Jury Selection
in a Criminal Case

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Jury Selection in a Criminal Case

Presenter

- Adam Muery, DDA Ector County
  - Medically Retired Master Texas Peace Officer
  - Special Investigations Counsel, Office Of the Attorney General of Texas (2005-2007)
  - Chief Inspector General, Directorate of Interior Affairs – Baghdad Iraq (2007-2008)
  - B.S. Texas A&M University 2001
  - J.D. University of Texas 2004

Jury Selection in a Criminal Case

- Jury Selection Basic Tips
  - Selection starts on your drive to the Courthouse
  - Show up early, look prepared
  - Look like a news anchor







Jury Selection
in a Criminal Case

Be Prepared

- Eliminate a Single Point of Failure
- Ejury – Develop Ideal Juror Profile
- Mock Trial
- Po Boy mock trial
- **Check Their Shoes**

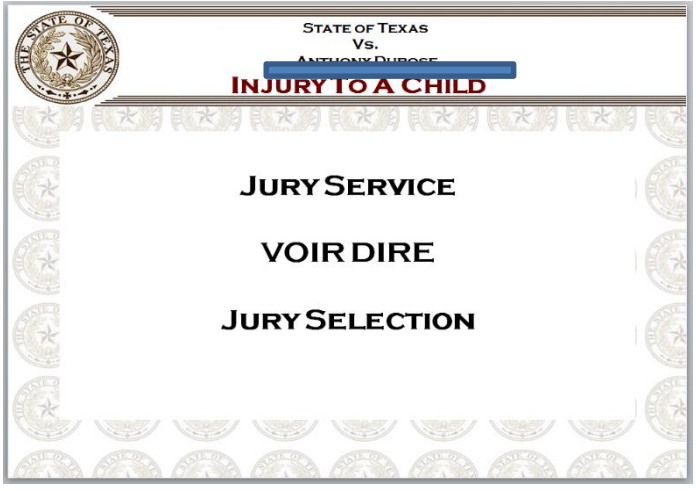
Jury Selection
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Be Prepared

- Selection Charts
- Apps = Ijury
- Have a Spotter (or 2)
- 1 Hour Time Limit

Jury Selection
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Be their teacher:



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Jury Selection
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- Burden of Proof
  - It's raining outside
  - Football Field
  - Stair Step
  - Puzzle
- Know Your Enemy
- Circumstantial Evidence



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Two Real Purposes of Jury Selection

Build Rapport with Jury

- At beginning tell them something about you

Identify those Jurors who are on your team

(and who will be good team members)

- Group Questions
  - Punishment or Rehabilitation
- Individual Questions

Jury Selection in a Criminal Case

Challenges For Cause

- NO LIMIT
- Prospective Jurors who have a bias or prejudice against any phase of law upon which a party is entitled to rely can be challenged for cause
  - Leaning or Pre-judgement
  - Range of Punishment
  - Type of Case
  - Personal Experiences

Jury Selection in a Criminal Case

Peremptory Challenges

- Establish Strike Zone (don't forget alternate jurors)
  - Must have gotten every person in the strike zone to speak on an issue.
- Plus and Minus
- Use your gut

Jury Selection in a Criminal Case

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

- Using peremptory challenges to strike venire panelists on the basis of race violates the equal protection clause.
- Also applies to gender
  - *JEB v. Alabama*, 511 U.S. 127 (1994)
- Also applies to Defense challenges for cause
  - *Georgia v. McCollum*, 505 U.S. 42 (1992)

Jury Selection in a Criminal Case

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

- Batson Does Not (Necessarily) Apply To
  - Religion
    - Jasper v. State, 61 S.W. 3d 413 (CCA 2001)
  - Age
    - Ealoms v. State, 983 S.W. 2d 853 (Waco 1998)
  - Physical Disability
    - U.S. v. Harris, 197 F.3d 870 (7th Cir. 1999)
  - Homosexuality
    - Johnson v. Campbell, 92 F.3d 951 (9th Cir. 1996)
  - Jury Shuffles
    - Wearren v. State, 877 S.W.2d 545 (Beaumont 1994)
  - Challenges for Cause
    - Staley v. State, 887 S.W.2d 885 (CCA 1994)

Jury Selection in a Criminal Case

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

- Batson Inquiry is a 3 Stage Process
  - Prima facie case by defense
  - Race neutral explanation by the State
  - Trial judge determination of whether the defendant carried the burden of showing purposeful discrimination

Jury Selection in a Criminal Case

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

- What tends to show pretext
  - Lack of Questioning of stricken venireperson
  - Disparate Treatment
    - If you strike a venireperson of one race for a reason but leave venireperson of other race on even though they gave same reason.

Jury Selection in a Criminal Case

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

- Race neutral examples
  - Appearance
  - Intelligence and educational background
  - Employment
  - Juror's desire not to serve
  - Health Problems
  - Criminal Background (including family)
  - Age
  - Can be superstitious or silly as long as race neutral
    - *Middleton v. State*, 187 S.W.3d 134 (Austin 2006)

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