

VOIR DIRE IN DOMESTIC VIOLENCE CASES

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VOIR DIRE

- Law and procedure
- Specific areas of inquiry
- Specific questions
- Intangibles

THE LAW

Voir Dire in California is governed by:

1. California Rules of Court
2. California Code of Civil Procedure
3. Case law

CALIFORNIA RULE OF COURT § 4.200(a)

Court must discuss the following with counsel:

- Brief outline of case
- Names of witnesses
- Theory of culpability
- Defense theory (may decline)
- Procedures for hardships/challenges for cause
- Areas of inquiry by court and counsel
 - Anything off-limits?
- Time limits
- Schedule of trial and predicted length
- Number of alternates and method of selection
- Procedure for *Wheeler/Batson*

CALIFORNIA CODE OF CIVIL PROCEDURE § 223

• Judge's discretion viewed in light of:

- Amount of time requested
- Unique/complex law or facts
- Length of trial
- Number of parties
- Number of witnesses (CCP § 223(c)(1-5))

CCP § 223 & RULE OF COURT § 4.201

- Examination may be conducted:
 - Orally
 - Written questionnaire; or
 - Both methods

PURPOSE OF VOIR DIRE

- Only in aid of the exercise of challenges for cause. (CCP § 223(d))
- Improper question:
 - A question that, as its dominant purpose, attempts to precondition the prospective jurors to a particular result or indoctrinate the jury. (CCP § 223(d))

CALIFORNIA CODE OF CIVIL PROCEDURE § 223

- Judge shall conduct initial questioning.
 - Attorneys may submit questions for consideration (CCP § 223(e))
- Attorneys shall have right to conduct oral questioning.
 - *"Shall permit liberal and probing examination calculated to discover bias or prejudice."*

CALIFORNIA CODE OF CIVIL PROCEDURE § 223

- Follow-up permitted to Judge's questions. (CCP § 223(b)(1))
- Not required to submit questions in advance. (CCP § 223(b)(1))
- No specific/unreasonable/arbitrary time limits or inflexible time policy.
 - Judge shall permit supplemental time based on individual responses or conduct of jurors that may evince attitudes inconsistent with suitability to serve as a fair and impartial juror in the particular case. (CCP § 223(b)(2))

CALIFORNIA CODE OF CIVIL PROCEDURE § 223

- **Judge shall consider use of questionnaires.** (CCP § 223(e))
 - Copies of questionnaires available upon request.
- **List of jurors' random order to attorneys.** (CCP § 223(f))

QUESTIONING A JUROR IN PRIVATE

- **Preference is for non-sequestered voir dire.**
 - *People v. Roldan* (2005) 35 Cal.4th 646, 691; CCP § 223(d)
- **May conduct sequestered voir dire on media reports and other issues.**
 - (Advisory Committee Notes, CCP § 223)
- **Judge should consider the charges, the nature of the evidence, and other relevant factors.**

QUESTIONING A JUROR IN PRIVATE

- **Must inform jurors of possibility of sequestered voir dire if questioning likely to elicit answers a juror may feel are sensitive in nature.**
- **Jurors must be advised of right to request a hearing in chambers to answer sensitive questions before writing them in questionnaire.**
 - (*Copley Press Inc. v. Superior Court* (1991) 228 Cal. App. 3d 77, 79).

GROUND TO CHALLENGE A JUROR

- **General Disqualification** (CCP § 225 (b)(1)(A))
- **Implied Bias** (CCP § 225 (b)(1)(B) & 229(f))
- **Actual Bias** (CCP § 225 (b)(1)(C))

THE VENIRE ARRIVES.....

- **Observe the jurors**
 - Special needs, odd behaviors, clothing, loner, reading materials, inconsiderate behavior.
- **Listen to the defense**
 - Watch their reactions
- **Notes / scoring system**
 - 1,2,3....+/-
 - Leader / Follower
 - Wheeler Challenges

GIVING THE JURORS A ROADMAP

- **Domestic Violence / Stalking questions**
- **Follow-up from defense**
- **Questionnaire / Specific to juror questions.**
- **Promise to be respectful.**
- **Private if allowed.**

DOMESTIC VIOLENCE – STARTING THE DISCUSSION

• What do you think of when you hear the words "Domestic Violence?"

