

Voir Dire

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A Roadmap

- I. Basic Mechanics
- II. Challenges
- III. Tips & Techniques
- IV. Objections

Mechanics

Basic Mechanics of Jury Selection

1. Panel is brought to courtroom & sworn
2. Questionnaires handed out (if being used)
3. Judge hardships the entire panel
4. 12 potential jurors seated at random
5. These 12 are questioned by court
6. Defense counsel questions the 12
7. DDA questions the potential 12
8. Exercise of challenges
 - a. Cause
 - b. Peremptory
9. Panel is accepted by both sides
10. Selection of alternates
11. Jury and alternates are sworn

Challenges

Challenges for Cause

1. **General Disqualifications [CCP §§ 228(a), 203]**
 - Not a U.S. citizen
 - Under 18
 - Does not live in CA
 - Not a resident of Ventura County
 - Does not speak English well enough to understand proceedings
 - Inability, making jury incapable of performing duties without prejudicing rights of either party (CCP § 228(b))
 - Simultaneously serving as a grand juror
 - Subject of a conservatorship
 - Has a felony conviction and has not had civil rights restored
2. **Implied Bias [CCP §§ 225(B)(1)(B), 229]**
 - Related to one of the parties or witnesses
 - Has had attorney-client relationship with attorney/partly within one year of the filing of the complaint
 - Has an interest in the action, beyond that of a citizen or taxpayer
3. **Actual Bias [CCP § 225(b)(1)(C)]**
 - Difficulty to keep an open mind b/c of the nature of the case
 - Admits bias for or against a group involved in the case
 - Admits having "settled opinions" about issues in the case
 - Cannot assure the court that case would be decided by reference exclusively to the law and evidence, or admits that there is significant likelihood that extraneous matters will enter into the decision-making process
 - Juror has an opinion on the defendant's guilt or innocence

Peremptory Challenges

- **6 Challenges**
 - If charged offense is punishable with max term of 1 year or less [CCP § 231(b)]
- **20 Challenges**
 - If charged offense is punishable by death or life in state prison [CCP § 231(a)]
- **10 Challenges**
 - In all other cases that do not fall into the categories described above or below
- **Multiple Defendants**
 - If punishment is 1 year or less: 6 joint + 2 each
 - If D's charged w/same offense:
 - Life/death case: 20 joint + 5 each
 - All other cases: 10 joint + 5 each
 - DDA gets same number of peremptory challenges as defense (i.e. 8, 25, or 15)

Tips & Techniques

Cat's Rules for an Effective Voir Dire

1. Make a Solid First Impression

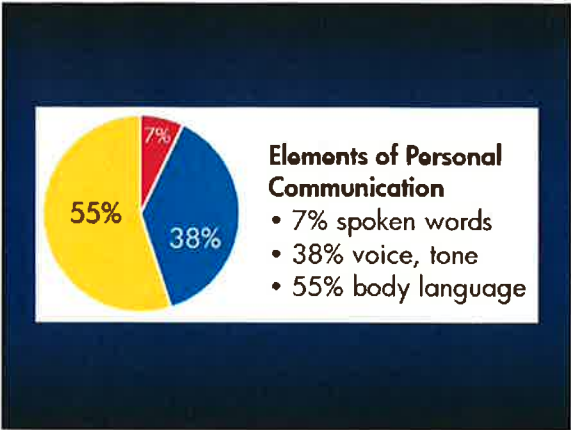


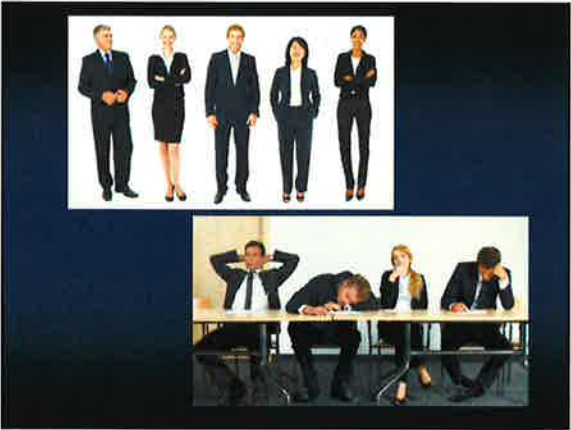
Everyone sees what you appear to be...



