VOIR DIRE

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September 15, 2016

CODE OF CIVIL PROCEDURE SECTION 223

In a criminal case, the court shall conduct the examination of prospective jurors. The court may submit to the prospective jurors additional questions requested by the parties as it deems proper. Upon completion of the court's initial examination, counsel for each party shall have the right to examine, by oral and direct questioning, any or all of the prospective jurors. **The court may, in the exercise of its discretion, limit the oral and direct questioning of prospective jurors by counsel.** The court may specify the maximum amount of time that counsel for each party may question an individual juror, or may specify an aggregate amount of time for each party, which can then be allocated among the prospective jurors by counsel. 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, including any limitation on the time which will be allowed for direct questioning of prospective jurors by counsel and any determination that a question is not in aid of the exercise of challenges for cause, 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.

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I. PROCEDURE

1. When jurors enter the room, stand with good posture, smile and make non-threatening (i.e. don't stare) eye contact.

2. The judge will address potential jurors first and through questioning, determine who should be excused due to hardship, i.e. who cannot afford financially or for some other reason to serve. Begin taking notes on each juror. Even if judge won't excuse for hardship you may use this information to decide to use a peremptory challenge.

3. The clerk of the court will read the complaint and 12 randomly selected jurors will be seated in the jury box. The court will give each attorney a legal-sized sheet of paper with a grid of 12 boxes. Each box represents a seated juror. Fill in the name of the person currently seated in the corresponding box. As jurors get excused in the process and new jurors are seated in the box, most attorneys use yellow post-it notes to write the newly seated juror's name on and put it on the box.

4. The judge will ask standard questions of each juror. These questions are usually posted in the courtroom for the jurors to see.

5. After the judge is done questioning, the defense attorney will question each of the 12 jurors in the box. Object appropriately.

6. After the defense questions the first 12, the court will inquire if the defense passes for "cause." CCP 226(d) A juror may be excused for "cause," i.e. the excusing attorney does not need to use one of his/her 10 peremptory challenges to get rid of the juror, if the judge is convinced that the juror cannot be fair. Common examples of inability to be fair include:

(a) The juror indicating unwillingness to follow the law,

(b) An indication they would vote guilty or not guilty no matter what the evidence proved,

(c) An unwillingness to pass judgment on another, and,

(d) A bias against police officers, a witness or the defendant.

If the defense wishes to challenge any juror(s) for cause, he/she will generally let the court and you know at bench but may announce the challenge for all to hear. Depending on the judge and the strength of the defense argument, the court may excuse a challenged

juror right away, question the juror himself/herself, or give you the opportunity to rehabilitate the juror through questioning.

7. After the defense questions the first 12 potential jurors the court will invite the prosecution to question. You may stand or sit. **I encourage standing.** It brings you closer to the jury, thus enabling you to make better eye contact, command the attention of all the jurors rather than just the one you are questioning, and helps establish your command of and ease in the courtroom. This also helps facilitate engaging the juror in more productive dialogue, which is the whole point of voir dire. Standing is more professional and it helps humanize you to the jury. It favorably distinguishes you from the defense attorney if the defense attorney does not stand. If the defense attorney does stand during his/her questioning, you should definitely stand during yours.

8. After you have questioned the initial 12, the judge will ask if you "pass for cause." If no juror has articulated a basis for you to challenge them for cause, you should say "The People pass for cause." If you believe you should try to excuse a juror for cause, most judges will allow you to engage in the initial discussion of your reason for doing so at bench (i.e. out of the ear of the jurors). So if you want to challenge for cause, say "Your honor, may we approach?" At bench, explain to the judge why the juror should be excused. The judge could then do any one of several things, including agreeing with you and immediately excusing the juror, asking follow-up questions himself/herself, allowing the defense attorney to ask follow-up questions, and denying the motion right away. If your motion is granted, a new juror will be seated immediately and the defense attorney will then get to question the new juror. If your motion is denied, the juror will remain and you will no doubt need to later use one of your peremptory challenges to excuse the juror.

