

VOIR DIRE FOR DOMESTIC VIOLENCE CASES

Brie Hopkins, City of Bellevue



DISCLAIMER: This presentation is not representative of the opinions or views of the City of Bellevue.

TRIALS ARE WON AND LOST IN VOIR DIRE

LIVE NOW FOX1 **JURY SELECTION BEGINS**



THE LOWCOUNTRY'S NEWS LEADER

MURDAUGH TRIAL **FIRST DAY OF ALEX MURDAUGH MURDER TRIAL**
JURY SELECTION BEGINS THIS MORNING

LIVE 5 NEWS 51° | 6:50
WATCH US ON amazon | ectv

TRIDENT MEDICAL CENTER FIRST ALERT WEATHER

MOUNT PLEASANT

MONDAY HI 59 LOW 34

TUESDAY HI 58 LOW 44

WEDNESDAY HI 71 LOW 46

UTAH NATIONAL NEWS DESK

KOURI RICHINS TRIAL

JURY SELECTION BEGINS

HARVEY WEINSTEIN JURY

MALE **FEMALE**

15 JURORS
12 REGULAR AND 3 ALTERNATES

VOIR DIRE – ALWAYS BE CLOSING!



- Voir Dire the leading edge of your closing argument.
- Psychology tells us by the time a case gets to closing, jurors have already made up their minds.
- “Primacy effect” = the earlier people receive info, the better they will accept and recall it.
- By using voir dire to begin the message that will carry through to closing argument, prosecutors take advantage of the primacy effect and begin “closing” before the defense lawyer ever speaks.

2 QUESTIONS JURORS HAVE AT THE END OF TRIAL



- Has this case been proven? AND
- Even if the case is proven, should I convict the defendant?

OBJECTIVES OF VOIR DIRE



1. Prepare jurors to overcome potential weaknesses.
2. Finding (and striking) the worse three jurors.
3. Establish the case's themes and arguments.
4. Educating jurors on the law governing the case.
5. Protecting strong jurors from defense challenges for causes; AND
6. Most importantly, establish credibility with jurors.

WHAT ARE SOME OF THE BIGGEST HURDLES?

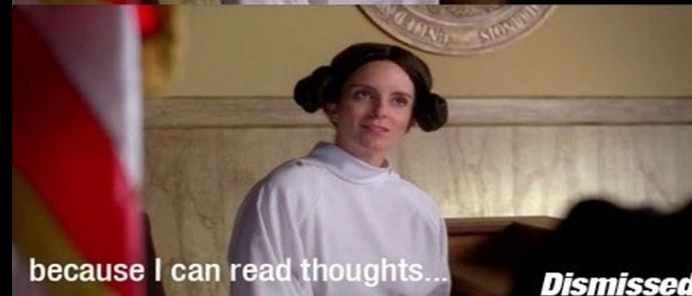
The Judge



The Time



YOU GET 3 PEREMPTORY STRIKES, SO USE THEM AND USE THEM WISELY!



TECHNIQUES & STRATEGY



- Try to ask every juror a question.
- Read body language and tone.
- Listen to their responses.
- Trust your gut reaction.

WHAT ARE YOUR BIGGEST WEAKNESSES IN YOUR CASE?



Rookie mistake not to prep for voir dire and rely on scripts. Every case different. Tackle head on!

WHAT ARE YOUR BIGGEST STRENGTHS IN YOUR CASE?



You want jurors to realize the evidence you have is enough. If you have independent wits or video or visible injuries, then you want them to feel like that is enough.