- Gender(s)
- Parties
- Offender
- Relationship
- Type of abuse
- Results

CONTINUE THE DISCUSSION – DV

1. Repeat their exact words. *"There was violence in my house, it was horrible."*

2. Open-ended questions. *"What kind of violence occurred? What do you think it stemmed from? What would happen?"*

- How recent
- Relationship
- Reported
- How they reacted
- Resumed Relationship
- Impact / Effect on life
- Law Enforcement Involvement
- Judicial Involvement

CONTINUE THE DISCUSSION – DV

3. Acknowledge validity and compare. *"Thank you for your honesty and sharing your personal experience. It is understandable that you feel the way you do. Has anyone else had violence in their home?"*

4. Compare and contrast: *"Mr. Smith, how was your experience similar or dissimilar to that of Mr. Jones?"*

ACCUSED OF DV
Has anyone here been <i>accused</i> of Domestic Violence or know someone else who has?
<ul style="list-style-type: none">• "Mr. Smith, you said that your ex-wife accused you once."<ul style="list-style-type: none">• What happened• How recent• Relationship• Reported• Resumed Relationship• Law Enforcement Involvement• Judicial Involvement• Were you treated fairly

ADDITIONAL QUESTIONS / ISSUES
<ul style="list-style-type: none">• Does anyone think that Domestic Violence is a personal family issue that the Government should stay out of?• Uncomfortable Nature of Topic – Getting Involved

SEX CRIMES
<ul style="list-style-type: none">• <i>Crimes of Domestic Violence or Stalking may include a sexual component (rape or sexual assault), or threats to commit those crimes.</i>• <i>Is there anyone here who as been the victim of, accused of, or know someone who has experienced or been accused of sexual assault?</i>• <i>Same questions, maybe in private.</i>

STALKING

- When you hear the term “*Stalking*,” what is the first thing that comes to your mind?
 - Celebrity / Movie
 - Personal experience (Self, Friend, Acquaintance).
- Legal vs. Layperson Definition
- What kind of conduct comes to mind?
- Do you know anyone who has sought or been the subject of a Restraining Order?

CONTINUE THE DISCUSSION – STALKING

1. Repeat their exact words. *“Ms. Jones, you recently read about a man who was stalking a celebrity, right?”*
2. Open-ended questions. *“What kind of conduct was involved? What did you think about it?”*
 - How recent
 - Relationship
 - Reported
 - How they reacted
 - Resumed Relationship
 - Impact / Effect on life
 - Law Enforcement Involvement
 - Judicial Involvement

CONTINUE THE DISCUSSION – STALKING

- Do you have expectations for how a Stalking victim should respond (if at all)?
- What if they maintained some level of communication?
- When you hear the word “Stalker,” do you make any assumptions about the mental health of the persons involved?

USING THE INFORMATION – DV AND STALKING

- Develop a profile.
 - Personal experiences
 - Susceptibility to emotion
 - Strong positions on issues
 - On the lookout for stealth jurors.
- Peremptory Challenges
- Challenges for Cause

INTANGIBLES

- Characteristics of Defendant
- Sympathetic defendant
- Uncooperative victim
- Unlikeable victim
- No Victim
- Cooperative / biased / motivated victim
- Different lifestyles
- Prior Domestic Violence

THE DEFENDANT

- *In this case the defendant is _____.*
 - *Female, Elderly, Young, Disabled*
 - *Military (Uniform)*
- *Were you surprised when you heard the charges read?*
- *Why do you think that surprised you?*
- *Do you have any automatic assumptions about the defendant?*

