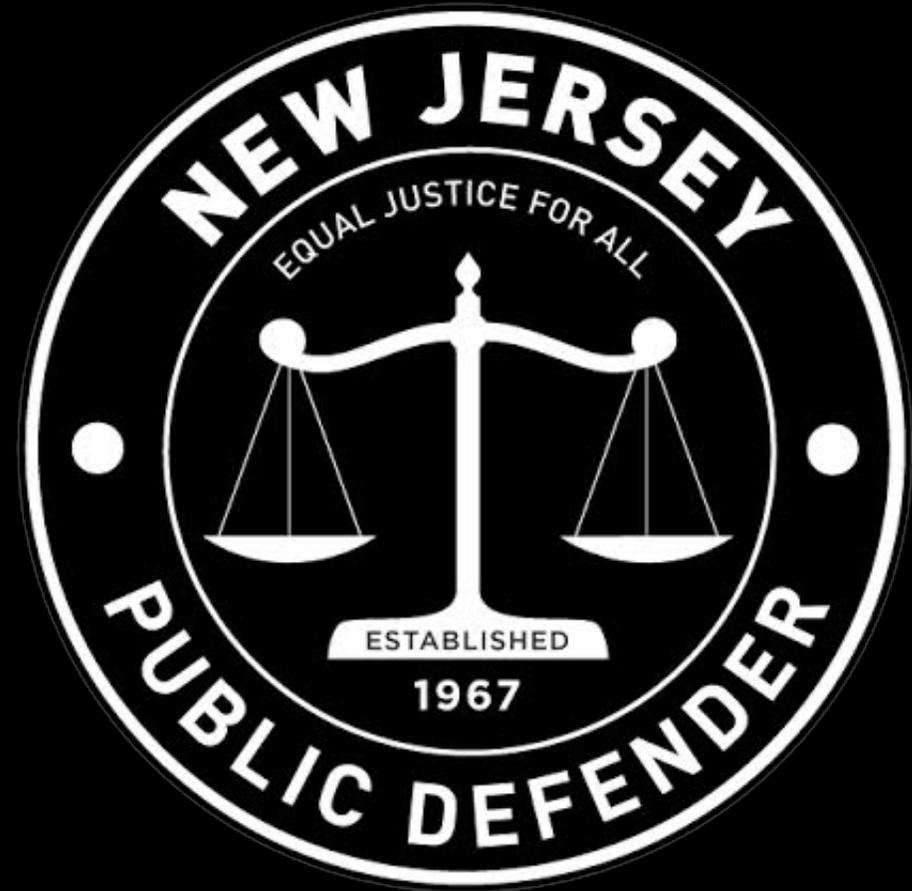


Attorney Conducted Voir Dire

Presented by Joseph Krakora

New Jersey Office of the Public Defender



Defined

What it is...

- Panel voir dire
- Opportunity for all parties to probe juror beliefs
- Allowing attorneys to pose questions directly to jurors

