

VOIR DIRE  
JURY SELECTION (DESELECTION)  
KCDAA- TRIAL ADVOCACY 2023



# Forecast:

- **Concepts** influencing jury selection
- **Goals** of Jury Selection
- **Laws** of Jury Selection
- **Preparation** for Jury Selection
- **Art** of Jury Selection
- **Sample Questions**

# Concepts Influencing Jury Selection

- Really not jury selection but jury de-selection
- Most important? It *is* important...
- First impression
- Develop rapport/ Get the jurors to like you
- Limited time:
  - Connecting with jurors
  - Getting jurors to open up to discover bias
  - Making intuitive judgments about jurors



# Goals of Jury Selection

- Use juror information to *benefit* your case
- The acquiring of sufficient information, verbal and non-verbal to establish the record *for cause* challenges and the intelligently exercise the *peremptory* challenges.
- Educate the jury about the case, facts, client, parties, witnesses, or the law
- Discover attitudes and potential biases that could hurt your case (e.g., how they feel about drugs, sex offenses, delayed reporting, domestic violence, use of cooperators)



# Goals of Jury Selection

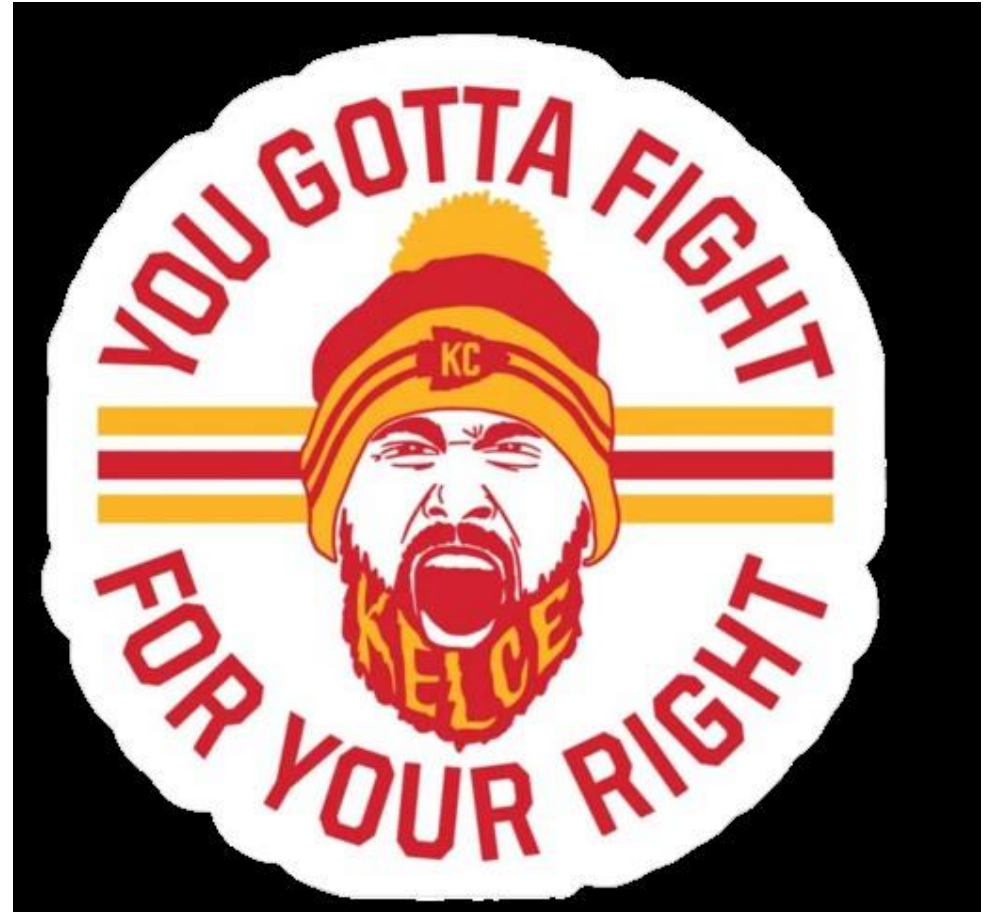
- Neutralize negative beliefs
- Get “buy in” from jurors who agree/disagree with a juror who gave you a “good answer”
- Find those who will follow the instructions/law



# Laws of Jury Selection

## Prosecutor's Right to Voir Dire

- “It would be of little avail for State to try a case before a jury which would not give it a fair hearing and decide the case upon evidence; to rule that State did not have a right to a fair hearing would make statutory provision for selecting a jury in a criminal case, including right to challenge for cause and to peremptory challenge, a hollow gesture”. K.S.A. 22-3410, 22-3412. *State v. Stuart*, 1978, 223 Kan. 600, 575 P.2d 559



# Laws of Jury Selection

## Prosecutor's Right to Voir Dire

- Without voir dire it is difficult to establish bias for challenges *for cause*
- Without voir dire it is difficult to learn about specific views that would prevent or substantially impair jurors from performing their duty in accordance with their instructions and oath.
- Without voir dire it is difficult to discover bias so that peremptory challenges may be intelligently exercised.

# Laws of Jury Selection

- Sections 22-3407 through 3413 of the Kansas Statutes govern jury selection in criminal trials.
- The purpose of **voir dire** is to enable the parties to select competent jurors who are without bias, prejudice, or partiality. The nature and scope of the **voir dire** examination is generally entrusted to the sound discretion of the trial court. *State v. Robinson*, 306 Kan. 431, 432, 394 P.3d 868, 872 (2017)
- The trial court has the authority **to limit** voir dire if the court believes such examination to be harassment, is causing unnecessary delay, or serves no useful purpose.



# Laws of Jury Selection

## EXCLUDED FOR JURY SERVICE

### K.S.A. 43-158

The following persons shall be excluded from jury service:

- a) Persons unable to understand the English language with a degree of proficiency sufficient to respond to a jury questionnaire form prepared by the commissioner
- b) Persons under adjudication of incompetency
- c) Persons who within 10 years immediately proceeding have been convicted of or pleaded guilty, or nolo contendere, to an indictment or information charging a felony;
- d) A mother breastfeeding her child shall be postponed until such mother is no longer breastfeeding the child

# Laws of Jury Selection

## EXCLUDED FOR JURY SERVICE BY COURT

### K.S.A. 43-159

In addition to the persons excused from jury service in [K.S.A. 43-158](#), and amendments thereto, the following persons may be excused from jury service by the court:

- (a) Persons so physically or mentally infirm as to be unequal to the task of ordinary jury duty;
- (b) Persons whose presence elsewhere is required for the public welfare, health or safety;
- (c) Persons for whom jury service would cause extraordinary or compelling personal hardship; and
- (d) Persons whose personal relationship to the parties or whose information or interest in the case to be tried is such that there is a probability such persons would find it difficult to be impartial.

# Laws of Jury Selection

## 22-3410. Challenges for cause

- (1) Each party may **challenge** any prospective **juror for cause**. **Challenges for cause** shall be tried by the court.
- (2) A **juror** may be **challenged for cause** on any of the following grounds:
  - (a) He is related to the defendant, or a person alleged to have been injured by the crime charged or the person on whose complaint the prosecution was begun, by consanguinity within the sixth degree, or is the spouse of any person so related.
  - (b) He is attorney, client, employer, employee, landlord, tenant, debtor, creditor or a member of the household of the defendant or a person alleged to have been injured by the crime charged or the person on whose complaint the prosecution was instituted.

# Laws of Jury Selection

## 22-3410. Challenges for cause

(c) He is or has been a party adverse to the defendant in a civil action, or has complained against or been accused by him in a criminal prosecution.

(d) He has served on the grand jury which returned the indictment or on a coroner's jury which inquired into the death of a person whose death is the subject of the indictment or information, or on any other investigatory body which inquired into the facts of the crime charged.

(e) He was a juror at a former trial of the same cause.

(f) He was a juror in a civil action against the defendant arising out of the act charged as a crime.

(g) He was a witness to the act or acts alleged to constitute the crime.

# Laws of Jury Selection

## 22-3410. Challenges for cause

(h) He occupies a fiduciary relationship to the defendant or a person alleged to have been injured by the crime or the person on whose complaint the prosecution was instituted.

(i) His state of mind with reference to the case or any of the parties is such that the court determines there is doubt that he can act impartially and without prejudice to the substantial rights of any party.

(3) All **challenges for cause** must be made before the **jury** is sworn to try the case.

# Laws of Jury Selection

## REMOVAL FROM THE JURY PANEL FOR CAUSE

If the judge determines during the **voir dire** process that any individual is unable or unwilling to hear the particular case at issue *fairly* and *impartially*, that individual should be removed from the panel.

Such a determination may be made on motion of counsel or on the judge's own initiative.



# Laws of Jury Selection

## *Timing and Order of Challenges*

- ❖ Challenges to an individual juror **for cause** are generally exercised during *voir dire* immediately after obtaining a response that supports one or more grounds for a challenge for cause
- ❖ Before challenge for cause based on prospective juror's bias obtain on voir dire **an admission** from the panel member that he or she has a predisposition or has made up his mind about the case.