UNCOOPERATIVE VICTIM

- *Not all crime victims are happy about coming to court. In fact, some want nothing to do with it.*
- *Do you think Domestic Violence cases should be prosecuted even if the victim does not want it prosecuted?*
- *Can you think of reasons why a victim might not want the case prosecuted?*

UNCOOPERATIVE VICTIM

- *Do you think that a person could get on the stand and lie?*
- *How do you determine if someone is lying?*
- *The court will give you instructions as to how to evaluate testimony, will you use those as you reflect back on the testimony of witnesses?*
- *Listen to all of the evidence*

UNLIKEABLE VICTIM

- *Jury instruction*
- *Some witnesses in cases are not very likeable for a whole host of reasons.*
- *Can you set that aside as you look at the evidence in the case?*

No VICTIM

- In some cases, victims never testify. In this case, I do not expect that we will hear from the victim during the trial.
- Do you think it is fair that a trial can proceed without the victim?
- Can you look at the evidence that is presented and render a verdict?

COOPERATIVE / BIASED / MOTIVATED VICTIM

- Preview the issue
- You may hear that there is an ongoing custody issue in this case.
- Would it influence you in a manner such that you would give less weight to the testimony based on that alone?

INTANGIBLES

- Socioeconomic differences
- Status in Community
- Same sex relationship
- Drug use
- Bad choices

INTANGIBLES
<ul style="list-style-type: none">• Presence / lack of injury• Inconsistent statements• Involvement of children• CSI

INTANGIBLES
<ul style="list-style-type: none">• #MeToo• Kavanaugh• Strong Opinions• Social Media / Comments

INTANGIBLES– HOW TO ADDRESS THEM
<ul style="list-style-type: none">• Jury instructions• Preview of what to expect• Immediate / Strong feelings• What do you think?• How would it affect you?• Can you set aside?

PRIOR DV- EVIDENCE CODE 1109

- By Defendant (and/or Victim)
- Pre-trial ruling
- *You may receive evidence that you can consider in your deliberation, but only for specific or limited purposes. You will get instructions from the judge on how to do that.*
 - *Will you agree to consider all of the evidence you are allowed to?*
 - *Will you follow the judge's instructions?*

CHILDREN AS WITNESSES / VICTIMS

- A child may be called as a witness in this case.
- Do you think it is fair to ask a child to testify?
- What if it is about something that involves their parents?
- Would you hold it against the party who called the child?

GENERAL QUESTIONS

- Reasonable doubt
- One Witness Rule
 - Domestic Violence
 - Sexual Assault
 - Stalking
- Direct vs. Circumstantial Evidence
- Reasonable vs. Unreasonable
- Commitment to wait to decide until case complete!

JUROR-SPECIFIC QUESTIONS

- Specific to questionnaire
- Prior questions by defense
- Any unanswered questions

SECOND WAVE OF JURORS

- Do not simply ask if anyone has different answers!
- Don't shortchange yourself on time!
- Still ask direct questions and general questions

DON'TS

- Abbreviate your voir dire as selection goes on (and on).
- Argue with a juror.
- Discuss information subject to privacy request.
- Use legalese.

JURORS TO AVOID
<ul style="list-style-type: none">• Batters• Former Victims<ul style="list-style-type: none">• Can be very critical<ul style="list-style-type: none">• I got out, why can't she?• My situation was worse.• Still caught in cycle.• Emotional Response• Jurors who won't get along<ul style="list-style-type: none">• Overbearing, obnoxious, etc.

JURORS - CAREFUL
<ul style="list-style-type: none">• Lived in abusive homes• Cynical about DV / Stalking• Messy Divorces / Custody• Law Enforcement / Relatives• Participants in court system• Teachers, Social Workers, Therapists• Lawyers• Engineers??

JURORS YOU WANT
<ul style="list-style-type: none">• No DV history• Life Experience• Personable• Reasonable• Leaders and Followers

FINAL ADVICE

- Let the jury do most of the talking
- Be yourself
- Sense of community
- Go with your gut!

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