POTENTIAL ISSUES TO CONSIDER DURING PREPARATION

- Uncooperative victim
- Sympathy of defendant
- Unlikeable victim or witness
- Cooperating witness or co-defendants (“snitches”)
- Inconsistent testimony
- Inability of witness to recall details
- Absence of eyewitnesses
- Absence of physical evidence
- The “who cares” factor (broke the TV they jointly owned)
- Circumstantial evidence
- Poor police work
- Absence of harm to victim
- Delay in reporting the crime



STARTING YOUR VOIR DIRE



- Your introduction will immediately set the tone and mood of the trial. Serious but personable and always be honest (never trick questions).
- Don't waste precious minutes re-hashing the Court's introductory questions.
- From the beginning tell the jury that you are going to ask that they find the defendant guilty. Get them comfortable with this concept. End with this same concept.

INTRODUCTION

- Who's excited to be here?
- We all have busy lives. Does anyone have something going on that may distract them from paying attention and upholding the law?
- Intro Hypo: Goal to get people talking. If you could be a Judge, Prosecutor, Juror, Defense Lawyer – who would you want to be?



KEY CONCEPTS TO ALWAYS DISCUSS

- What is Evidence (CSI effect)
 - Evidence is testimony
- Reasonable Doubt
- Accountability
- Guilt



“CSI EFFECT”



- Dispel myths about evidence
 - We are not Law & Order... Defense Counsel is not Perry Mason... There is no Big Brother in the sky and CSI does not really exist
- Idea is you don't want jurors to be disappointed. Manage expectations about types of evidence.
- Goal is to find out what kind of evidence they expect or need to find defendant guilty.

RECANTING VICTIM



DV Hypo: Woman walking down street stranger jumps out of bushes and punches her... Who would agree crime? (remember no trick questions – want them to trust you) Would you call 911?

- If you have an independent witness, you want someone who would report DV to 911.
- Same woman, but with boyfriend... still crime? Why?
- What if she doesn't want your help... anyone surprised... reasons why a victim may say that?

“PRESSING CHARGES”



- Who brings charges?
- Everyone understand that this is a criminal case which means the City brings charges not victim?
- Anyone going to hold that against the City if victim doesn't want charges?
- Should a defendant get a “free pass” when victim doesn't want to prosecute?

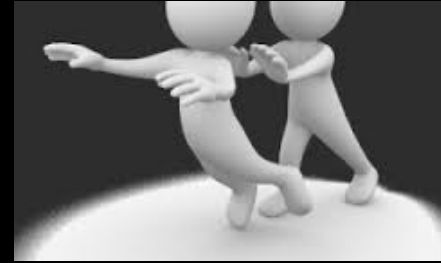
CIRCUMSTANTIAL EVIDENCE



- Behind closed doors
- Does the City fail because no witnesses?
- Possible to prove with 1 witness?

- Cookie Crumble Hypo
- Jury's job to determine the credibility
- Bias, Motive, Relationship
- Circumstantial = Direct (no difference in law)

MINIMAL INJURIES



- Prior Scenario: What if he didn't leave a mark? i.e., push. Say you're the prosecutor – how would you prove that?
- Is testimony evidence?
- Is it enough?
- Anyone believe they could not convict a person of assault without visible injuries?
- Who can follow the law?

VULNERABLE VICTIM



- Hypo: “Rolling a Drunk” – why roll a drunk for \$5 when Armani suit/Rolex walking by?
 - Easy Target
 - Not Credible
 - Won’t Fight Back
- Victim Intoxicated. Is that an excuse to hit someone? You get a “free pass” for that?

VICTIM NOT PRESENT



- Who is expecting to hear from the victim?
- Surprised if you don't hear from the victim?
- Anyone ever have to testify against someone they love? Why wouldn't a victim want to testify? Everyone agree it would be a hard thing to do?
- City is not going to have the victim testify. Based on that fact alone, would anyone be unable to convict unless they hear from victim? Hold that against the City? Be fair to the City?

MALICIOUS MISCHIEF



- How many own... Car, House, Phone...
- Do you expect others to respect that property?
- Anyone experience otherwise? How did it make you feel?
- What were the consequences to that person?