# Laws of Jury Selection

## *Timing and Order of Challenges*

- ❖ To avoid alienating the challenged juror or other prospective jurors, make the challenge in a neutral, nonjudgmental manner, without directly accusing the prospective juror of bias.
- ❖ “Your Honor, in light of Mr. Smith’s answers about this matter, it might be better if he did not serve on this case”. . . . or “there may be another case where he is better suited to serve.”
- ❖ If your challenge for cause fails, you most likely will want to exercise a peremptory to remove the person from the jury.



# Laws of Jury Selection Procedure for Exercising Challenges/Rehabilitation of Challenged Witness

- ❖ After you have asserted a challenge for cause, the other side may attempt to "rehabilitate" the witness before the judge rules on the challenge for cause. Generally, the other party may conduct further voir dire examination to clarify that the person can act with impartiality. The purpose of such further examination is to convince the judge that the prospective juror should not be removed for cause, thus forcing the challenging party to exercise one of his or her limited peremptory challenges if he or she wishes to remove the person from the jury.
- ❖ If a prospective juror admits bias or prejudice, he or she is disqualified from serving on the jury as a matter of law.

# **Laws of Jury Selection**

## **Juror's knowledge of material fact (22-3413)**

If a juror has personal knowledge of any fact material to the case, he must inform the court and shall not speak of such fact to other jurors out of court. If a juror has personal knowledge of a fact material to the case, gained from sources other than evidence presented at trial and shall speak of such fact to other jurors without the knowledge of the court or the defendant, he may be adjudged in contempt and punished accordingly.

# Laws of Jury Selection

## Jury selection/ Peremptory challenges(22-3412)

- Off-grid felony, a nondrug felony ranked at severity level 1, or a drug felony ranked at severity level 1 or 2
  - A nondrug felony ranked at severity level 2, 3, 4, 5 or 6, or a drug felony ranked at severity level 3 or 4
  - An unclassified felony, a nondrug severity level 7, 8, 9 or 10, or a drug severity level 5 felony
  - Misdemeanor
- 12 Peremptory Challenges
  - 8 Peremptory Challenges
  - 6 Peremptory Challenges
  - 3 Peremptory Challenges

# Laws of Jury Selection

*Batson v. Kentucky*, 476 U.S. 79 (1986)

- *Shall not* exercise peremptory challenges in a discriminatory manner based upon race, gender, or ethnicity.
- *Batson* applies to defense counsel as well.
- A defendant has standing to object to the exclusion of a cognizable group even if he or she is not a member of that group and cannot demonstrate any actual prejudice from this exclusion.
- A defendant objecting has the burden of establishing a prima facie case that the State has engaged in purposeful discrimination.

# Laws of Jury Selection

*Batson v. Kentucky*, 476 U.S. 79 (1986)

## BURDEN OF PROOF

- (1) the objector must make a prima facie case that group bias motivated the challenge;
- (2) the prosecutor (or attorney being challenged) must then give race-neutral reasons for its challenge; and
- (3) the trial judge must decide whether group bias is the more likely explanation.

## IF CHALLENGED MUST:

- Prove that neutral, non-discriminatory reasons exist for exercising its challenges
- Claims of good faith are not sufficient
- (tone of voice, body language etc. may be race-neutral)

# Preparation for Jury Selection – Before you enter the courtroom

Start your preparation long *before* the trial (charging or case is assigned)

## **Case Analysis - Issue Spot .....**

1. What are the jury issues in this case?
2. What questions *do I have* about the facts of this case?
3. What are the facts, issues or problems in this case where a jury might find reasonable doubt?

# Preparation for Jury Selection

- **Jury Questionnaires**
- **Design group questions**
- **Design individual questions**
- **Design questions which can explore attitudes toward case problems and weaknesses**

# Preparation for Jury Selection

## JURY QUESTIONNAIRES

The trial courts' discretion will control whether a jury questionnaire is allowed in an individual case. *State v. Aikins*, 261 Kan. 346, Syl. P 12, 932 P.2d 408 (1997).



**IN THE DISTRICT COURT OF RENO COUNTY, KANSAS**  
**JUROR QUESTIONNAIRE**

You have been selected to serve as a juror in the District Court of Reno County, Kansas. Please, carefully read and answer the questions on this form and return it in the enclosed addressed, stamped envelope within the next three days. Your cooperation and willingness to serve as a juror is appreciated.

Name: **Peak, Courtney Marie**  
 Last, First Middle

Street Address 409 W Sixth Ave City Buhler State KS Zip 67522

Mailing Address (if different from street address) \_\_\_\_\_

Home Phone \_\_\_\_\_ Work Phone \_\_\_\_\_ Cell Phone 620-899-2532

Round Trip mileage from your home to court house (outside city limits only) 30

Age: 34 Date of Birth: 02/15/1988 Male / Female (circle one)

Years of residence in Kansas 16 Length of Residence in Reno County 16

Are you a United States citizen?  **Y**  **N (circle one)** Are you a Resident of Reno County?  **Y**  **N (circle one)**

Are you able to read, write and understand the English language?  **Y**  **N (circle one)**

State Highest Grade/Level of Education: high school graduate

Have you had vocational or professional Training? Yes \_\_\_\_\_ No \_\_\_\_\_ If yes, explain: \_\_\_\_\_

Occupation: insurance agent

Employer: Anna Crable Agency

If retired answer the preceding question with information from your last employment and check here: \_\_\_\_\_

Marital Status (married, single, divorced or widowed) widowed

Spouses Name: \_\_\_\_\_

Spouses Occupation and Employer: \_\_\_\_\_

Number of dependents and ages: three dependents - 14 yo, 7 yo, 3 yo

Have you served as a juror in this county within the last 12 months?  **Y**  **N (circle one)** If so, when? \_\_\_\_\_

Have you ever served on a civil jury? NO Have you ever served on a criminal jury? NO

Have you or any member of your immediate family been a party to any civil or criminal lawsuit?  **Y**  **N (circle one)**

If so, what type of lawsuit was it, and when and where did it occur? \_\_\_\_\_

Who in your family was involved in this lawsuit? \_\_\_\_\_

Have you been convicted of or pleaded guilty or nolo contendere ("no contest") to a felony within the last ten years?  
 **Y**  **N (circle one)** If so, state when and where this conviction took place: \_\_\_\_\_

Has any court ever found you to be incompetent or incapacitated:  **Y**  **N (circle one)** If so, please state where and when this took place: \_\_\_\_\_ If restored, give date: \_\_\_\_\_

Are you currently a breastfeeding mother? Yes \_\_\_\_\_ No

Are you related to or a close friend of any law enforcement officer:  **Y**  **N (circle one)**

If you believe you have a physical disability, which would prevent you from serving as a juror, please state what it is: \_\_\_\_\_

I affirm that the answers I have given to the above questions are true and correct.

C. Peak  
 JUROR SIGNATURE

# Preparation for Jury Selection

- Once prospective jurors have been assigned to the panel for a particular case and before *voir dire* begins, the court will provide the attorneys with the list of the prospective jurors' names and their answers to the standard juror questionnaire.
- If you have time, obtain each venire person's prior dealings with the criminal justice system (victim/witness/defendant)- they might not be honest on questionnaire

# Preparation for Jury Selection

## JURY QUESTIONNAIRES

### (Standard)

- Name
- Address
- Length of residence in Kansas
- Occupation
- Marital Status/Occupation of Spouse
- Dependents/ Ages
- Prior Jury Service
- Felony Conviction (past 10 years)
- You or family member/party to civil criminal lawsuit
- Found incompetent or incapacitated
- Related or close friend to law enforcement

# Preparation for Jury Selection

## Analyzing/Researching Potential Jurors

- . Observe any applicable ethical or privacy restrictions (e.g., do not attempt to access private sections of juror's social media page)*



# Preparation for Jury Selection

Review responses to questionnaires for any potential challenges for cause or peremptory challenges



- Example:
  - Prospective juror is married to or employed by a party or an attorney in the cause
  - Another reason for bias

# Preparation for Jury Selection

- Consider the “ideal” juror profile for your case
- Then remember you will never have an “ideal juror”

- ❖ Age
- ❖ Life Experiences
- ❖ Attitudes
- ❖ Occupation
- ❖ Personality type and characteristics
- ❖ Politics?



# Preparation for Jury Selection – Know the “Routine Procedure” in your Jurisdiction.

- ✓ Consult with the trial judge's clerk and/or other attorneys who have practiced in the same court; they know what practices the judge generally follows in voir dire and jury selection.
- ✓ Some judges distribute to attorneys written summaries of their usual voir dire procedures. This information can help you tailor a voir dire motion to fit the judge's expectations and eliminate any unnecessary requests.
- ✓ Know what questions the judge may ask in advance.
- ✓ Know how challenges will be exercised, or in what order alternates will replace jurors if that becomes necessary during the trial.
- ✓ Request a pretrial conference with the judge if clarification is needed on issues

# Preparation for Jury Selection

## Know the “Routine Procedure” in your Jurisdiction.

- ✓ Will the judge allow a pretrial juror questionnaire?
- ✓ How many jurors and alternates will be seated? Will the alternates know they are alternates?
- ✓ If there are more than two defense attorneys, are challenges assigned to individual parties or to sides of the case?
- ✓ How will panelists be seated in the box and replaced when challenged?



