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SUMMARY KEYWORDS

jury, case, courtroom, challenges, questions, people, voir, jury selection, person, trial, type, jurors, courthouse, judge, individual, members, prosecutor, jury selection process, strike, opposing counsel

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Hi, my name is Adam Murray, and I'm a deputy district attorney here in the 358th. District Court in ector. County Odessa, City of Odessa, Texas. And I'm actually sitting here in a jury box in that courtroom. And we're talking about today, is jury selection in a criminal case? Or how do we pick those 12 women and men who sit in this box and decide the fate of their fellow man, the United States has a unique system, and that would do it the jury system in England, they also have a jury system, but it's only used in very rare cases. Most of civil law jurisdictions, they have no jury, it's a foreign concept. And we believe that most of us, mostly attorneys in this country, believe that the jury system is what allows to have that equal playing field. You know, in some places, it's easy to sway preference with a particular judge or particular magistrate based on those past relationships. But by taking 12 men and women from from a pool and putting them in a box to allow them beside the facts of the case. It definitely evils that playing field and takes away that element of having the benefit of that pre existing relationships. So how do we choose those best individuals to sit in a box while we're not trying to find the 12 individuals who are most likely to render a fair verdict, we're trying to find those 12 individuals that are most likely to go along with what we want them to find who's going to be the best juror for our particular side, that's part of that adversary system. That's why one side has their strikes, and the other side has their strikes. And what's left, hopefully, is that, and that even field that will provide for that justice. And so we talked about some of the jury selection, just basic tips. First of all, recognize that in selecting a jury, it's part of that overall effort to persuade the jury, you have to realize that it actually starts long before you get to the courtroom, it starts even as you're driving to the courthouse, and everybody who's on that initial denier that's called to come to the courthouse. It for most of them, that's unique experience, it's really, most of them don't walk into that courtroom every day on that courthouse every day. And so they're taking it all in, and they're watching everybody. And if they see you in a suit, they're gonna know that you're probably going to be one of the attorneys. And so if they see that you cut somebody off in traffic, or if you stole a parking space, or if you're

driving a flashy car, all those different things can be signs to them. That before you even start with your voir dire, because in Texas, we say we're dire, even though the other 49 states save what DeRay or some other thing in Texas, it's for dar, even before you start, they're going to already have some type of you judgment on you. And what you want to have them is have them on your team, you're trying to find those members of the jury that are going to be on your team, and are going to be most likely to align with your advocacy. So another part of that overall strategy is to show up early and look prepared. Most people are not excited about jury duty. And when they show up for jury duty, and they're delayed, that doesn't make them very happy. They every minute they spin in that courtroom, they think that they're spinning away from their work or other things they could be doing. And it may not matter whether or not you're in the courtroom or not. From a technical perspective, it might be that you're waiting on the clerk to do something or the judge to do something. But they're gonna see you and hold you accountable if you're not on time. So if they're supposed to show up at nine you show up at 845 because nothing has been better for me that is sit at the at the Council table looking completely prepared. Have the jury come in frustrated about having to wait and then see the opposing counsel come in 15 minutes later looking slovenly and go into the desk and trying to find everything. Right then that jury is already blaming that other Attorney for the reasons why their time is being wasted it whether or not it's true or not, it doesn't matter. appearances are everything. And this is really about making a presentation. If you realize that jury is the most important group in the room, it's not the judge. It's not the defendant. It's not the council's the juries whose most important and everything you should do should be about how it impacts them. Along those lines, how you can I guess help build rapport and put them on the team. Some courthouses are particularly hot, some courthouses particularly cold, something I found effective is I can look and see if the women are shivering or the men are shivering. And I you know, I can offer and say stand up and say, Hey, is anybody hot or cold is your way I can adjust the thermostat. And again, they see you as the person that cares about them and their needs and you're starting to continue to build that rapport. Another thing to do, I think in building Air Force is to look like a news anchor. That's what I tell people so look like a news anchor. As far as your dress or attire light shirt, conservative tie, dark suit.

