FUNDAMENTALS OF TRIAL ADVOCACY COURSE

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JURY SELECTION

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JURY SELECTION

Right to a Jury Trial

1. **Sixth Amendment, U.S. Constitution**: "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial by an impartial jury . . ."

2. **Article 2, Section 23, Arizona Constitution**: "The right of trial by jury shall remain inviolate."

3. **Article 3, Section 24, Arizona Constitution**: "[i]n criminal prosecutions, the accused shall have the right to . . . a speedy public trial by an impartial jury . . ."

4. **A.R.S. section 13-114**: "In a criminal action defendant is entitled: (1) To have a speedy public trial of the county in which the offense is alleged to have been committed."

Jury Eligibility

A trial is jury eligible if either of the following is present:

1) The offense had a common law antecedent which was jury eligible

<u>or</u>

2) If the offense is "serious".
   a) Incarceration of 6 months or less = petty offense = presumptively not jury eligible.
   b) Presumption may be rebutted by "demonstrating the offense carries additional severe, direct, uniformly applied, statutory consequences that reflect the legislature's judgment that the offense is serious." *Derendal v. Griffith,* 209 Ariz. 416, 104 P.3d 147 (2005).

Number of Jurors

1. **A.R.S. section 21-102:**
   a. Imprisonment for 30 years or more: 12 jurors
   b. Imprisonment/sentence of less than 30 years: 8 jurors
   c. Misdemeanor: 6 jurors

2. **Arizona Rules of Criminal Procedure, Rule 18.2: Alternate jurors**

Jury Selection

1. **Arizona Rules of Criminal Procedure, Rule 18.3: Jury Information**, "Prior to the voir dire examination on the day when jury selection is commenced, the parties shall each be furnished with a list of the names of the panel of prospective jurors called for the case together with the zip code, employment status, occupation, employer, residency status, education level, prior jury duty experience, and felony conviction status . . . ."

2. **Arizona Rules of Criminal Procedure 18.4: Challenges**
    a. **Challenge to the Panel**: Written challenge alleging panel selection materially departed from legal requirements.
    b. **Challenge for Cause** (by the court or by a party)
    c. **Peremptory Challenge**
        1. Ten in death penalty cases
        2. Six in all other Superior Court cases
        3. Two in all limited jurisdiction courts
        4. Joint trials: Each defendant gets ½ of the peremptory challenges
        5. Parties may agree to exercise fewer peremptory challenges
        6. *Batson v. Kentucky,* 476 U.S. 79 (1986)

3. **Arizona Rules of Criminal Procedure, Rule 18.5: Procedure for Selecting Jury**
    a. **Swearing Panel**
    b. **Calling Jurors for Examination**: Regarding # of juror questioned, court may either:
        * Call # equal to # to serve + # of alternates + # of peremptory challenges

        or

        * All prospective jurors
    c. **Inquiry by the Court; Brief Opening Statements**
        * Court gives overview and introductions
        * Court shall ask questions regarding juror qualifications
        * Court may allow parties to give brief opening statements
    d. **Voir Dire Examination**
        * Court controls
        * Conducted on the record
        * Court shall permit further examination by a party
        * Written questionnaires not precluded
    e. **Scope of Examination**
        * Court ensures juror privacy reasonably protected
        * Inquiries limited to bases for cause/peremptory challenges
    f. **Challenge for Cause**
        * Challenge made on the record but out of hearing of jurors
        * If juror is excused, another member of the panel will replace juror

g. **Exercise of Peremptory Challenges**
   * Alternating with prosecutor going first
   * Failure of party to exercise challenge is waiver of party's remaining challenges
   * If parties fail to exercise full # of challenges, clerk shall strike jurors on bottom of the list until only the # to serve + alternates remain

h. **Selection of Jury**
   * Alternates chosen by lot by the clerk just before deliberations
   * Alternates will be instructed to continue to follow admonitions until they are informed of verdict or jury discharged
   * If deliberating juror excused, court will chose replacement from alternates
   * If alternate joins deliberations, court will instruct jury to begin deliberations anew

i. **Deliberations in a Capital Case**

4. **A.R.S. section 21-201: Qualifications**
   a. At least 18 years old
   b. U.S. Citizen
   b. Resident of jurisdiction
   c. Never convicted of felony or felon with rights restored

5. **A.R.S. section 21-202: Persons entitled to be excused from jury service**.

Batson

- ***Strauder v. West Virginia,* 100 U.S. 303 (1879)**
  - An African American was convicted of murder. The defendant appealed their conviction by an all Caucasian jury. Defendant claimed that a state law limiting those eligible for jury to all Caucasians as violating his Equal Protection rights.
  - Does a state law limiting jury service to Caucasians only violate the Equal Protection Clause?
    - Yes, the purpose of the Clause was so that persons of every race could enjoy all the civil rights under the law. The Court also said that there can be limits on jury service such as gender and education.
  - Justice Field dissented and Justice Clifford concurred with the dissent.
- ***Swain v. Alabama,* 380 U.S. 202 (1965)**
  - A defendant appealed their criminal conviction claiming that the use of peremptory strikes by the prosecutor excluding all African Americans was unconstitutional. Further, at the time this use of strikes was so

widespread and systematic that no African American had ever served on a jury in that particular county.

