

VOIR DIRE AKA JURY SELECTION

LATIN FOR “TO SPEAK THE TRUTH”

Presented by Ashley Rich, District Attorney

13th Judicial District Of Alabama



AGACL BOARD MEMBER FOR 12 YEARS

- ALABAMA DEATH ROW
- 13 INMATES FROM MOBILE COUNTY
- 10 SINCE I STARTED AS A PROSECUTOR IN 1996
- 6 OF THOSE 10 INMATES FROM MOBILE COUNTY I PERSONALLY SOUGHT DEATH AND WON
- PUT FIRST FEMALE IN THE STATE OF ALABAMA ON DEATH ROW

THOMAS LANE



DONALD WHATLEY



AUBREY SHAW



DERRICK DEARMAN

JOHN DEBLASE



HEATHER KEATON



THIS PRESENTATION IS NOT ABOUT
CAPITAL MURDER DEATH PENALTY CASES
BUT ABOUT ALL CASES

“MOBILE IS THE BIRTHPLACE OF MARDI GRAS” WWW.HISTORY.COM



According to the [Mardi Gras New Orleans](#), Mardi Gras celebrations were common in the city by the 1730s, although the first recorded Mardi Gras parade didn't float through the New Orleans's streets until 1857. Meanwhile, [Alabama news site AL.com](#) reports that the Boeuf Gras Society, a mystic society started in Mobile in 1710, kicked off a 1711 parade down Dauphin Street with a giant bull's head on wheels (the fatted bull was used in ancient Carnival celebrations in France).

MOST IMPORTANT LESSON IN NEW ORLEANS





MOVIECLIPS.COM

SAME LESSON WE LEARNED IN BOTH
TOPGUN MOVIES:



JURY SELECTION IS SUPER IMPORTANT

JURY SELECTION SHOULD BE THOUGHT ABOUT WELL IN
ADVANCE OF TRIAL

JURY SELECTION LOGISTICS SHOULD BE THOUGHT ABOUT
WELL IN ADVANCE OF TRIAL

JURY SELECTION IS A STUDY OF HUMANS AND OCCURS WHEN
YOU GET THE VENIRE LIST

JURY SELECTION ALSO STARTS WHEN YOU LEAVE THE
HOUSE THAT MORNING TO GO AND PICK A JURY

Voir Dire begins way before
Trial

THEORY OF CASE

Before voir dire

Theory of your case is important to know

Why?

You are looking for a juror who has values and beliefs which best position the juror to see, weight and analyze the evidence in the way which is consistent with your theory of the case.

CAN I USE MY THEME IN JURY SELECTION?

- YES.
- Jury selection is the perfect opportunity to introduce your case theme and to begin finding people in the venire who will best receive the information of your case theory is extremely important.

JURY SELECTION IS NOT ONE AND DONE

- Jury selection cannot be delegated to someone else.
- No one knows your case better.
- Change your general list of questions and add to it for the specifics of this case.

PLAYING BOTH SIDES IS IMPORTANT

- What type of jurors would be receptive to my case theory?
- What types of jurors would be unreceptive to my case theory?
- What are the possible defense case theories?
- What types of jurors would be receptive to the defense's case theory?
- What types of jurors would be unreceptive to the defense's case theory?

EXAMPLES:

JURORS WHO HAVE CHILDREN IN A CHILD ABUSE CASE

JURORS WHO DON'T HAVE CHILDREN IN A CHILD ABUSE CASE

JURORS WHO DON'T OWN GUNS IN A MURDER CASE WHERE VICTIM IS SHOT TO DEATH

JURORS WHO OWN GUNS IN A MURDER CASE WHERE VICTIM IS SHOT TO DEATH

DETERMINE WHO YOUR MODEL
JUROR IS

DETERMINE TYPES OF PEOPLE YOU DON'T WANT AS JURORS

- Engineers?
- Lawyers?
- Irrational thinkers?
- Indecisive people?
- Leaders?
- Strong opinionated people?

**MOTIONS REGARDING VOIR DIRE THAT NEED TO BE
FILED OR HANDLED ORALLY IN COURT AT LEAST A FEW
MONTHS BEFORE TRIAL**

- **NON-CAPITAL CASES**

- Is there a reason to have more than the standard number of jurors?
- Try to agree with defense on this before presenting to judge
- Need number decided on months in advance so that jury assembly can make sure there are enough jurors for each courtroom that week

MOTIONS REGARDING VOIR DIRE THAT NEED TO BE FILED OR HANDLED ORALLY IN COURT AT LEAST A FEW MONTHS BEFORE TRIAL

• CAPITAL CASES

- File a Motion to use a jury questionnaire and proposed jury questionnaire that has all of the questions you would like to see prior to general voir dire.
- Include in the Motion that you will also need time for general voir dire followed by individual voir dire.
- Include in the Motion a request for a larger number of jurors than in a normal case due to having to death qualify the jury.
- If you don't ask you won't get it. At least ask for it to preserve the record on a death penalty appeal.
- Must decide which questions you will ask for general voir dire and remove them from the questionnaire so as not to be duplicative.