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Sometimes people like To express themselves in their attire, or the way they dress, but the courtroom is not the place for that. It's a distraction. And what you might think is cutting edge fashion. Somebody else might think is pompous, the news agencies have tons of PR and marketing gurus, and they spent a lot of money to determine that perfect appearance for their news anchors that it's going to appeal to the widest audience across the country. And so if you're trying to figure out what to wear, look at what they're wearing, that's a pretty good guide, actually had an associate of mine who showed up to a court hearing. And he was trying to be as young guys looking very fashionable. And he's wearing hot pink and purple striped socks. And I was about ready to rip his head clean off his shoulders. And I sent him out of the courtroom, and I

banned him from the courthouse that day. And I was livid. Because something like that is going to make it's going to reflect on you, you don't want the jury focusing on the color of your socks, no matter how fashionable they are, you don't want focusing on the color of your socks rather than your case. Be prepared. Now. When I say be prepared, a lot of times people do half measures on preparation for trial, you have to realize that going to trial is the same as going to battle. And you just have to backup and one of the military terms that I've learned is eliminate a single point of failure. If within your plan, you have a single point of failure or something that could go wrong, Murphy's Law says it will go wrong. So make sure that you have a backup plan. If you have a PowerPoint presentation, for example, that you're going to use for your voir dire. And it might be that the power goes out, it might be that your computer doesn't work, it might be that the bulb goes out, there's a lot of different things that can happen. So have backups, have your backup slides, and posters already prepared, so that if your PowerPoint slides presentation fails, you can pull those up and continue with your presentation seamlessly. You don't want to have some type of small mistake like that messing with your head and throwing you off because the jury will see it and they'll sense it. And it will reflect negatively throughout the entire presentation of your case. So eliminate that single point of failure. Another thing is, as far as being prepared, is be prepared on who you want for your jury. Before you ever walk into that courtroom. It's it's certain jurors, certain profiles of jurors are better for certain types of cases. The Civil lawyers have learned this over the years. And there is a entire cottage industry on being able to identify who those perfect jurors are. And it's really not as expensive as you might think. There is a service called a jury that you can go where basically you take your faxes, you do two one pages, your facts of the case, as you believe them. your opponent's facts as you believe that they'll be presented. And they send this out to about 100 different participants, and they read the facts. And then you get a profile backwards says okay are these hundreds of participants, here's your ages, here's your demographic, his educational background, here's how they felt and thought about this particular type of case. And then you can use that in advance to help you build your Intel or your background information. So that when you walk in and pick that jury, you already have an idea of who you're going to be looking for. Another idea along the same lines is to do a mock trial. I've done mock trials where the basically it's like these marketing, they set them up with these marketing type firms. But they'll bring in 20 people cross section of the community, the put them in the room, you can present your case, you can have the both sides, entire thing is videotaped. And then you have a session afterwards, we talked about the strengths and weaknesses. What went over well, in your opening statement went over poorly in your opening statement, and that type of thing. Whole thing cost a couple grand now I know if you're a prosecutor or court appointed attorney, the idea of being able to have a couple of grand at a mock trial is probably far fetched. But there's no reason you can't have a poor boy mock trial. And by that I mean solicit your family and friends who don't have involvement loo community, bounce ideas off of them. And you can come up with your own type of testing your sounding board in advance. So you'll know what arguments are going to work best with what types of people and what type of people are going to care most about the factors in your case. Another thing we'll talk about, whenever

you're looking at the jury selection process is a lot of times as you're sitting there and as you're walking into the courtroom, you'll have an opportunity to see them their entire person. Usually whenever they're actually sitting in the courtroom, you only see them from the chest up of the head up. But a lot of times when they're walking in, there might be things that click to you

