



VOIR DIRE TRAINING

VOIR DIRE

Ability to question potential jurors in a manner that will elicit responses that permit an attorney to wisely determine which jurors to challenge

- *Advanced Voir Dire & Jury Selection*
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CURRENT LAW: AB 1541

Assembly Bill No. 1541

CHAPTER 302

An act to repeal and add Section 223 of the Code of Civil Procedure, relating to jurors.

[Approved by Governor September 26, 2017. Filed with Secretary of State September 26, 2017.]

LEGISLATIVE COUNSEL'S DIGEST

CURRENT LAW:
AB 1541/CA CIVIL CODE SECTION 223(B)(1)

Upon completion of the trial judge's initial examination, counsel for each party shall have the **right to examine... any or all of the prospective jurors.**

The scope of the examination conducted by counsel shall be within **reasonable time limits** prescribed by the trial judge in the judge's sound discretion....

CURRENT LAW:
AB 1541/CA CIVIL CODE SECTION 223(B)(1)

The trial judge shall not impose specific unreasonable or arbitrary time limits or establish an inflexible time limit policy for voir dire.

CURRENT LAW:
AB 1541/CA CIVIL CODE SECTION 223(B)(1)


The trial judge should permit counsel to conduct voir dire examination without requiring prior submission of questions ... unless a particular counsel engages in improper questioning.

CURRENT LAW:
AB 1541/CA CIVIL CODE SECTION 223(B)(1)

During any examination conducted by counsel for the parties, trial judge **shall** permit **liberal** and **probing** examination calculated to *discover bias or prejudice* with regard to the *circumstances of the particular case* or the parties before the court.

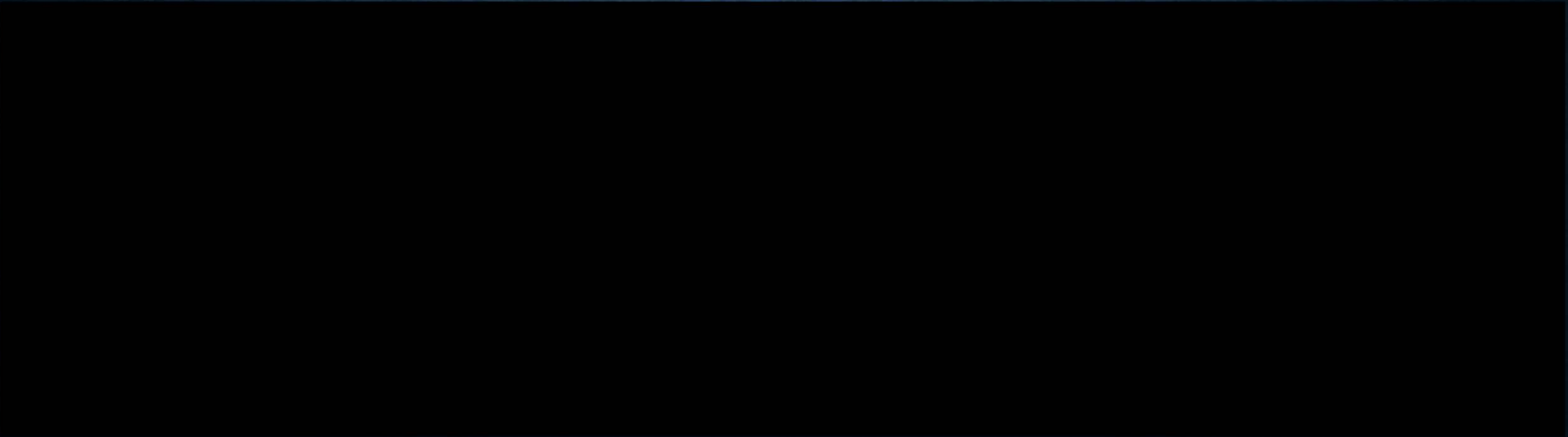
JUDICIAL VOIR DIRE: Backgrounds

PEREMPTORY VS. FOR “CAUSE” CHALLENGES

- **“Cause” Challenge:** Juror has said something that shows that he/she cannot be fair and unbiased.
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- **“Peremptory” Challenge:** You can remove a juror for any reason OTHER than due to being part of a protected class.