LOGISTICS YOU OR YOUR ASSISTANT NEED TO DO WEEKS BEFORE THE TRIAL:

- NON CAPITAL
- Meet with Judge's assistant to discuss how the jury venire will be seated.
- Mark Jury chart with juror numbers.
- Provide you with an updated list of attorneys in your office to read during voir dire.
- Provide a complete witness list of all possible witnesses at trial for you to read during voir dire

LOGISTICS YOU OR YOUR ASSISTANT NEED TO DO WEEKS BEFORE THE TRIAL:

- **CAPITAL CASE**

- If you do not have room in the regular courtroom you need to decide where jury selection will take place.
- Is there a sufficient sound system available for the room?
- Are there microphones for jurors to use?
- Who will be delivering the microphone to each juror?
- Determine how the jurors will be seated.
- Make larger juror seating chart.
- How the jury venire will be seated.
- Mark Jury chart with juror numbers.
- Provide you with an updated list of attorneys in your office to read during voir dire.
- Provide a complete witness list of all possible witnesses at trial for you to read during voir dire. When reading list make sure you identify their roll in trial because it helps jurors identify if they know them or not, i.e., victim, witness, ADFS employee, cop, expert, id officer

Name: _____
Date: _____
Charge: _____
Defense: _____
Challenge for cause: _____
Verdict: _____

SCORING

PURPOSE
PROSECUTING INFORMATION
KNOWLEDGE OF THE CASE
PRIOR ADVICE SERVICE
BURDEN OF PROOF
REASONABLE DOUBT
LAW AND EVIDENCE
KNOW FACTS
KNOW WITNESSES
PRIOR PROBLEMS WITH LAW ENFORCEMENT
ANY OTHER REASON

Attorney: _____
Verdict: _____

State Vs. _____

Date: _____

Charge: _____

Defense Atty: _____

Challenges for cause:

State

Defense

VOIR DIRE

PURPOSE

PERSONAL INFORMATION

KNOWLEDGE OF THE CASE

PRIOR JURY SERVICE

BURDEN OF PROOF

REASONABLE DOUBT

LAW AND EVIDENCE

KNOW PARTIES

KNOW WITNESSES

PRIOR PROBLEMS WITH LAW ENFORCEMENT

ANY OTHER REASON

Alternates:

State

Defense

EDUCATING THE VICTIM OR VICTIM'S FAMILY ABOUT JURY SELECTION BEFORE TRIAL IN A PRIVATE MEETING

- Constantly being judged, jurors are forming an opinion about them.
- Atrium, elevators, halls, bathrooms, smoke breaks, walking to car.
- Not to talk to potential jurors ever.
- Not to talk to anyone they don't know.
- What to wear.
- Social media and not to post anything.
- News media and whether to talk to them or not.

PRIOR TO WEEK OF JURY SELECTION

- Get a list of all information known about your jury venire from Clerk.
- Run that juror through NCIC to determine priors.
- Run that juror through your jail database for crimes not reported on NCIC and arrests that maybe did not result in convictions.
- Run that juror through social media sites.
- If find information on any of these about the juror to use in voir dire make sure you print a copy of it all to keep in your file/potential show to jury during challenges.
- Distribute copy of jury venire list to all employees and see if they know any potential jurors and can email their responses and why or why not the juror would be a good or bad juror.

KNOW YOUR STATE RULES

MAKE A VOIR DIRE NOTEBOOK

(ESPECIALLY HELPFUL FOR TRIAL ON THE FLY)

INCLUDE IN THE NOTEBOOK YOUR STATE RULES:

SUMMARY OF YOUR RULES

A COPY OF THE EXACT RULES WITH ANNOTATIONS

THREE PRONG TEST REQUIREMENTS DEFENSE MUST MEET
BEFORE YOU EXPLAIN YOUR REASONS FOR STRIKING

QUICK LIST OF CASES TO SUPPORT BATSON
CHALLENGE

LAW GOVERNING VOIR DIRE

Rule 18.1 Jury of Less than 12 members

Rule 18.2 Jury Information - prior to voir dire each party furnished with list of names and addresses of prospective jurors.