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and you'll recognize whether or not they might be a good jury for your particular case. There's nothing worse for me as a as a trial attorney than to pick a juror have a jury selected and then have member of the selected juror come Walk up into the jury box and see that you know, based on their pants or their cut off shorts, or whatever their other attire is that I wouldn't want to have chosen them for my, for my jury. One particular case is there's this lady that we picked for a trial, she stood up, she was wearing sandals, they were made out of woven hemp rope. And she, I mean, she looked like she probably smoked marijuana on a daily basis, that's not somebody that you want for a drug possession case, most likely. So make sure you know, check their shoes as my rule, look at them as you're coming in and kind of evaluate the totality of the person as you're walking again, before the selection process even starts. Because once it starts, you won't have attraction and the ability to do that. The other thing is to, again, following up with Be prepared is have everything you need for your notes in your selection charts ready, it is very difficult to stand at a podium in those courthouses that have podiums don't all do, and have a selection chart big enough to cover the entire room. And if you don't have it prepared in advance, it's you're not going to be effective with your note taking. And usually what I use if is just a piece of paper such as this, that has the rows and the seat numbers. And then you know, if they're sitting on the left and right, I'll actually fold the paces and type them together. So as I had them on podium, I can make my notes. And a lot of times is a mask my questions, I was putting pluses or minuses or I'll just put a quote of a particular thing to keep track of it. So I can use it in my selection process on my peremptory challenges. And there's some other technology out there. Nowadays, you have a jury, and some other apps that are available for Android or for iPhones. And some of those are pretty helpful. I tried using nigiri. I found that even though it's good in concept, I personally have difficulty asking the questions, watching the jury members, paying attention to everything, and then also trying to operate the iPad or the app. To me, it's important to focus on the jury, their facial expressions, their reactions, their actions that the people on this side have is statements that this person made, you know, all those types of nonverbal cues that you can pick up on are made more difficult. If you're trying to use an app or something like that, ideally, what you're going to have is you're going to have a spotter or two, and maybe one of those can operate the app or keep the notes in the chart. But that's, you know, it doesn't even have to be an attorney as your, your extra spotter could be a secretary or someone else. Investigator. But that way that as their as you're talking to one particular jury member, then they can be your denier number, they can be looking over at the other side of the room and talking to or seeing the the responses and the facial responses. And the rolling of the eyes of the shrugging of the shoulders, that comes

from a lot of those other other individuals other than the ones that you're talking specifically to that part of building rapport that I like to do is I like to be their teacher, again, whenever they come into the courtroom. For most of them, this is an unusual experience for them and they feel uncomfortable coming in, they don't know what's going on. Most of the time, they think whatever they see on TV is how it really works. And we know that that is absolutely not how it works. And so a lot of times I like to be the professor, the person that they listen to, to learn information, and I tried to establish, you know, the jury service I build start off by building a, a sense of duty and patriotism that comes to they're showing up and participating in our process of jury selection, explaining the process of retiring the steps and that they're not really selected, but they're stricken and that type of thing. And also the number of also explained the number of jury members that are going to be selected, you know, establishing the zone. What I mean by the zone is typically you'll have in a district court case you have 12 members of the jury, each of the attorneys have 10 peremptory strikes, which adds up to a total of 32 if you assume that there's going to be another 10 or 15 possible challenges for cause that means anything more than 50 members of an eye or panel, anybody above number 50 isn't going to be selected. But a lot of times there might be Nxd they'll wonder why why aren't they talking to me? Or why aren't they calling on me? or Why are the other people in the front row is gonna be wondering, Well, why are they just picking on us. And if you explain all those types of things to begin with, it's good and helps to alleviate some of that anxiety and get some more involved in the process. Now, the

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thing I'd like to make sure to do in the board or process is eliminate some of those misperceptions that they have as part of that education. You know, a lot of times again, they watched CSI and it's not just part of the jury selection process, but the entire trial process or their view of criminal justice system explained to them that you know, there isn't going to be DNA in every case you There aren't DNA test kits out in the field that give you a response and 20 minutes or less, it usually takes months to get anything back if the person is even in the system, and the truth about fingerprints and blood, spatter, and all those types of things that they see in the whiz bang show compared to reality, it kind of lower those, those expectations, so to speak, also like to give them the definition of a burden of proof. And obviously, the defense side wants to present it to be much more challenging than the prosecution does. And so there's different examples that I use for doing accepting and burning off proof. One of them I use is talking about perceptions. And this also not only is a burden proof, but also mixes in the concept of circumstantial evidence. And so I tell the jury is, you know, as you're sitting here in the jury, even though the windows might be closed, as we're sitting here in the courtroom, you can't really see outside. But sometimes you can hear a loud boom. And boom, sounds kind of like thunder. And you hear something that sounds like water, eating off the window panes. And you see somebody walk in the back door of the courtroom. And they're wearing a trench coat and a trench coats wet. And they have an umbrella and they're shaking out the umbrella and the umbrella is wet. Now you don't know what's going