The defense will aggressively challenge for cause to get rid of perceived pro-prosecution jurors. You must defend the ability of these jurors to be fair and advocate for their retention on the jury. However, you must pick your battles and only oppose challenges for cause where your position is legally correct. Otherwise, you will lose credibility with the court. Keep in mind, each side wants the other to lose the battle over an attempt to excuse for cause so that the other side will have to use one of their precious 10 peremptory challenges to excuse a juror.

9. Once the court has 12 jurors who have survived the challenges for cause, you move into the next phase of the process, the exercise of peremptory challenges. CCP 231 The People are given the first opportunity to excuse a juror with a peremptory challenge. You will have the people you plan to excuse marked in some fashion so you know who you are going to excuse and in what order. Keep this secret from the defense. If you are lucky and/or good at this game of poker, they will excuse someone that you would have excused yourself. To exercise a peremptory challenge when asked by the court, say "Your Honor, the People would like to thank and excuse Juror #_. You can excuse anyone for any reason as long as the reason is not based on race, gender, religion, sexual preference, etc. After you exercise a peremptory challenge, a new juror is seated, questioned by the judge, defense and prosecution, challenged or not for cause, and then the opportunity is extended to the defense counsel to exercise a peremptory challenge. This will go back and forth as described above until you agree to accept the jury. If at any juncture you do not wish to exercise a peremptory challenge, you must say **"Your honor, the People accept the panel as presently constituted."** The preceding wording is very important as it will allow you to later excuse any juror sitting on the jury as long as at least one different person is sitting on the jury from when you previously declined to exercise a peremptory challenge. Once 12 jurors are accepted, the court will set about the selection of 1 or more alternate jurors. The above described process will again be employed. Typically, the court will allow you the same number of peremptory challenges as the number of alternates to be chosen.

II. SAMPLING OF APPROPRIATE AREAS OF INQUIRY

* You cannot cover all the topics you would like to in any voir dire due to time restraints, the patience of the judge and of the jury. Select those that seem most important in your particular case. Ask yourself, "If this jury were to acquit, why would it? Is there something about the case, witnesses, defendant or law that would give the jury trouble?"

1. Racial bias. Jurors may be informed of witnesses' race during a racial bias line of questioning. (*Ristaino v. Ross* (1976) 424 U.S. at 396-397.)

2. Willingness to follow the law. Expect the defense to argue that once a juror has agreed to follow the law given by the court, counsel may not ask whether that juror will follow

specific laws. However, your position is that a "reasonable inquiry into specific legal prejudices must be permitted as the basis for a challenge for cause. . . ." (*People v. Balderas* (1985) 41 Cal.3d 144, 183.) This case held that persons who harbor legal prejudices pertinent to the trial display "actual bias." This authority should be helpful in supporting an argument that you should be permitted to ask jurors whether they may be inclined to vote not guilty because they disagree with specific laws. *People v. Pinholster* (1992) 1 Cal.4th 865, 915, holds that a court must permit questioning regarding legal doctrines that are material to trial and controversial in that they are likely to invoke strong feelings and resistance to their application.

3. Bad experiences with law enforcement.

4. Clubs, groups, hobbies, reading interests. While you may find answers to such inquiries helpful, don't be at all surprised to have a judge shut you down as one cannot make a credible argument that questioning in these areas go to cause.

