICAL ASPECTS OF VOIR DIRE

FROM THE SAN DIEGO DISTRICT ATTORNEY'S OFFICE PROPOSITION 115 MANUAL

JUDICIAL VOIR DIRE

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

> "In a criminal case, the court shall conduct the examination of prospective jurors. However, the court may permit the parties, upon a showing of good cause, to supplement the examination by such further inquiry as it deems proper, or shall itself submit to the prospective jurors upon such a showing, such additional questions by the parties as it deems proper. Voir dire of any prospective jurors shall, where practicable, occur in the presence of the other jurors in all criminal cases, including death penalty cases.
>
> Examination of prospective jurors shall be conducted only in aid of the exercise of challenges for cause.
>
> The trial court's exercise of its discretion in the manner in which voir dire is conducted shall not cause any conviction to be reversed unless the exercise of that discretion has resulted in a miscarriage of justice, as specified in Section 13 of Article VI of the California Constitution.

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

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

Rule 228.1 Pre-voir dire conference in criminal cases

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

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

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

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

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

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

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

Rule 228.2 Supplemental examination in criminal cases

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

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

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

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

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

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

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

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

COUNTY OF SAN DIEGO

INTER-DEPARTMENTAL CORRESPONDENCE

August 30, 1990

TO: Don MacNeil
Bob Sullivan

FROM: Richard McCue

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

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

RM/jc

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

Sec. 8.5. Examination of prospective jurors in criminal cases

(a) [In general]

(1) This standard applies in all criminal cases.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

> (i) Have you heard my questions to the other prospective jurors:
>
> (ii) Have any of the questions I have asked raised any doubt in your mind as to whether you could be a fair and impartial juror in this case?
>
> (iii) Can you think of any other reason why you might not be able to try this case fairly and impartially to both the prosecution and defendant, or why you should not be on this jury?
>
> (iv) Give us the personal information requested concerning your occupation, that of your spouse and your prior jury experience.

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

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

PAUL PFINGST

VOIR DIRE

I. FORMULATE STRATEGY FOR THE ENTIRE TRIAL
(AKA EXCEDRIN HEADACHE #1)

A. The "real trial" starts before voir dire.

B. Select the messages, themes, or issues.

C. Themes must be pursued through opening statement, testimony, closing, and instructions.

II. VOIR DIRE GOALS

A. **Select 12 unbiased, reasonably intelligent, mainstream-type people.** (Prosecution and defense extremists need not apply.)

B. **Sensitize jurors to critical issues that they will ultimately have to confront.** (Leave the thinking to us.)

C. **Establish our professionalism and competence.** (Let those Dale Carnegie lessons pay off.)

1. **GOAL A: Selection**

(a) Watch them whenever and wherever you can. Locate the loners, big mouths and losers; then execute them.

(b) Note physical as well as verbal reactions to judge and defense attorney. Locate the people who distrust defense attorneys and hug them.

(c) Find the ones who respond to us. Rule of thumb: If it seems you didn't get along well with a juror--you didn't! Kick 'em.

(1) Do they look us in the eye?

(2) Do they follow our cues?

(3) Do they respond directly to our questions?

(4) Do they try to help us perform or are we doing all the work?

(5) Is there an ease to the conversation?

(d) Don't waste a lot of time on the sure winners and certain losers. Save attention for the question marks.

(e) Keep the questions simple. Complexity is quicksand.

2. **GOAL B: Sensitize**

(a) Pick two (or at most three) important ideas we want them to remember forever; i.e., bad people can be good witnesses; circumstantial evidence is great stuff; alibis are phony.

(b) We think positive ideas. We speak positive ideas. We have no problems, only solutions. So will the jury.

(c) Follow up on the two or three ideas in opening and closing. If they die at voir dire, they may be forgotten by deliberations.

(d) Make them tell you they will convict.

3. **GOAL C: Establish Professionalism**

(a) Jurors want us to succeed and they expect us to be competent.

(b) The single best predictor of a guilty verdict is the jury's perception of the prosecutor.