on outside. beyond a reasonable doubt, you believe that it's raining, right? Everybody knows that it's raining outside? And there's one I usually that pretty often. And I'll ask the question, of course all say it's raining outside without me having to prompt them. I remember there was one trial I had. It was just it was in Maryland County, in Cameron, Texas. It was this great old courthouse is built in 1876. And they remodeled it with the original historical standards. And so it was like being Atticus Finch. I mean, as far as a two storey wood courthouse, it's a place where you love to try cases, and have these grand windows and went 20 feet up. And they were all covered in these wooden shutters. And there's one day that or one particular trial where I use that example of it's raining outside, in my voir dire to explain the concept. But then I also use it as a theme, and I brought it up a couple or two or three times during the trial. I remember during my closing argument, it was my closing argument on the case, just as I was saying, It's raining outside, you hear this crack of thunder outside, and it really did start raining. It was it was like the hand of God was intervening on our case. But you can offer explanations to people that are possible, right? Is it possible but it's not raining outside, it could be that, you know, there's a civil war reenactment going on. And that's the sound of thunder. And it could be that their sprinklers are broken. And this guy happened to be prepared. And he knew he was going to have to run to the sprinkler. And so he had the umbrella out. And all this happened to get me going while there happened to be the Civil War reenactment.

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All those things are

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possible explanations for what could be going on besides it raining. But none of those things are reasonable. And so that's what I used to establish the beyond a reasonable doubt if you have to come up with crazy concocted theories to doubt something and that's not reasonable. And that's not the standard we're held to. I've also seen attorneys use defense attorneys use either the stair step method or they'll use the football field method. And they'll talk about Okay, well on a football field, you have 100 yards. And in order for a police officer to stop you, he only has to have reasonable suspicion, which is somewhere around the 30 yard line. And in order to arrest you or to write a ticket, he has to have probable cause, which is somewhere around the 50 yard line. So that's the kind of level so to do or to get him into the courtroom or to be indicted, that's where you have to be the only to that 30 yard line. But then there's a higher level of proof, which is clear and convincing evidence. And that's that level of proof that is required for the state to take away children from their parents and a child protective services case. And then the absolute highest level of proof that you can ever see is proof beyond a reasonable doubt. And be yet proof beyond a reasonable doubt. It's not good enough to make it to the 50 yard line or the opposing 30 yard line. You have to make it all the way to the endzone and that's the difference. Ladies and

gentlemen, the level of proof. I've seen a lot of defense attorneys use that effectively or the stair step effectively, what I like to do and as a prosecutor we get to go first, because we have the we have the burden of proof. And so what I like to do is I find out what my opposing counsel likes to use. I'll go ask other prosecutors or other attorneys what method they use to explain probable cause or proof beyond a reasonable doubt during voir dire and then I'll still have thunder. I'll use their same whatever method they use. I use the same method But I dumb it down and switched around to benefit me. So the time they get up to standard talk there have nothing left to say. I actually had an attorney in a particular case, who when he got up, because we were passing each other, he said, Well, I don't have anything left to say because he stole all my lines, which was, you know, part of my strategy. Another thing that you'll you've seen as far as a definition or explanation, a burden of proof is the puzzle of the gun with the missing pieces. And it helps to explain to the jury that in order to meet that, beyond a reasonable doubt, we don't have to put in all the pieces of the puzzle. We don't have to answer all those different questions as prosecutors, we only have to show the elements of the offense. And so if they have random questions about x, y, and z, that were never answered, well, we don't have to answer those questions, as long as we establish the the elements of the offense. So there's two real purposes of jury selection. The first that we've talked about somewhat is building rapport. And that's very important, because I think a jury is much like fans at a football game, where if you're sitting in an endzone, if you're sitting, or if you're sitting in the stands, if you're sitting on the home side, every time that referee makes a call against your team, you're gonna think he was wrong, or you saw things wrong, or he, the guy really was down. And vice versa, if you're on the visitor side, every time you see the penalty against a visitor, again, your perspective is going to be swayed based on what side you're rooting for. What you want is for that jury to be rooting for you, so that as the evidence is presented, and their arguments are made, they are interpreting the information, with a bias towards you are in favor of you in a perspective in favor of you, and more likely to come out on your side, which, as prosecutors, for me, it's the side of justice. So in order to build airport, in addition to the things we've talked about, you also want to make sure and tell them something about yourself. Now, this is the only time during the entire trial, that you're going to have a time to engage in conversation with the jury where they can ask you questions, you can ask them questions, and you can go back and forth. And sometimes you ask them questions that are very personal, and digs into things they don't like to typically talk about in public or in front of people that they don't know. And so if you start off by telling them things about yourself, that kind of breaks the ice and it opens it up, and you start to develop that report. And you can start off by asking them questions that again, get them talking that aren't quite as intrusive. So as you stage your questions, have it as a stair step process of those questions that are easy to answer, and then the ones that go into more difficult areas. Now the second part of the process, the first purpose was to build rapport. The second is to identify those jurors who are on your team.

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Most of the jurors have had a minimum of 18 years of life experience while some had 40 or 50 years of life experience. And if we think of an it within an hour of talking, during voir dire that we're going to be able to turn them around or switch their perspective on life or their opinions. We're probably overselling our power as persuasive speakers. So what we need to do is identify who is going to be on our team who's more likely to decide with us. So one of the things you can start off with is group questions. But what I mean by group questions is those kinds of questions you can ask and just get a simple response a yes or no, or a choice A or choice B, an example those types of questions would be you believe the primary purpose of the criminal justice system is punishment or rehabilitation? And you'll go down the list and say punishment, rehabilitation, and then they can answer. Now you need to watch out because if you just go person, Person person, those types of questions, and a lot of times you'll have people who just take the path of least resistance, and they'll only say the answer the person the merely before them. And you'll have a string of nine different rehabilitations in a row, just because it's easier to say rehabilitation, and then a buck the trend. So when you're asking those questions in order for them to be effective, you don't walk down and look at every individual one by one and repeat the question. Do you believe the primary purpose of the criminal justice system should be punishment or rehabilitation? And occasionally, if you throw in a and why to not everybody, but some of them then everybody will be on their toes? I don't know. You know what? I need to give an honest answer and think about this. And there's also individual questions. And these are the ones that are more prying. In again, going back to the the group questions, sometimes you can do it as a raising of the hand of the different options, as well. But the individual questions, I think, are are some of the most important because a lot of times in those group questions that the raising your hand there are jurors who will never speak up in a in an environment like this, and and those usually end up being the ones on the jury. And so by the time you finish with your jury selection process, you should have no question marks, you should have have had the opportunity to speak with every single person that's in your strike zone and gotten some type of response out of them. There's nothing worse than what having the judge set the jury, and you're seeing people that you've only seen for the first time, and you're saying, Where did that person come from? Have they even been in this courtroom? I haven't heard anything from them. I don't know anything about this person. It's a scary feeling. So make sure that you work your way down the list, and you ask some of those prying questions, especially if it has to do with the sensitive area, things like child abuse and things such as that. And it's not only to be able to make sure you get a response from every person in the strike zone. But it's also that you can pick up on those nonverbal clues, which often are the most, the most helpful. There's a show that used to be on TV, I think it's off the air now. But it's called lie to me. And actually went through a three day course, on detecting deception that was taught by a interrogator for the ATF and everyone terror greater for the ATF. And he talked about all those micro expressions, and those involuntary movements or jerkins that people have, that they don't even realize that they're doing. They can tell you if you're lying to them. And they've come in handy. For me, there's been like, for example, there was one case that I was trying it was a sexual abuse case. And the question I was asking is whether or not the

individual had had personal experience or family experience, or those types of cases or those types of events. And there's one individual as I was asking the question, they immediately jerked his head down and looked to the side. And he could tell that it was one of those micro expressions of shame that in some way, he was either a victim or perpetrator those types of crimes. I couldn't use it as a challenge for cause. But you better believe that I exercise my freedom free challenge on him. I recommend and the interrogator that taught that class who was fantastic. He recommended that TV show lie to me. He said the first two seasons, a lot of the stuff they have is everything they have is dead on. And it really is good teaching or learning for people who are in our type of work. But beyond that, they season three and so on, they just got kind of crazy with it. But if you want to expand your knowledge of understanding deception from individuals, start looking at that TV show or start researching that field of research. Another important thing I want to talk about when it comes to jury selection is challenges for cause.