COURT ORDER VIOLATIONS



- Anyone ever had to get a protection order? How did you do that?
- Why would someone seek a protection order?
- Who signs that order? Judge/victim?
- Who is responsible if violated?
- Who is the only person who can lift the order? JUDGE!
- What if a protected party invited or engages in the contact, do you think a defendant could get a free pass?
- Anyone have issues with police (i.e., police only wits)?
Government shouldn't be involved in relationships?

ORDER VIOLATION HYPO



- Stop Sign Hypo: Ask jurors, if there was no one around do you stop at the stop sign or do you just slow down? If you ran it, hit a car, would you be responsible? What if you thought this was the stupidest place to put the stop sign, would you still agree that you should stop?
- Follow the law. Follow court orders. Even if you don't agree with them.

ORDER VIOLATION HYPO



- Defense is didn't read the order so not a "knowing" violation.
- Contract Hypo: How many of you have accepted contracts and sign off on it? Who is responsible for the terms of that contract? Even if you didn't read the entire document you are obligated to the terms?
- Pro tip: Get the court recording.

HARASSMENT



- Fire in Theater Hypo: Someone yells “fire” in theater.
 - Agree that it would cause panic?
 - Words could cause fear?
- Get people who agree that words can cause people to be scared.
- Anyone ever threatened? How did it make you feel? Scared? Report to police? Anyone think well it is just words they didn't do it? Remind people it is a crime to threaten people.

STALKING



Rebecca Schaeffer

Robert John Bardo

- Flowers/gifts Hypo: You wake up and open the door of your house. See flowers. There is a card telling you, “you look beautiful in those pink PJs.”
 - What if you don’t know who it was. Fear? Scared?
 - What if they signed it your ex-boyfriend. Fear? Scared?
 - What type of evidence would you need to hear from the victim.
 - Can people be stalked by someone they had a prior relationship?

PARENTAL DISCIPLINE



- Hypo: See a parent spank kid in grocery store. Then starts beating kid. Call 911? Who doesn't get involved? Why? Should they be prosecuted?
- Is there a point with discipline, when the line becomes crossed? Where is that line in the sand for you?
 - Slapping, spanking OR
 - Pulling hair, punching, hitting with an object, kicking
- Why would a child be reluctant to speak out against a parent who hurt them?
- Why would any victim of DV choose not to speak out against their abuser?

PRIMARY AGGRESSOR OR SELF-DEFENSE



- The primary (or predominant) aggressor is the person who “poses the most serious, ongoing threat.” The primary aggressor may not be the person who struck the first blow or caused the most significant injury.
- Hypo: Couple arguing. Man grabs woman by the neck. She punches him and knocks out tooth. Who is the primary aggressor in that scenario? What are factors you would look at?
- Also remember self-defense against an assault is not mutual combat even if that person gets hurts.

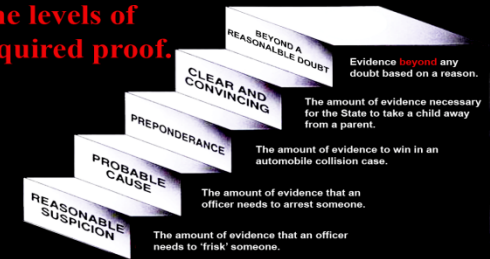
BEST EVIDENCE



- If recanting, untainted evidence:
 - 911 Call
 - Video
 - Photos
- If not recanting,
 - A victim's testimony is enough – you don't need the video
 - Credibility of the witness

REASONABLE DOUBT

The levels of
required proof.



- “Snowed Last Night” Hypo/ “Stars on Flag”
- Not Beyond All Shadow of a Doubt
- You weren't there
- No Video in the Sky
- Your job as jurors is to determine credibility
- Are you going to hold the City to higher burden of proof than required?
- Unable to follow the law because you need more evidence than the law requires?

