

JURY SELECTION

GOALS

1. Acquiring information about the jurors so as to be able to make challenges for cause and to exercise peremptory challenges
2. Educating and persuading the jurors on issues in case
3. Getting the jury to like you and your client

GENERAL GUIDELINES

- Make panel comfortable
- Professional/Sincere/Comfortable
- Eye contact
- Build rapport
- Different styles and goals of questioning:
 - Commitment Style
 - Attitudinal Questioning
- Have a system/Use a chart
- Know what type of juror you want and want off

THE LAW -- CIVIL

- Need 24 jurors in District Court in two party case
- Each side has six peremptory challenges
- Need 12 jurors in County Court
- Each side has three peremptory challenges
- Multiparty case requires equalization

THE LAW -- CIVIL

- One additional strike per side if one or two alternate jurors used and two strikes per side if more than two
- Can only exercise against the alternates

THE LAW -- CRIMINAL

- Death Cases: 15 per side
- More Than One Defendant: 8 per defendant and prosecution has 8 for each defendant
- Non-Death Cases: 10 per side
- More Than One Defendant: 6 per defendant and prosecution has 6 for each defendant

THE LAW -- CRIMINAL

- Misdemeanors in County Court: 3 and prosecution has 3 for each defendant
- Misdemeanors in District Court: 5 for each side
- More Than One Defendant: 3 per defendant and prosecution has 3 for each defendant

THE LAW – CRIMINAL & CIVIL

- The Shuffle – Either side may require a random reseating of the jurors in the presence of the attorneys
- Applies only to the panel assigned to the court for the particular case being tried, not to the general panel
- Must be done before voir dire begins

CHALLENGES FOR CAUSE

- Must be made orally as soon as counsel believes the grounds have been established for disqualification
- Whether done in open court or by approaching the bench is up to the judge
- Must be ruled on without delay

**CHALLENGES FOR CAUSE
GROUNDS**

- Pecuniary interest, employee, same insurance company
- Bias or prejudice re party
- Bias or prejudice re subject matter
- Test: The juror cannot be fair and impartial because his or her feelings are so strong in favor of or against a party or in favor of or against an issue with respect to the subject matter that the juror's verdict will be based on these feelings and not on the evidence

**CHALLENGES FOR CAUSE
GROUNDS**

- If bias is established, juror must be removed but court or opposing counsel can attempt to rehabilitate by getting juror to say that can set bias aside and try the case fairly on the law and evidence
 - I cannot be fair
 - I am biased for or against _____
 - I am prejudiced for or against _____

**CHALLENGES FOR CAUSE
GROUNDS**

- I cannot follow the law
- You are saying my client is starting out behind _____ and his/her client?

**CHALLENGES FOR CAUSE --
CRIMINAL**

- Bias or prejudice
- Influenced by a conclusion as to the defendant's guilt or innocence which would affect the juror's action in finding a verdict

**CHALLENGES FOR CAUSE --
CRIMINAL**

- Q. Whether, in the juror's mind, the conclusion will influence his or her verdict
- Yes—discharged for cause
- No—further examination as to how the conclusion was formed & extent will affect the juror's consideration

**CHALLENGES FOR CAUSE
GROUNDS**

- If overruled, then must tell the court that:
 - As a result of the court's refusal to strike the for-cause panelist, the party will exhaust its peremptory challenges before striking an objectionable panelist on the list
 - Identify the objectionable panelist who will remain on the jury list once the party uses its last peremptory strike (the objectionable panelist can be either the panelist who should have been struck for cause or another objectionable panelist, and the objectionable panelist actually serves on the jury)

**CHALLENGES FOR CAUSE
GROUNDS**

- Ask the court to reconsider its ruling or, as an alternative, to grant the party an additional peremptory strike to compensate for the erroneous ruling
- Only after the court overrules the request should the peremptory challenges be given to the judge

LIMITS ON QUESTIONING

- Broad in order for litigants to discover any bias or prejudice
- May impose limits that would tell panel the legal effect of their answers to the jury charge
- Liability insurance in personal injury and wrongful death cases
- Split on whether can ask about connections between panel member and insurance industry

LIMITS ON QUESTIONING

- OK to ask whether panel has heard or seen ads concerning jury verdicts and alleged liability insurance crisis
- Can't ask to commit in advance as to the weight to be given certain evidence
- Can't call attention to differences in financial situation of the parties
- Can use hypos so long as they do not misstate the law
- Can extend beyond challenges for cause

LIMITS ON QUESTIONING

- Must be relevant to the type of case
- To preserve error there must be a record and objection
- OK to limit time

COMMITMENT QUESTIONS

- CRIMINAL

“Commitment questions are those that commit a prospective juror to resolve, or to refrain from resolving, an issue a certain way after learning a particular fact.”

If the evidence in a hypothetical case showed that a person was arrested and they had a crack pipe in their pocket, and they had a residue in it, and it could be measured, and it could be seen, is there anyone who would not convict a person, based on that?

- May seek the juror’s general views?
Do you think there might be circumstances that would mitigate against the death penalty?

- If the law requires a certain type of commitment from jurors, the attorneys may ask the prospective jurors whether they can follow the law in this regard
- Must be limited to those facts necessary to the question
- Otherwise the question is improper

- CIVIL
- Summarizing the evidence and asking whether either party is starting out ahead is requesting a commitment
- Improper to ask jurors what their verdict would be if certain facts were proven
- Asking whether a juror will give more or less weight to a specific fact is improper

- No prohibition on the court permitting the jury to hear the facts, but, in its discretion, may refuse to allow question that seek to determine the weight to be given (or not given) a particular fact or set of facts
- Court may permit the prohibited questions but may not strike a juror for cause based on the answer

BATSON

- Can't exercise peremptories on the basis of race or gender (some states also extend to religion and ethnic group)
- Procedure
 - Opponent of challenge must make a prima facie case of purposeful discrimination by showing that other party has used challenges to remove venire members of a protected class and that the circumstances raise an inference that the exclusion occurred because of impermissible reasons. May be supported by statistical evidence and differences in questions asked

BATSON

- After challenge the proponent of the strike must come forward with a race-neutral or gender-neutral explanation. Doesn't have to be persuasive or plausible. Just has to be permissible under the Equal Protection Clause
- Court must determine whether the opponent of the strike has proven purposeful discrimination. Will hold evidentiary hear at which may consider plausibility and persuasiveness of reason given.
