


THE ART AND SCIENCE OF JURY SELECTION



SUSAN PRICE
ASSISTANT HEAD OF COURT
ORANGE COUNTY DISTRICT ATTORNEY'S OFFICE
(714) 347-8718

08-14-15

THE BASICS
CCP §§ 223, 226, 231

- Voir dire should be conducted in open court with other prospective jurors present
- Judge conducts initial questioning
- Court may ask questions submitted by parties
- Defense usually has first turn to question and challenge for cause. Judge may limit time for questioning;
- DA then questions and challenges for cause;
- DA exercises first peremptory challenge, then alternate with defense
- Additional jurors are called as needed and the process continues
- When each side passes consecutively, the jury shall be sworn
- Cause challenges must be made prior to peremptory challenges
- Challenges must be made before jury is sworn

FOR CAUSE CHALLENGE
CCP § 225(B)(1)

- Unlimited number (each side)
- General disqualification
 - Lack of any qualification prescribed by law
 - Doesn't speak/understand English, convicted felon, non-resident, etc.
- Implied bias
 - Blood relation to any party, victim, witness, etc.
 - Involvement in prior case
 - Any interest in outcome
- Actual bias
 - State of mind preventing impartiality
 - Focus of voir dire questioning

PEREMPTORY CHALLENGE
CCP §§ 225(B)(2) / 231

- **Limited number**
 - Generally 10 per side
 - 6 if maximum punishment is 90 days (e.g., PC § 415)
 - 20 if life or DP case
- **Alternates**
 - Same number as alternative jurors called (CCP § 234)
- **Multiple defendant cases**
 - Defense gets 6, 10 or 20 challenges jointly (per above guidelines)
 - Each defendant gets 5 individual challenges
 - DA gets same amount as total defense challenges
 - E.g., 3 co-D non-life case [DA gets 25 challenges (10+5+5+5)]
- **Can be used for any reason**
 - Can be based on instinct or gut feeling
 - May not exclude members of a cognizable group based on group bias

YOUR GOAL IN JURY SELECTION

Build rapport


Establish credibility

Pick a jury that will convict

Establish a relationship:
Jury selection is nothing
more than forming
connections

RAPPORT

TRADITIONAL HUMAN CONNECTION IS GETTING LOST



WE ARE ALL GUILTY OF IT



(MOST) IMPORTANT PART OF YOUR TRIAL

- Jury selection is the time where you set the tone for **your** trial.
- Different styles determine the mood in the courtroom;
 - Judge's personality;
 - Attorney personality;
 - Formality of the courtroom;
- Your personal connection style is the first step in forming your relationship with the jurors.
 - your confidence;
 - your comfort in the space;
 - Your interest in this process.

WHY DO YOU NEED TO BUILD RAPPORT?

What makes people open up to you?

You have a short period of time and you want your jurors to tell you (or show you) if there is anything that will keep them from voting guilty in your case.

SHORT TIME TO GET TO KNOW SOMEONE

What are the common things you see/do in getting jurors to open up and talk to you?

- Small talk
- Soothing tone
- Analogies and Metaphors
- Stories
- Humor

If potential juror feel like it's abrupt or an interrogation, you will get one word answers that won't help you.

These are all subtle efforts to connect with other people, make them comfortable and encourage them to open up.

START A CONVERSATION

- This can be a difficult skill, once you master it, you can use it anywhere;
- Start by creating a friendly/approachable vibe;
- Engage the person your talking to by showing authentic curiosity; you want to ask open ended questions;
- Develop some "conversation starter" particular to your case; don't be tied to a memorized set of themes for jury selection;
- In order to effectively start a conversation with your jurors you need a combination of friendliness, curiosity, and authenticity.

WHAT DO YOU KNOW ABOUT THEM?

- You may not know much about these people, their background, their lives, but ...
- Everyone in your jury pool is human.
- Most humans share many emotional triggers.