(c) The jurors' perception of the prosecutor is three times more important than their perception of the defense attorney.

(d) There are four "musts" for successful juror perception.

(1) The prosecutor must appear efficient and competent.

(2) The prosecutor must appear likeable.

(3) The prosecutor must be relied on to tell the truth.

(4) The prosecutor must appear confident about the case.

(e) Voir dire makes our first impression as a law enforcement official and as a person.

(1) Prepare a two to three minute opening.

(2) Don't forget your good buddy--the D.A.

(3) We are purposeful and direct. (Don't step in quicksand).

(4) We are concise.

(5) We tell them what we are looking for.

(6) We are not overly ingratiating.

(7) We keep it short and keep it moving.

(8) We obviously represent all of those things the defense attorney does not.

(f) Social Science tells us:

(1) Volume counts;

(2) Dress doesn't.

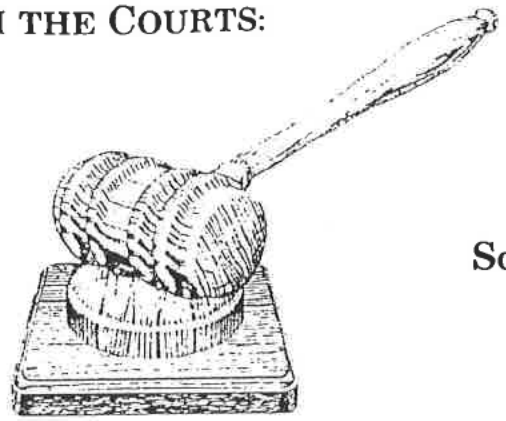
(3) Eye contact counts;

(4) Sex doesn't.

(5) Watch their eyes; watch their eyes; watch their eyes.

P.S. (1) Their jury selection expert is <u>our</u> friend.

(2) Questionnaires: a good question with legal complications.



Some Thoughts on Voir Dire Examination

by Judge Charles R. Hayes

Ask a trial juror what he or she thinks of the voir dire process. You are likely to hear that it is a waste of time. You are also likely to learn that jurors are frequently offended by an endless series of aimless, repetitious questions perceived to have little, if anything, to do with whether they would be fair jurors. Likewise, if you ask the same question to lawyers, they will say voir dire is boring and tedious—until they are given center stage and a captive audience of 45 jurors. Suddenly, those boring, tedious, and repetitious questions take on a certain eloquence in the mind of the speaker . . . and the eloquence continues on and on.

The practical considerations that follow are intended to assist counsel at getting the most out of jury selection while lessening the risk of irritating or offending jurors and others who are a part of the trial process. Admittedly, suggestions and the cited examples are rather basic. While they may be a matter of second nature to most trial attorneys, they highlight situations which recur with surprising frequency, even among experienced trial counsel.

Purpose of Voir Dire

Despite what many seminars on the subject seem to support, the purpose of voir dire is not to educate the jury concerning the particular facts of the case, nor is it to indoctrinate the jury as to counsel's factual or legal contentions. However, much of the focus of voir dire seems to be aimed toward these ends.

It is important to keep in mind that the purpose of voir dire examination is to select a fair and impartial jury. The examination consists of asking prospective jurors questions to determine whether grounds exist for the exercise of a challenge for cause or a peremptory challenge.

In the case of *People* v. *Williams* (1981) 29 Cal.3d 392, the California Supreme Court extended the scope of examination to allow attorneys to question jurors to aid in the exercise of peremptory challenges. Prior law required an attorney's questions to be directed to the issue of challenges for cause. While the court's decision in *Williams* led many to conclude that the floodgates had been opened, this concern proved largely unwarranted.

In 1987, the Legislature codified the *Williams* decision in Penal Code section 1078. Under this enactment, trial courts must permit reasonable examination of jurors by counsel. However, section 1078 by its own terms established an express "duty" of the trial court "to provide for a voir dire process as speedy, focused and informative as possible and to protect prospective jurors from undue harassment and embarrassment and from inordinately extensive, repetitive or unfocused examination." Even the former Chief Justice in *Williams* urged trial courts to employ an Evidence Code section 352 approach by weighing the relevance of voir dire questions against their potential to create confusion or waste time.