Rule 18.2(b) Juror Questionnaires

Rule 18.3 Challenge to the Trial Venire - Motion to challenge the venire shall be made before trial and shall be decided prior to voir dire examination.

Rule 18.4 Procedure for selecting a Jury

Rule 18.4(a) Compilation of Strike list

Rule 18.4(b) Oath of Prospective Jurors

Rule 18.4(c) Voir Dire Examination – Juror can answer questions in private

Rule 18.4(d) Scope of Examination

Rule 18.4(e) Challenges for Cause

CHALLENGES FOR CAUSE: How to challenge for cause -Rule 18.4(e)

Grounds for challenge for cause: Alabama Code 12-16-150

- 1) nonresident in county for over 6 months
- 2) not a citizen of Alabama
- 3) indicted within last 12 months for felony OR offense the same as the one defendant charged with
- 4) related to defendant or prosecutor or victim
- 5) convicted of felony
- 6) promise to convict or acquit
- 7) fixed opinion as to guilt or innocence of defendant that would bias his verdict
- 8) under 19
- 9) unsound mind
- 10) witness for the other party

NUMBER OF QUALIFIED JURORS: Rule 18.4 (f)(1)

- | | | |
|----|---|-----------------------|
| 36 | - | if death penalty case |
| 24 | - | if felony case |
| 18 | - | if misdemeanor case |

IF TWO OR MORE DEFENDANTS: Rule 18.4(f)(2)

12 additional names for each additional defendant

Rule 18.4(g) ALTERNATE JURORS

Rule 18.4(h) INSUFFICIENT NUMBER OF JURORS

COPY OF RULE AND ANNOTATIONS

- should also be in your notebook

GENERAL VOIR DIRE QUESTIONS FOR ALL CASES SHOULD BE IN YOUR NOTEBOOK

VOIR DIRE-GENERAL QUESTIONS

A. PURPOSE OF THESE QUESTIONS:

To obtain a fair and impartial jury for both the State and Defendant

- (1) Apologize in advance if you find some of my questions invasive, personal, embarrassing or just none of my business
- (2) But it is my duty and obligation to ask so can get fair and impartial jury

B. BURDEN OF PROOF ON STATE - in this and every criminal case

- (1) Burden of Proof = Reasonable Doubt
NOT beyond all doubt or to mathematical certainty
- (2) Anybody feel b/c this is a MURDER case that the burden of proof should be higher?

C. LOCATION OF INCIDENT:

- (1) ADDRESS:

DATE & TIME:
- (2) Anyone familiar with that location or live in that area?

D. WITNESSES:

- (1) State expects to call the following witnesses:

E. PRIOR CRIMES OR OFFENSES:

- (1) Has any prospective juror ever been charged with, arrested or convicted of a criminal offense other than a minor traffic ticket?
- (2) Spouse, relative, or close friend?
- (3) Anyone ever posted bond for someone else or helped someone to post a bond?
- (4) Anyone ever had unpleasant experience with anyone in law enforcement field?

F. PRIOR JURY EXPERIENCE

- (1) Any prospective juror ever sat as a juror in any type of criminal case?
- (2) What type of case and when?

(3) Reach a verdict? What was it?

G. POTENTIAL JUROR EVER BEEN WITNESSES

(1) Any prospective jury ever been a witness in any type of legal proceeding other than a divorce case?

(2) Who did you testify for? What was the outcome of the case?

H. DIRECT VS. CIRCUMSTANTIAL EVIDENCE:

The law recognizes two types of evidence, DIRECT EVIDENCE and CIRCUMSTANTIAL EVIDENCE.

DIRECT EVIDENCE is evidence which directly proves a fact without an inference. As an example, you do not need an inference to know that I am now standing in front of you. In other words, your view of me is direct evidence that I am in this courtroom.

CIRCUMSTANTIAL EVIDENCE is evidence which proves a fact from which an inference of the existence of another fact may be drawn.

HERE IS AN EXAMPLE OF CIRCUMSTANTIAL EVIDENCE: If you know the circus is in town, that it passed in front of your house that day your picket fence in front of your house has been smashed, there are large elephant prints on your front lawn near where the fence has been crushed, there is hay scattered on your front lawn, there is a strong smell of an animal in your front lawn, and there are peanut shells strewn all over your front lawn, you may immediately draw a reasonable inference from this circumstantial evidence that one of the circus elephants has been at your house.

