

VOIR DIRE IN DOMESTIC VIOLENCE CASES

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VOIR DIRE

- Law and procedure
- Specific areas of inquiry
- Format for Questioning
- 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(a))
- 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, 78).

GROUNDS 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 *accused* of Domestic Violence or know someone else who has?

- "Mr. Smith, you said that your ex-wife accused you once."
 - What happened
 - How recent
 - Relationship
 - Reported
 - Resumed Relationship
 - Law Enforcement Involvement
 - Judicial Involvement
 - Were you treated fairly

ADDITIONAL QUESTIONS / ISSUES

- 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

- *Crimes of Domestic Violence or Stalking may include a sexual component (rape or sexual assault), or threats to commit those crimes.*
- *Is there anyone here who as been the victim of, accused of, or know someone who has experienced or been accused of sexual assault?*
- *Same questions, maybe in private.*

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 would you expect a stalking victim to react/respond?*
 - *What if they maintained some level of communication?*
 - *When you hear the word “stalker,” do you make any automatic assumptions about the person’s mental health?*

CRIMINAL THREATS – PC 422

- Freedom of Speech
 - *Some limits: “FIRE” in crowded theater.*
- Anyone who believes speech should NEVER be criminalized?
- Is a threat more or less of a threat if uttered by a family member/loved one?
- Promise to consider context and evidence

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

- BATTERERS
- Former Victims
 - Can be very critical
 - I got out, why can't she?
 - My situation was worse.
 - Still caught in cycle.
 - Emotional Response
- Jurors who won't get along
 - Overbearing, obnoxious, etc.

JURORS - CAREFUL

- 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

- 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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