Section 1078 specifically sets forth the types of questions which "trial courts shall not permit" when their sole purpose is any one of the following: 1) educate the jury as to the facts of the case, 2) compel the jurors to commit themselves to vote in a particular way, 3) prejudice the jury for or against a party, 4) argue the case, or 5) indoctrinate the jury. Although none of the factors identified by the Legislature is particularly new, the legislative intent that trial courts should take strong measures to control the length and content of voir dire is clear.

Over the next few years, trial courts will be assuming more responsibility over the voir dire process and exercising increased control over both its length and content. Accordingly, attorneys should be prepared with well considered questions directed toward efficient voir dire.

Looking for the Right Jury

Prior to questioning jurors, think about the types of jurors best suited to your case. For example, consider looking for jurors with a business or accounting background to decide a fraud case; in a child molest case, you might seek jurors with more of a family orientation or background.

Think about the particular facts of the case as they relate to an "ideal juror." Are your witnesses primarily drawn from law enforcement or are the witnesses paid informants? Are your witnesses comprised of unsavory characters who might appear to be less sympathetic than the defendant? Each of these situations is somewhat unique to the case. A little prior planning related to the desired demographics of the jury will go a long way to the formulation of clear, concise, and thoughful questions. The careful formulation of questions will certainly aid in the selection of a jury relatively unencumbered by preexisting bias.

The Right Questions

Once you determine the types of jurors you will be seeking, tailor questions specifically to finding those jurors in light of the case you will be trying. Avoid asking merely a set of generic, boilerplate questions. Nothing puts a jury to sleep faster than asking each juror a series of repetitious, general questions not particularly germane to your case. At best you will put jurors to sleep. At worst you risk alienating the entire panel for wasting their time with aimless repetition.

In formulating questions, be aware of any preexisting bias of your own which could shade the wording or manner of your questioning. The following is a most graphic example which occurred when a male attorney blundered through the examination of the panel. The manner of this attorney's repeated questioning indicated he had certain views concerning the

place of women, and especially homemakers, in society.

The panel was comprised of several men who had extensive business or professional backgrounds, and several women, two or three of whom had described their current occupations as that of "mother" or "homemakers." The defense attorney asked the same questions of each woman. "Mrs. Jones, do you think that during deliberations, since you are just a housewife, you might tend to be intimidated by the professional men on the jury? Do you think you might tend to just go along with what ever decision they may have come to in this case?"

Finally, one female juror who had been asked the above questions passed a note to the bailiff asking to talk to the court and counsel privately. During the individual voir dire that followed, the juror came directly to the point. The juror stated in substance: "Mr. _____, that's the fifth time you have asked that question about merely going along with the professional men on the jury. You have only asked it of the women. You have not asked it of any of the men on the jury. I may be just a mother taking care of my son but I am not stupid as you apparently presume. I have an undergraduate degree from Berkeley and an MBA from Stanford. In answer to your question, NO! I will not be intimidated by the gentlemen on the panel. . . and I am not intimidated by you. Your sexist attitude toward women is transparent and offensive."

On how many occasions are similar thoughts or feelings encountered but not expressed other than among the jurors? Over a period of hours this lawyer had unintentionally demonstrated his own gender bias by condescension in the manner of his speech and the content of the questions.

Sensitive Areas or Questions

A sensitive area or question is encountered in voir dire where there is a reasonable possibility the trial judge will sustain opposing counsel's objection to your question or line of inquiry. If your case involves issues which you feel must be addressed to the jury during voir dire but which could draw a successful objection, bring the matter up during the pretrial conference with the judge.

All too often during the pretrial conference, attorneys—both prosecutors and defense counsel—fail to mention issues which will surely arise during voir dire. Frequently, important factual and legal issues regarding voir dire are neither raised nor discussed with the trial judge prior to commencing the process. Counselors simply wade into the pond without checking the depth of the water. By the time a particular question has been asked in open court, it is often too late.