- Was the Prosecutors use of peremptory strikes constitutional?
  - Yes, the use of peremptory strikes applies to both the defense and the prosecution. African Americans were not being excluded from jury service since they were included on the list for jury service.
- Chief Justice Goldberg and Justice Douglas dissented.

- ***Arlington Heights v. Metro Housing*, 429 U.S. 252 (1977)**
  - A company wanted to build on several tracts of land for the purpose of constructing low income, multiple family housing in an area that was predominantly Caucasian. The land at the time was zoned as single family, therefore constructing the residences would be contingent upon rezoning. Rezoning was denied on the grounds that the land was unsuitable for low income, multiple family housing. Company sued claiming that the rezoning denial had a discriminatory effect based on the rezoning mainly affecting minorities.
  - Was the denial of the rezoning discriminatory, violating the petitioners Equal Protection rights?
    - No, while the denied rezoning may have a disproportionate discriminatory effect on minorities the party asserting the claim, could not demonstrate that the zoning was denied with discriminatory intent.

- ***Batson v. Kentucky*, 476 U.S. 79 (1986)**
  - During jury selection a prosecutor used four peremptory strikes removing all African Americans from the panel. Defense counsel objected stating that doing so violated the defendant's Sixth and Fourteenth Amendment rights.
  - Does a peremptory strike based solely on race violate the Constitutional rights of a defendant?
    - Yes, the practice violated the Equal Protection rights of the defendant. To establish a *prima facie* case of discrimination defendant must show that they are a part of a cognizable racial group, the prosecutor used peremptory strikes to exclude potential jurors of the same racial group and there are any other relevant details that can be inferred that the prosecutor was attempting to exclude potential jurors based on their race.
  - Justice White filed a concurring opinion. Justice Marshall filed a concurring opinion. Justice Stevens filed a concurring opinion in which Justice Brennan joined. Justice O'Connor filed a concurring opinion.

Chief Justice Burger filed a dissenting opinion in which Justice Rehnquist joined. Justice Rehnquist filed a dissenting opinion in which Chief Justice Burger joined.

- ***Hernandez v. N.Y.*, 500 U.S. 352 (1991)**
  - Defendant sought review of the rejection of their *Batson* claim when the prosecutor used two peremptory strikes on Spanish speaking jurors because they felt that the prospective jurors would not be able to listen to and follow the translator.
  - Does a *Batson* challenge include peremptory strikes based solely on ethnicity?
    - Yes, United States Supreme Court ruled that a peremptory strike based only on ethnicity violated the Equal Protection Clause. Here the prosecutor offered a neutral reason for the strike.
  - Justice O'Connor, with whom Justice Scalia joined, concurred in the judgment and filed an opinion. Justice Blackmun dissented and filed a statement. Justice Stevens, with whom Justice Marshall joined, dissented and filed an opinion.
- ***State v. Davis*, 504 N.W.2d 767 (Minn. 1993)**
  - A prosecutor used a peremptory strike on a member of the jury panel claiming that it was due to the person belonging to a certain religion. When asked for a reason for the exclusion the prosecutor stated that in his experience members of the particular religion were reluctant to be in the position of exercising authority over others.
  - Do *Batson* challenges include peremptory strikes based on religion?
    - No, Court refused to extend *Batson* to include peremptory strikes based on religion and The Supreme Court of the United States denied certiorari.
- ***J.E.B. v. Alabama*, 511 U.S. 127 (1994)**
  - In a paternity suit brought by Alabama the attorney for Alabama used 9 out of 10 peremptory strikes on male jurors, resulting in an all-female jury. The putative father appealed claiming that this practice violated his Equal Protection rights.
  - Does a peremptory strike based solely on gender violate the Equal Protection Clause?
    - Yes, United States Supreme Court reversed the lower court decision. Ruling that *Batson* challenges extended to peremptory strikes based solely on gender.

- Justice O'Connor filed a concurring opinion. Justice Kennedy filed an opinion concurring in the judgment. Chief Justice Rehnquist filed a dissenting opinion. Justice Scalia dissented and filed an opinion in which Chief Justice Rehnquist and Justice Thomas joined.

- ***Purkett v. Elem*, 514 U.S. 765 (1995)**
  - Prosecutor used two peremptory strikes on African Americans on the jury panel. The prosecutor claimed that they didn't like the way the potential jurors had their hair cut and that their facial hair made them look suspicious.
  - Was the reason given for the peremptory strike insufficient to overcome a *Batson* challenge to the strike?
    - Yes, Court found that explanations for peremptory strikes need not be plausible or persuasive. In response the party asserting the *Batson* challenge has the burden of showing that the reason offered is pretextual.
  - Justice Stevens filed dissenting opinion in which Justice Breyer joined.

- ***Payton v. Kearse*, 495 SE2d 205 (S.C. 1998)**
  - In a civil case, one party claimed that the trial judge improperly denied their *Batson* challenge. When the party exercising the peremptory strike was asked for a reason for the strike, they stated that the potential juror was from a family that had problems with the law and that they were of a *redneck variety*. The trial judge then denied the *Batson* challenge.
  - Did the trial court err when it denied the *Batson* challenge?
    - Yes, once a pretextual discriminatory reason is given for a peremptory strike it poisons any other reason given. Here the term *redneck* is a stereotype that applies exclusively to Caucasians. It is a stereotype that includes a broad group without evidence that all members of the group have certain characteristics. Such as a person who is a member of the KKK or Black Panthers. Therefore, the trial judge improperly denied the *Batson* challenge.