COMMONALITY

- Meaningful commonalities connect people;
- You can connect with them in a general, "we are all part of the same community", rather than personal way;
- Use real life scenarios and examples when you begin to introduce legal concepts.
- "Oh Please" example- circumstantial evidence.

HOW DO YOU BUILD RAPPORT IN A SINCERE WAY?

- Prosecutors are presenters. We present a theory to an audience. We are public speakers.
- What is the most effective way to communicate with your jury pool?
- In terms of communicating feelings and attitudes, research studies have concluded:
 - 7% of message pertaining to feelings and attitudes is in the words that are spoken.
 - 38% of message pertaining to feelings and attitudes is paralinguistic (the way that the words are said).
 - 55% of message pertaining to feelings and attitudes is in facial expression.

(Mehrabian, A. (1981) Silent messages: Implicit communication of emotions and attitudes. Belmont, CA: Wadsworth (currently distributed by Albert Mehrabian, email: am@kasj.com))

EYE CONTACT

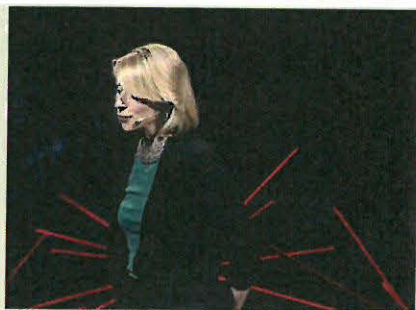
- The movements of your eyes, mouth, and facial muscles can build a connection with your jury. Alternatively, they can undermine your every word.
- Eye contact is the most important element in this process. No part of your facial expression is more important in communicating sincerity and credibility.
- Nothing else so directly connects you to your jury.

"Effective presenters engage one person at a time, focusing long enough to complete a natural phrase and watch it sink in for a moment. This level of focus can rivet the attention of a room by drawing the eyes of each member of the audience and creating natural pauses between phrases. The pauses not only boost attention, but also contribute significantly to comprehension and retention by allowing the listener time to process the message." *Andrew Dugan, author and public speaking coach*

WHAT DOES YOUR BODY LANGUAGE SAY ABOUT YOU?

- **Hands:** They don't belong in your pockets or folded across your chest either or held behind your back. Use them to help emphasize a point, to express emotion and to engage your jury.
- **Gestures:** Most people have a gesture at their disposal that supports common words. It's a universal way of connecting with other people.
- **Stance:** don't hide behind the podium.
- **Notes:** leave them on the podium, come back if you need to.
- **Comfort** in the courtroom, this is "your" case, feel comfortable in the space.
- Especially when you go up against someone who is more experienced. Example.
- Be natural.

AMY CUDDY VIDEO




IT'S SOMETHING YOU WILL WORK ON
FOR THE REST OF YOUR CAREER

"Tiny Tweaks = Big Changes"

Amy Cuddy TED Talk
http://www.ted.com/talks/amy_cuddy_your_body_language_shapes_who_you_are.html

BE YOURSELF

**YOU HAVE TO BE COMFORTABLE IN THE
SPACE**



Our beliefs change our minds
our minds change our behavior
and our behavior changes our reality

TED

When your audience feels an emotion, they are motivated to act.

CREDIBILITY

WHY IS IT IMPORTANT TO BUILD CREDIBILITY FROM THE BEGINNING?

If they trust and respect you, they will follow you.

Your demeanor, your words and your relationship with them will carry through to the verdict and sometimes even after

DO YOU LOOK THE PART?

- What is the message you are conveying in your appearance?
 - Shine your shoes;
 - Wear a suit, doesn't have to be expensive to look put together;
- Clear your work space;
- Be on time;
- Professional;

If they like how you look, and how you present yourself, they will trust that you know what you are talking about.

You can begin to subtly introduce your theme in opening because this is the time that you are developing your relationship with them.

In closing, you can remind them of that

BRING YOUR JURY BACK

THINK ABOUT THE CALCRIMS THEY WILL BE GETTING

- Defenses
- Witness issues (uncooperative, discrepancy)
- Circumstantial evidence
- Group crimes
- DV
- Testimony of single witness
- Voluntary intoxication
- What other themes do you often see?