This situation is a good example of the truth of the adage, "an ounce of prevention is worth a pound of cure." Bring up the topic during the conference. Do not just surprise the judge with something which could have been anticipated and thereby force the judge to rule on the objection on the spot. By discussing the sensitive matter in advance, you can convince the judge that a particular area is a legitimate subject of voir dire inquiry. A series of carefully phrased questions discussed with the court in advance may avoid drawing a successful objection from your opposition.

For example, a prosecutor might have a case resting entirely on circumstantial evidence and wish to ask the jury questions concerning the distinction between direct and circumstantial evidence. The prosecutor may wish to carefully phrase a series of questions relating to whether any member of the jury could not convict a defendant solely on circumstantial evidence. The precise language of the questions will determine whether they are permissible or objectionable as an attempt to compel the jury to commit themselves to vote in a particular manner.

Give the judge some warning. Let the judge know there is a legitimate area of concern that you wish to address in voir dire. Avoid the possibility of having the judge sustain your adversary's objection in front of the jury and either explicitly or implicitly finding your tactics are improper.

Avoid Tainting the Panel

On one hand, voir dire is aimed at eliciting information from prospective jurors which would reveal a bias or prejudice toward one party or the other. On the other hand, care should be taken not to inadvertently pose a question which may elicit a juror's response that could significantly prejudice your case. Similarly, you must be alert to opposing counsel's questions which may also result in prejudice to your case. For example, defense counsel may ask a perfectly legitimate question concerning whether any jurors have any bias for or against law enforcement officers or whether any juror has had any unpleasant experiences with law enforcement officers. However, opposing counsel may then follow with a question calling for the juror to respond in a narrative explaining the basis for the bias or to describe what happened during an unpleasant encounter with law enforcement. In this example, if either of defense counsel's questions calling for the narrative is asked without objection, you run a significant risk. In the presence of the panel, the juror may answer the question in graphic detail, describing perceived misconduct or mistreatment by a law enforcement officer. After Pandora's box is opened, the unwary or inattentive prosecutor who failed to take steps to prevent this from happening is for all practical purposes without remedy.

From the defense standpoint, there is also the story of the juror who expressed doubt about being able to be fair in a driving under the influence case. One of the lawyers asked her to explain "why" and was greeted with a graphic and emotional description of the juror's daughter being killed before her very eyes by a drunken driver. Having heard the tearful story, the balance of the panel was not in any position to dispassionately sit in judgment, and a new jury had to be impaneled. So goes the morning's voir dire, all because a lawyer who asked the question was not thinking and the balance of the participants were not being attentive.

The pretrial conference is the appropriate forum to discuss ground rules to prevent such occurrences. It is suggested that whenever a juror expresses an opinion in a sensitive area that needs follow up, the juror should be questioned on the subject at a convenient time out of the presence of the balance of the panel. Advance planning and discussion of such potential problems is time well spent by the court and counsel.

In summary, trial judges are given wide latitude and discretion in controlling the content and length of voir dire examination. Judges are individuals having differing views and approaches on the permissible scope of examination. The scope of voir dire is circumscribed by the unique factual and legal issues presented in the case you are trying. These complex factors simply highlight the importance of the well prepared prosecutor. Consideration should be given to (1) the scope and content of one's own voir dire examination, (2) the examination of the opposition, and (3) ensuring the court is fully apprised of the anticipated factual and legal issues presented by voir dire. To overlook the importance of the voir dire process in the case you are trying is to invite disaster. □

The Honorable Charles Hayes is a judge of the Superior Court of San Diego County.

Hon. J. Clinton Peterson

Voir Dire Examination of Jurors in the Criminal Case for Purposes of Peremptory Challenge

The parameters of voir dire examination of jurors in aid of peremptory challenges in criminal cases have been varied in practice. They also have represented a difficult and somewhat confusing area of the law for over 80 years in California. There is probably no phase of trial more frequently a source of exasperation to the courts and of frustration for counsel than voir dire. The practices of lawyers in jury selection and the trial court's role in controlling such practices have been the basis of frequent delays and repeated objections from counsel of both sides and have spawned a panoply of appellate court criticism and comment.