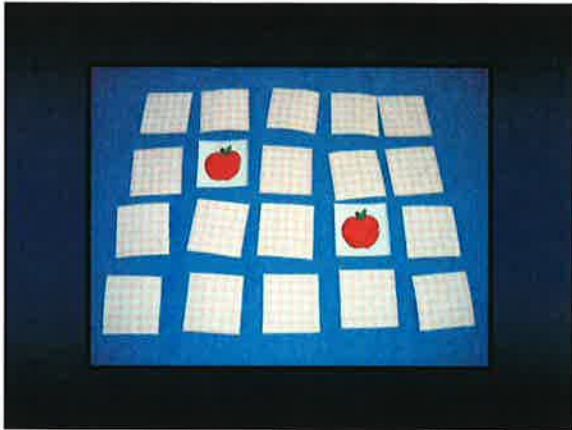
...the jury at that you identify in the courtroom, and that they are above each other.

...few really know what you are.









Cat's Rules for an Effective Voir Dire

1. Make a Solid First Impression



Project to the jury at all times that you are confident in your case, are in control, and that your honesty and integrity are above reproach

Cat's Rules for an Effective Voir Dire

1. Make a Solid First Impression
2. Have a Discussion



Cat's Rules for an Effective Voir Dire

1. Make a Solid First Impression
2. Have a Discussion
3. Keep it **Interes**ting



Cat's Rules for an Effective Voir Dire

1. Make a Solid First Impression
2. Have a Discussion
3. Keep it **Interes**ting
4. Air Your Dirty Laundry



Cat's Rules for an Effective Voir Dire

1. Make a Solid First Impression
2. Have a Discussion
3. Keep it **Interes**ting
4. Air Your Dirty Laundry
5. When in doubt, kick them out!

Suggested Voir Dire Format

Three Steps:

- Clarify Who You Are
- Discuss Legal Principles & "Dirty Laundry"
- Burden of Proof: BRD

Make Sure the Jury Knows Who You Are

Option #1

- Good morning. As you can see, the defense attorney has a client sitting next to her at counsel table. You can also see that I don't have anyone sitting next to me at my table, but that doesn't mean I don't have a client.
- Who do I represent? Ok, I represent the People, but who are these People? When do I represent them? Why is there representation for the People? Do you agree that the People have a right to a fair trial too? What does that mean to you? Will you give People same fair trial as you will the defendant?

Make Sure the Jury Knows Who You Are

Option #2

- Good morning. As you can see, the defense attorney has a client sitting next to her at counsel table. You can also see that I don't have anyone sitting next to me at my table, but that doesn't mean I don't have a client. The Judge told you I represent the People of the State of CA.
- Have you heard the expression, "out of sight, out of mind?" What does that mean? Do you think that because my client isn't visibly sitting right next to me that the People are any less deserving of a fair trial? Do you think it might be easy to overlook the People's right to a fair trial since my client isn't so visibly present in this courtroom? Do you agree that the People have a right to a fair trial too? What does that mean to you? Will you give People same fair trial as you will the defendant?

Legal Principles & Dirty Laundry

- ◊ Following the law, even if they don't like it
- ◊ Personal experiences of jurors that may affect case
- ◊ Single witness testimony
- ◊ Youthful or very attractive defendants
- ◊ Children as witnesses
- ◊ Witnesses with RAP sheets
- ◊ The "CSI Effect"
- ◊ Sympathy / Punishment
- ◊ Negative experiences with law enforcement
- ◊ Case specific issues: DNA, Alcohol, Drugs, Experts

Burden of Proof: BRD

- ◊ Proof BRD – have you heard that phrase before? Where? What does that phrase mean to you?
- ◊ Make sure they know what BOP is not
- ◊ Explain legislative intent for setting BOP BRD.

Burden of Proof: BRD

Option #1:

- ◊ If I prove, BRD, that the defendant committed the crimes he's charged with, what will your verdict be Mr. Juror?

Option #2:

- ◊ If I prove, BRD, that the defendant committed the crimes he's charged with, is there anything that would prevent you from returning a guilty verdict, Mr. Juror?

Burden of Proof: BRD

If they waiver, are apprehensive, overly conditional in their response, or ask you questions instead, kick them!!!

Objections

Improper Voir Dire Questions
[CCP §§ 223(d), 223(e)]

- ◊ Educate the jury as to the particular facts of the case
- ◊ Compel jurors to vote in a particular way
- ◊ Prejudice jury for or against any party
- ◊ Argue the case
- ◊ Indoctrinate the jury
- ◊ Instruct the jury in a matter of law
- ◊ Attempt to accomplish an unlawful purpose
- ◊ Not reasonably calculated to lead to a challenge for cause

Batson / Wheeler

- Protected groups:
 - Race
 - Religion
 - Ethnicity
 - Gender
 - Sexual orientation
 - Age
 - Mental or physical disability
 - Marital Status
- Not recognized as a protected group:
 - Caucasians with Spanish surnames
 - People with "low incomes"