- (1) Does everyone understand that in a trial direct evidence and circumstantial evidence are entitled to equal weight?
- (2) Is there anyone who believes that they cannot convict a defendant if the State has no physical evidence?
- (3) You will be instructed that circumstantial evidence and direct evidence are to be given equal weight and that facts may be proved by either direct or circumstantial evidence, can you follow that jury instruction?
- (4) Is there anyone of you who right now before hearing any evidence believe you CANNOT convict a defendant if all the state has is circumstantial evidence?
- (5) Because the court will instruct you that the State is allowed to meet its burden of proof with only circumstantial evidence?
- (6) Is there someone who feels so strongly that they have to have an eyewitness or video to convict someone of a crime?

(add other items of evidence you are missing gun, dna, tox etc here)

I. DEFENDANT'S RESIDENCE:

- (1) Does anyone currently live or has lived in the past
(WHERE DEF LIVES, IE Orange Grove Housing project?)

J. CSI EFFECT

1. Who watches crime shows on tv? Raise your hand also
2. Now these are serious questions. Does everyone understand that those tv shows are made for ratings and lots of the fancy tests and gadgets they have on those shows don't exist in real life and we don't solve the crime in an our or even arrest the suspect in an hour?
3. Does everyone understand that in the real world we can't search one fingerprint with a national database of all persons who have fingerprints and solve a crime?
4. Is there anyone here who would hold us to the same standard of solving crimes that they see on these tv shows?
5. Is there anyone who would require us to have fingerprints because the law does not require us to have them to prove our case?
(add other types of evidence here)

K. OPEN ENDED QUESTIONS

- (1) Is there any reason why you feel that you should not sit as a juror in this case?

Of the questions that I have asked you was there a time when one of you wanted to say something but I didn't give you a chance? Now is the time.

THIS IS A TEMPLATE – BEFORE TRIAL GO THROUGH REST OF VOIR DIRE MANUAL AND ADD FACT SPECIFIC QUESTIONS TO YOUR VOIR DIRE THAT ARE SPECIFIC TO YOUR CASE.

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BATSON AND HOW TO HANDLE TEMPLATE
SHOULD BE IN YOUR NOTEBOOK

DAY OF JURY SELECTION

- TO HAVE WITH YOU:
 - JURY SELECTION NOTEBOOK
 - LIST OF SPECIFIC VOIR DIRE QUESTIONS FOR THIS CASE
 - JURY SEATING CHART

MAKE SURE JUDGE SWEARS IN THE POTENTIAL JURORS
BEFORE STARTING THE PROCESS

YOU SHOULD ALWAYS BE OBSERVANT

- MAKE MENTAL NOTE OF WHAT JURORS ARE DOING IN HALL AND WHO THEY ARE HANGING OUT WITH
- THEIR Demeanor AS THEY WALK IN COURTROOM
- THEIR Demeanor DURING QUESTIONING

THINGS TO DO AND NOT
TO DO
DURING THE VOIR DIRE
QUESTIONING PROCESS

FAIRNESS

- Therefore, don't ask if they can be fair. Ask open ended questions.
- No person wants to admit they cannot be fair, unless he or she is merely seeking to be excused from jury duty.

CANNOT DISCUSS INFORMATION KNOW
WILL BE INADMISSIBLE AT TRIAL

GENERAL TIPS ABOUT YOU AND HOW YOU ASK QUESTIONS

- Be yourself.
- Be polite and professional.
- Understand the process.
- Be organized.
- Speak with each juror. Even if they didn't answer a single question.
- Listen to a juror's answers.
- Learn their names/ use a chart so you can address them by name Mr. Mrs. Miss etc, be formal and respectful.

- Pay attention to the non-answering jurors.
- Be mindful of sensitive subject matters. Ask if they would like to answer outside of other venire members at a later time.
- Pay attention to personality types: the combo of personality type, values and beliefs and responses may prioritize a juror or a challenge.
- Educate not preach. Ask if they can follow the law but the juror should always talk more than the attorney.
- Don't try to convert a potential juror to your beliefs.

INFORM JURORS WHAT THEY CANNOT DO-THANK YOU ANGELA BACKERS

- Do not investigate anything on the internet or a dictionary
- Do not visit the crime scene
- Do not talk about the case or the bible
- Do not consult your pastor
- Do not read articles about the case or defendant

CHALLENGES FOR CAUSE DEFINED GENERALLY

- Under the law, a **challenge for cause** , otherwise known as a strike for cause, is defined as a legal challenge by one side in a court case to remove a potential juror from consideration in a trial.
- The term "challenge" itself is defined legally as the act of formally questioning the legality of a person, action, or thing. In the case of a jury trial, both sides of the case are able to challenge the seating of a juror due to cause.
- EXAMPLES:
 - actual biases of the juror,
 - inability of the juror to effectively communicate,
 - or the inability of the juror to understand the facts presented in trial.
- All members of the jury must be able to deliver a fair and impartial verdict.