> "In theory, the attorneys try to select neutral and unprejudiced jurors; in practice, each strives to mold a panel favoring his side. To this end, *mind-numbing quantities of time* may be exhausted interrogating the veniremen. In big cases voir dire may continue *wearyingly for weeks or even months.*" [*People* v. *Helton* (1984) 162 Cal.App.3d 1141, 1144, 209 Cal.Rptr. 128 (Emphasis added).]

The Legislature has responded to such criticism by substantially amending California Penal Code section 1078. Among other changes, those amendments add subsections (b) and (c) to create a "Task Force on Voir Dire" to submit to pilot program counties (Fresno and Santa Cruz counties) by July 1, 1988, a list of standardized voir dire questions to be utilized exclusively by the courts of those counties in asking all questions "designed solely for assisting in the intelligent exercise of the right to peremptory challenge" [California Penal Code section 1078(b)].

Curtailment of all voir dire by counsel for the purpose of aiding exercise of peremptory challenges may be a statewide reality after January 1, 1992 [California Penal Code section 1078(d)], when the Judicial Council reports the pilot project results to the Legislature.

An examination of the legal history of voir dire in California, including the present law, reveals that the varied control or exercise of judicial discretion as to voir dire examination by appellate and trial courts has contributed as much to the existing problems as have the tactics of both counsels.

From 1912 until 1981, voir dire examination by counsel was prohibited from being conducted as a basis for the exercise of peremptory challenges. [*People* v. *Edwards* (1912) 163 Cal. 752, 127 P.58.] Such examination was allowed only for purposes of challenges for cause. The *Edwards* rationale was almost identical to the quoted language of *Helton, supra.* That is, the curtailing of...

> "tedious examinations of jurors, apparently with no definite purpose or object in view, but with the hope of eliciting something indicating the advisability of a peremptory challenge,... the *supposed privilege* of doing this has been greatly abused." [*People* v. *Edwards, supra,* 163 Cal. 753 (Emphasis added).]

In 1981, the Supreme Court, in *People* v. *Williams* (1981) 29 Cal.3d 392, 174 Cal.Rptr. 317, 628 P.2d 869, recognized the *Edwards* rule was often widely ignored in practice and was unevenly applied by trial courts. *Williams* held:

> "[C]ounsel should be allowed to ask questions reasonably designed to assist in the intelligent exercise of peremptory challenges whether or not such questions are also likely to uncover grounds sufficient to sustain a challenge for cause.
>
> "[W]e leave intact the considerable discretion of the trial court to contain voir dire within reasonable limits." [*People* v. *Williams, supra,* 29 Cal.3d 407-408.]

Williams instructed trial courts:

> "[C]ounsel should at least be allowed to inquire into '*matters concerning which either the local community or the population at large is commonly known to harbor strong feelings that may stop short of presumptive bias in law yet significantly skew deliberations in fact.*' " [*Id.* at p.408 (Emphasis added).]

However, *Williams* excluded voir dire questions which sought to: 1) educate the panel to the case's particular facts, 2) compel jurors to commit to a particular vote, 3) prejudice a juror for or against any party, 4) argue the case, 5) indoctrinate the jury, and 6) instruct the jury in matters of law. Finally, *Williams* explained that:

> "[A] question fairly phrased and legitimately directed at obtaining knowledge for the intelligent exercise of peremptory challenges may not be excluded merely because of its *additional tendency* to indoctrinate or educate the jury." [*Id.* (Emphasis added).]

The six criteria for excluding voir dire questions (at least conditionally) recited above from *Williams* are incorporated in subdivision (a)(4) of the recent amendment to Penal Code section 1078. That subdivision, however, seems to accord with *Williams* on the proposition that a voir dire question may have a dual result (a legitimate purpose with a concomitant "tendency to indoctrinate or educate the jury") and be properly allowed: