

Basics of Jury Selection

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Beginning Questions

- Where does jury selection start?
- What do you call it?
 - "Vore Dyer" or "Vwah Deer"?
- Is this Art or Science?

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Terminology

- Venire: the panel of prospective jurors
- Venire member: a potential juror
- Challenge for Cause: challenge to a potential juror's fitness or qualification to serve on the jury
- Peremptory Challenge: a "strike" to exclude a potential juror from the jury for any reason or no reason at all

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Terminology, cont.

- Strike List: the names a party submits to be removed from the jury following the question-and-answer period
- Strike Line: the cutoff line in the panel behind which no potential juror will be on the jury

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Practical Considerations

- Goals of Jury Selection
 - Gather information to intelligently make challenges
 - Always look for bias and prejudice on the panel
 - Introduce yourself, your client, and your case
 - Establish credibility

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Practical Considerations

- Proper Topics for Discussion
 - Your background
 - Familiarity with the judge and lawyers
 - Familiarity with witnesses
 - Potential jurors' relevant experience and opinions
 - Factual background of the case – to the extent allowed

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Things to Do

- Do:
 - Talk to the bailiff, coordinator, court reporter ahead of time
 - Determine if you need to move for more time / questionnaire
 - Request an allocation of strikes (based on party alignment)
 - Prepare a seating chart
 - Request the reporter make a record of jury selection
 - Ask the potential jurors questions
 - Call jurors by their names and juror numbers

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Things to Avoid

- Do not:
 - Pick a jury alone
 - Be afraid of the bad answer
 - Waste the court's time, waste the juror's time
 - Request a juror shuffle, unless...
 - Talk more than listen
 - Argue more than ask

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Ask the Big Questions

- You must figure out what your Big Questions are and ask the panel about them
 - What does "abuse" look like? Or "neglect"?
 - Drug use / mental health / criminal history / domestic violence
 - Best interest of the children
 - What is good parenting? What is bad parenting?
 - Plans for parents
 - Parental presumption
 - Personal involvement or experience with CPS
 - Actions of the Department
 - Termination

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Important Cases: *Batson*

- *Batson v. Kentucky*, 476 U.S. 79 (1986)
 - Criminal case with an African-American defendant
 - Prosecutor used his peremptory challenges to remove all African Americans from the jury pool
 - The Supreme Court reversed the conviction, holding that race-based challenges violate the Equal Protection Clause
 - This holding has been extended to gender, religion, and ethnicity

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Important Cases: *Hallett & Cortez*

- *Hallett v. Houston Northwest Medical Center*, 689 S.W.2d 888 (Tex. 1985)
- *Cortez v. HCCI-San Antonio, Inc.*, 159 S.W.3d 87 (Tex. 2005)
 - Provide the procedure for preserving error when the court refuses to grant a challenge for cause
 - Prior to submitting its peremptory challenges, a party must advise the court that a specific objectionable juror will remain on the list after the party has exercised its peremptory challenges

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Important Cases: *Cortez*

- *Cortez v. HCCI-San Antonio, Inc.*, 159 S.W.3d 87 (Tex. 2005)
 - Overrules the long-standing rule that once a potential juror has expressed bias, that person cannot be rehabilitated
 - Potential jurors cannot recant professed bias by saying they can be fair and impartial
 - Questions should not focus on where the potential jurors begin, but where they are likely to end
 - However, questions that attempt to preview a potential juror's likely vote are not permitted
 - There are no "magic words" that will disqualify for bias or cure bias

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Important Cases: *Vazquez*

- *Hyundai Motor Co. v. Vazquez*, 189 S.W.3d 743 (Tex. 2006)
 - Trial courts are allowed significant discretion in limiting inquiry during jury selection
 - A potential juror's bias against the facts of a case are not grounds for disqualification
 - Questions should focus on preconceived notions, not on the particular facts of the case involved
 - Bias against the law or a party is relevant, as is prejudgment of the verdict in the case

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Important Cases: *Treeline*

- *State of Texas v. Treeline Partners, Ltd.*, 476 S.W.3d 572 (Tex.App.—Houston [14th Dist.] 2015, pet. denied).
 - Trial courts do not have unlimited discretion in limiting attorney inquiry during jury selection
 - Parties must be able to intelligently exercise their strikes
 - Courts should not foreclose a line of questioning aimed at discovering potential juror's preconceived notions and biases about the parties or the lawsuit

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Preserving Error: Basics

- Always make a record
- If anyone (counsel, court, or potential juror) makes an improper statement, you must object, move to disregard, move to strike the panel, and/or move for a mistrial
- If the court overly limits time or topics, you must object and show:
 - You did not attempt to prolong jury selection;
 - You were prevented from asking proper, relevant, and specific questions; and
 - You must identify specific jurors that you did not get to examine

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Preserving Error: *Hallett* Challenge

- Use a peremptory challenge on a potential juror who was challenged for cause but not removed
- Exhaust your remaining peremptory challenges
- **Before turning in your strike list to the court**, advise the court (on the record!) that one or more specific, objectionable venire members remain on the list