5. Prior involvement with court system by juror or juror's family and friends.

6. Sympathy.

7. Commitment to make credibility determinations and decide who is telling the truth.

8. Notions of street justice.

9. Think police did a bad job.

10. Should defendant be prosecuted even if the victim does not want prosecution?

11. Can you disregard the issue of what the punishment will be?

12. Can you disregard whether others who have violated the law are or are not being prosecuted.

13. Whether different charges should have been filed.

14. Requiring more than circumstantial evidence.

15. Speculating about other possible evidence not presented.

16. Requiring guilt to be the only possible interpretation versus the only reasonable interpretation.

17. Requiring crime scene investigation scientific proof.

18. Completely disregarding testimony from imperfect witnesses (e.g. those with lapse in memory or an agenda).

III. SELECTION OF JURORS

1. If voir dire will be conducted solely by the judge, present the court and defense counsel a typed, generously spaced and preferably one-page list of questions you want the judge to ask potential jurors. The questions should be distinct from any questions on the courtroom question list. Advise the judge you are requesting coverage of listed questions.

2. Ask the court to pre-instruct on laws you think some jurors may be uncomfortable following. Provide the court a copy of the CALCRIM forms you want read. Some limited discussion of law is proper if the explanation is prefatory to inquiring whether the jurors would follow the law. (*People v. Webb* (1967) 66 Cal.2d 107, 128; *People v. Love* (1960) 53 Cal.2d 843, 852; *People v. Wein* (1958) 50 Cal.2d 394-395.)

3. If the judge is doing all the questioning, do not hesitate to request to approach the bench to ask the judge to cover any questions he/she missed with a juror that you need answered before you pass for cause.

4. Identify case themes and issues and weave them into your voir dire. For example, police subterfuge is an issue for some jurors. Depending on the subterfuge, it may be wise to examine the issue in questioning to see if the juror will be so outraged by the subterfuge they would ignore the evidence. Voir dire is an opportunity to get jurors comfortable with the fact you have only one witness to a key fact. In voir dire, you want to get a juror to commit to the idea that testimony from one witness who they believe will be enough proof for them to vote guilty. If you have an unlikable victim, get jurors to commit to the principle that everyone is entitled to the protections of the law, not just those of whom you approve. Other areas you may want to broach if they are an issue in your case include snitches, paid informants and witnesses with a prior criminal history.

5. Outline the questions you are going to ask.

6. Create a grading system so that at a glance, you can identify who is the least desirable juror in the box. You will use your peremptories on the least desirable candidates first. A great deal of gamesmanship goes on in voir dire and it is important that you win the game. For example, commonly there will be a juror who makes statements that are both attractive and concerning to each side. You would rather the defense use a peremptory on that juror than burn one yourself. So wait until the process is near completion before you use a peremptory challenge on that juror. It is always nice to be in the position of having used fewer peremptories than the defense as the process winds down. It gives you the ability to use your peremptories to mold an acceptable jury into a great jury.

7. Never pass up an opportunity to do voir dire personally. You should always want to know more about a juror than what a judge elicits.

8. Speak to each juror. Never skip one unless you already know you are going to excuse that juror and are not interested in making a point with that juror for the benefit of the jury pool. Find something to say even to a juror you know you want to keep as it is a rapport building tool. On the other hand, if it is all too obvious that the defense is going to use a peremptory on the juror, there is no need to ask any questions.

9. Never test a juror. For example, questions that call for a juror to explain reasonable doubt, direct and circumstantial evidence, and other legal concepts should be avoided. You run the great risk of embarrassing the juror (and why would you want to do that) and really fail to advance your cause in any way. You should assume no juror could answer such questions correctly.

10. Avoid questions directed to the entire group. Most jurors are intimidated just being in the juror box and are unlikely to volunteer information unless specifically asked. The prospect of saving time is not a good enough reason to risk missing out on key information.

11. Don't ask jurors if they have a problem with not getting to see police reports. This will make them resentful and feel like something is being kept from them. If you don't bring it up, it is unlikely to ever occur to them that they would like to see reports.

12. Don't talk down to jurors. For example, you may be concerned that they expect CSI-type crime solving, but don't ask them if they understand that real life isn't like television. You can make the point easily enough without asking such a question.

13. Take copious notes. You will be surprised how the details on the many jurors who get in and out of the box start to run together. Notes will also prove invaluable when defending against or making a *Wheeler* motion.