# Preparation for Jury Selection

## Know the “Routine Procedure” in your Jurisdiction.

- ✓ Will each side question all panelists first, or will sides alternate in questioning individuals?
- ✓ What time limits and break periods does the judge have in mind?
- ✓ How will cause challenges be exercised – openly, or at the bench?
- ✓ How will peremptories be exercised? When?

# Preparation for Jury Selection

## Preparing a Jury Chart

- To assist with jury selection, most attorneys prepare a juror chart or diagram, which consists of an array of squares arranged in the manner in which the (potential) jurors are seated, with each square representing an individual juror.
- For each square, leave sufficient space to enter information

Case Name:	State v. Jones	Trial Date:	_____
Cause No.:	_____	Trial Judge:	_____
Cause of Action:	_____		
Verdict:	_____		

<b>Juror No. 6</b>	<b>Juror No. 5</b>	<b>Juror No. 4</b>	<b>Juror No. 3</b>	<b>Juror No. 2</b>	<b>Juror No. 1</b>
<b>Juror No. 7</b>	<b>Juror No. 8</b>	<b>Juror No. 9</b>	<b>Juror No. 10</b>	<b>Juror No. 11</b>	<b>Juror No. 12</b>

<b>Alternate No. 1</b>	<b>Alternate No. 2</b>
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JUROR 12  
PLEASANT  
COOPERATIVE

JUROR 3  
BOSSY?  
NO SMILE

JUROR 8  
BLUE SWEATER  
HR BACKGROUND

JUROR 5  
FORMER CPA  
TECHNICAL

JUROR 6  
QUIET-TENTATIVE

JUROR 11  
SAT ON JURY  
WATCHES CSI

JUROR 17  
KNOWS OF DEF  
SAYS CAN BE  
FAIR

JUROR 2  
SAID "SIR"  
FOLLOWER??

JUROR 9  
SEEMS GREAT  
VERY SMART

# Qualifying the Jury- From the Judge

Pattern Inst. Kan. Civil 101.20

## I. IDENTIFICATION OF THE CASE:

“This is a criminal case in which the State of Kansas is represented by \_\_\_\_\_, sitting \_\_\_\_\_. The defendant, \_\_\_\_\_, is sitting \_\_\_\_\_, and is represented by \_\_\_\_\_ of \_\_\_\_\_, sitting \_\_\_\_\_. The defendant is charged with .{CHARGES}”

## II. PURPOSE OF VOIR DIRE

***START BUILDING RAPPORT  
WHILE STANDING***

“As prospective jurors you will be called and questioned so that the Court may determine your qualifications to serve in this case. The Court and the attorneys conduct this examination to obtain a fair and impartial jury and not to pry into your personal affairs. Because this is an important part of the trial, the law requires that prospective jurors be sworn before questions are asked. The Clerk will administer the oath.”

# Qualifying the Jury- From the Judge

## Pattern Inst. Kan. Civil 101.20

### PIK COMMENT

Kansas Statutes recognizes the right of participation in this examination by the Court and by counsel. The Committee believes the following are not proper areas for examination:

1. Questions previously asked by Court or counsel, and answered.
2. Questions touching upon anticipated instructions.
3. Questions touching upon the verdict to be returned when those questions are based upon hypothetical facts and situations.
4. Questions that are in substance arguments of the case.

Additionally, the Committee believes that voir dire is best conducted when questions are not asked relative to data available from jury information sheets obtainable from the clerk and when collective questions are used as fully as practicable. Such restrictions as those found above may be made known to counsel by rule or informal statement.

# The Art of Jury Selection



- Stand when jurors enter
- Stand when conducting jury selection
- Be aware of obstacles  
(Podium/Microphone/Other barriers)
- Be open and available
- Avoid reading directly from voir dire notes
- Your notetaking?



# The Art of Jury Selection

## Develop Rapport

- First impressions
- Make eye contact
- Be yourself
- Be sincere
- Encourage juror candor
- Demonstrate you are honestly doing your best for the State



# The Art of Jury Selection

- All eyes are on you....
- Don't rush
- Be courteous, sincere, and well mannered
- Remain conversational and friendly
- Be an active listener
- Smile to acknowledge or nod
- Don't interrupt
- Play it cool even when things go badly
- LISTEN, LISTEN –WATCH, WATCH





# The Art of Jury Selection

## Observe:

- The way they dress
- Interactions with each other (both before and after they enter the box)
- Posture and demeanor
- If possible, have a second pair of eyes...



# The Art of Jury Selection

- Use Open-ended questions
- On occasion lead (make a point, seal the deal)

- ❖ What do you feel when you hear?
- ❖ Have you heard others say?
- ❖ Could you share some examples?
- ❖ Does anyone else have examples or experiences?



# The Art of Jury Selection

## Techniques in questions- Learn and Listen

- **Concreteness:** tell them why you are asking the question.
- **Reflection:** repeat back to them what you heard them say.
- See who shares or differs with answers. Reward honesty. No bad answers.
- Continue your eye contact- use a non-verbal action (smile, laugh, frown etc. as an introduction to ask a direct question).
- Try to get them to interact with each other.



# The Art of Jury Selection

## Encourage Agreement with Other Jurors

- When you do ask for potential jurors' reactions to a specific attitude, you are more likely to elicit an honest answer if the answer comes not from you but from another potential jurors specific views.



# The Art of Jury Selection

## Encourage Agreement with Other Jurors - Learn and Listen

### “LOOPING”

- EXAMPLE:
- After asking Mr. Smith an individual open-ended question, you can turn the answer into a group question by asking, "**How many of you agree with Mr. Smith?**"
- This type of question creates confidence that it is okay to express that opinion because one member of the panel has already done so.
- You can also flip this tactic by asking who disagrees with a given response.

- Working with the panelists' **own words** helps to send the message that you are interested in what the panelists think. The panelists will not feel that you are trying to prime them toward any



**Get it and spread it....**

# The Art of Jury Selection

## Encourage Agreement with Other Jurors

### Get it and Spread it....

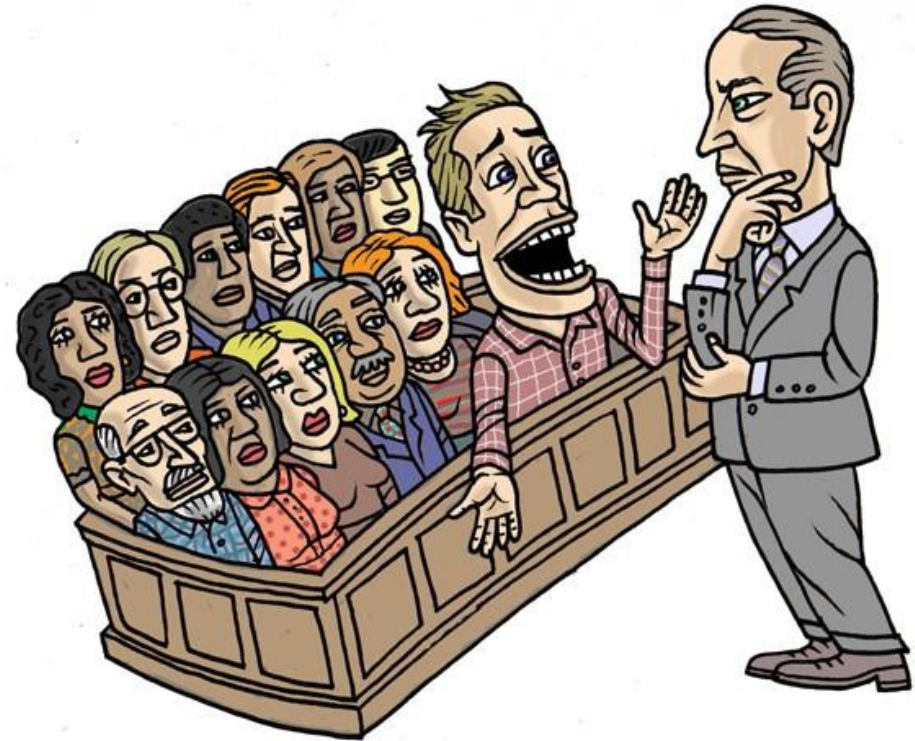
- Raise your hand if you agree/believe...?
- List everyone who raises their hand
- How many believe (the opposite)....?
- List everyone who raises their hand
- How many at this point have no opinion one way or another?
- List everyone who raises their hand
- Reinforce the juror's candor and openness
- Lock them into the position.
- Loop with follow up



# The Art of Jury Selection

## Do not engage jurors in argument or try to change their mind

- Everyone is free to have their own ideas and not to have someone try to change them.
- Remember, voir dire is an interview and discussion, you are trying to find out about them and educate them about your theory of the case.
- Listen and hear what the juror is saying and ask what they mean. Don't assume you know.