- ***State v. Lucas*, 199 Ariz. 366, 18 P.3d 160 (App. 2001)**
  - Prosecutor used peremptory strike on the only African American on the panel. The reason given for the strike was that the person was a lawyer and that they were from the South.
  - When a neutral reason is given for a strike along with a discriminatory reason, is the defendant's Equal Protection rights violated?
    - Yes, once a discriminatory reason has been uncovered-either inherent or pretextual this reason taints any other neutral reason for the strike.

- ***Johnson v. California*, 545 U.S. 162 (2005)**
    - Defendant appealed their second-degree murder conviction after the prosecutor used three peremptory strikes on the remaining African American venire persons. Trial judge rejected the *Batson* claim stating that defendant failed to show a strong likelihood of purposeful discrimination. The appeal claimed that the California standard of 'strong likelihood' was different from the United States Supreme Court's standard of a 'reasonable inference' that discrimination occurred.
    - Are the California standard (strong likelihood) for a *prima facie* case that discrimination has occurred in a *Batson* challenge copacetic with the United States Supreme Court standard (reasonable inference)?
        - Yes, the standards are the same, inferences of discrimination are sufficient to present a *prima facie* case of discrimination, the burden then shifts to the opposing party to present a neutral reason for the exclusion.
    - Justice Breyer concurred and filed opinion. Justice Thomas dissented and filed opinion.
- ***United States v. Blaylock*, 421 F.3d 758 (8th Cir. 2005)**
    - The defendant appealed their conviction for drug trafficking, claiming among other things, that the peremptory strike of a venire person based on sexual orientation violated his Equal Protection rights.
    - Does *Batson* extend to peremptory strikes based on sexual orientation?
        - Court did not address the issue. It only expressed doubt that it did and that even if sexual orientation was included the prosecutor provided a neutral reason for the exclusion.
- ***State v. Newell*, 212 Ariz. 389, 132 P.3d 833 (2006)**
    - In a death penalty case the prosecutor used a peremptory strike on the only remaining African American on the venire panel. Prosecutor claimed the strike was due to perceived contradiction about whether they would be able to vote for the death penalty, they did not believe that the contradiction was enough for grounds to strike for cause.
    - Did the prosecutor improperly exercise their peremptory strike, violating the defendant's Equal Protection rights?
        - No, Defendant was not able to show evidence, other than inference, that strike was purposeful racial discrimination.
- ***Snyder v. Louisiana*, 552 U.S. 472 (2008)**
    - A prosecutor used a peremptory strike on a juror because, they appeared nervous and were a student teacher with school obligations. Prosecutor

claimed that due to their other obligations they would be unduly motivated to reach a prompt verdict.

- Did the use of a peremptory strike violate the defendants Equal Protection rights?
    - The Supreme Court found that due to other jurors being in similar circumstances who were not struck, the reasoning was pretextual for purposeful discrimination. Further there was nothing in the record to indicate that the juror appeared nervous.
- Thomas, joined by Justice Scalia, dissented and filed an opinion.

- ***US v. Collins*, 551 F.3d 914 (9th Cir. 2009)**
    - The defendant was convicted of drug offenses involving distribution of methamphetamine. The defendant appealed their conviction stating that the trial judge applied an improper standard on a *Batson* challenge. When the prosecutor used a peremptory strike on the only remaining African American venire person. When the *Batson* challenge was made the prosecutor was not asked for a reason for the strike. They only stated that a *prima facie* case had not been made since the defendant could not show that a pattern of discrimination.
    - Was an improper standard for reviewing a *Batson* challenge used by the trial judge?
        - Yes, the correct test for a *prima facie* case for a *Batson* challenge is: the prospective juror is a member of a cognizable racial group, the prosecutor used a peremptory strike to remove the juror, and the totality of the circumstances raises an inference that the strike was motivated by race. Here, the fact that there was only one member of a cognizable racial group left does not mean that there was not discriminatory intent. Further, other jurors in similar circumstances were not struck. In applying both of these factors the defendant did establish a *prima facie* case. The prosecutor now has the burden of demonstrating a neutral reason for the peremptory strike.

- ***SmithKline Beecham Corp. v. Abbott Labs.*, 740 F.3d 471 (9th Cir. 2014)**
    - In a civil dispute regarding a claim about a good faith and fair dealing violation when Abbott increased its cost of an HIV drug fourfold, a juror was excluded by use of a peremptory strike. A *Batson* challenge was raised claiming that the potential juror was excluded based solely on sexual orientation.
    - Does a *Batson* challenge extend to peremptory strikes based solely on sexual orientation?

- Yes, sexual orientation is subject to heightened scrutiny. Therefore, rejecting a juror based solely on sexual orientation violates equal protection rights.