14. Ask the court for the order in which jurors are to be called. The request may be denied, but it doesn't hurt to ask and could help you quite a bit if granted. Run an inquiry on each juror (you will probably need an investigator or a paralegal to do this because you will be busy) on our in-house juror database.

15. Important to remember: jurors are very nervous and they will appreciate anything you do to put them at ease. Don't view this as a chance to show off your sparkling personality - relax - feed off what defense does.

IV. USING THE INTERNET TO RESEARCH JURORS

The general rule is that a litigator may research jurors online by reviewing public information. ABA Formal Opinion 466, Lawyer Reviewing Jurors' Internet Presence, states that unless limited by law or by court order, lawyers can review the internet presence of a potential juror before or during trial. So you can do a "google" search on a prospective juror, but you may not contact a juror. Thus, while you can look at what a juror makes publicly available on Facebook, do not send a juror a "friend" request on Facebook. CRPC Rule 5-320, Contact With Jurors, prohibits a lawyer connected with a case from having any contact – direct or indirect – with anyone the lawyer knows is a member of the venire from which the jury on the case will be selected.

ABA Ethics Opinion 466, Lawyer Reviewing Juror' Internet Presence, indicates that while lawyers cannot send an "access request" to a juror either directly or through another person, a lawyer may examine the juror's social media presence. The opinion states that even if a juror or potential juror were to receive notice the lawyer was looking at his/her Internet profile, it would not violate ABA Model Rule 3.5(b) (ex parte communication). For example, LinkedIn is a popular website that encourages all to look at individual profiles, however, it notifies users when

another user has viewed his/her profile. So, you should consider whether you want a juror to know that you were looking at his/her Internet profile. Some jurors might find it invasive and offensive.

V. USING VCIJIS TO RESEARCH JURORS

This office keeps a data bank of information relative to potential jurors that you should access via VCIJIS during the course of jury selection. It is vitally important that you or an investigator or colleague (whoever you can get to help you), use the "juror" tab in VCIJIS to search for jury trial reports that mention your potential jurors. A "jury trial report" is a report that trial attorneys complete after every trial. The purpose of the report is to memorialize the trial attorney's impressions of each person that was questioned during voir dire in the case, and how each juror who ultimately served on the case voted. The best jury trial reports will include candid impressions of people they questioned during the jury selection process, a summary of what the case was about and a recommendation about whether future prosecutors should select or dismiss this juror during future jury selections. You will sometimes see recommendations to not select a particular juror if your case has certain features, e.g. no chemical test in a DUI case.

VI. *WHEELER/BATSON MOTIONS*

The People or the defendant may bring a *Wheeler/Batson* motion if either suspects the other is using peremptory challenges to exclude jurors on the basis of their being a member of a cognizable group. *People v. Wheeler* (1978) 22 Cal.3d 258, is the seminal case on this issue. The United States Supreme Court adopted a similar, but not identical, position to *Wheeler* in *Batson v. Kentucky (1986) 476 U.S. 79.* California subsequently endorsed the Batson standard, which requires the side challenging excusal of a juror to merely raise an inference based on the totality of the circumstances that group bias motivated the dismissal of the juror. *Johnson v.* California (2005) 545 U.S. 162. Cognizable groups are generally recognized when members can be distinguished on racial, religious, ethnic or gender grounds. (*Id.* at 279.) One cannot bring a successful *Wheeler* motion by consolidating multiple juror challenges, each to a different minority group, and claim that people of color are being unfairly excluded. *(People v. Neuman (2009) 176 Cal.App.4th 571)* However, a single juror challenge found to have been motivated "in substantial part" by discriminatory intent, is sufficient to win a *Wheeler* challenge. (*Snyder v. Louisiana 128 S.Ct. 1203 (2008))*