BEST PRACTICES CHALLENGE THEM AS
SOON AS POSSIBLE IF ALLOWED BY
JUDGE

- OR WHILE DISCUSSING REASONS IF HELD UNTIL ALL
QUESTIONING IS DONE

ALABAMA LAW ON CHALLENGES FOR CAUSE

- (e) CHALLENGE FOR CAUSE. When a prospective juror is subject to challenge for cause or it reasonably appears that the prospective juror cannot or will not render a fair and impartial verdict, the court, on its own initiative or on motion of any party, shall excuse that juror from service in the case. Challenges for cause shall be made before the parties begin striking the jury and may, in the discretion of the court, be made out of hearing of the prospective jurors but shall be on the record.

CHALLENGES FOR CAUSE SHOULD BE
DONE NONETHELESS BEFORE YOU GO TO
DISCUSS YOUR STRIKES AKA
PEREMPTORY CHALLENGES & DEVELOP
YOUR STRIKE LIST

CHALLENGES FOR CAUSE

- The improper removal of just one juror using a challenge for cause will result in the AUTOMATIC reversal of the death penalty.
 - Wainwright v. Witt, 469 U.S. 412, 424 (1985)
 - Uttecht v. Brown, 551 U.S. 1, 6 (2007)
- Example: If juror says "I don't believe in the death penalty" and then said they would set aside their feelings about the death penalty, if instructed, they must consider and weigh the evidence – use strike instead of challenge for cause.

- Every juror on your strike list MUST be for genuine, reasonably specific, race or group neutral explanation **related to the particular case being tried.**
- Hernandez v. New York, 500 U.S. 352 (1991)
- Must strike all jurors in a particular class.
 - If all social workers if DHR involved
 - All persons who had family members who were charged with domestic violence.
 - Negative experience with law enforcement

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POTENTIAL QUESTIONS TO ADD

- EMPLOYMENT:
 - Do you supervise others in your employment?
 - Do you discipline or fire others?
- SPARE TIME
 - What do you do in your spare time
- TELEVISION AND RADIO
 - What tv and radio programs do you frequently watch or listen to?
 - Is there any subject matter that you try to avoid?
- BOOKS
 - What type of books do your read?

ALCOHOL

- Has alcohol abuse touched your life or the life of anyone you know in any way?
- Did alcohol result in any arrests or court?
- Did alcohol result in any type of treatment?

DRUGS

- Have drugs touched your life or the life of anyone you know in any way?
- Did drugs result in any arrests or court?
- Did drugs result in any type of treatment?
- Do you believe that drugs make you do things that are contrary to your nature?

REGISTERED TO VOTE

- Are any of you not registered to vote?

ORGANIZATIONS INVOLVED IN

- Are any of you involved in any civic, political, social or charitable organizations, including, but not limited to groups associated with
 - Prisoner's rights
 - Protests/marches online or in person

INMATES

- Have you ever visited a jail or prison or juvenile hall?
- Have you ever put money on an inmate's books?
- Have you ever corresponded with an inmate?

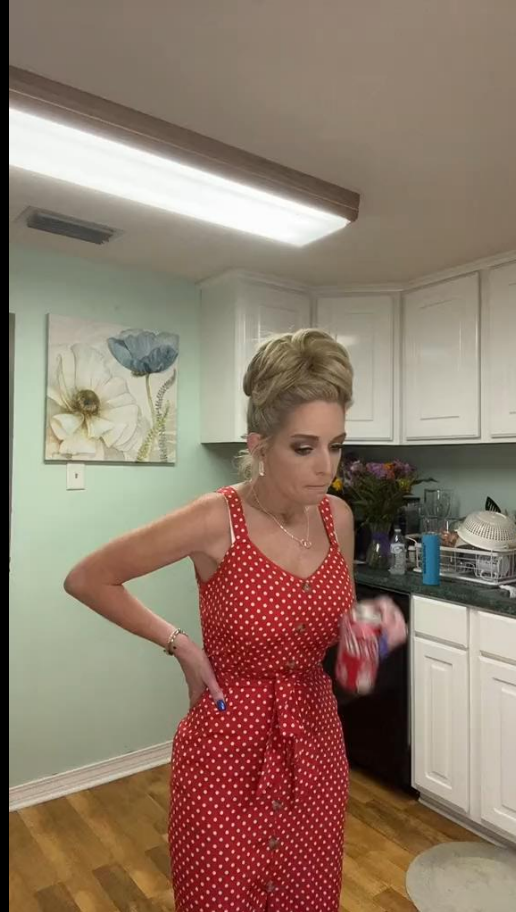
MEDIA

- ONLINE

- How many of you do not use any types of social media, Facebook, Instagram, Tik Tik, Twitter, etc?
- How many of your use any form of this for over an hour a week?
- Two Hours?
- Three hours?
- Four hours?
- Over 5 hours a week?