Preparation of Jurors

Arizona Rules of Criminal Procedure, Rule 18.6

* Jurors may be provided a handbook approved by Supreme Court
* Oath (note new language effective 1/1/14)
* Court shall give preliminary instructions immediately after swearing jury regarding order of proceedings, procedure for submitting questions, and elementary legal principles
* Court shall instruct jurors that they may take notes, and shall provide materials. Court has discretion to also authorize documents and exhibits to be included in notebooks . Jurors have access to their notebooks during recesses and deliberations. After a verdict, notes will be destroyed by bailiff/clerk (in capital cases, notes available until after sentencing verdict)
* Jurors will be instructed they may submit written questions to the court. Counsel may object to the questions out of the presence of the jury. For good cause, the court may prohibit or limit questions to witnesses.

Jury Selection

1. Basics:
   a. Purpose: Expose Juror Bias
      1 How do we do that:
         1. _____ conducted Voir Dire
         2. Use of a _____ (SJQ)
         3. Combination of Voir Dire and SJQ
      2 Roadblocks we Face:
         1. Peer Pressure & Self Esteem
         2. Genuine inability to gauge the depth of their own bias
         3. The lack of opportunity because the right questions were never asked!!!
         4. A willingness to lie about the bias
   b. Methods:
      1 _____

      2 _____

   c. Number of Jurors: ARS §21-102

      Misdemeanor _____

      Felonies

         30 years and more _____

         29 years and under _____

      Alternates: Rule 18.2

         1. Court may qualify additional jurors as deems necessary
         2. Rule 18.5(h) how alternates are selected—_____
   d. Note Taking during voir dire

2. 7 Objectives of Voir Dire
   1. Build Rapport
   2. Establish Credibility for the Case - Attorney
   3. Gather information in support of challenges
   4. Stimulate conversation with jurors
   5. Educate
   6. Advocate
   7. Understand the jury's values that will impact the verdict

3. Effectively Meeting the 7 Objectives

   a. _____:

      1 Extensive in scope

      2 Individualized and personalized

      3 Doesn't invade privacy unnecessarily

   b. _____:

      1 Attorney listens to what jurors say, probes appropriately

   c. _____:

      1 Sensitive, caring and concerned response to jurors

      2 Doesn't seek to commit

      3 Asks only questions which elicit responses that will be used for jury selection/opening statement

4. Preparation:

   Prior Preparation Prevents Piss Poor Performance

   a. Questions:

      1 Gaining Information

         1. "What" questions will reveal _____data

         2. "Why" questions will reveal a juror's _____

         3. "How" questions usually reveal a juror's true _____

      2 Use the E.A.R Method

         1. Experience

            a. Have you or anyone close to you ever been in a fight/physical altercation?

            b. Tell me about the fight – what happened?

         2. Attitude

            a. How did you feel about your brother getting in this fight at Hooters?

         3. Rules (what did they learn as a result of this experience)

            a. Were you satisfied with the end result of this incident?

3 Give Jurors Time to Think: (www.trialtheater.com Elliot Wilcox)

1. **Ask the question of the entire panel (and tell them how they should respond):** *"By show of hands,* has anyone here ever been wrongfully accused of something?"
2. **Show them how to respond:** While asking the question, raise your own hand in the air. (Telling them how to respond and then *showing* them how to respond will encourage greater responses.)
3. **Pause.** Don't rush it. Mentally count to 10 or so before you even *think* about saying anything else or moving to another topic.
4. **Look 'em in the eyes.** While you're pausing, make eye contact with several jurors and use the power of your eye contact to encourage responses. Keep an eye out for the ones who look like they'd *like* to respond, but haven't made up their minds yet.
5. **Nobody volunteered? Pick on someone.** Actually, pick about 3-4 people, from different parts of the room, and ask them directly: "Mrs. Jones, have **you** ever been wrongfully accused of something?" By asking them directly, sometimes you'll prompt a better response. (A good place to start is with the people who looked like they *wanted* to respond, but didn't raise their hand.)
6. **Ask the entire panel again.** Even if no one responds to your individual questions, it's not a waste of time, because you're giving the other jurors time to finish thinking their way through your question. Now that they've had enough time to finish thinking, ask the entire panel once again, perhaps adding a bit of a challenge to your question: "Really? No one here has **ever** been wrongfully accused of anything?"
7. **Pause (again). Look 'em in the eyes (again).** Hopefully, this will prompt any hold-outs into answering the question. If not, consider rephrasing the question, or moving on to another topic. At least you'll know that you didn't cut off anyone's thought process and prevent them from answering.

4 Hot Topics:

1. Race
2. Police experiences
3. Media
4. Civil Cases pending
5. Safety
6. Schools
7. Discipline
8. Child care
9. Alcohol and drug use
10. Domestic violence
11. Child sexual abuse
12. Child physical abuse
13. Adult sexual assault
14. Miscellaneous

5. What to Avoid During Voir Dire
   a. Top 10 List

10 _____

1. Remember...jurors are not witnesses
2. Provide a "safe" posture when questioning jurors
3. Converse with them...not attack
4. Keep an open mind to their responses. Don't judge them openly

9 _____

1. Remember...jurors feel slighted if you do not ask them questions or give one too much attention
2. Protect the not-so-bright jurors
3. Prepare questions everyone can and should answer
4. Ignoring theories on group dynamics and concentrating on one or two specific jurors

8 _____

1. Prepare...don't ignore.
2. Design questions that address these issues
3. Do Not Neglect to voir dire on case weaknesses
4. Anticipate adverse answers or comments. Do NOT be afraid to let the juror expose personal bias against your case
5. Argue for individual voir dire *in camera* for sensitive questions
6. Always give feedback when they answer questions
7. Use a SJQ