THEMES TO INTRODUCE IN VOIR DIRE

- Think about the weaker aspects of your case and touch on them in jury selection so that you can highlight in closing:
 - Single witness testimony: prep them for this instruction:
- When you introduce themes, how are they reacting to the concepts that you are introducing?
 - victim and they can't get over it, that's a problem.
 - Can you follow the law.
- TV shows- set the expectations by highlighting this is real life.
- Direct/circumstantial evidence. Example.

GROUP CRIMES CALCRIM 401 - AIDING AND ABETTING

- A person may be guilty of a crime in two ways. One, he or she may have directly committed the crime. I will call that person the perpetrator. Two, he or she may have aided and abetted a perpetrator, who directly committed the crime.
- A person is guilty of a crime whether he committed it personally or aided and abetted the perpetrator.

MOTIVE

- The People are not required to prove that the defendant had a motive to commit the crime charged. P. 31
- Having a motive may be a factor tending to show that the defendant is guilty. Not having a motive may be a factor tending to show the defendant is not guilty.
- The motive in this case is to steal and to kill a man who was insulting him.
- He may not have gone over there to steal, but at some point, he did.

COMMON DEFENSES/LESSERS HEAT OF PASSION

It is not enough that the defendant simply was provoked. The defendant is not allowed to set up his own standard of conduct. You must decide whether the defendant was provoked and whether the provocation was sufficient. In deciding whether the provocation was sufficient, consider whether a person of average disposition, in the same situation and knowing the same facts, would have reacted from passion rather than from judgment.

SELF DEFENSE

- The defendant is only allowed to use that amount of force that a **reasonable person** would believe is necessary in the same situation.
- The defendant used **more force** than was reasonable, the attempted killing is not justified. (Calcrim 505)
- A defendant who uses deadly force must have a reasonable belief that the use of force is necessary to prevent imminent death or great bodily injury.

If the defendant used **more force** than was reasonable, the attempted killing is not justified. (Calcrim 505)

WITNESSES ISSUES

You alone must judge the credibility or believability of a witness.

You can decide if they lied and what you want to do with that information. You can accept the part you think is true and ignore the rest or ignore the testimony all together.

LEGAL CONCEPTS: SECOND DEGREE MURDER: IMPLIED MALICE

Implied Malice:

1. The defendant intentionally committed an act;
2. The natural and probable consequences of the act were dangerous to human life;
3. At the time he acted, he knew his act was dangerous to human life; and
4. Deliberately acted with conscious disregard for human life.

• **No intent to kill is needed;**

CALCRIM 224

Before you may rely on circumstantial evidence, you must first determine whether or not the evidence supports a conclusion that a defendant is guilty beyond a reasonable doubt. However, when considering circumstantial evidence, you must accept only reasonable conclusions and reject any that are unreasonable.

You are not simply looking for twelve fair and impartial jurors.


SELECTION

PICK JURORS WHO WILL CONVICT

- Ultimately, you want jurors who have no hesitation rejecting the unreasonable and convicting;
- You want to make sure there are no biases, obvious or not, that will keep them from convicting.
- Do you rely on stereotypes? Do you trust your gut?
- Kick them if they are an obvious juror that you don't want; Don't waste time with questions;
- Can this juror get along with everyone else? Too "over-the-top" on issues, either side.
- Nonverbal cues.
- Normal, regular people?
- Don't play games with your challenges, you might get surprised and stuck with a jury you don't like.
- Be tireless, you may be tired. Stay on your game;

HOW DO YOU KNOW WHO WOULD BE A GOOD JUROR FOR YOUR CASE?

- Don't buy into the stereotypes
- Video:
http://www.youtube.com/watch?feature=player_detailpage&v=8enPC27m12M



; Advocate (1-5) Movie CLIP - Jury Selection (199

It all comes down to whether or not you "connect" with the person.

TRUST YOUR GUT