- WHAT CRIMINAL CASES HAVE YOU FOLLOWED IN THE MEDIA?

shoelover99



IDENTIFYING THE WEAKNESSES IN YOUR CASE IN VOIR DIRE AND ASKING JURORS ABOUT THEM

- You may find out in the evidence presented that my victim in this case
 - Is married to the defendant

If I prove to you the charges beyond a reasonable doubt, is there anyone who could not find the defendant guilty(add issue here) because the victim chose to remain married to him?

- Delayed in reporting
- Has a criminal record
- Is a prostitute
- Was drinking a lot that night
- Had previously lied about this incident
- Pretended that nothing happened afterward

ANOTHER WAY OF ID ISSUES

- Will you automatically disregard the testimony of a witness who was intoxicated at the time of the crime?
- Will you automatically disregard the testimony of a witness who had previously lied about what happened that night?
- Will you automatically disregard the testimony of a witness who is a child?
- Will you automatically disregard the testimony of a witness who is (add age here) years old?
- Will you automatically disregard the testimony of a witness who did not disclose the assault right away?

EXPLAINING LACK OF EVIDENCE IN VOIR DIRE

- NO GUN
- NO DNA
- NO EYEWITNESSES
- NO VIDEO
- Is it possible for you to return a verdict of murder if there is NO DNA evidence presented?
- Is there anyone that would require the State to have DNA in order to convict the defendant of this crime even though the law does not require us to have DNA evidence in order for you to find the defendant guilty?

ONLY ONE WITNESS

- The law does not require the State to produce multiple witnesses.
- The testimony of a single witness is sufficient to prove any fact.
- Is there anyone that would require the State to have more than one witness in order to convict the defendant of the charge of (insert charge)?

SEXUAL ASSAULT CASES

Have you or anyone you know ever been the victim of sexual assault?

Was it reported to anyone?

Have you or anyone you know ever been accused of sexual assault?

Was it reported to anyone?

Have you ever followed any rape, sexual assault or child molestation case in the news?

Which case(s)? What was the outcome?

Do you think it was a fair outcome?

Do you know about the Springhill College student that was accused of rape?

SEXUAL ASSAULT CASES CONTINUED

- When you heard the charge was sexual assault, did you look over at the defendant and say to yourself, he doesn't look like a rapist?
- If you did, can you explain what a rapist or child molester looks like?
- If I prove my case to you beyond a reasonable doubt, would you hesitate to convict because he doesn't look like your idea of a rapist?

IF JURORS ARE SLEEPING OR
INATTENTIVE, FAILING TO LOOK IN EYES,
BAD ATTITUDE, BAD DEMEANOR, ETC

- Ask them gently about it on the record if possible.

Second to last question in all cases

- Is there anything that you have thought of that you forgot to answer to any questions I have asked you. That is ok. Here is your opportunity to tell us what you now think you should tell us in response to our questions.
- Does anyone have any answers they would like to share with us now?

RELIGIOUS REASON CANNOT SIT IN
JUDGEMENT OF ANOTHER

JURY QUESTIONNAIRES

Jurors should be sworn BEFORE filling out the questionnaire.

Make sure they are signed under penalty of Perjury

EXAMPLES OF QUESTIONNAIRES

- See online materials 10 samples of jury questionnaires
- One is defense submitted questionnaire – Court chose it

DON'T USE JURY QUESTIONNAIRE UNLESS IT CAN BE FOLLOWED UP WITH INDIVIDUAL VOIR DIRE

- WHY?
- Deprives you of face time with the juror
- Can't read body language or hesitation when juror is writing answers on the questionnaire
- Don't get to follow up with something they marked or wrote

PROCESS AFTER JURY
QUESTIONNAIRES ARE FILLED OUT

BATSON CHALLENGE

- Expect it and show no emotion about it at all.
- Have all of your race neutral reasons ready. Get them ready when you are developing your strike list and be ready to articulate them.
- Breathe deeply and calm down. Get your facts in order.
- Interesting note: look at death row photos again

DEFENSE MUST PROVE HOW PRIMA FACIE VIOLATION OF FAIR CROSS SECTION REQUIREMENT BEFORE STATE MUST EXPLAIN REASONS FOR STRIKING