7 _____

1. Ask questions
2. You should be asking about the weaknesses in your case
3. If you don't have a weakness you are ill-prepared for trial

6 _____

1. Generally used in most complex cases and capital cases

5 _____

1. Avoid "talking down" to jurors. Remember...the average juror reads and understands at an 8th grade level
2. Use every day, ordinary language found in any newspaper
3. Don't use legalese, acronyms, legal or police jargon
4. Do not speaking in the Abstract
   a. Describe your case in simple terms
   b. Design case-specific questions
   c. Use principles of personalization. Use words and descriptions that involve them

d. Use examples when you can

4 _____

1. Get a Poker Face
2. Do not making it uncomfortable for a juror to express an honest opinion or disagree with you
3. Give jurors feedback on their responses
4. Ask the panel does anyone else AGREE with Juror

3 _____

1. Talking More Than Your Jurors
2. Use Open-ended Questions
3. Questions should be less than 20 words each.
4. Direct Questions to Individuals, not just the group
5. Make sure each juror speaks at least twice
6. Avoid
    e. Formulating questions so that no response is the desired response
    f. Embarrassing the "not so bright" juror.

2 _____

1. List of Case Strengths & Weaknesses
2. Write Voir Dire Well in Advance of Trial
3. Design Questions that Probe Each and Every Strength and Weakness
4. Think about Jury De-selection while Preparing Case Themes and Opening
5. Failure to Ask the Court Permission to use a SJQ

1 _____

1. Thinking your case hasn't started until after the jury is picked
2. Jury Selection is the first time you get to advance your theory of the case
3. First impressions last throughout the case

6. Have the Information Now What?
    a. Challenges for _____
        1 What is it
            1. A request that a prospective juror be dismissed because there is a specific and forceful reason to believe the person cannot be fair, unbiased or capable of serving as a juror. The judge determines if the person shall be dismissed.
            2. Causes include
                a. acquaintanceship with either of the parties, one of the attorneys or a witness,
                b. The potential juror's expression during voir dire (questioning of the prospective jurors) of inability to be unbiased due to prior experience in a similar case (having been convicted of drunk driving, being a battered wife, etc.),

c. any obvious prejudice, or
d. Inability to serve (such as being mentally disturbed).
e. Knowledge of the facts
f. Any other basis for believing he/she might not be impartial.

2 When does this happen
1. Generally after the Judge asks all the questions
2. Sometimes they will do as they ask questions

3 Passing the Panel for Cause

b. _____ Challenges

1 What is it
1. The right of the plaintiff and the defendant in a jury trial to have a juror dismissed before trial without stating a reason.

2 When do you do this
1. After all questions have been asked

3 How many do you get (Rule 18.4(c))
1. Capital Case: _____
2. Superior Court Cases: _____
3. Limited Jurisdictions: _____
4. Co-Defendants: allowed ½ the number allowed to one defendant, prosecutor does not get any more.

4 How should you strategically do your strikes

c. <u>Batson</u>

1 What is this

Strike a juror based on race, gender, religious discrimination:

Prima Facie showing the party struck the juror for discriminatory reason—
Race, gender, religious reasons

Party defending the strike must provide a race neutral reason for the strike

Court must determine and put on the record if there is a violation of Batson.
Violation: juror back on the panel
No violation: juror remains stricken and does not serve on panel.
Must raise issue or waived on appeal.

2 What do you need
1. Race Neutral Reason of why struck juror

3 State call <u>Batson</u> violation on the defense

41	42	43	44	45	
29	30	31	32	33	34
17	18	19	20	21	22

Defense

	46	47	48	49	50
35	36	37	38	39	40
23	24	25	26	27	28

Prosecutor

8	16
7	15
6	14
5	13
4	12
3	11
2	10
1	9

Judge

VOIR DIRE CATEGORIES

1. General Information
2. Domestic Violence
3. Crimes Involving Weapons
4. Crimes Against Children
5. Crimes Involving Automobiles
6. Repeat Offenders
7. Crimes Involving Minority Groups
8. Crimes Involving Animals
9. Sexual Assault
10. Crimes Involving Impairment – Drugs/Alcohol
11. Media
12. Civil Cases Pending as a Result of Criminal Charges
13. Safety and Self Defense
14. Schools
15. Doctors and Health Issues
16. Crimes Involving Drowning
17. Crimes Involving Strangulation
18. Identification/Memory
19. Death Penalty
20. DNA
21. Immigration
22. Identity Fraud

23. Experts

24. Informant/Immunity

25. Athletes

26. Gambling

27. Investigation Issues

28. Conspiracy

GENERAL INFORMATION JURY QUESTIONING
Maricopa County Attorney's Office

Updated May 2013

Note: This section of the jury instructions material consists of questions which appear in case specific sections as well. This section is designed as an outline for general jury questioning.

JUROR NUMBER: _____

JUROR QUESTIONNAIRE

PLEASE READ CAREFULLY

INSTRUCTIONS TO JURORS

The process of jury selection will take place in two stages. The first stage will be the completion of this questionnaire. The second stage will consist of a question and answer period. Using this questionnaire will shorten the process of jury selection. Your written responses are part of the public record. However, at the conclusion of the process, your questionnaire will be sealed to maintain confidentiality.