COMMON SENSE



- Watson Hypo: Anyone ever heard of Watson. He was the computer that played jeopardy. What if we replaced the jurors with Watson. Would that be a good idea? What would be missing?
- Common sense

NO WITNESSES IN PUBLIC



- Stadium Hypo: Fight at Seahawks game. 100 people are watching the fight.
 - How many witnesses would the City need to bring in?
 - 1 person enough?
 - The only witnesses you are going to hear were involved in this, does anyone have a problem with that?

IF YOU HAVE DEFENDANT'S ADMISSIONS/ OR YOU KNOW DEFENDANT WILL TESTIFY



- Defendant made admissions to police, or you know that defendant is going to testify.
- Chocolate Cake Hypo: Made chocolate cake. Go into Johnny's room chocolate all over face. Who thinks Johnny ate the cake? What if Johnny denies it? Are you surprised? What if he blames sister Sally?

WHAT DO YOU DO WITH A “BAD” ANSWER?



- Always thank the juror for their answer.
- Remind them there are no wrong answers and Voir Dire is to learn about your opinions and feelings.
- Then ask “how many of you agree with juror number X?,” “how many of you disagree?”
- Then strike that juror FAST! Most likely are not able to rehabilitate.



BATSON → GR 37

- *Batson v. Kentucky*, (1986), was a case in which the US Supreme Court ruled that a prosecutor's use of a peremptory challenge in a criminal case may not be used to exclude jurors based solely on their race.
- The party raising the *Batson* challenge must make out a “prima facie case” of purposeful discrimination based on the totality of the relevant facts that give rise to an inference of discriminatory purpose.
- Washington Supreme Court found *Batson* was failing to address issue specifically unconscious bias in April 2018 enacted GR 37.
- GR 37 uses an objective-observer standard. That the trial court would find a peremptory strike invalid if an objective observer could find that race or ethnicity was a factor for a peremptory challenge.

GR 37 STEPS




- 1st - A party objects to use of peremptory challenge by simply citing GR 37. Hearing outside jurors before potential juror is excused.
- 2nd - Party exercising peremptory challenge shall articulate reason for challenge.
- 3rd - The Court will evaluate reasons in light of the totality of circumstances. If the court determines that an objective observer could view race or ethnicity as factor challenge denied. No need to find “purposeful discrimination.”

GR 37 – WHAT CAN THE COURT CONSIDER?

- Number AND types of questions posed to prospective juror
- If asked significantly more OR different questions
- Whether other jurors provided similar answers
- Whether a reason might be disproportioned associated with race or ethnicity
- Whether the party has used peremptory challenges disproportionately against a given race or ethnicity in the present case OR past cases



GR 37 – WHAT REASONS ARE PRESUMPTIVELY INVALID?

- Prior contact with police
 - Expressing distrust of police or that police engage in racial profiling
 - Having r'ships with people stopped, arrested or convicted of crime
 - Living in high-crime neighborhood
 - Having a child outside of marriage
 - Receiving state benefits
 - Not being a native English speaker
- 
- shutterstock.com · 207274006
- Improper Discrimination → Juror Sleeping, inattentive, staring or failing to make eye contact, problematic attitude, body language or demeanor, unintelligent or confused answers → IF one of these reasons then must provide reasonable notice so behavior must be addressed timely manner → lack of corroboration shall invalidate reason for preemptory challenge

WHAT IS THE TEST “FOR CAUSE”

- Voir Dire the individual juror
 - Take an oath to follow the law
 - Listen to the facts
 - Be fair to both sides
 - Judge facts fairly



THE “SMOKING GUN” JUROR

- Cop
- Lawyer
- Firefighter
- Software Engineer
- Past Criminal History
- Leader vs. Follower
- Difficulty understanding English? Difficulty hearing?