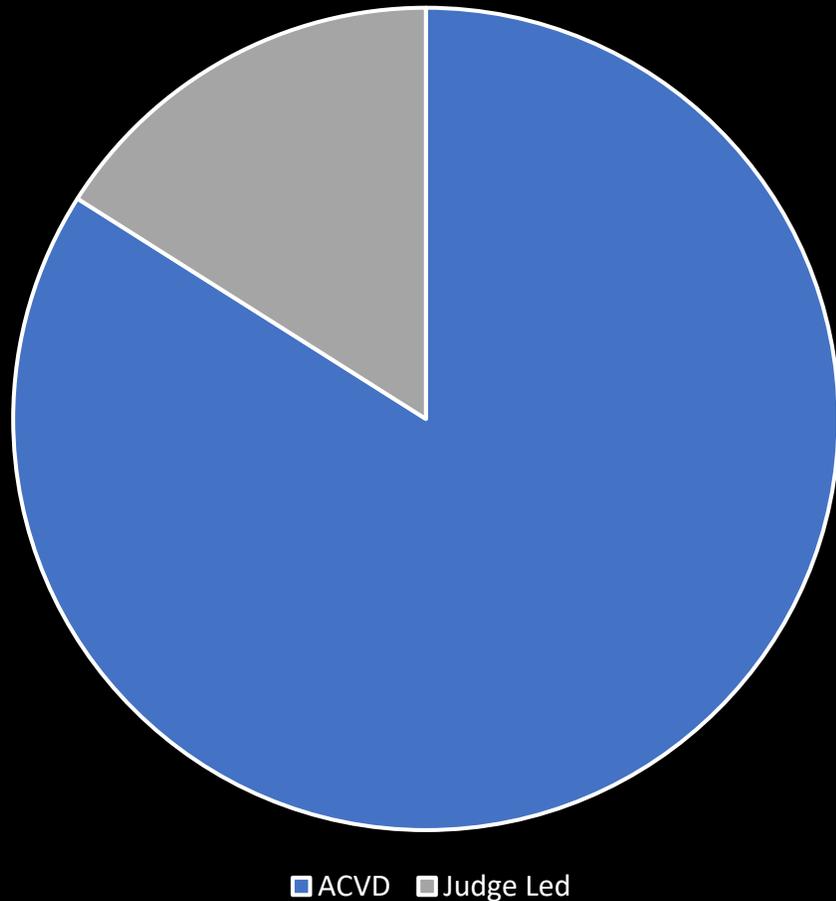
What it is not...

- Individual juror voir dire
- Opportunity to indoctrinate jurors
- Allowing attorneys to take over the role of the judge

Myths

1. The selection process is longer
2. Court and parties learn less about jurors
3. Jurors are embarrassed in the process
4. Attorneys indoctrinate the jury

States with ACVD



- New Jersey is one of only eight (8) States and the District of Columbia which employ the judge conducted system
- States moving *to* ACVD because research shows myths are unfounded
- See Executive Summary for more details

7 Steps to a Jury

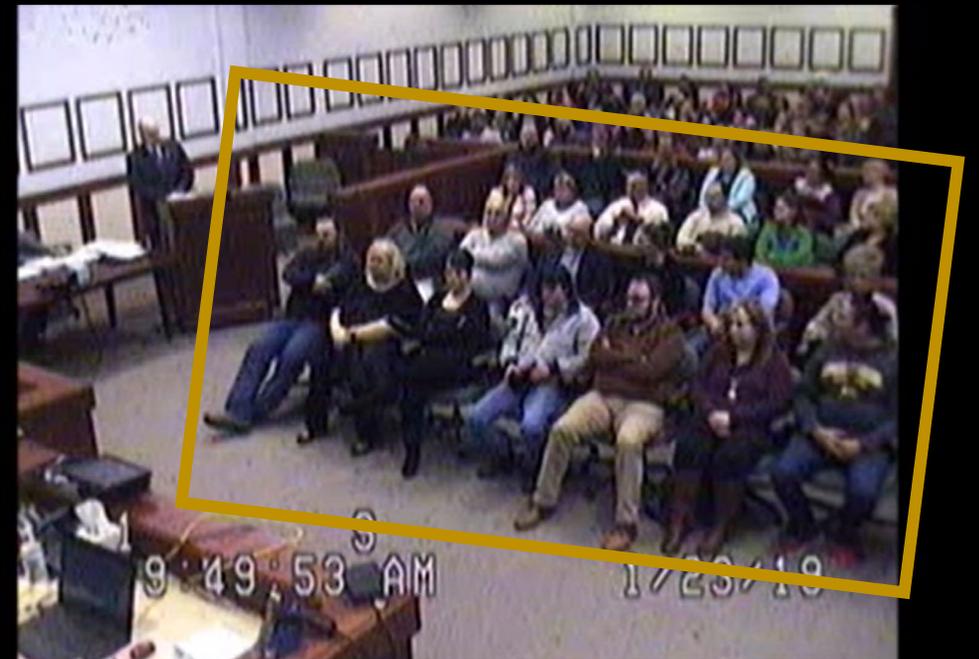
1. All potential jurors come to courtroom
2. Jurors seated on a panel (number required for the case plus number to accommodate use of all strikes)
3. Judge voir dres panel
4. Prosecutor voir dres panel
5. Defense voir dres panel
6. Judge hears cause challenges
7. Parties use peremptories