BATSON / WHEELER (2021)

*Protected Classes: Race, Gender,
Ethnicity, National Origin, Sexual
Orientation, Age, Etc.*



COMING SOON...AB 3070

Assembly Bill No. 3070

CHAPTER 318

An act to add, repeal, and add Section 231.7 of the Code of Civil Procedure, relating to juries.

[Approved by Governor September 30, 2020. Filed with Secretary of State September 30, 2020.]

LEGISLATIVE COUNSEL'S DIGEST

Code Of Civil Procedure 231.7 AB 3070

(January 1, 2022)

A party may not use a peremptory challenge to remove a prospective juror on the basis of the prospective juror's race, ethnicity, gender, gender identity, sexual orientation, national origin, or religious affiliation, or the perceived membership of the prospective juror in any of those groups.

REASONS “HISTORICALLY” ASSOCIATED WITH IMPROPER DISCRIMINATION

- (A) The prospective juror was inattentive, or staring or failing to make eye contact.
- (B) The prospective juror exhibited either a lack of rapport or problematic attitude, body language or demeanor.
- (C) The prospective juror provided unintelligent or confused answers.

These reasons are *presumptively invalid* unless the trial court is able to confirm that the asserted behavior occurred, based on the court's own observations or the observations of counsel for the objecting party. Even with that confirmation, the counsel offering the reason shall explain why the asserted demeanor, behavior, or manner in which the prospective juror answered questions matters to the case to be tried.

“PRESUMPTIVELY” INVALID REASONS TO EXERCISE A PEREMPTORY CHALLENGE

- (1) Expressing distrust of or having a negative experience with law enforcement or the criminal legal system.
- (2) Expressing a belief that law enforcement officers engage in racial profiling or that criminal laws have been enforced in a discriminatory manner.
- (3) Having a close relationship with people who have been stopped, arrested, or convicted of a crime.
- (4) A prospective juror's neighborhood.
- (5) Having a child outside of marriage.
- (6) Receiving state benefits.
- (7) Not being a native English speaker.
- (8) The ability to speak another language.
- (9) Dress, attire or personal appearance.
- (10) Employment in a field that is disproportionately occupied by members listed in subdivision (a) or that serves a population disproportionately comprised of members of a group or groups listed in subdivision (a).
- (11) Lack of employment or underemployment of the prospective juror or prospective juror's family member.
- (12) A prospective juror's apparent friendliness with another prospective juror of the same group as listed in subdivision (a).
- (13) Any justification that is similarly applicable to a questioned prospective juror or jurors, who are not members of the same cognizable group as the challenged prospective juror, but were not the subject of a peremptory challenge by that party. The unchallenged prospective juror or jurors need not share any other characteristics with the challenged prospective juror for peremptory challenge relying on this justification to be considered presumptively valid.

THE OBJECTION

- Objection (either by defense or the judge, or YOU!)
- Party exercising the challenge must state the reasons the peremptory challenge has been exercised.
- Judge must evaluate the reasons given to justify the challenge in light of the “totality of the circumstances”
 - Court must determine there is a “substantial likelihood” that an objectively reasonable person would view that the protected class was a factor in the use of the peremptory challenge. No “purposeful discrimination” is needed.
 - If the objection is sustained, the court must explain the reasons for its ruling on the record.

OVERCOMING THE PRESUMPTION

“Clear and convincing” is the standard of the degree of certainty the judge must have in determining whether the reasons given for the exercise of the peremptory challenge are unrelated to the prospective juror’s cognizable group membership, bearing in mind conscious and unconscious bias and are instead specific to that juror and bear on that juror’s ability to be fair and impartial in the case.

REMEDIES FOR FINDING OF DISCRIMINATION

- 1) Quash the jury venire and start jury selection anew. The remedy *shall be* provided if requested by the objecting party.
- 2) IF the motion is granted after the jury is empaneled, *declare a mistrial* and select a new jury if requested by the defendant.
- 3) Seat the challenged juror.
- 4) Provide the objecting party additional challenges.
- 5) Provide another remedy as the court deems appropriate.

PEREMPTORY CHALLENGES: HOW MANY DO YOU GET?

- Misdemeanor Case = 6
- Felony Case = 10
- Case with Life as Potential Punishment = 20
- You can *only* kick people in the box!



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