

### **Jury Selection Exercise Directions**

**Purpose of the Exercise:** This exercise gives the judges an opportunity to apply the material covered in the lecture portion of this program. The case study fact pattern, which deals with a marital rape, is based on the facts from two actual cases. In this exercise, the judges are asked to address the following issues:

- The essential areas of inquiry for *voir dire*;
- The judge's role in *voir dire*;
- How to ask appropriate questions about potential jurors' prior sexual victimization or perpetration;
- How to protect jurors' privacy; and
- How to avoid causing them trauma during *voir dire*.

**Setting:** If the group is not too large, this exercise can be conducted as a group discussion. For larger groups, it is better to have the judges discuss the questions in small groups, which allows each judge the opportunity to speak.

**Materials Required:** The only handouts required for this exercise are the **Jury Selection Exercise Case Study** and the **Jury Selection Exercise Discussion Questions**.

**General Instructions:** Have the judges read the **Jury Selection Case Study** and then discuss the questions included in the **Jury Selection Exercise Discussion Questions**. Since there are eight questions to discuss in a short amount of time, you should divide the group up and assign each group two questions to discuss.

**Small Group Instructions:** The following instructions are to be used if the exercise is conducted in small groups:

- **Facilitator:** To save time if you have not pre-selected your small group facilitator, assign the judge whose last name begins with the letter closest to A to be the facilitator.
- **Reporter:** Assign the person to the left of the facilitator to record the answers for the group and to report back to the larger group.
- **Report Back:** For each question, call on a different reporter to give his or her group's top two suggestions or comments. Remind reporters not to repeat what has already been said. If time permits, you can then take comments from the entire group.

### **Jury Selection Exercise Case Study**

**Background:** Defendant, Ben Nelson, and his wife, Vicki Taylor Nelson, were married 11 years ago. They have a six-year-old daughter, Sierra. On April 1<sup>st</sup>, Ms. Nelson filed for divorce. She is seeking custody of their daughter, support and exclusive use of the marital home. On April 15<sup>th</sup>, after talking to a counselor at the local shelter for battered women, Ms. Nelson reported to the police that her husband raped and sodomized her on March 17<sup>th</sup>. She told the police that her husband had been physically and sexually violent towards her for many years, that he was getting more violent, and that she “just couldn’t take it any more” because she really thought “he was going to kill [her].”

Mr. Nelson has been charged with sexual assault.

**Prosecutor’s Statement of the Case:** On the night in question, March 17<sup>th</sup>, the defendant demanded that his wife have oral and anal intercourse with him. He also insisted that he wanted to videotape their sexual activity. The victim refused, telling her husband that she was exhausted from taking care of their sick child. When she said no, the defendant forced her into the bedroom, ripped off her clothing and pushed her onto the bed. He kept telling her that she better “get into it” and that if she didn’t, she knew “exactly what would happen.” He then forced his penis into her mouth and her anus. While she cried and begged him to stop, he forced his penis into her vagina as well.

Based on past experience, the victim knew that if she didn’t do what her husband demanded, she was at great risk of being seriously injured. In the past, when she didn’t acquiesce to his sexual demands, he had beaten her severely and taken his anger out on their child, hitting the child and verbally abusing her. He had forced his wife to do humiliating and degrading acts in the past when she said “no” to him. He had also taken photos of her while he forced her to perform “degrading and embarrassing sexual acts.” He threatened to post these compromising photos of his wife on the Internet, and to send them to her family and co-workers, if she didn’t comply. He used the photos on many occasions to get her to do what he wanted.

Defendant has a history of violence against his wife. Two years ago, she obtained a domestic violence protective order against him, which he violated on several occasions. She was terrified for her life on March 17<sup>th</sup> and worried about what would happen to their child if she resisted the defendant or failed to comply with his demands.

Ms. Nelson left her husband on April 1<sup>st</sup>, trying to find safety for herself and her child. After she received support and counseling, she had the courage to come forward and report to the police that Mr. Nelson brutally raped her on March 17<sup>th</sup>.

**Defense Attorney's Statement of the Case:** Mr. Nelson is an upstanding member of the community who has struggled for years trying to keep his family together under the most difficult circumstances. His wife is extremely erratic and vindictive. When she doesn't get her way, she makes all sorts of crazy accusations, only to back down later. She ran to the court in the past seeking a domestic violence protective order, only to go back to the judge begging for him to allow the couple to resume contact once she was over her temper tantrum. She would call the police, claiming to be a victim of violence, to manipulate Mr. Nelson into doing what she wanted.

Ms. Nelson has very "unconventional" sexual appetites. The couple had a very active and "non-traditional" sex life. Ms. Nelson made sexually explicit videotapes of herself in the past and has posed for numerous photos performing the acts the couple engaged in on March 17<sup>th</sup>. The couple did have sex on March 17<sup>th</sup>, but it was entirely consensual.

Ms. Nelson filed for divorce on April 1<sup>st</sup>, seeking full custody of their daughter and financial support for both of them. It was only after talking to her divorce lawyer and the counselors at the local shelter, that she made these false allegations of rape against her husband. She is a vindictive woman, making these false allegations to gain sympathy and a financial advantage in the divorce. She is also trying to prevent Mr. Nelson from having contact with his precious daughter by making these trumped-up, crazy allegations.

## **Jury Selection Exercise Discussion Questions**

**Background:** The prosecutor and the defense attorney want expanded *voir dire* in this case because so few marital rape cases are brought to trial. The prosecutor wants to explore the potential jurors' attitudes about marital rape and other relevant issues, such as delayed reporting and the fact that the wife did not report earlier sexual assaults. The defense attorney wants to ask the potential jurors questions about their attitudes toward "unconventional sexual practices" and the fact that Ms. Nelson has filed for divorce and is seeking custody of their daughter, among other things. The prosecutor also wants you to use a written questionnaire to ask potential jurors about their prior experiences with sexual abuse. If potential jurors answer that they or members of their family have either been the victim of a sexual assault or accused of sexual assault, the prosecutor wants individual *voir dire* for those jurors, to protect their privacy. In addition, the prosecutor wants to have one of her victim/witness staff members present to offer support to any potential juror who discloses prior sexual victimization and is excused from serving on the jury.

## **Discussion Questions:**

1. What are the essential questions the prosecutor should ask?
  2. What are the essential questions the defense attorney should ask?
  3. If they don't inquire into these areas, would you ask the questions?
  4. How would you phrase the questions about potential jurors' prior victimization or perpetration to help ensure that you get honest and complete responses?

5. During *voir dire* in open court, one of the jurors starts crying as she is disclosing that she was raped when she was a teenager. The defendant moves for a mistrial. Would you grant it? Why or why not?
  6. Would you agree to the prosecutor's request for a written questionnaire and individual *voir dire* for questions about potential jurors' prior sexual victimization or perpetration? Why or why not?
  7. Would you agree to the prosecutor's request to have a victim/witness staff member present to provide support to any potential juror who discloses prior sexual victimization and is excused from serving on the jury? Why or why not?
  8. Would you conduct a post-trial de-briefing session with the jury? Why or why not?