When answering questions, please print your answers and keep in mind that you are sworn to tell the truth and that your answers are given under the penalty of perjury. It is important that you answer the questions that follow as completely and honestly as possible. There are no "right" or "wrong" answers, but rather only complete and incomplete answers. Complete answers are far more helpful because they will reduce the time needed for follow-up questioning in court.

It is also extremely important that your answers to these questions be exclusively your own. Accordingly, you must fill out the questionnaire by yourself and not discuss the questions or your answers with anyone else. We do not want to embarrass anyone. If there is a sensitive area, **please answer the question thoroughly**.

Finally, please do not write on the back of any page. The questionnaire must be copied so each attorney and the Court have a copy. If you wish to make further comments regarding any of your answers, you may do so on the explanation sheet attached to the back of your questionnaire noting the question number associated with your answer. Please do not speculate about the evidence to be presented in this case based on any question contained in the questionnaire. The verdict must be based on the evidence presented in court during trial.

PLEASE MAKE SURE YOU SIGN AND DATE THE LAST PAGE.

BACKGROUND INFORMATION [PLEASE PRINT]

1. Gender: ☐ Male ☐ Female Age:_____

2. Where were you born and raised? _____

3. City/Area of Residence (please specify the area, for example northeast Phoenix, south Phoenix):_____

4. Marital status:
   ☐ Single ☐ Domestic Partner ☐ Widowed
   ☐ Married ☐ Divorced ☐ Re-Married

EMPLOYMENT

5. If you are employed outside the home:

   a. Name of your employer:

   _____

   _____

   b. What is your present job:

   _____

   _____

   c. How long have you been with this employer: _____

   d. Duties and responsibilities of your present job:

   _____

   _____

   e. Do you supervise any other employees? ☐ Yes ☐ No

   f. Do you have authority to fire or discipline other employees? ☐ Yes ☐ No

6. If you are now retired, unemployed or disabled, please list your former occupation:

   _____

   _____

7. If you are presently a student:

School	Grade	Full or Part Time

8. Do you plan to attend school? ____ Yes ____ No When do you plan to start? _____

If yes, what will you study? _____

9. Please list any prior jobs or occupations (not already mentioned):

Job Title	Years	Name/Location of Employer

10. Please state your spouse's/partner's present occupation and employer or if retired or unemployed, their last occupation and employer:

_____

_____

11. If you are divorced/separated or widowed:
What type of occupation did your former spouse(s) have? _____

ABILITY TO SERVE AS A JUROR / POTENTIAL HARDSHIPS / LIMITATIONS

Jury duty is often inconvenient and may present a hardship. As a citizen of the United States and Arizona, one of your responsibilities and privileges is to serve on juries when summoned.

After the jury is selected, the normal trial schedule is Monday through Thursday, beginning **June 9, 2012** and ending approximately **August 9, 2012.** Typically, court begins at 10.30 a.m. and ends at 4:30 p.m. There will be lunch and afternoon breaks. **You have been provided a calendar showing the actual dates and times for the trial.**

Under Arizona law, because this trial will last more than ten days, jurors who sit on this case will be compensated for the actual amount of their daily earnings up to $300 dollars per day, but not less than $40.00 dollars per day from the fourth day until discharged or excused. To receive this compensation, you will be required to provide documentation of your actual earnings and employment and follow the procedures required by law.

Under Arizona law, your employer must permit you to be absent from work to serve on a jury. Your employer may not terminate or penalize any employee because the employee serves on a jury, including loss of seniority.

12. Do you feel that service on this jury would create an undue hardship? An undue hardship is something beyond normal hardship and inconvenience associated with jury duty. Situations that may be considered undue hardships include scheduled surgery for you or a loved one for whom you are responsible and prepaid travel plans that cannot be changed.

☐ Yes ☐ No If yes, please explain: _____

_____

_____

13. Do you have a hearing, vision or physical problem which would make it difficult to hear the testimony, view exhibits, or to sit for long periods of time? ☐ Yes ☐ No

If yes, please describe: _____

14. Are you taking medications regularly? ☐ Yes ☐ No

If yes, please list the medications:

_____

15. Do any of your medications affect your memory or concentration, or in any way affect your ability to serve as a juror in this case? ☐ Yes ☐ No

16. Do you have any physical or emotional concerns or limitations that would prevent you from serving in this case as set forth in the trial schedule provided?

_____

_____

17. Do you have any difficulty reading, speaking or understanding the English language? ☐ Yes ☐ No

_____

_____

18. Have you formed any opinions about this case? ☐ Yes ☐ No

If yes, what opinions have you formed?

_____

_____

_____

19. If you have formed an opinion about this case, would you be able to set those opinions aside and only judge this case on the evidence presented? ☐ Yes ☐ No

20. Do you recall having read, seen or heard anything concerning any previous legal proceedings involving the Defendant?
☐ Yes ☐ No **If YES, in your own words please tell us what you recall:**

_____

_____

If yes, what opinions have you formed about this case?

_____

_____

RESIDENCE`/FAMILY/AFFILIATIONS/INTERESTS

21. How long have you lived in Maricopa County? _____

22. Other places you have lived and length of time: _____

_____

23. What is the highest level of education that you have competed?_____

24. What colleges did you attend? _____

a. Degree(s) and date(s) received:

_____

b. Any special professional or vocational training received:

Where and when: _____

Nature of training:_____

c. What is the highest level of education reached by your spouse or significant other?