# The Art of Jury Selection

- Theories –*Impressionistic questioning*: very intuitive, i.e., *the juror likes me*



- **Character/Personality trait questioning:**

Bases selection on:

- Personality traits
- Assertive nature?
- Follower?
- Listener ?
- Communicator ?
- Non-verbal behavior WATCH, WATCH, WATCH Even when court is just beginning



# The Art of Jury Selection

- **Generalization/Stereotyping:** selecting characteristics which would tend to favor your position (possible examples?)
  - Parents
  - Military
  - Professions with rules and structure
  - Bookkeepers/Bankers
  - *Life experience technique in voir dire*



# The Art of Jury Selection In General

- Prepare your own questions rather than boilerplate you inherited
- Have a purpose with every question
- Learn/Educate don't lecture jurors
- Don't waste the juror's time



# The Art of Jury Selection In General

- Stay in touch with the flow and feelings of the prospective jurors as the day and the trial unfolds
- Notice if they are bored, angry, tired, etc. be in synch with them



# The Art of Jury Selection

## Observation of Panelists Behavior

- Look at:
  - The way they dress
  - Interactions with each other (both before and after they enter jury box)
  - Posture and demeanor
- If possible have a second pair of eyes.....



# The Art of Jury Selection

## START AT THE VERY BEGINNING... A VERY GOOD PLACE TO START

1. Introduction; Proud to Represent the State of Kansas
2. Recognize the sacrifice of jury service
3. Stress the importance of the case to **both** sides
4. Explain the process



*"The Court will allow the cape but will draw the line at the wind machine."*

# The Art of Jury Selection

## LEARN DON'T LECTURE

Raise your hand if you can hear me.....



Who promises to raise your hand if during the trial you cannot hear something?

# The Art of Jury Selection

- ❖ Explain the *procedure* (not meaning?) of Voir Dire
- ❖ Apologize for probing and personal questions
- ❖ Stress honesty and candor
- ❖ Not every case is a “good fit”
- ❖ Put jurors at ease regarding nervousness about speaking in public (making the record)



## **VOIR DIRE- LEARN DON'T TEACH**

### **Introduction**

Raise your hand if you can hear me.....

Good Morning. My name is \_\_\_\_\_, and I am proud to stand here representing the State of Kansas and have twelve of you decide this important case. This case is important to the defense, but also important to the State of Kansas.

In this part of the trial we need to find out your feelings, impressions, or opinions about issues in this case. I want you to know that there are no right or wrong answers. We will be honest with you , and we ask that you be honest with us.

I have been with the District Attorney's Office for \_\_\_ years. Prior to that.....

Ultimately twelve of you will be asked to serve as jurors in this case. The process of selecting a jury has one objective: to seat twelve unbiased persons who will listen attentively to the evidence presented and render a verdict based on that evidence.

We select a jury by asking a series of questions, sometimes general in nature, sometimes specific. The purpose of my questions are not to embarrass you or intrude on your personal lives. We want only to find the best jury for this particular case.

There are no right or wrong answers...no grades are handed out. We are just asking you answer the questions honestly.

Will each of you agree to do that? **Please raise your hand if you agree to do that....**



I also want to let you know that not every case suits every juror. There are lots of different kinds of cases needing jurors.

I can't remember a time when I have been in a trial where the *first* group of 12 people called actually served as jurors so it is likely several of you will be excused.

Some of you may determine this is not the right case for you and you might have a hard time being unbiased given your life's experiences and beliefs.

Some will be excused for cause, some legal factors may disqualify you, and some may be excused without any reason because we have to whittle it down to 12 people.

If someone is not chosen, that doesn't mean they don't have good character, or integrity or wouldn't be a good juror on another case. Again, the objective is to select the best jury for *this* particular case.

# The Art of Jury Selection

*Turn to jurors not in the box:*

I'd ask each of you to please listen to the questions being asked, because when you come forward you may be asked if you were listening, and you may be asked to respond to the questions that would have triggered a response to the group sitting here.



# The Art of Jury Selection

## Potential “for cause” questions:

- Is there anyone who has a *personal or family problem* or any other matter that is so pressing that you would not be able to give your full attention to this case?
- Does anyone have a **temporary or permanent physical impairment** that might be a problem during a trial?
- It is possible that this trial could last                      highly unlikely the case would last longer than that.  
Would this cause a serious problem for anyone?
- Does anyone *work nights*? **TIRED JURORS**



# The Art of Jury Selection

## Give a brief overview of your case.

- This is a criminal case. The defendant is charged with \_\_\_\_\_.
- It is the State's claim that.... (dates and overview of the case)
- When I give that brief overview, is there anyone who feels they may have *knowledge* of this particular case?
- If so, have you formed an opinion as to the guilt or innocent of the defendant?



"How is it, Mr. Crusoe, that you know nothing about this case?"

# The Art of Jury Selection

## Knowledge of the Defense

- Does anyone know the defendant \_\_\_\_\_?
  - Does anyone know his/her attorney \_\_\_\_\_?
  - Does anyone know anyone who works in that attorney's office?
- (may want to list names to determine the relationship if any)



# The Art of Jury Selection

## Knowledge of your office

- \_\_\_\_\_ is the District Attorney/County Attorney for \_\_\_\_\_.
- He/She has a number of assistants that work for him/her, including me.
- Does anyone on the panel know: (may list each, or ask general statement regarding knowledge)
- How? Anything about that knowledge that would prevent you from being a fair and impartial juror?
- People in our office have regular contact with individuals in the community. A person's contact with our office can be pleasant or strained, depending on the circumstances.
- Is there anyone who has had a negative experience with our office where you are concerned that experience may affect your ability to serve?
- Raise your hand if you or someone close to you has a connection to any case currently being prosecuted by the \_\_\_\_\_ office.

# The Art of Jury Selection

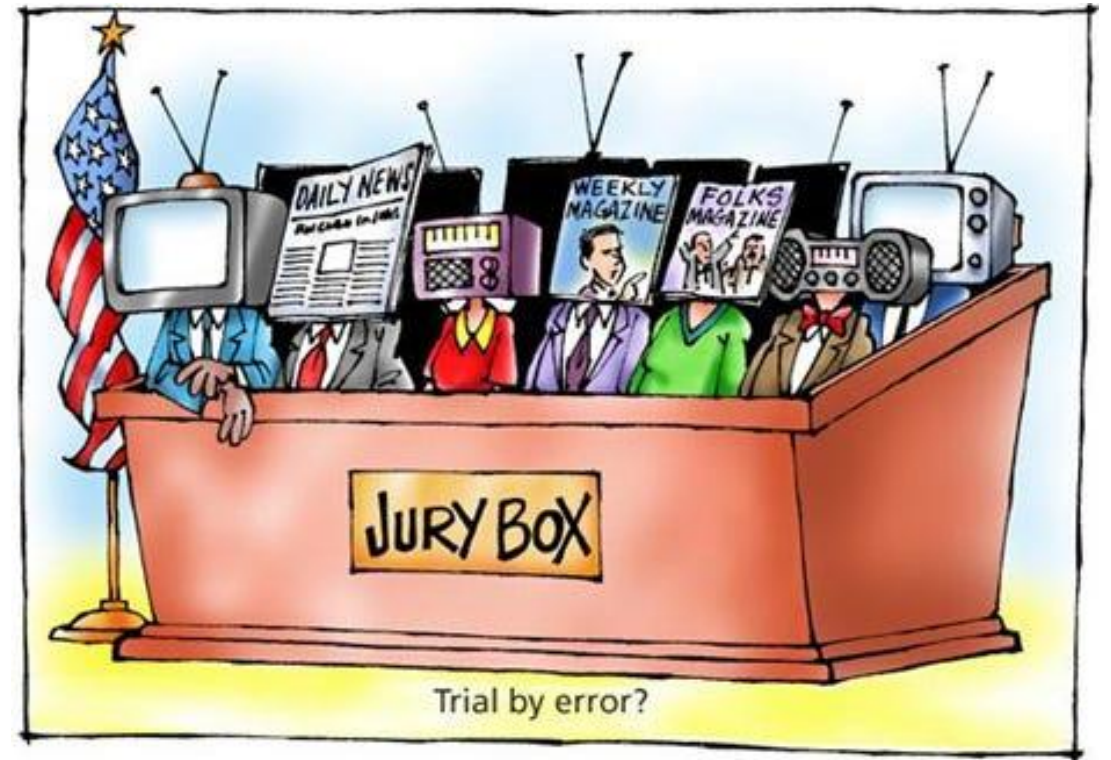
## Knowledge of Witnesses

- You may hear testimony from the following witnesses in this case:
  
- Does anyone know any of these people? How? Anything that would prevent you from being a fair and impartial juror? Can you weigh their testimony just as you would any other witness?
  
- The only evidence that you are to consider in this case will come from the testimony of witnesses and the exhibits that are admitted at this trial. Is there anyone who feels they cannot put personal feelings or knowledge aside and rely only on the evidence presented at the trial?

# The Art of Jury Selection

## Group Questions

- News accounts, heard of the case?
- Anything about that knowledge influence you?





# The Art of Jury Selection

## Group Questions

- Ever serve on a jury? (Difference between civil and criminal)
  - Able to reach a verdict?
  - Positive experience?
- Know anyone else on the jury panel?
- Military service?
  - Law enforcement service?
  - EMS/Fire Dept. Service?
  - Teacher/ Pastor/ Social Worker?