1. All potential jurors come to courtroom



2. Jurors chosen fill panel

- In this case, judge intends to seat 14 jurors
- Defense and prosecution have a total of 18 challenges
- 32 jurors are chosen for the first panel



3. Judge Conducts Voir Dire

- Judge voir dices panel of 32
- Judges in KY voir dire on:
 - Relationships between potential jurors and witnesses
 - Hardships
 - Nature of the charges
- States differ
- We recommend more extensive judge voir dire to issues of law, affirmative defenses, defendant's right not to testify, etc.



Judge Voir Dire: Charges

- Judge reads charges
- Attorneys may also discuss charges in their voir dire



Judge Voir Dire: Charges



- Excused jurors are replaced
- Asked for reactions to previous questions

4. Prosecutor Voir Dire: Memory



Objections



Judge Interjects



Additional Categories Covered by Prosecutor (in order covered)

- Experience with police department involved in case
- Donations in time or money to charities, including domestic violence charities
- Causes of domestic violence
- Difference between domestic violence and bar fight
- Whether it is ever permissible to hit someone
- Self-defense
- Memory
- Punishment* (KY has jury sentencing and jurors are entitled to know potential sentences during trial)

TOTAL TIME FOR PROSECUTOR:
30 minutes

Important note: time is not limited by the judge in KY

5. Defense Voir Dire: Teen Cell Phone Use



Race and ACVD

Judge Mark Bennet

- “Few arguments for greater lawyer participation in the voir dire process seem more persuasive than implicit bias”;
- “Judges do not have the same access to develop voir dire strategies to address both explicit and implicit biases of prospective jurors”;
- “Judges generally do not have the knowledge of the case that would indicate the possible impact or jurors’ implicit biases”;
- “Elimination/reduction in peremptories only works in tandem with ACVD”

MODEL JURISDICTION: WASHINGTON STATE

- Juror video coupled with EXTENSIVE panel voir dire about race
- Video alone NOT enough
- Attorneys are prohibited from asking a category of questions that implicate racial bias

Defense Voir Dire: Race



Additional Categories of Defense Voir Dire (in order covered)

- Parenting
- Reasons children might lie to parents
- Cell phone uses and teenagers
- Assumptions about domestic violence (women as aggressors)
- Misuse of justice system
- Sentencing*
- Prior jury service
- Burden of proof/presumption
- Nature of the charges
- Defendant not testifying
- Race
- Role of attorneys vs. role of judge in a criminal trial

**TOTAL TIME FOR
DEFENSE:
30 minutes**

*Important note: time is not
limited by the judge in KY*

6. Cause Challenges

- For cause challenges made at side bar
- Additional jurors fill the open seats
- They are asked if they have responses to issues raised



7. Peremptory Challenges

- States differ:
 - Simultaneous
 - Alternating
- We recommend alternating
- No new jurors are needed at this stage because we are now just striking jurors from the panel
- ALL challenges are exercised...in a matter of minutes

The 14 remaining jurors become the jury



About those myths...

- MA most recent state to move to ACVD
- SJC studied myths extensively
- From the report...

Proven Benefits

1. More meaningful and forthright information provided by potential jurors.
2. No significant increase in time to choose a jury.
3. No unnecessary exposure of private information.
4. No juror indoctrination.

Final Report to the Justices, Supreme Judicial Court Committee on Juror Voir Dire

Perhaps most importantly...

“[C]ourts noted an increase in the number of for cause challenges after attorneys became involved in questioning. This increased use of for cause removals demonstrates that, with judge only constitutionally disqualified and biased jurors were being allowed to decide criminal cases.”

Judicial Education Project