- 1. that the group alleged to be excluded is a distinctive group in the community
 - 2. that the representation of this group in venires from which juries are selected is not fair and reasonable in relation to the number of such persons in the community
 - 3. that this underrepresentation is due to systematic exclusion of the group in the jury-selection process.
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- **DUREN V. MISSOURI, 439 U.S. 357, 364, 99 S.CT. 664, 58 L. ED. 2D 579 (1979)**

WHAT TO DO IF DEFENDANT DOES NOT
RAISE BATSON CHALLENGE OR DOES
NOT MEET BURDEN FOR STATE TO
DISCLOSE REASONS FOR STRIKE

- DO IT ANYWAY TO PRESERVE THE RECORD.

QUICK LIST OF CASE CITES TO VALIDATE RACE NEUTRAL STRIKES-HAVE IN YOUR NOTEBOOK

BATSON CHALLENGES

Recognized Race-Neutral Reasons when Confronted with Batson Challenge

1) The juror knows or is acquainted with the defendant.

Knight v. State, 622 So.2d 426 (Ct.Cr.App.1992); Avery v. State, 545 So.2d 123 (Ct.Cr.App.1988); Head v. State, 610 So.2d 1202 (Ct.Cr. App.1996); Riley v. State, 166 So.3d 705, 723(Ala.Crim.App.2013); Thomson v. State, 153 So.3d 84 (Ala.Crim.App.2012); Knight v. State, 300 So.3d 76 (Ala.Crim.App.2018)

2) The juror is opposed to the death penalty (in a capital case).

Dallas v. State, 711 So.2d 1101 (Ct.Cr.App.1997); Johnson v. State, 620 So.2d 679 (Ala.Cr.App.1992), reversed on other grounds, 620 So.2d 709 (Ala.1993), on remand, 620 So.2d 714 (Ala.Cr.App.), cert. denied, 510 U.S. 905, 114 S.Ct. 285 (1993);

3) Juror has been charged with or convicted of a crime or has been implicated in criminal activity.

Wilsher v. State, 611 So.2d 1175 (Ala.Cr.App.1992); Knotts v. State, 686 So.2d 431 (Ct.Cr.App.1995); Warner v. State, 594 So.2d 664 (Ct.Cr.App.1990) (rev'd other); Powell v. State, 548 So.2d 590 (Ct.Cr.App.1988); Click v. State, 695 So.2d 209 (Ct.Cr.App.1996); Benjamin v. State, 156 So.3d 424 (Ala.Crim.App.2013); McMillan v State, 139 So.3d 184, 203 (Ala.Crim.App.2010)(3rd degree assault);Lewis v. State, 24 So.3d 480, 501 (Ala.Crim.App.2006)(Can be a misdemeanor)

4) Juror appears inattentive, bored, etc.

Kelley v. State, 602 So.2d 473 (Ct.Cr.App.1992); Stephens v. State, 580 So.2d 11 (Ct.Cr.App.1990); Dallas v. State, 711 So.2d 1101 (Ct.Cr.App.1997)

5) Juror appears baffled/confused.

McGlown V. State, 598 So.2d 1027 (Ct.Cr.App.1992) or seems unable to understand the questions asked. See- Vanderslice v. State, 671 So.2d 769 (Ala.Cr.App.1995); Dallas v. State, supra.

6) Juror displays a hostile attitude toward the challenging party.

Scott v. State, 599 So.2d 1222 (Cr.Cr.App.1992) (overruled in part); Wagner v. State, 555 So.2d 1141 (Ct.Cr.App.1989); Powell v. State, 608 So.2d 411 (Ct.Cr.App.1992)

7) Juror is impatient, evasive, or less than candid in response.

Brown v. State, 623 So.2d 416 (Ct.Cr.App.1993); Bishop v. State, 690 So.2d 502 (Ct.Cr.App.1996); Other demeanor issue: (i.e. chewing gum, inappropriate attire, jewelry, etc.) See: Warner v. State, supra; Stephens v. State, supra.

8) Juror has family member who has been convicted of a crime.

Dallas v. State, 711 So.2d 1101 (Ct.Cr.App.1997); Gorum v. State, 671 So.2d 764 (Ct.Cr.App.1995); Fort v. State, 668 So.2d 888 (Ct.Cr.App.1995); Lam Luong v. State, 199 So.3d 173, 193 (Ala. Crim. App. 2015); Bohannon v. State, 222 So.3d 457 (Ala. Crim App. 2015); Wiggins v. State, 193 So.3d 765 (Ala. Crim. App. 2014)

9) Juror has a drug problem.