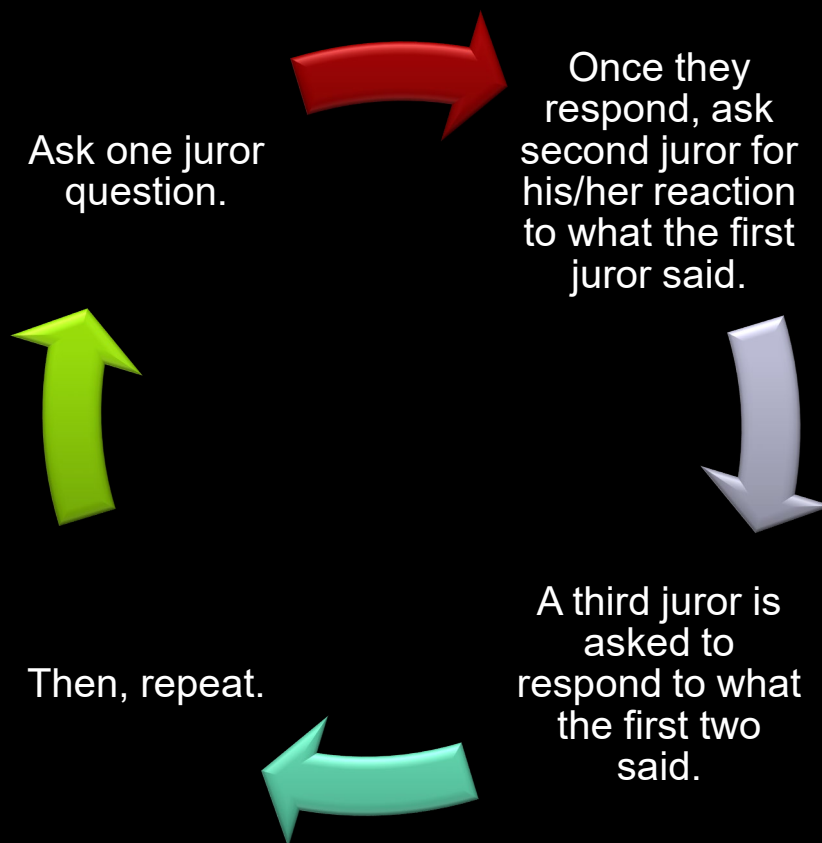
LOOPING: AN EFFECTIVE TOOL FOR VOIR DIRE

Ask one juror question.

Once they respond, ask second juror for his/her reaction to what the first juror said.

A third juror is asked to respond to what the first two said.

Then, repeat.



LET'S PRACTICE – CASE STUDY



- Defendant and victim are married with kids.
- Defendant becomes angry over money.
- Defendant slaps victim across the face leaving a red mark.
- Victim calls 911 and reports.
- Officers respond and victim tells them what happens.
- Defendant denies and says, “just an argument, nothing physical.”
- Kids saw nothing.
- Officers note visible injury to face consistent w/ a slap.
- Victim recants and says defendant never hit her.
- Victim does not work outside home and takes care of kids.

WHAT ARE WEAKNESSES OF CASE STUDY?



- Recanting or uncooperative victim
- Witness credibility
- Totality of circumstances
- Minor injuries

The key is a generic DV Voir dire fails to address unique weaknesses, and possibility wastes valuable and limited time on areas that may not be relevant. So, tailor voir dire to the circumstances of a specific case.

SAMPLE VOIR DIRE



- Juror No 1, why might a victim of DV not want the abuser prosecuted?
- Fear
- Fear of what?
- That the person will do it again, or it will get worse
- Juror No 2, can you think of any other reason?
- Embarrassment
- Embarrassment about what?
- Having a family secret.
- Juror No 3, how do people often feel about someone they are in a r'ship with?
- Love
- Can love be a factor in why a victim may not want to prosecute?
- Yes
- Junor No 4, does domestic violence affect only the victim?
- No
- Who else can be impacted?
- Kids
- If victim has kids with an abuser, could that be a factor in why the victim may not police involved?
- Yes
- Why
- Because they want to keep the family together
- Juror No 5, what is something that victims of DV might need or depend on an abuser for?
- Financial support
- Financial support only for themselves?
- No also for their kids
- So money can be a factor in why many victims of DV don't want law police involved?
- Definitely
- Juror No 6, because of these reasons do you think victim os DV sometimes try to protect their abusers from police?
- Yes
- Like what?
- By not reporting or lying about it.