Major areas of study: _____

Degrees or certificates: _____

25. Have you, your spouse or any close family member ever applied to, worked for, or had training with (check all that apply and note if it was you, your spouse or a family member):

_____ a. Any law enforcement or security agency (including police department and sheriff's deputy or posse, federal marshal, DEA, Department of Public Safety, FBI, private security company or investigative agency)?
_____ b Any private firm involved in the investigation of civil or criminal matters?
_____ c. A prison, jail, detention center, probation service, or agency responsible for correctional work (including Department of Corrections, Bureau of Prisons, County Sheriff's Office, or parole officer)?
_____ d. Any city or town attorney, Attorney General, or state or federal prosecutor (including as a lawyer, paralegal, or secretary)?
_____ e. Any public agency or law firm that practices criminal defense (including as a lawyer, paralegal, or secretary)?
_____ f. Any court (including as a lawyer, judge, bailiff, clerk, other member of court staff, or court reporter?)
_____ g. A psychologist, psychiatrist, mental health center?
_____ h. A social worker or social service agency, or counseling service?
_____ i. A treatment program for alcohol, drugs or any other substance abuse?
_____ j. Medical, nursing, or EMT services?
_____ k. Any forensic field such as fingerprinting, DNA, ballistics, autopsies, etc.?

If yes to any of the above, please provide details: _____

_____

_____

_____

_____

26. Have you ever served in the armed forces? ☐ Yes ☐ No
Were you drafted or did you voluntarily enlist? ☐ Drafted ☐ Enlisted

What branch: _____ Type of discharge from service: _____

Active: _____ Reserve: _____

Rank achieved: _____ Dates of Service: _____

Duties: _____

Did you serve in combat? ☐ Yes ☐ No

27. Please tell us the following about your children/stepchildren:

Relationship	Age	Gender	Level of Education	Occupation	Lives with you?

28. What do you like to do in your spare time (i.e., hobbies, sports, interests, movies, books, etc.)?

_____

_____

29. Have you or your spouse/partner ever closely followed a criminal court case(s)?
☐ Yes ☐ No
If yes, please describe:_____

_____

30. Have you ever watched television programs which show police officers, prosecutors, defense attorneys and trials? ☐ Yes ☐ No
If yes, which ones: _____

_____

31. Do you feel television shows such as C.S.I and Law & Order are realistic portrayals of the criminal justice system? ☐ Yes ☐ No

Please explain:_____

_____

32. What television shows do you watch on a regular basis?

_____

33. What newspapers, magazines, periodicals or blogs do you subscribe to or regularly read?

_____

34. Do you regularly post to or read blogs, Twitter, and/or social sites such as Facebook, or MySpace? ☐ Yes ☐ No

If yes, which ones?_____

35. Will you accept without reservation the Court's order that **YOU WILL NOT ACCESS OR USE THE INTERNET TO GATHER ANY INFORMATION OF ANY KIND REGARDING THIS TRIAL OR BLOG IN ANY WAY ABOUT ANY ASPECT OF YOUR JURY SERVICE IN THIS TRIAL?** ☐ Yes ☐ No

36. Do you read mysteries? Yes ____ No ____

If so, which books and authors are your favorites?

_____

_____

_____

37. Have you had any specialized training or education in the area of DNA and DNA analysis? Yes ____ No ____ If yes, please describe.

38. Have you or anyone close to you ever worked in a lab or any medical testing facility? Yes ____ No ____ If yes, please describe.

39. Do you have any special interest in any type of scientific analysis such as fingerprint, hair or DNA? Yes ____ No ____ If yes, please describe.

40. Do you have any difficulty understanding, and/or a strong dislike of complex math/scientific information? Yes ____ No ____ If yes, please describe.

_____

_____

_____

_____

41. Generally, do you seek out positions of leadership? (Please check one)
____Always
____Often
____Occasionally
____Never

42. Do you consider yourself more of a.
____Detail oriented person
____A big picture person
____Both
Please explain your answer.

_____

_____

_____

43. Have you, a family member or close personal friend ever been involved in a business dispute? Yes ____ No ____ If yes, please explain.

_____

_____

_____

44. Have you, a family member or close personal friend ever lost a business or faced financial difficulties because of the impending loss of a business?

Yes ____ No ____ If yes, please explain.

_____

_____

_____

45. Have you ever faced a <u>serious</u> financial difficulty?

Yes ____ No ____ If yes, please explain.

_____

_____

_____

46. Do you routinely carry or handle large sums of cash, exceeding $500.00?

_____

_____

_____

47. Do you have direct experience or responsibility for preparing financial records, either personally or professionally?

Yes ____ No ____ If yes, please explain.

_____

_____

_____

48. Have you, family member or close personal friend ever lost a business or faced financial difficulties because of the impending loss of a business?

Yes ____ No ____ If yes, please explain.

_____

_____

_____

49. Have you, any family members or close personal friend ever experienced a dispute with a business partner? Yes ____ No ____

If yes, please explain the circumstances and how was it resolved?

_____

_____

50. A person accused of a crime does not have to testify under the Fifth Amendment of the U.S. Constitution, and his silence may not be considered in determining guilt or innocence. If the defendant does not testify, do you feel he is more likely guilty?