Powell v. State, 608 So.2d 411 (Ct.Cr.App.1992)

Compare: The fact that the juror knows someone with a drug problem is probably not a sufficient enough race-neutral reason.

10) Juror indicates that jury service would be a hardship.

Harvey v. State, 579, So.2d 22 (Ct.Cr.App.1990); Trawick v. State, 698 So.2d 151 (Ct.Cr.App.1995)

11) Juror, in prior jury service, served on jury which acquitted defendant.

Watkins v. State, 551 So.2d 421 (Ct.Cr.App.1988); Grimes v. State 689 So.2d 956 (Ct.Cr.App.1996); Trawick v. State, 698 So.2d 151 (Ct.Cr.App.1995); Childers v. State, 608 So.2d 350 (Ct.Cr.App.1992); Whittlesey v. State, 586 So.2d 31 (Ct.Cr.App.1991); Heard v. State, 584 So.2d 556 (Ct.Cr.App.1991)

12) Juror expresses dissatisfaction with or distrust of law enforcement or has had an altercation with a police officer.

Gaston v. State, 581 So.2d 548 (Ct.Cr.App.1991); Trawick, supra; Yelder, supra; Carter v. State, 603 So.2d 1137 (Ct.Cr.App.1992); Warner v. State, supra; Stephens v. State, 580 So.2d 11 (Ct.Cr.App.1990);

13) Juror is taking notes when others aren't or is taking many more notes than others.

Breland v. Ford, 693 So.2d 393 (Ala. 1996)

Note: Since there is a substantial body of opinion on the psychological considerations of the avid note-taker (especially at such an early stage in the proceedings), this reason has been held to be non-pretextual.

14) Juror has been the subject of a DA's office investigation or inquiry.

Guthrie v. State, 689 So.2d 935 (Ct.Cr.App.1996) [bad check unit had "contacted" juror]

15) Juror/Juror's family has been represented by defense attorney.

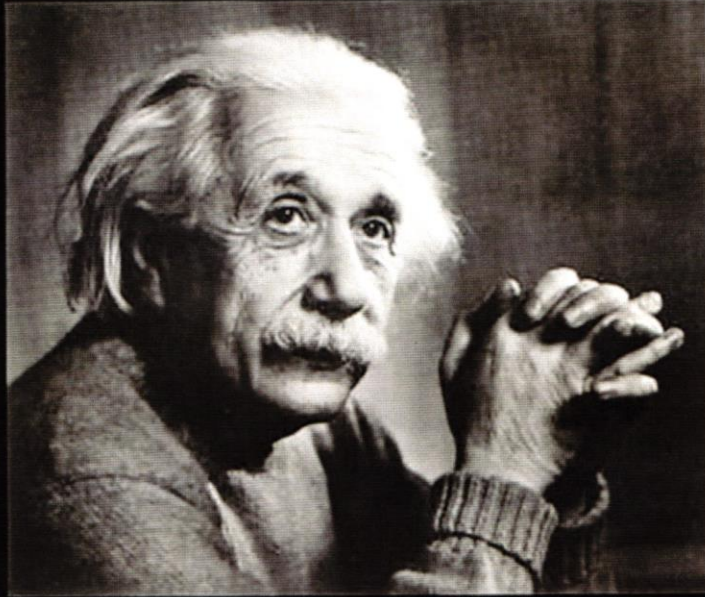
Ward v. State, 539 So.2d 407 (Ct.Cr.App.1988); Whatley v. State, 146 So.3d 437, 456 (Ala. Crim. App. 2010)

16) Juror is acquainted with the facts of the particular case. This has been (somewhat reluctantly) accepted as a race-neutral reason so long as the strike does not have the appearance of being merely pretextual. (i.e., the juror's more-than passing familiarity causes some legitimate concern.) See: Harris v. State, 5455 So.2d 146 (Ala.Cr.App.1988); Stephens, supra.

17) Fact that the prosecutor distrusts juror or find his responses not to be credible: This is another potentially dangerous reason, but there is some authority upholding it, particularly when the facts make the distrust apparent even to the appellate courts' jaundiced eye. See: Stephens, supra (fact that juror knows nothing about case, even though it occurred in a small community of which she is a resident--prosecutor's suspicion held warranted).

DETAILED LIST OF HEADNOTES OF CASES TO CITE TO VALIDATE RACE NEUTRAL STRIKES-HAVE IN YOUR NOTEBOOK

- SCAN INTERN WORK IN HERE



"The world will not be destroyed by those who do evil, but by those who watch them without doing anything." - Albert Einstein