# The Art of Jury Selection

## Explain what happens during the trial

- ❑ BEHAVIOR OF LAWYERS DURING THE TRIAL

- ❑ BENCH CONFERENCES

- ❑ Redactions on videos

- ❑ INABILITY TO SPEAK TO JURORS DURING TRIAL



# The Art of Jury Selection

- Burden of proof
- Other standards of proof in non- criminal cases
- Not any, not all, beyond a reasonable doubt
- Raise your hand if you agree to hold me to *that* standard, no higher- no lower

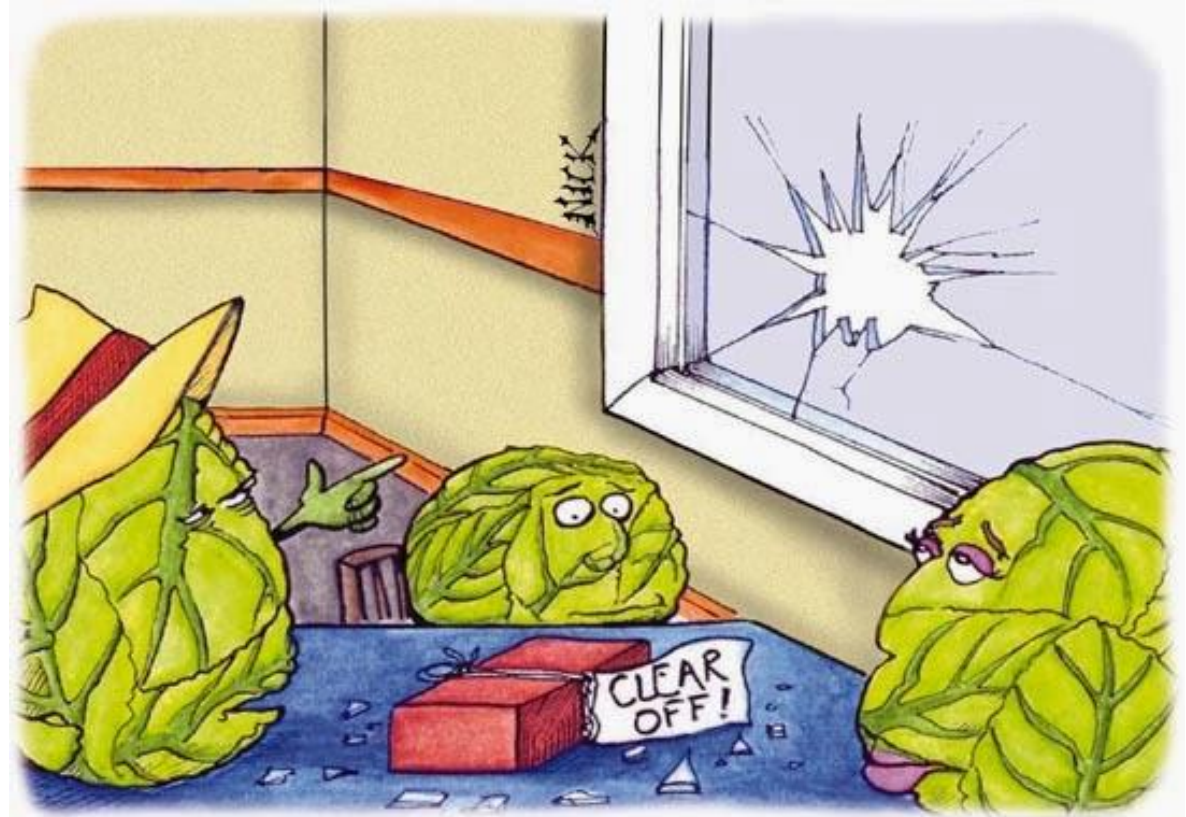


# The Art of Jury Selection

## Issue Spotting

### Potential Unpopular Crimes

- ❑ Does anyone have a belief that this type of case should not be brought into court for determination by a jury?



*"Son, it's time we told you. There are some people in this world who don't LIKE brussels sprouts..."*

# The Art of Jury Selection

## Evidence Presented by the State (Elements of a Crime)



No one sitting as potential jurors would be a juror if you were there on those \_\_\_\_\_  
dates of 2023.... WHY?

# The Art of Jury Selection

- Because you would be a witness instead of a potential juror.
- The State can't physically take you back and actually put you on the scene of these events.
- Without being there you will never know beyond **any** doubt or **all** doubt what happened.
- Simply beyond a **reasonable** doubt.



# The Art of Jury Selection

*Anyone watch shows like CSI etc.?*



# The Art of Jury Selection

- End of the case the judge will instruct you, raise your hand if you agree to follow the law?
- Even if you disagree with the law?
  
- Raise your hand if you agree to NOT hold the State to a standard **higher** than reasonable doubt?
  - Should have got fingerprints
  - Should have done...("CSI Standard")?





# The Art of Jury Selection

- Have any of you ever been a victim (friend/family) of a crime?
  - Was the person caught?
  - Were you satisfied with the outcome?
  
- Can you put aside any feelings you might have about that incident, listen to the evidence presented here, and then render an unbiased decision?
  
- Do any of you know any of the other members of the jury panel? Would that relationship have any influence on your decision or make it difficult for you to remain firm in your beliefs regarding the guilt or innocence of the Defendant?

# The Art of Jury Selection

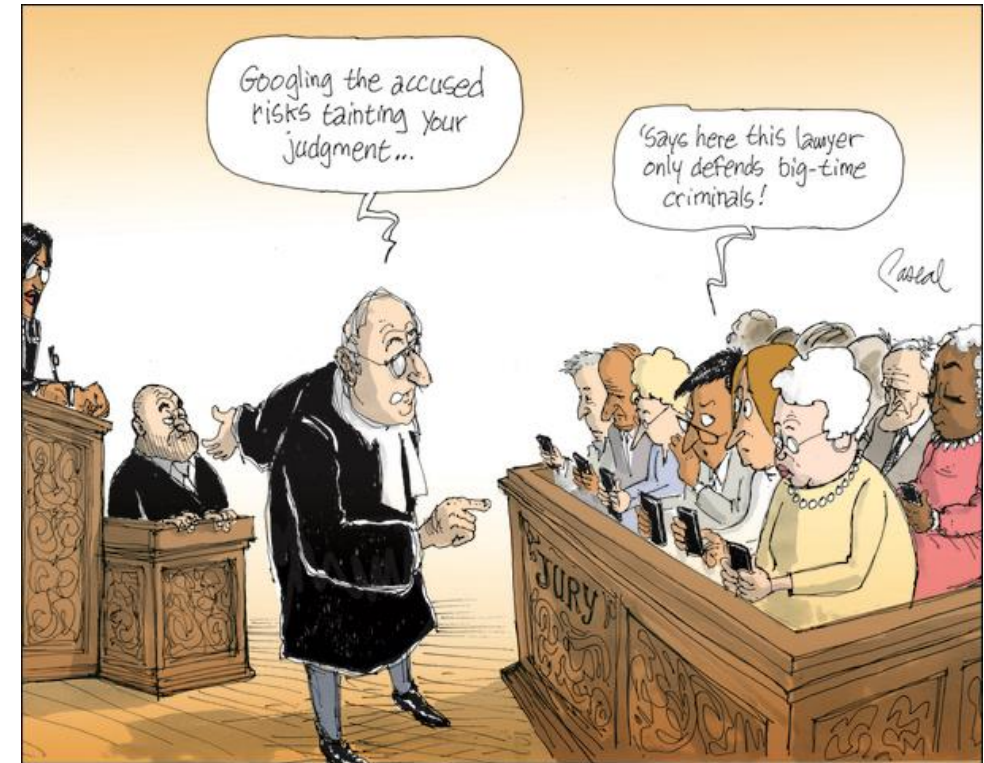
- In appropriate cases, inquire whether any of the prospective jurors (or family members, etc.) have special education, knowledge, or training regarding any fields of special expertise involved in the case (e.g., QuickBooks on embezzlement case).
- Is there anyone who feels that, because of a religious or any other reason, you should not sit as a juror and decide whether this defendant is guilty?

# The Art of Jury Selection

- ❑ In this jury trial, if selected, the jurors are determining if the State has met its burden of proof beyond a reasonable doubt, the penalty is decided by the judge if there is a conviction. The penalty is determined by the Court from a broad range of possibilities. Our Kansas legislature has relieved jurors from the burden of determining penalties and in fact, it is improper for you to consider potential penalties when you make your determination of Guilt or innocence.
  
- ❑ If you sit on this jury, you are not to let sympathy or prejudice enter into your decision. Your decision is to be made solely on the testimony of witnesses and physical evidence.
  
- ❑ Is there anyone who cannot do that?

# The Art of Jury Selection

- ❑ You will be instructed by Judge \_\_\_\_\_ not to do your own research or investigation after hours during this trial. Is there anyone who might have trouble resisting the temptation to do your own research? This includes research, talking to others etc.