Most *Wheeler* motions are brought on the basis of race. However, the motion is applicable whenever you can identify discrimination against a constitutionally cognizable group, for example, males. (*People v. Cervantes* (1991) 233 Cal.App.3d 323.) Examples of groups not found to be constitutionally cognizable within the meaning of *Wheeler* include the less educated, young adults, blue-collar workers and low-income persons. (*People v. Estrada* (1979) 93 Cal.App.3d 76, 90-93.) People 70 years and older are not a cognizable group. *(People v. McCoy (1995) 40 Cal.App.4th 778, 783-786.)*

A *Wheeler* motion is timely if it is made before full jury empanelment is done, i.e., any time before the alternates are sworn. *(People v. McDermott (2002) 28 Cal.4th 946, 970)*

A. Burden of Proof in *Wheeler* Motions.

The party bringing a *Wheeler* motion has the burden to establish a **"prima facie"** case. A "prima facie" case means the totality of the circumstances raises an inference of a discriminatory reason for excusing the juror. This burden is less than the "preponderance of the evidence" or the "more likely than not" standard. To make a prima facie case, the complaining party must satisfy a three-pronged test.

First, the moving party must present a complete record of the circumstances surrounding the removal of the juror(s); all the relevant circumstances, such as the prospective juror(s)' individual characteristics, the nature of the excusing side's voir dire and the answers given by the excused juror(s).

Second, the moving party must show the persons excused to be members of a cognizable group.

Third, the moving party must establish an inference based on the totality of the circumstances (prima facie case) that the person has been challenged due to group association rather than because of any specific bias.

Only after the court makes a finding that a prima facie case has been made must the challenged side respond. No response from the challenged side is necessary until the judge finds there is a "reasonable inference" that prospective jurors were excused because of their group association rather than because of any specific bias. *Wade v. Terhune (2000) 202 F.3d 1190.*

B. What should you do if the defense makes a *Wheeler motion*?

Though you are not required to justify your exercise of a challenge until the judge rules that the defense has made a prima facie case, the better practice is to defend yourself and state your reasoning as soon as practicable. In other words, do not wait until the judge makes a prima facie finding against you to defend yourself and present your reasons for excusing a juror.

The prosecutor should be aggressive in pointing out facts that bear upon the prima facie inquiry to assist the trial court in making this threshold determination. The prosecutor should point out objective factors that undercut the notion that there is a prima facie showing. For example:

(1) Even though a defendant is not required to be a member of the juror's protected group to make a claim of discrimination, his dissimilarity from that group may undermine his argument,

(2) One should also point out that the case has no particular racial overtones and that one or more of the prosecutor's witnesses are members of the protected class at issue,

(3) Point out that you have passed on particular members of the class still in the jury box, and have only used one of six peremptories against a minority.

The prosecutor can also argue seemingly unrelated issues of personal credibility. For example, it is proper for the judge to consider that the prosecutor has previously appeared before the judge and never mislead the court, has kept a member of the cognizable class at issue on the jury in a prior trial though s/he had peremptory challenges remaining. *P. v. DeHoyos* (2013) 57 Cal.4th 79. The prosecutor can also point out s/he has never been found to have violated *Wheeler*. Defend yourself vigorously.

C. What if you innocently made a mistake?

Were you sick that day of jury selection and not as sharp as you should have been, leading to a mistake? If that is what happened, tell the court you were sick. For example, a prosecutor might mistakenly excuse a juror thinking that juror made some comments that another juror made, who was sitting nearby. If that is what occurred, say so. The judge may lawfully deny a *Wheeler* challenge if it is found the attorney made an innocent mistake. *Aleman v. Uribe* (9th Cir. 2013 2013 WL 3619980)

The court will then evaluate the justifications offered and determine whether they are valid. If the judge finds that challenges were made based on group bias, one of several different things could occur next. If the challenging side wants the juror who was improperly excused to be re-seated, that can occur as long as the challenging side waives their right to let the juror go and obtain an entirely new panel. The assent of the challenging party can be found on the basis of implied consent, i.e. simply saying nothing when the challenged juror remains seated on the jury. (Mata (2013) 57 Cal.4th 178)

Traditionally, the remedy for a successful Wheeler challenge has been a new venire, but recent case law (People v. Wright (2012) 204 Cal.App.4th 1084) indicates the judge has discretion to simply re-seat the challenged juror and proceed with the same venire. In People v. Willis (2002) 27 Cal.4th 811, the court suggested that an instruction by the trial judge to the venire that no one should take personally any juror challenges may help avoid prejudice to the party who challenged the juror only to have him/her re-seated, but the court did not rule that such an admonition was necessary.