Yes ____ No ____ Why or why not?

_____

_____

_____

51. Have you ever read about or had any experience with the accuracy of eyewitness identification? Yes ____ No ____ If yes, please explain.

_____

_____

_____

52. Do you believe that you possess any psychic abilities or have extrasensory perception?

Yes ____ No ____ If yes, please describe.

_____

_____

_____

53. Generally, do you think the criminal justice court system is either too lenient or too harsh? Yes, too harsh ___ Yes, too lenient _____ No ___ If yes to either please explain your answer.

_____

_____

_____

54. Do you want to serve on this jury?

Yes ____ No ____ Do not feel strongly one way or the other. _____

If you answered yes or no, please explain your answer.

_____

_____

_____

55. How many of you regularly post to or read blogs, Twitter, and/or social sites such as Facebook, or MySpace? Will any of you have difficulty accepting without reservation the Court's order that you will not access or use the internet to gather any information of any kind regarding this trial or blog in any way about any aspect of your jury service in this trial?

_____

_____

56. How many of you consider yourself to be primarily a detailed oriented person? Who thinks they're more of a big picture type person?

_____

_____

57. Do you or anyone close to you have any hostility, bitterness, frustration towards the criminal justice system (i.e., police, prosecutors, defense attorneys, or the courts)? If yes, please explain:

_____

_____

58. How many of you believe Arizona's criminal laws are too harsh? If yes, please explain:

_____

_____

59. Have any of you had any experiences with crime and/or police and/or the media that have affected your view of the Arizona criminal justice system? If yes, please explain:

_____

_____

60. Have you, a family member, or close friend ever physically harmed anyone, whether intentionally, accidentally or otherwise? If yes, please explain:

_____

_____

61. Have you or anyone close to you ever had a negative experience with the police? Have you or anyone close to you ever made a formal complaint against any law enforcement agency or officer?

_____

_____

62. Would any of your religious beliefs, moral feelings or philosophical principles interfere with your ability to sit in judgment of another person?

_____

_____

63. Is there anyone who does not understand that the state of Arizona is bringing the case against this defendant? That this is not like a civil case where one person files against another?

_____

_____

64. Have you ever been involved in a Neighborhood Watch program?

_____

_____

65. Is there anyone who feels television shows such as C.S.I and Law & Order are realistic portrayals of the criminal justice system?

_____

_____

POLITICAL, RELIGIOUS, AND OTHER ORGANIZATIONAL AFFILIATIONS

66. Do you regularly attend religious services? ☐ Yes ☐ No

67. Would any of your religious beliefs, moral feelings or philosophical principles interfere with your ability to sit in judgment of another person? ☐ Yes ☐ No If yes, please explain:

_____

_____

_____

68. Please list any civic, political, social, or charitable organizations, including unions or clubs, you are affiliated with, belong to or have donated money to:

_____

_____

_____

Are you an officer or leader in any of these groups? ☐ Yes ☐ No

69. Would you describe yourself as more of a leader or a follower? ☐ Leader ☐ Follower

70. Do you consider yourself to be (select only one):

☐ A detailed oriented person ☐ A big picture type person

71. Do you consider yourself to be (select only one):

☐ More Conservative ☐ More Moderate ☐ More Liberal

72. Have you, a member of your family or close friend worked with any program dedicated to rehabilitating persons convicted of a crime? ☐ Yes ☐ No

If YES, please describe it briefly and, if other than yourself, state the relationship of the person to you.

_____

_____

73. Have you ever belonged to, been affiliated with or donated money to any group involved in law enforcement or monitoring of the courts, such as:

Neighborhood Block Watch	☐ Yes ☐ No
Mothers Against Drunk Drivers	☐ Yes ☐ No
Volunteer Posse	☐ Yes ☐ No
Parents/Families of Murdered Children	☐ Yes ☐ No
Any group that campaigns for stricter criminal penalties	☐ Yes ☐ No

Other:_____

If yes, please describe: _____

74. Have you, any member of your immediate family, household or close friends ever belonged to any organization that advocates victim rights? ☐ Yes ☐ No
If yes, please describe: _____

_____

75. Have you, any member of your immediate family, household or close friends ever belonged to any organization that advocates prisoners' rights? ☐ Yes ☐ No

If yes, please describe: _____

_____

CRIMINAL JUSTICE SYSTEM

76. Do you have any prior experience as a juror? ☐ Yes ☐ No If yes, for each occasion, please state:

When	Where	Nature of Case (i.e., personal injury, burglary, etc.)	Outcome/Verdict

Were you ever a foreperson? ☐ Yes ☐ No

Do you still agree with the verdict(s) reached? ☐ Yes ☐ No

Describe any prior jury experience that would make it difficult for you to again serve as a juror:

_____

77. Have you ever served on a Grand Jury? ☐ Yes ☐ No

78. **Have you, a family member or anyone you personally know ever been accused of, arrested for, charged with or convicted of any type of offense?**
☐ Yes ☐ No If yes, who was involved? Describe relationship and crime:

_____

_____

_____

_____

79. Have you, any close family member, or close friend ever been placed on probation or sentenced to jail and/or prison? ☐Yes ☐ No
If yes, please explain: _____

_____

_____

_____