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To me, you hear a lot of trial attorneys who make the mistake after they lose a case to say it was the juries fault, to blame it on the jury, or to say, Oh, well, that was just a bad jury for this reason or that reason. That's wrong. And the reason that's wrong is because they are your jury. If you are a trial attorney, that means you had that process, you had the ability to vet them to select them to challenge them. And if they ended up on that jury stay in that jury box. And they weren't right for this case, well, then it's your fault that they ended up there. And the great thing about challenges for cause is they are limitless, you are not limited on the number of challenges for cause, the only thing that's going to limit you on the challenges for cause is your own personal laziness, and how willing you're going to be to really get into it. Are you going to aggravate the judge if you go too much into it? Yeah, but you know what, he's not the funder of fact. I think in trial jury trial cases, even though the judge is very important, he's not nearly as important as making sure you get that right jury in that jury box. So use those challenges cough for cause he's an early use them often and and really get them committed, because once they get up to the stand, they're going to do the opposing counsel is going to try to redeem I'm gonna try to get them back into that into denier. But if you get them to commit, while you're going through your voir dire, holding completely, that they will have that bias or they will have that prejudice, then there's, to a certain extent, you're not going to be able, the opposing counsel is not going to be able to redeem them. Now, if you ask a member of the jury on those challenges for cause, if they have a bias or prejudice, they're going to say no, every single time they're going to say no, because nobody in this day and age wants to admit to be biased. Nobody in this day and age is going to MIT to be prejudiced, even though that's what the law requires. If you worded in a different way, then you can stair step them into admitting it to it and getting a strike for cost. So for example, you can use the word and Hirshhorn recommends this a leaning or prejudgment so you can say you know what, everybody has a leaning or prejudge But one way or the other, I would just go with AM. So I'm in favor of the Aggie football team over the Longhorn football team. And that's my lien here

pre judgments. Some of you might have leanings or pre judgment. And you might be dealing ideal for a ton of different cases. But because of that leaning on their pre judgment, or because of that experience you may have had, you might not be right for this particular case, now, people are going to be much more likely to admit to that leaning or pre judgment. And then from that you get them into what amounts to a bias or prejudice, say miscellaneous judgments. And

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okay, well,

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now based on that leaning, is it, is it possible that you might not be the best person for this case? Is it possible that you would rule one way or the other based on your prior experience. And those if you use those, those terms, those terms of phrase, there could be a lot more likely to admit and be able to fall in the category for challenge for cause. Other things you can do is your range of punishment, you know, could you put somebody on probation, you know, for sexual assault of a child, if they're not even eligible, if they're not even able to consider it? Well, then they can be stricken. And that's one of the primary things that defense attorneys like to do is they like to throw out extreme cases, and look for those, those punishments that a typical juror without further facts, couldn't agree to. So that's why it's important if you're a prosecutor for another side of things, to be able to rehabilitate that juror. Or to preempt it by saying, Hey, you know, here's some examples, you might say that you can't ever have sexual assault of a child in probation. But what if it's a case where it's a 16 year old girl and a 20 year old boy, and they've been dating for a while, and now you know, that they've even gotten married. And this happened years ago? You know, because there's no statute of limitations in these types of cases. So this happened 10 years ago, and now they're married, and they have five kids is that the type of thing that you think that probation would be acceptable? You know, it doesn't it should not mirror the fact that the specific case, they cannot hear this back the facts of the specific case that you're trying, but you can just give scenarios of a of this offense, they could agree to a range of punishment within the entire range. You can also talk about the type of case and also talked about those personal experiences. Now, the next is the, I want to talk about his peremptory challenges. Again, like I said, we need to make sure not only to explain the strike zone, to the opposing, I mean, to string the strike zone to the Barnard members, but you also want to make sure that you have that down pat, on your particular notes, especially considering who you believe are going to be challenges for cause based off your questioning and based off your opponent's questioning. I mean, obviously, don't forget the alternate jurors, different courts have different alternates. Most times, you'll see in a district court case two alternates I've seen but the law permits, as many as four alternates, those alternates very well could be on a jury if somebody gets sick or the flu. And so it's important to consider them and your peremptory challenges. And it makes sure that whenever you have that