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Commitment Questions

- Have your commitment questions ready to go:
 - As we sit here right now, before any evidence is admitted, knowing nothing else about the case ...
 - Have you already made up your mind? (Prejudice)
 - Can you be fair to my client? (Bias)
 - Will you hold my client to a higher standard? (Burden shifting)
 - Can you apply a clear and convincing standard?
 - Parental presumption?
 - Can you follow the judge's instructions?
- Lead the other side's good jurors into bias and rehabilitate your good jurors out of bias

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Juror Information Card

First, Middle Name:	Number:	Juror No.:	3
Last Name:			
Address:		City: DALLAS	State: TX Zip: 75230
Lived in Dallas County For: 10	Donation: Yes, donate all of my pay	Donation Amt: 0	
Date of Birth:	Place of Birth: Houston	Education Level: Doctorate	
Home Phone:	Work Phone:	Cell Phone:	
Drivers License No.:	Race: White	Religion: Baptist	
Occupation: Attorney	Marital: Married	No. of Children: 0	Gender: Female
Work Status: Employed	Employer:	Yrs. Emp.: 10	
Spouse's Occupation: Architect	Spouse's Name:		
Spouse's Employer: Self Employed	Years Employed: 0		
Served on Civil Case: NO	Where:	Served on Criminal Case: NO	Where:
Have you ever been party to a lawsuit: NO	Where:		

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Juror Information Card	
Juror Number:	
Email Address(es)	
Mailing Zip 75660	Employment Status: (unemployed) Occupation: Employer: Prior Employer:
Residence Zip 75660	Spouse Name: Employment: (employed) Occupation: Attorney Employer:
Residency US Citizen: Yes	Children Ages: Occupations:
Austin (if not/No) <i>(After Arrested)</i> County: Tarrant Years Resident:	Where did you grow up: Texas Special skills or knowledge: Arts & Media
Demographics Age: 34 Race: Hispanic origin Sex: Female Education: Other Religion: Agnostic/Unitarian Marital Status: Married Children: 0	Hobbies: I drive up like Japanese cartoon characters and act like them to escape reality since being a normal person isn't fun, and I receive mail from letters from the normal House. Organizations: Injuries requiring medical attention: Self: Yes Spouse: No Child(ren): No Description: I broke my nose once when a ball hit my face?

Notes for Jury Selection

Notes for Jury Selection

MAIN 22
VOID DEF II
Anyone else up mind? ✓
→ Jury Card ✓
INTRO - TEAM ✓
Thanks ✓
COURSE ✓ / FIRM / AG / TX DOT ✓
Role Call

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Notes for Jury Selection

E.D. exp. → too great a power
loan to L.O.
"TAKEN"

F.M.V. → Premium v Low Ball
D.O.U. , B.O.P.

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Juror Math: Finding the Strike Line

31 32 33 34 35 36 37 38 39 40
21 22 23 24 | 25 26 27 28 29 30
11 12 13 14 15 16 17 18 19 20
1 2 3 4 5 6 7 8 9 10

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Juror Math: Finding the Strike Line

31 32 33 34 35 36 37 38 39 40
21 22 23 24 | 25 26 | 27 28 29 30
~~11~~ 12 13 14 15 16 17 18 19 20
1 2 3 4 ~~5~~ 6 7 8 9 10

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Juror Math: Finding the Strike Line

31 32 33 34 35 36 37 38 39 40
 21 22 23 24 25 26 | 27 28 29 | 30
~~1~~ 12 13 14 ~~15~~ 16 17 18 19 20
 1 ~~2~~ 3 4 ~~5~~ ~~6~~ 7 8 9 10

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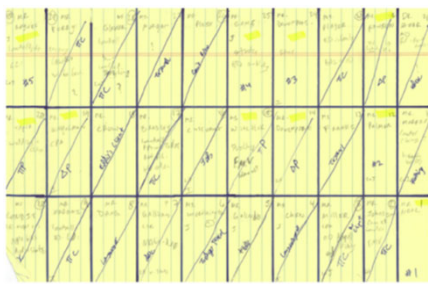
Juror Math: Finding the Strike Line

31 | 32 33 34 35 36 37 38 39 40
 21 22 ~~23~~ 24 25 26 27 28 29 | 30
~~1~~ 12 13 14 ~~15~~ 16 17 18 19 20
~~1~~ ~~2~~ 3 4 ~~5~~ ~~6~~ 7 8 9 10

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Seating Chart



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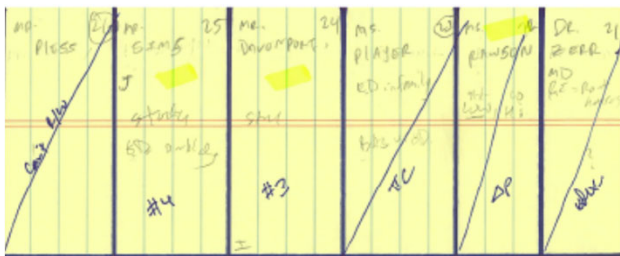
Seating Chart



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Seating Chart



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Quick Takeaways

- Know your judge, know your venue
- Be yourself
- Be prepared
- Be respectful
- Always make a record
- Ask questions
- Listen to the answers
- Expect the unexpected
- Have fun

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