D. Justifications for Juror Challenges.

No clear test exists by which appellate courts measure whether a record shows specific bias versus group bias. Once the judge has determined a prima facie case has been made, the party accused of wrongdoing will be helped immeasurably if he/she has detailed notes documenting the reason the juror was excused. Essentially, one must try to show that excused panelists in the alleged subject group had similar characteristics to other excused panelists or that you had a non-discriminatory reason for excusing the juror. Do not assume one justification will suffice. Case law indicates there is strength in quantity. One should not fail to mention any justification because it seems trivial. Examples of justification include:

- Police record.
- Unconventional lifestyle, poorly groomed.
- No stake in community.
- Panelist glared at me, smiled at defendant/defense attorney.
- No rapport with attorney, hostile.

- Panelist is a loner.
- Panelist not part of my juror profile.
- Panelist lives near crime scene.
- Age (*People v. Paris* (1984) 154 Cal.App.3d 876).
- Panelist was reading a newspaper in jury box (disinterested).
- Panelist expressed doubts about ability to sit in judgment.
- Juror was untruthful.
- Lacked employment experience and experience outside the home.
- Social-worker type might be too sympathetic.
- Demeanor, tone, facial expressions. ***Caution***: if you expect this reason to hold up on appeal, be sure to have a supportive record. For example, ask questions like: I saw you smiling at the defendant, I'm curious as to why? You seem a little upset with me. Have we met before? So I noticed you looking around during questioning. Is there something else on your mind besides these proceedings that might make it difficult for you to give your full attention?
- Spanish speaking juror expresses doubt about ability to rely on interpreter's translation versus their own translation.
- Noting the various reasons for the challenge, point out that there was nothing that would sufficiently redeem the juror (i.e. nothing to outweigh the problems you have pointed out). This is necessary to justify that you kept a similar juror who had other redeeming qualities (e.g. has relative in law enforcement).

It is dangerous to rely on subjective factors to pass appellate review since the appellate court will have no way to judge body language and other subjective factors. Thus, assume that if you want an appellate court to count any subjective justification as valid, the trial court's acceptance of that factor must appear on the record as a demonstrable reality. The prosecutor should ask the

court to state for the record the court's agreement of the prosecutor's characterization of the juror's behavior.

Explain to the court that to find a violation, the court must find that the prosecutor is not only a racist, but is lying to the court about the true reasons for the challenge. Argue passionately and make sure the court appreciates the gravity of the ruling.

When the trial court denies a *Wheeler* motion without finding a prima facie case of group bias, the reviewing court considers the entire record of voir dire, another reason you should defend yourself even before a prima facie case is found. *People v. Howard* (1992) 1 C.4th 1132, 1154

A few practical notes. A prosecutor's preference for the next prospective juror is not a non-discriminatory reason for excusing a juror. A prosecutor who explained that she had excused some male jurors in order to seat more favorable men who were next in line lost the motion. That bare explanation of why she was excusing male jurors did nothing to dispel the reasonable inference the prosecutor preferred women to men and was using her peremptory challenges to effect that preference. *People v. Douglas (1995) 36 Cal.App.4th 1681, 1689-1690* held no prima facie showing was made were the prosecutor challenged two black jurors who had relatives with extensive criminal histories. In *People v. Perez (1994) 29 Cal.App.4th 1313, 1320-1330* the court held that the prosecutor's peremptories of Latino jurors were race-neutral where the prosecutor explained his reasons were inadequate life experience, not answering juror questionnaire and inappropriate laughter.

