


THE ART AND SCIENCE OF JURY SELECTION



9 - 26 - 17

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 limit time for questioning by the parties.
- 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
 - If the crime is punishable with a maximum term of imprisonment of one year or less, there is a limit of 6 per side.
 - 20 if life or DP case
- **Alternates**
 - Same number as alternative jurors called (CCP § 234)
- **Multiple defendant cases**
 - Defense must exercise their challenges jointly, but they each get **5 additional challenges**, to exercise separately.
 - In a misdemeanor case, they are each entitled to **2 additional challenges**.
 - The People will get additional challenges equal to the number of ALL the additional separate challenges allowed to the defendants. (two defendant case, DA gets 10 additional challenges in a felony and 4 additional challenges in a misdemeanor).
- **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

(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.

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.

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@iasj.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 DiLugan, 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.**

BE YOURSELF

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

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?
 - Clothing, style, shoes, should be in good condition;
 - Wear a suit, doesn't have to be expensive to look put together;
- Clear your work space;
 - The courtroom "is not a buffet." Steve McGreevy
- Be on time;
- Professional;

If they are impressed with how you are presenting yourself, they will trust that you know what you are talking about.

BEGIN TO INTRODUCE YOUR THEME

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

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 (CALCRIM
- When you introduce themes, how are they reacting to the concepts that you are introducing?
 - and they can't get over it, that's a problem.
 - Can you follow the law.
- Direct/circumstantial evidence. (CALCRIM 224) Example.
- TV shows- set the expectations by highlighting this is real life.
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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?

- http://www.youtube.com/watch?feature=player_detailpage&v=9enPC37mHrM