SAMPLE VOIR DIRE



- Juror No 7, do you agree with No 6 that sometimes victims of DV lie about what happened to protect their abuser?
- Yes
- If we have evidence that proves someone guilty of abuse, do you think that the government should prosecute that even if victim is uncooperative?
- Yes
- Why?
- Because DV is dangerous and you don't want it to get worse
- Juror No 8, when a victim is being assaulted and picks up phone to call 911, what is she thinking in the moment?
- That she needs help.
- Right. Ane when does she need it?
- Right now
- What about 6 mos later after the call when the case against her loved one finally goes to court?
- She doesn't want him to get in trouble
- If a victim of DV does not want an abuser in trouble, should we prosecute those crimes No 9?
- Yes
- Juror No 10, if you had long her and I grabbed it and pulled hard how would that feel?
- It would hurt
- Have I caused you bodily injury?
- I think so
- Why?
- Because it hurt
- Juror No 11, if I took a picture of her would I see any signs of injury like blood or bruising?
- No
- Juror No 13, are you going to go to the hospital and get a CT scan or any other medical records?
- No
- Juror No 14, I definitely caused pain to Juror No 10, but it didn't last long and didn't have visible marks do you think I caused bodily injury?
- Yes

ACCOUNTABILITY/ GUILT



- Start and finish Voir Dire with what you are going to ask them to do – to find the defendant Guilty!
- Get them comfortable with the “Guilty!” concept.
- We like to see the best in people. To give people second chances. That is not your job! Your job is to evaluate the evidence, determine creditability of witnesses, that is your job.
- Ask if the City meets our burden of proof, of proving beyond a reasonable doubt the defendant guilty of the crime – could you find the defendant guilty? Ask everyone in the pool – go down the line.

CLOSING POINTS FOR VOIR DIRE



- Prep for Voir Dire
- Be honest
- Be likeable (if you can), serious but personable
- No trick questions
- Tie your closing from concepts you taught in Voir Dire – help weave in your theme with strengths/ weaknesses of case



DV AWARENESS WILL ONLY HELP EDUCATE OUR JURY POOLS

SOMETIMES THEY GET IT RIGHT, SOMETIMES THEY DON'T!



SEAN 'DIDDY' COMBS VERDICT

CHARGE	VERDICT
Racketeering conspiracy	Not Guilty
Sex trafficking	Not Guilty
Transportation to engage in prostitution	Guilty
Sex trafficking	Not Guilty
Transportation to engage in prostitution	Guilty

SEAN 'DIDDY' COMBS



WEINSTEIN VERDICT

CHARGES

- FIRST COUNT OF FIRST-DEGREE CRIMINAL SEXUAL ACT
GUILTY
- ONE COUNT OF RAPE IN THE THIRD DEGREE
NO VERDICT

02 CBS NEWS NEW YORK



BREAKING NEWS

Maui doctor found guilty of attempted manslaughter



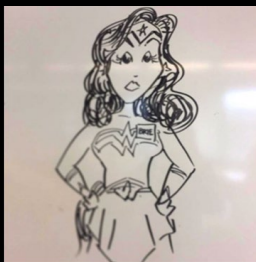
MURDER CONVICTION

Mar 16 | Kouri Richins, the mother of three, was found guilty of the poisoning and murder of her husband, Eric Richins, following her trial; she is scheduled to be sentenced in May.

Questions?



As Taylor Swift says, “Fake it to you make it!”



Brie Ann Hopkins
Domestic Violence Prosecutor,
City of Bellevue
Bhopkins@bellevuewa.gov
(425) 452-4469

