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## MEMORANDUM

**To:** All District Attorney Staff  
**From:** Sheryl Wolcott, Chief Deputy District Attorney  
**Date:** November 12, 2021  
**Subj:** Accessing Background Information on Potential Jurors

In the past, it was a routine practice of some District Attorney's Offices to run the names of potential jurors through their case management systems and, for some, to run them through CLETS to check for rap sheets. We had a recent opportunity to evaluate this practice. This memo offers guidance on the topic.

All attorneys should be aware of the guiding caselaw on this topic. Background information may be gathered on potential jurors using **publicly available information, and information equally available to the defense** (such as social media, and court databases equally accessible by the prosecution and defense.) Additionally, per the holding of People v. Murtishaw (1981) 29 Cal.3d 733 (overruled on other grounds by People v. Boyd (1985) 38 Cal.3d 762, 772-773) and its progeny: the trial court has the discretion to order the prosecution to disclose to the defense any information about potential jurors that the prosecution acquired through **databases or other investigation not accessible by the defense**. This holding is rooted in the fairness of the criminal process, keeping both sides on equal footing regarding information known about potential jurors.

For any attorney wishing to gather background information on potential jurors, the most prudent approach would be to check publicly available information, and to check for any local criminal history through the court's Odyssey attorney portal,<sup>1</sup> which is equally accessible by the defense.

According to the California Department of Justice, it is within the authorized CLETS access for our office to check potential jurors' backgrounds. Thus, attorneys who feel it warranted may check potential jurors' rap sheets and/or PbK entries, but with the caveat that any information gathered from these sources may be ordered to be

<sup>1</sup> If you have not registered for a login to the Odyssey attorney portal, you should do so. It can take several days for a login to be granted. Access is from the court's website.

disclosed to the defense, because the defense does not have equal access to these databases. Alternatively, the safer practice would be for the attorney to affirmatively disclose to the defense any information gathered from these sources without waiting for a defense request or court order. Requests to run potential jurors through CLETS and/or PbK should clearly state what information is sought, and should be made to the attorney's Legal Clerk. The questionnaire the court uses currently includes a juror's date of birth, which will be needed to run these database checks.

With the changing landscape under Batson/Wheeler and AB3070, which takes effect January 1, 2022, any piece of information the prosecution possesses about a potential juror has increasing potential to be the subject of scrutiny. The best practice would be to check the same information sources for all potential jurors on a case, not just a select few. Further, the likelihood of the law changing in this arena is high; we should be prepared for the potential of a future mandate to disclose all information not equally available to the defense, even absent a defense request or a court order.

Whether to seek background information on potential jurors, and from which sources, is a judgement call made by the trial attorney on a case-by-case basis.