# The Art of Jury Selection

## GENERAL WRAP UP:

- If at the end of the trial the State has not met its burden of proof, would any of you find it hard to return a verdict of not guilty?
  
- On the other hand, if at the end of the trial you believe beyond a reasonable doubt that this Defendant is guilty, **raise your hand** if you would be able to find the Defendant, “\_\_\_\_\_”, you are guilty."
  
- Is there anyone who has something you believe you should say but, because I have not asked the right question, you have not done so?

# The Art of Jury Selection

- ❑ While we have been talking, has anyone had anything come to mind you wish you would have said but didn't get a chance to answer?
  
- ❑ Can anyone think of any reason why you would not be able to serve as a fair and impartial juror in this case?
  
- ❑ Ladies and Gentlemen, I appreciate your attention and your straightforward answers to my questions.
  
- ❑ Your Honor, the State passes the panel for cause.

# The Art of Jury Selection

## **ISSUE SPOT: ADDRESS ISSUES OF CONCERN WITH THE JURY**

When you heard the charges, were there any of you who thought this is NOT a type of case that should be brought to court for a jury determination?

EXAMPLES

# The Art of Jury Selection

## Issue Spotting/ Drawing the Sting – CHILD ABUSE/CHILD SEX CASE

**This case involves topics most of us are uncomfortable speaking about. I imagine many of you thought about that when I first read the allegations.**

*Example of my discomfort when I started teaching elements of rape at KLETC. Ask in your answers to try to work through your discomfort.*

I said earlier this case has allegations of offenses that some individuals are not comfortable talking about on a regular basis. We don't have a choice or that luxury when we are hearing evidence in a criminal case.

When I read the charges against \_\_\_\_\_, was there anyone who thought to themselves, *I don't think I could be fair and impartial on those types of charges?*

**This case involves allegations of sexual abuse: the allegations involve the defendant and his daughter when she was under the age of 16.**



# The Art of Jury Selection

## Issue Spotting/ Drawing the Sting – CHILD ABUSE/CHILD SEX CASE

- Is there anyone whose first thought is “I’ll bet the kid is lying?” Here we have “Another kid who has watched too much TV or is trying to get attention?”
  - IF YES:
    - Why was that your first thought?
- Does anyone here think that molestation or sexual abuse is an *easy* allegation for a child to make?
- Anyone believe just because a report is made, charges are filed?
- Anyone think child sexual abuse allegations are overblown?
- Raise your hand if you believe that child molestation happens?
- Many of you raised hands saying they thought it happens- (loop?)

# The Art of Jury Selection

## Issue Spotting/ Drawing the Sting – CHILD ABUSE/CHILD SEX CASE

- Has anyone here **personally observed** a child being molested?
- If you haven't seen it, but you know it happens, why is it that you believe it without seeing it without your own 2 eyes?
- Is it fair to say that we know that molestation happens because people give believable accounts of sexual abuse?*
- Raise your hand if you agree if it is difficult for adults to talk about these topics, it might be difficult for kids to talk about it.**
- Has anyone ever heard the term DELAYED DISCLOSURE**
- Fancy term for keeping a secret
- Promise will not ask what it is, but how many of you have ever kept a secret?
- I want you to think of the most serious secret you have ever kept (*I am not going to ask the specific secret*)

# The Art of Jury Selection

## Issue Spotting/ Drawing the Sting – CHILD ABUSE/CHILD SEX CASE

- Juror *x*, how long did you keep that secret?
- Why did you keep the information secretive?
- Did anyone eventually disclosed the secret?
- How did you choose the person to whom you would disclose?
- Did you tell the *entire* secret at first or did you slowly disclose bit by bit?
- Why did you disclose this way?
- As you told the secret, were you concerned about how the person you were telling would react?
- Why were you concerned?

# The Art of Jury Selection

## Issue Spotting/ Drawing the Sting – CHILD ABUSE/CHILD SEX CASE

- How did the person that you told respond?
  
- How did you feel about telling?
  
- In order to preserve the secret, did you ever have to lie, either directly or by omission?
  
- Why did you lie?
  
- Did the fact that you kept important information a secret mean you were dishonest?
  
- Allegations also involve members of a family.. anyone think of why secrets might be kept within a family?
  - Don't want to hurt marriage
  
  - Love that person still
  
  - May not feel safe to tell

# The Art of Jury Selection

Issue Spotting/ Drawing the Sting – CHILD ABUSE/CHILD SEX CASE

RAISE your hand if you agree, just because something is kept a secret, does not mean it did not happen.

Who here agrees if someone keeps a secret, that does not necessarily mean they are or were being dishonest?

Certainly not talking about an allegation of sexual abuse, but ever a situation where something happening in the family may wait until it is safe to tell someone?

# The Art of Jury Selection

Issue Spotting/ Drawing the Sting – CHILD ABUSE/CHILD SEX CASE

- Share a story where you did not want to believe something had happened (medical diagnosis)
  
- Anyone here know someone who perhaps got a bad diagnosis and it was just too painful to deal with so were in denial?
  
- Were there signs of the illness or event that came before the official diagnosis that were ignored?
  
- Why do you think people *might ignore warning signs*?

# The Art of Jury Selection

## Issue Spotting/ Drawing the Sting – **WITNESS CREDIBILITY**

- Raise your hand if you believe you are a good judge of character? Credibility:
- So if a person were to describe a sexual assault (or other crime) to you, how would you figure out whether they were telling you the truth?
- Generally, what do look for to evaluated someone's credibility?**
- To Judge Credibility- look at their demeanor:**
- Sir, if I were to ask to you stand up and to describe your last consensual sexual encounter to these jurors, how do you think you would feel?
- Don't worry, I'm not going to ask you to do that, but even the thought of being asked to do that . . . do you think it would make a person uncomfortable?

# The Art of Jury Selection

Issue Spotting/ Drawing the Sting – CHILD WITNESS CREDIBILITY

And how might that *discomfort* be displayed by a witness on the witness stand?

How do you think it would affect witness behavior?

Be able to look you in the eye?

Might have trouble answering questions?

Fidget with clothes or jewelry?

Do you think that those indicators of nerves are indicators of lying?

Why not?



# The Art of Jury Selection

## Issue Spotting/ Drawing the Sting – CHILD WITNESS CREDIBILITY

- Would you agree that if someone is testifying, if they don't look you in the eye, that may not indicate dishonesty?*
- Get a few jurors to say that not looking you in the eye, quiet voice – not an indicator of lying because this would be really hard to discuss*
- Children Lie:**
- Raise your hand if you have children? How many children? What is the age range of your children?
- Have your children ever lied to you? What sorts of things have your children lied about?
- When your child was young, between the ages of 4-6, how could you tell if he was lying?
- When lying, could he keep a consistent story intact throughout several recitations? In general, do you believe that adults are more sophisticated liars than children?

# The Art of Jury Selection

Issue Spotting/ Drawing the Sting – CHILD WITNESS CREDIBILITY

- Would you be surprised if a child victimized by abuse had emotional or behavioral problems?
- Would you be surprised if a child victimized by abuse became involved with drugs or alcohol? Would you be surprised if such a child became promiscuous? Why not?
- During your childhood, how many members of this jury panel were ever picked on by a bully?
- From the show of hands, it appears many of you have been picked on by a bully.

# The Art of Jury Selection

Issue Spotting/ Drawing the Sting – CHILD WITNESS CREDIBILITY

- Now, how many of you ever reported the bullying to a school, teacher, parent, or anyone else who could protect you from the bully?
  
- Why not?
  
- Have you ever testified in court? How did you feel? Were you nervous?
  
- Why were you nervous?
  
- Based on your experience, do you believe a child testifying in court might also be nervous? Do you believe most adults are uncomfortable speaking in public about their sexual history? Why?

# The Art of Jury Selection

## Issue Spotting/ Drawing the Sting – CHILD WITNESS CREDIBILITY

- Raise your hand if you have ever had to tell someone about a traumatic or painful event, such as a death in the family?
  
- The first time you spoke of the event was it difficult to speak without displaying emotion? The more times you had to speak of the event, was it easier or more difficult to speak of the event without emotion?
  
- In judging credibility of testimony: would anyone take into account a child's lack of sexual experience and **ability** to describe events?
  
- Does anyone believe in order for their to be proof of a sexual assault, there has to be physical evidence?
  
- Can anyone think of a reason why there might not be **physical evidence**?

# The Art of Jury Selection

Issue Spotting/ Drawing the Sting – INCONSISTENT STATEMENTS/TRAUMATIC EVENT  
WITNESS DEMEANOR ON THE STAND

## (INCONSISTENT STATEMENTS)

A JUROR MENTIONED ONE WAY TO JUDGE CREDIBILITY WOULD BE THE  
CONSISTENCY OF STATEMENTS:

- I would like each of you to think of a major life event that has happened in the last TEN YEARS. Take a moment... Raise your hand if you have thought of your event. Everyone have an event?
- Juror X- What is that event? (find someone who says wedding or birth)
- Do you ever discuss that event with other people? Who?