E. Comparative Juror Analysis.

Recently, the California Supreme Court mandated that comparative juror analysis must be used by the trial court and even for the first time on appeal if relied upon by the defendant and the record is adequate to permit the urged comparisons. *People v. Lenix (*2008) 44 Cal.4th 602, 622. Comparative juror analysis closely examines the attorney's justification for striking potential jurors from the jury pool to make sure the reason was believable. For example, it rightly arouses suspicion when an attorney's reason for eliminating a black juror also applies to white jurors who were kept on the jury. An appellate court will have just the dry record to apply this analysis, and though it may decline to apply the analysis if it deems the record inadequate, the best practice is to make your record very thorough during the trial court discussion of the issue.

Indeed, even if the trial court finds that the defense did not make a prima facie case and does not require input from the prosecutor, you should ask the court for permission to make a record of the circumstances and your reasons for the benefit of the appellate court.

VII. OBJECTIONS

Keep in mind that the law provides voir dire "shall be conducted only in aid of the exercise of challenges for cause." It is difficult to fashion a test to tell you if a question goes to "actual bias," which is the standard a challenge for cause must meet, or the question merely helps one discover to which side a juror would be more partial, technically the purpose of peremptory challenge questioning. Advocacy skills and the predilections of the judge will determine which questions you are successful in excluding or asking.

Suggestions on phrasing of objections:

1. Question is unrelated to challenge for cause.

2. Calls for prejudgment of the evidence.

3. Improper indoctrination.

4. Incorrectly stating the law.

5. Asked and answered of this juror.

6. Leading.

VIII. EXAMPLES OF PROPER CHALLENGES FOR CAUSE

1. Juror has fixed opinion as to guilt or innocence.

2. Nature of case makes it difficult for juror to keep an open mind.

3. Juror states belief that self-redress is justified.

4. Racial prejudice.

5. Lifestyle prejudice.

6. Political or associational prejudice.

7. Juror has knowledge of case gained from speaking with other persons believed to be speaking from personal knowledge.

IX. SAMPLE VOIR DIRE FOR BATTERY CASE

1. Have you or anyone you know been accused of battery?

2. The law defines battery as the slightest touching of another in a rude or angry manner. This may be different than you thought when you walked into this courtroom. Will you apply the law's definition even if you disagree with it?

3. Do you know any person who regularly defends persons charged with crimes?

4. Do you think you should consider sympathy in deciding whether defendant is guilty or not guilty?

5. Do you agree with the law which allows a fact to be proven by one witness?

6. Do you feel comfortable with the responsibility of deciding who is telling the truth and who is not telling the truth?

7. Would you vote not guilty just because you would have acted differently than the victim in the same situation?

8. Do you have any moral or religious beliefs that would make it difficult for you to pass judgment in this case if that judgment was guilty?

X. SAMPLE VOIR DIRE FOR RAPE CASE

1. Have you or anyone you know been accused of rape?

2. Have you done any reading, seen any documentaries or movies or in any other way been educated on the issue of rape?

3. Is there some point that a woman gives up her right to say no to sex?

4. Do you feel a woman ever deserves to be raped?

5. Would you require a woman to resist to the point of having visible injuries before you would believe she was raped?

6. Would you hold it against the prosecution if you don't approve of the victim and her lifestyle or choice of job?

7. Ever heard anyone say:
Death before dishonor.
If a man doesn't have a weapon, a woman can't be raped without being severely beaten.
What do you think of that?

8. Would you not believe the victim just because you would have acted differently in the same situation?

9. Can you convict on the word of one person in a rape case, the alleged victim? Some people can't and that is okay - just speak up now.

10. Law does not recognize the defense that a man had an irresistible impulse or could not control himself. Do you agree with that?