strike zone, established that every single person that strikes zone has spoken to you on a particular topic. So one, you can see their response to you as an individual. If there's, if you ask them a question, they sneer at you or they roll their eyes, or they turn the other way. You know, those are the kinds of things that you'll recognize, you'll pick up in your gut. And you'll know that you don't have a good rapport or good connection with that particular individual. And you don't want them on the jury. Using your gut, I think is some of the best advice, but also use the advice, but also use the gut of the spotters that you have. Women are particularly talented at picking up at nonverbal cues, and emotional reactions to people in the audience. Guys, so much have to be taught to look for those types of things. Or for women, a lot of times, generally speaking, it's instinctive and so they can be some of your best partners in a trial are hopefully you you are a woman, and you have the ability to spot that naturally. As I'm taking my notes on my particular sheet, again, it's somewhat difficult in those tiny boxes to write down everything somebody's saying. But I that's why a lot of times, I'll just use a plus or a minus. And so if they see something alike, I put a plus if I say something I don't like I put a minus. And then I look at it. If someone has all pluses, obviously it's someone I want to keep. I don't want to exercise a strike on them. And if I if they don't, then obviously it's if there's minuses, that's problematic. Jury selection process also is of course not limited to what you have in the courtroom. But once you have that list, it's really important to take advantage of the resources you have available to you. Hopefully you're going to have other members of your team such as an investigator etc. There's plenty of open records. If you're if you're prosecutor, then you have law enforcement that can you can tie into to check the background of the nra members. But even if you're on the defense counsel side, there's tons of public information websites, we can find out about an individual's also, it's very important to find out from social media sites, you know, but again, if it's a drug case, and you go to the person's Facebook page, frantically trying to check all 100 members of your denier panel,

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but it's, it's effective, it can't be done. You can go to those Facebook pages and you can find, you know, they're there for two oh friendly or that they're in favor of drug legalization or different comments they have, depending on the type of the case that they'll put on their website, which will on their Facebook pages and Twitter pages, etc. And that will help indicate to you Hey, is this a good person for me? Or is this not a good person? For me? Those types of things, definitely, you want to take into consideration if you're from a small community or rural community, I've tried cases in Harris County, which obviously is impossible, but in places like Milan County, everybody knows everybody in about three quarters of your panel is gonna have no somebody involved in the case. And you'll have somebody who's been in that community a long time that you can say, hey, just go down this list for me. And tell me if there's anybody that jumps out is problematic. There's one time those It was kind of funny. We did that. And there was a woman whose two sons and both been arrested many times. And we thought that she'd be a bad member of the jury, you know, because she had family members that we've prosecuted that have been arrested.

Somehow, she slipped through the cracks and ended up on the jury, and I was terrified that she was going to wait to Hong vote. What's funny was, is that was just a misdemeanor DWI case. But in the closing arguments, the defense attorney had made a reference to this being a death penalty case where his client, because his client was a truck driver, meaning that, you know, he lives his livelihood or his way to earn money. The funny thing is, this lady actually thought it was literally a death penalty case, and that the man was gonna be put to death for a first time DWI. And she's still voted to convict we found out later whenever they explained that deliberation. So a lot of times, it's better just to go with your gut than assuming that because there's somebody is other outside relationships, they may or may not be a good jury member really does become an art form more than more than a science. Now, I want to talk a little bit about the legalities of jury selection. Every court is going to be different, every jurisdiction is going to be different, every state's going to be different on what's permissible, it's pretty limited in federal cases, obviously. And your particular judge might limit you in the amount of time which allow you to go into things like that to learn your particular jurisdiction. As far as the federal law regarding regarding jury selection, the primary case is Batson v. Kentucky, and basically Batson v. Kentucky is is it says that, in a case, a peremptory challenge cannot be used solely on the basis of race. And basically, that was a case where I believe the prosecutor, there was four or five black members of an IR panel. And the prosecutor used all those challenges on the black members of an IRA panel. And basically, they came out and said, you know, it's a violate, it's a violation of the equal protection clause, and it's not allowed. In addition to race, there's a case JB versus Alabama, which says it also applies to gender. So you cannot allow exercise your peremptory challenges based on either race or on gender. It also applies not only to the prosecution, a lot of people miss out on this, it also applies to the defense because what the cases have said is it's not really a right of the defendant, but it's a right of the members of the jury panel to be able to serve on jury duty. And so the if the defense eliminates members of the of an IRA and exercise appropriate challenges based on race or gender, then those can also be challenged. The Batson challenge does not necessarily apply to religion, and again, this varies by jurisdiction. But in Texas of the quarter current pills, Batson does not apply to religion does not apply to age it does not apply to physical disability. It is not applied to sexual preference or homosexuality. It is not applied to jury shuffles. Jury shuffle is basically whenever the veneer panel set in the courtroom Whenever the attorneys look out of the courtroom if they want, it shuffled into a different order, they don't like to look at things. The Naked ask for jury shuffle. I've never seen a jury shuffle used effectively. I think if anything, it's used by most attorneys just as a stall tactic if they're not prey prepared, and they need a few more minutes to prepare their, for dire I don't know why they use them. But, you know, some people use shuffles, I've just never seen it actually be effective.