# The Art of Jury Selection

Issue Spotting/ Drawing the Sting – INCONSISTENT STATEMENTS/TRAUMATIC EVENT

- Do you tell the story of your *wedding / birth / death* the same way every single time that you tell it?

Why not?

How do you decide what details you're going to give?

Is the way that you're telling the story affected at all by your mood that day?

# The Art of Jury Selection

Issue Spotting/ Drawing the Sting – INCONSISTENT STATEMENTS/TRAUMATIC EVENT

- Childbirth analogy –Raise your hand if you are a biological parent?**
  - **Father’s experience vastly different than the mothers**
  - **No one remembers every medical person in the room**
  - **How accurate do you think their measures of time would be?**
  
- And I take it that there were other people present during the event?
  
- Do you think that they describe the event the same way that you do?
  
- Why wouldn’t they describe it exactly the same way?
  
- So if you don’t tell the story the same way every single time, how would someone know that you aren’t lying?

# The Art of Jury Selection

Issue Spotting/ Drawing the Sting – **INCONSISTENT STATEMENTS/TRAUMATIC EVENT**

- Is it fair to say that no one – except a seasoned liar – would tell the same story the same way with the same words every single time?
  
- Do those inconsistencies mean that a person is lying?
  
- Well, if you don't tell the story the same way as another witness, does that mean that *either* of you are lying?
- Why not?
- Raise your hand if you agree we as adults don't always tell the story the exact same way.
  
- Who agrees it depends on the audience?
  
- Who agrees that does not mean we are unreliable, we are human.



# The Art of Jury Selection

## Issue Spotting/ Drawing the Sting – INCONSISTENT STATEMENTS/TRAUMATIC EVENT

Would anyone have a concern if when someone told a story, THE FACTS WERE EXACTLY THE SAME EACH TIME?

*If there are inconsistencies in what a witness has said on prior occasions or between how 2 witnesses describe the same event, is that dishonesty?*

*Why not?*

When talking about sexual experience, even as adults: is there any juror here who could recall every single sexual experience that you have had with your spouse or partner in the last lets say 3 years?

Would you be able to know exactly....

- Who initiated it?
- The exact time of day
- How long it lasted
- If others were in the house, where everyone else in the house was located?

So if an adult would have difficulty remembering that, raise your hand is there anyone **who would hold a child** to the standard of remembering **every single act of molestation that occurred** over a period of years?

# The Art of Jury Selection

Issue Spotting/ Drawing the Sting – MEMORY/ TRAUMATIC EVENT

- Who here has ever gone to a haunted house as a child?
- How many haunted houses did you go to as a child?
- Was it scary?
- (Pick a juror out who says the experience was scary)
- Mrs. Smith, you're going to be a witness about your haunted house experience, okay?

# The Art of Jury Selection

## Issue Spotting/ Drawing the Sting – MEMORY

- Do you remember your visit to the haunted house?
- What was the month, day and year?
- What time of day was it?
- What was the address of the haunted house?
- What group sponsored the haunted house?

# The Art of Jury Selection

## Issue Spotting/ Drawing the Sting – MEMORY

- Tell me some of the things that you saw in the haunted house.
- Do you remember the *exact order* of scary things that you saw?
- Do you remember the costumes worn by *every single person* in the haunted house?
- Could you tell every single event that occurred in the haunted house?
- Why not?
- Does the fact that the experience **was scary** affect your ability to remember every single detail?

# The Art of Jury Selection

## Issue Spotting/ Drawing the Sting – MEMORY

- When you were going through the haunted house, did you ever ask yourself “how much longer” *or* did you feel at the end “thank God I’m out of here!”
  
- Would you agree with me that something that makes the haunted house a little less scary is the fact that *you know that it is going to end?*
  
- And that you were going to a safe place at the end of your haunted house experience?

# The Art of Jury Selection

## Issue Spotting/ Drawing the Sting – MEMORY

**(now pick another juror who will critique Mrs. Smith's testimony)**

**Mr. Jones, let's talk about Mrs. Smith's testimony**

- Do you believe her when she tells you that she has been to a haunted house?
- Now it seems to me that there are a lot of things she doesn't remember, so how is it that you believe her?
- Do you expect her to be able to recount every single detail?
- How do you think that the passage of time affects her memory?
- How do you think that her fear while in the house affects her memory?

# The Art of Jury Selection

## Issue Spotting/ Drawing the Sting – MEMORY

- Do those factors, however, make her unreliable?
  
- Does her inability to remember every single detail affect your ability to believe her?
  
- What if Mrs. Smith told you that there were 3 ghosts in the haunted house and another person who said that he went through the house said that there were only 2 ghosts.
  
- Would that affect your ability to believe Mrs. Smith?
  
- Why or why not?

# The Art of Jury Selection

Issue Spotting/ Drawing the Sting – MEMORY/ TRAUMA

- Raise your hand if you believe a scary or traumatic event, might that affect someone's ability to recall every single detail?

Especially if they didn't know how the event was going to end?

- Who believes the person would still be capable of being truthful, accurate reporters of the event?

*You could also use the example of being in a car accident, since it is often very scary and happens quickly, and if everyone could agree as to what happened, we wouldn't need investigators and police.*



# The Art of Jury Selection

## Issue Spotting/ Drawing the Sting – DOMESTIC VIOLENCE CASES

- Have you or has any member of your immediate family been the victim of a violent crime?
- Have you or has any member of your immediate family ever been the victim of any other crime that you believe could affect your ability to serve as an impartial juror in this case?
- How many of you have ever witnessed a violent incident?
- Have you or anyone close to you been involved in a fight for which the police were called? → Were you happy with the police's handling of the situation?
- How many of you have ever called the police because you were afraid?
- Have you ever called the police to protect others from violence?

# The Art of Jury Selection

## Issue Spotting/ Drawing the Sting – DOMESTIC VIOLENCE CASES

- How many of you have seen a normally calm person become violent after using drugs or alcohol?
- Do you think that using drugs or alcohol should excuse committing a crime?

### **Other Generic Questions**

- Do any of you have any training, education, employment or other background in the legal field, including work as an attorney, paralegal or secretary?
- Do any of you have any training, education, employment or background in law enforcement at either the local, state or federal level?
- Have you or any member of your immediate family ever been arrested for or prosecuted for any offense and believe that it could affect your ability to serve as an impartial juror in this case?
- Have you or any member of your immediate family ever been prosecuted by the District Attorney/County Attorney's Office?

# The Art of Jury Selection

## Issue Spotting/ Drawing the Sting – DOMESTIC VIOLENCE CASES

- Have you or any member of your immediate family ever had a negative experience with law enforcement, including during traffic stops, that could affect your ability to serve as an impartial juror in this case?
- Do you have any negative feelings or animosity against police officers or the government? If so, could they affect your ability to be fair and impartial as a juror?
- Is there anyone who would give less weight to the testimony of a witness simply because that person is a law enforcement officer?
- Witnesses who are expected to testify include the following: ...
- Are any of you related in any way or otherwise acquainted with any person who has been identified as a witness?

# The Art of Jury Selection

## Issue Spotting/ Drawing the Sting – DOMESTIC VIOLENCE CASES

### Questions Regarding Bias and Following the Law

- How many of you believe that crimes which take place in the home should not be prosecuted?
- Do you think you can tell an abuser by how he looks or acts?
- Is it okay to beat someone up because of things they say to you? Name-calling? Criticism? Jealousy?
- Are there any religious, philosophical or moral reasons why you could not find the defendant guilty if you believed he had committed the crime?
- *(For female prosecutors)* How many of you feel that because I am a woman and prosecuting this case, that I must be on a women's rights bandwagon?
- How many of you think that a victim must be married to be a battered woman?

# The Art of Jury Selection

## Issue Spotting/ Drawing the Sting – DOMESTIC VIOLENCE CASES

→ How many of you understand that the District Attorney/County Attorney's Office is bringing the case against this defendant? That this is not like a civil case where one person files against another? That this is not the victim "pressing" charges against the accused?

### **Questions Regarding Interpersonal Violence**

→ How many of you feel that crimes between family members should be treated differently from other crimes?

→ Do you know who is covered under the Kansas definition of family or household member?

[Provide definition of Family Household member]

→ How many of you feel that it is wrong for the State of Kansas to get involved in a domestic violence case?

→ Do you feel that domestic violence cases should be handled within the family instead of by the courts?

# The Art of Jury Selection

## Issue Spotting/ Drawing the Sting – DOMESTIC VIOLENCE CASES

Do you feel that prosecuting domestic violence crimes are a waste of taxpayers' money?

→ Do you feel that defendants in domestic violence cases should be treated more leniently?

→ Do you feel that domestic violence victims deserve less protection than victims of crimes committed by strangers do?

→ What do you think constitutes a battery? A hit? A slap? A shove? Use of weapons?

→ What do you think makes someone violent? Do you feel that people must be provoked to become violent? Do you think that people can get violent over unimportant things?

→ How many of you think that a victim who reports a domestic violence crime might be pressured by the suspect not to testify? Do you think a victim might be afraid for her safety if she testifies?