XI. SAMPLE LINE OF QUESTIONING TO EXCUSE A BAD JUROR FOR CAUSE

A. For the Wimpy Juror

1. Do you believe that the rights of the People of the State of California are just as important as the rights of the defendant?

2. Would you agree that some people simply do not feel comfortable sitting in judgment of others?

3. Do you feel that you are one of those people who simply find it very uncomfortable to sit in judgment of another in a criminal case?

4. Do you believe that it would be more fair to the People of the State of California to have 12 people on this jury who all felt comfortable voting guilty if that is what the evidence proves?

5. Do you think that there is some chance that you could not vote guilty even if that is what the evidence proved to you?

B. For the Anti-Law Enforcement Defense-Oriented Juror

1. Has your bad experience with law enforcement shaded the way you view police officers?

2. Do police officers have less credibility in your mind than the average person?

3. Do you agree that it would be most fair to the People, the side I am representing, that each of the 12 jurors who decide this case have an open mind about the credibility of the witnesses before they testify?

4. Do you think that as you sit here now you are a little biased against police officers?

5. Do you think you would be more suited to serving as a juror in a case that did not involve testimony from police officers?

XII. REHABILITATION OF A GOOD JUROR THE DEFENSE IS TRYING TO EXCUSE FOR CAUSE

A. Common Defense Ploy

1. Mr. Jones, as you sit here right now, you believe that the police arrest only guilty people, isn't that true?

2. So you are inclined to believe my client is guilty if he is here in this courtroom charged with a crime, isn't that true?

3. So isn't it true that if you were my client, charged with a crime but no evidence has been presented yet, you would not want someone like yourself sitting on this jury?

B. Sample Prosecution Follow-Up

1. Mr. Jones, are you telling us that you consider yourself a law and order type person?

2. So are you telling us that you believe strongly in justice?

3. Does justice to you mean that only the guilty should be convicted?

4. And is it true that you would be outraged if an innocent person was convicted of a crime he did not commit?

5. Do you agree both sides are entitled to a fair trial?

6. You have not heard the evidence in this case yet, isn't that true?

7. You agree that nobody can be found guilty without evidence?

8. You agree to vote not guilty if the evidence fails to prove beyond a reasonable doubt that defendant is guilty?

9. Are you the type of person who would feel sick to your stomach if an innocent person was convicted of a crime they did not commit?

XIII. WHAT KIND OF JURORS DO YOU WANT FOR YOUR CASE?

1. People with whom you are comfortable and you think are comfortable with you.

2. No wing-nuts! You need all 12 jurors to get along and come to a unanimous decision. Edgy, agenda-driven people or those craving attention don't fit the prosecution profile for jurors. They are the ideal defense jurors. If you see one juror always sitting alone apart from the rest of the group that is a sign they may not get along well in a group setting.

3. Common sense people with a stake in the community are good candidates. Older people are generally more concerned about safety than younger people. Life experience generally but certainly not always, translates to more savvy.

4. Every "rule" trial attorneys employ to identify good jurors was made to be broken. You generally don't want an engineer on the jury who thinks he could design a better machine than the one used to analyze your evidence. Artists are often thought too liberal to care about enforcing the law, but some are wonderful jurors.

5. Gut instincts mean everything in jury selection. If in doubt, excuse the juror unless you are worried about running out of peremptory challenges.

CASE: Single 25-year-old male charged with DUI. Clean cut, employed, sincere. On way home from family gathering, relatives will testify how little he had to drink.

Who Do You Want	Who Don't You Want

CASE: Petty theft of food from grocery store by mother. Mom uses stroller to hide food. Baby in stroller and another child tagging along.

Who Do You Want Who Don't You Want

CASE: Bar fight. 35-year-old defendant and 45-year-old victim. Both HBD. No significant injuries other than V's black eye and scratches on Def's face.

Who Do You Want Who Don't You Want

CASE: 31-year-old hype accused of UI methamphetamine. Refused chemical test.

Who Do You Want Who Don't You Want