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Now, maybe if you have a small an IRA panel, we only have 20 people show up. Maybe it's more effective. But you know, usually whenever you have over 100 people show up, it's going to be a

pretty even distribution, regardless. And the Batson challenges also do not apply to challenges for Cause if there's a challenge for cause, and it cannot be challenged based on whether or not was used for race, or for gender. Now there are bats inquiry is a three stage process. First of all, there has to be a primary case, face established by the defense, which is that a certain number of majority of a particular race, racial group or gender group was stricken under the peremptory challenges. Once that is done, then the opposing counsel has to offer a route, race neutral explanation for the reason why that person was struck. This should not be done in the presence of the jury, obviously, the first time I had a bathroom challenge to was when I was a young prosecutor. And I did strike every single black member of the entire panel, and there was a black defend it. However, there was only one black member of the entire panel, and she happened to be the second cousin of the defendant. So I exercise my peremptory challenge based on the fact that she was a family member that offended had nothing to do with race. But regardless, the the judge in that particular case was a constitutional county judge. So his prior legal education was that he had been an ag teacher, he was never an attorney. And he didn't really understand bats. And so he basically started interrogating me in front of the jury, which created a really negative context, the remainder of the trial, and that's not what's required. Only thing that is required is at the beginning, a race neutral explanation by the state. And then it's up to the trial judge to determine whether the defendant carried the perp the burden of showing the personal, purposeful discrimination. And there's a number of things that can be looked at, to show that pre tax, especially a lack of questioning of the stricken banagher person, if you have four Hispanics in the courtroom, and you stroke all four of them, and yet you didn't question any of those four,

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it's going to seem as a pretext, any type of reason you give, for that peremptory challenge. If there's disparate treatment, it's going to be seen as a pretext. And you're

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the baton challenger probably prevail. So for example, if you say, Well, the reason I struck that particular person is because he answered that it was he was more in favor of rehabilitation and punishment. But yet there were three other white members who answered the same question, you didn't strike them that well, then that's going to be seen as a pretext for the strike. Or, and I don't want to say that this is only based on minorities. I mean, By the same token, if you have a white defendant, and then and or Hispanic offended, you strike the white members. I mean, it's just based on race, regardless of whatever that race is. Now, there has been several race neutral examples have been accepted by various courts why and I want to say that these explanations given for the Shrike don't have to make sense. They don't have to be convincing. The only thing they have to be is race neutral. It can be superstitious or silly, as long as race neutral, and that's a quarter Milton viewstate. So some examples that have been held up by the courts to be neutral

examples that are accepted is the appearance of the particular number of denier, the intelligence or educational background, the employment, the jurors desire not to serve health problems and your criminal background of the jury, including family or the age of the church. Again, age is not a protected class. Some of the other things that I want to talk about really briefly as we have a few more minutes. One is the use of jury questionnaires. there's typically a standard jury questionnaire that is given out by the clerk's office that has has basic information such as employment and whether they're married to their education, etc. But sometimes you can actually use a jury survey that you create and that you can give to the jury. I mean, there's a lot of time, usually before you actually start your border process where you might have one or two hours with the jury members are just sitting around waiting, and if your judge approves it, and of course he gave it to the opposing counsel well in advance. You can do a four or five pay survey, which gets much more in depth into the preconceived beliefs, experience and background of those particular individuals. And you, you know, and your opposing counsel is going to be a lot more likely to accept it if you offered to give him a copy of everything. from experience, you know, if you're going to do those, make sure you have clipboards or something hard for them to write on and pencils, so they can fill it fill it out. The juries surveys can really make your your time more effective because as you're questioning on individual topics, you can go from the survey and say, Hey, Mr. Johnson, I see that you said this or Mr. Smith, I saw on your answer. You said this, or Mr. Rodriguez, I saw that you said this is there would you like to expand on it or give a further reason? If they've already written out part of that reason, it's easier for them to open up and continue talking further in depth about that reason. Again, I would like to thank you for the time to present here today. My name is Adam Murray. I'm with ector County District Attorney's office here in Odessa, Texas. Feel free to give me a call or send me an email. If there's anything I can expound upon or any further questions you might have. Thanks