# The Art of Jury Selection

## Issue Spotting/ Drawing the Sting – DOMESTIC VIOLENCE CASES

- How many of you think that it's possible for a victim to still care for the batterer after the abuse is over? How many of you are bothered by a victim who is willing to testify against a violent husband/boyfriend?
- How many of you think that children who grow up in a violent home are affected by witnessing violence?

# The Art of Jury Selection

## Issue Spotting/ Drawing the Sting – DOMESTIC VIOLENCE CASES

### Questions Regarding Victims Who will Testify for the Defendant or Not at All

- How many of you disagree with the State of Kansas's decision to press charges even if the victim does not want them to?
- How many of you think that the (insert state) has a responsibility to prosecute people who commit domestic violence crimes even when the victim does not want them to?
- How many of you feel the (insert state) is abusing their discretion or wasting taxpayer's money by prosecuting a case in which the victim does not want to participate?
- How many of you think a victim might feel that they cannot testify against their abuser out of loyalty? Fear? Love? Financial Dependence? Because of kids?
- How many of you are familiar with the term "drop the charges"? Do you think a victim should control whether or not a case is prosecuted? How many of you think that if a victim asks the (insert state) to drop the charges the (insert state) should automatically do so?



# The Art of Jury Selection

## Issue Spotting/ Drawing the Sting – DOMESTIC VIOLENCE CASES

- Does anyone believe if a victim doesn't seem to care if they are a victim that you should not convict if the evidence proves this case beyond a reasonable doubt?
- If the State proves this case beyond a reasonable doubt, how many of you would vote not guilty solely because the victim, for whatever reason, did not testify? Or testifies for the defendant?

### **Repeat Victimization**

- Have you ever heard someone ask, when talking about domestic violence, “Why doesn't she just leave?”
- Do you feel a victim “assumes the risk” if they stay in a relationship/environment where there has been previous violence?
- Do you think it is possible to continue loving someone that hurts you? Do you think someone should be held accountable for something that is illegal even if the victim has forgiven them?

# The Art of Jury Selection

## Issue Spotting/ Drawing the Sting – Stalking/ Protective Order

Raise your hand if you have known someone who had a PFA or Protection from Stalking issued against them?

Ms. Jones, you raised your hand, in your opinion, what that person treated fairly?

Anything about that experience cause you concern in serving on a jury with these allegations?

By show of hands, who here has had a friend, family member, co-worker or themselves been stalked?

Anyone sitting here ever have a family member, friend, or co-worker who was investigated for stalking?

Were they charged?

Effect your ability to serve on the jury?

By show of hands, who here, whether yourself or family, friend or co-worker has ever received a protection from abuse or protection from stalking order?

Does anyone on the panel have children?

**Juror by Juror**; how many children and ages of children (want to keep people with children)

# The Art of Jury Selection

## Issue Spotting/ Drawing the Sting – Sexual Assault Cases

Inform the jurors if they wish, the judge will most likely allow them to answer a question privately (with the attorneys) but not in front of other panel members.

Raise your hand if you have anyone close to you who has been victim or rape/criminal sodomy?  
this case has allegations of offenses that some individuals are not comfortable talking about on a regular basis. We don't have a choice or that luxury when we are hearing evidence in a criminal case.

When I read the potential charges against \_\_\_\_\_, was there anyone who thought to themselves, I don't think I could be fair and impartial on those types of charges?

### **SPECIFICS**

Is there anyone here who has ever been through a traumatic event, such as a car accident or physical injury, perhaps even a Robbery or burglary?

How did you respond right after it occurred? (Ask more than one juror to explain their responses to the trauma; you should get varying responses.)

# The Art of Jury Selection

## Issue Spotting/ Drawing the Sting – Sexual Assault Cases

Mr. Jones, you described a response to your situation which was different than Ms. Green's response to hers.

Do you think different people react in different ways to stress?

After the traumatic event, were you able to think clearly?

Did you rely on your instinct to get through it?

After the emergency was over and you had some time to reflect, did you come up with things you wish you would have done differently?

Did you react the same way you had thought you would?

Do you think that rape victims might respond in a variety of ways to trauma as well?

Can you make a room in your mind for that possibility and not judge the victim based on the way you think she should react?

Is there anyone here who knows someone who has been the victim of some kind of a sexual assault? (There should be more than one person raise their hand.)

# The Art of Jury Selection

## Issue Spotting/ Drawing the Sting – Sexual Assault Cases

### **Delayed reporting issues:**

In any of these situations, did the victim either never report the crime, or report it after some time has passed?

Can you think of any reasons why a victim might not report a rape to the police immediately after it occurs?

Do you agree that discussing the intimate details of such a humiliating act with total strangers might be more than a traumatized rape victim is capable of right after the rape?

Mr. Jones, could you run to Ms. White and tell her about the last sexual experience you had with your wife? (Obviously, you interrupt him before he does.)

Do you see how difficult it is to talk about an event involving sex, even when the sexual act is performed with consent and love?

Is there anyone here who has ever had someone come to them and disclose that they were sexually assaulted?

Did the person provide proof to you?

Did you believe him or her? Why?

# The Art of Jury Selection

## Issue Spotting/ Drawing the Sting – Sexual Assault Cases

### Appearance of the Defendant

Do you think you can tell by looking at someone whether he committed a sexual assault?

Does a person who commits this offense have certain characteristics?

Such as:

physical characteristics/background/ race/ economic level/ type of job/ gender/ age

Do you agree that there is no one certain or specific profile of a person who commits sexual assault?

Ask similar questions about the appearance of a victim and their expectations about how she should look.

Have any of you seen shows on TV about rape?

Agree that it is often portrayed as being very violent?

Do you think that rape is always committed in a violent manner?

# The Art of Jury Selection

## Issue Spotting/ Drawing the Sting – Sexual Assault Cases

### VICTIM RESPONSE

Is there anyone here who knows someone who has been the victim of some kind of a sexual assault? (There should be more than one person raise their hand.)

Do you think all sexual assaults are reported?

What are some of the reasons a victim of sexual assault might not report the crime? (threats, guilt, embarrassment, fear)

Understand that under our law, one form of rape is where the complaining witness is incapable of giving consent because of the use of alcohol?

Anyone know someone who drank so much was unable to make informed decisions?

Do you think it is unusual for a victim of sexual abuse not to report it?

# The Art of Jury Selection

## Issue Spotting/ Drawing the Sting – Sexual Assault Cases

### VICTIM RESPONSE

Mr. Jones, could you run to Ms. White and tell her about the last sexual experience you had with your wife?

(Obviously, you interrupt him before he does.)

Do you see how difficult it is to talk about an event involving sex, even when the sexual act is performed with consent and love?

Can you understand how difficult it is for a rape victim to discuss a rape with total strangers?

Is there anyone here who has ever had someone come to them and disclose that they were sexually assaulted?

Did the person provide proof to you?

Did you believe him or her? Why?



# The Art of Jury Selection

Issue Spotting/ Drawing the Sting – Sexual Assault Cases

## **VICTIM RESPONSE**

Has anyone here ever heard the expression “rolling a drunk”?

What does it mean?

Why would someone chose to rob a drunk person? (won't get caught, easy target)

Choose a person when he or she thinks it is likely they will get away with it, is it any less of a crime?

## **The victim's responsibility**

Do you think that the victim of a rape is ever responsible or deserves what happens to her?

Can she provoke a rape by her appearance? How?

# The Art of Jury Selection

Issue Spotting/ Drawing the Sting – Sexual Assault Cases

## **VICTIM RESPONSE/VICTIM RESPONSIBILITY**

Can she provoke it by being in the wrong neighborhood?

What if the victim's actions made it easier for her to be raped?

For example, what if she got into a car with the rapist?

What if she accepted a date with the rapist? Is she responsible for the rape?

Is it any less a crime because she made herself vulnerable to the assault?

# The Art of Jury Selection

Issue Spotting/ Drawing the Sting – Sexual Assault Cases

## **VICTIM RESPONSE/VICTIM RESPONSIBILITY**

Suppose your house is broken into and your property is stolen.

Raise your hand if you believe that is that a crime?

Now let's suppose that you left your door unlocked.

Do your actions in leaving the house open makes it any less the crime of burglary?

Can you understand why the burglar might choose your house over another house, since it is more vulnerable to the crime?

# The Art of Jury Selection

Issue Spotting/ Drawing the Sting – Sexual Assault Cases

## VICTIM RESPONSE/CONSENT

What are the ways that a person indicates that they do not consent to sexual activity?

Agree that there are different ways of indicating lack of consent?

Agree that a victim's ability to communicate might be affected by things such as fear, personality, age, intimidation?

Is saying “no” enough to indicate there is no consent?

Does a clear, unequivocal “no” mean “no” or does it mean keep trying until it changes?

Does a victim have to physically resist in order to show she does not consent?

# The Art of Jury Selection

## Issue Spotting/ Drawing the Sting – Sexual Assault Cases

When watching television, crime shows show a range of physical evidence, dna, fingerprints, CSI effect.

Understand not every case has physical evidence?

Who here understands that if there is a rape, there may not be physical evidence?

Who here understands that if there is a rape, there may not be physical evidence?

Do you believe that a victim must sustain physical injuries before you can say there has been a rape?