

SELECTION OF THE JURY

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FOREWORD

The selection of the jury is probably the most important single aspect of the criminal trial. A former Assistant District Attorney, (now a Supreme Court Justice) has said,

"There is a jury from every panel that will convict on any evidence and another jury that will acquit despite the strongest evidence,"

Thus, your job becomes a search for the jury which you feel will be best suited for your particular case. Any assistant who feels that the first twelve jurors called are satisfactory is doing himself (or herself) a great disservice.

Jury selection is the only time during the course of the trial when you can address jurors personally and answer their questions. It cannot be over-emphasized.

A. GENERAL LEGAL PRINCIPLES

Challenge to the Panel - Section 270.10, subd. (2)

"A challenge to the entire panel must be made in writing setting forth the grounds of challenge." If not made before selection commences, it is waived.

Examination of Jurors - Section 270.15, subd. (1)

See People v. Boulware, 29 NY (2) 135

See People v. Culhane, 33 NY (2) 90

Recently, many judges have imposed time restrictions on examination. Inquire before jury selection starts how much leeway you will be given, this will avoid the embarrassment of being interrupted by the Court.

Peremptory Challenges - Section 270.25 (2)

A Felonies 20 Alternates 2 each

B-C Felonies 15 Alternates 2 each

D-E Felonies 10 Alternates 2 each

Misd. (Section 360.30) 3 challenges

If there are three defendants, they must agree on all challenges.

After we excuse first, the defendant must challenge before any new jurors are called. Some judges have the jurors challenged removed at one time so they do not know who challenged them.

B. Purpose of Voir dire (French - to tell the truth)

1. Create favorable impression

The jurors will be looking at you and assessing you. They will observe your appearance, preparation (or lack of preparation) and fairness. Speaking to the jurors first is extremely advantageous.

2. Bring out theory of case

The voir dire is a golden opportunity for you to ascertain each juror's conception of the case. You want to find out if there are pre-conceived ideas which will interfere with your case.

Examples:

Assault 2nd or Obstructing - Have they ever

had experiences with any law enforcement personnel?

If so, dump them.

Circumstantial Evidence - Do they believe it can be reliable? (Many jurors do not).

Credibility - If you believe defense witnesses may lie, then drum that possibility into the jurors' heads.

Lack of Identification by Victim - That doesn't mean we must lose the case - they must consider all the evidence.

Being a criminal juror is difficult - - are they ready to vote guilty? Question women very carefully on this point.

The list is endless. You must bring out weaknesses in your case from the outset. Prepare the jurors so there won't be a shock later. This will be your only opportunity to mold their thinking.

3. Get them to talk. -- You want to hear them speak so that you can gauge their sincerity and willingness to sit. Ask about hobbies, periodicals, organizations they belong to, in order to assess them, in addition to their occupation.
4. Don't hesitate to challenge. -- If a juror doesn't seem to like you, (poor eye contact, evasive answers, poor attitude) -- GET RID OF THAT JUROR!! Otherwise, you will spend the trial saying to yourself, "Why did I leave "x" on?" Remember -- they are bored silly upstairs -- and want to sit on a case very badly -- they could care less who is challenged so long as they are sworn. Tell the whole jury that you may challenge some of them and this is no reflection on them at all -- this is your right as an attorney and they should recognize that.

C. SPECIFIC SUGGESTIONS

1. Avoid minority jurors where the defendant is a member of the same group -- we have had many hung juries as a result of failure to challenge.

2. Avoid any juror with physical defects --they may not be able to hear or see the evidence.
3. If a juror knew the other attorney or defendant and refuses to step down -- use a peremptory challenge.
4. Don't imitate another attorney -- develop and use your own strength.
5. Be courteous at all times -- especially to the Court.
6. Avoid constantly walking around the courtroom. Jurors cannot hear you, and it appears that you are quite nervous.
7. Don't antagonize a juror in order to get a challenge for cause.
8. If the Court allows you to -- explain the presumption of innocence and burden of proof, and indicate that you believe in them too. This will show the juror that you are a fair person. It also takes away the defense voir dire. If possible, your voir dire should be so complete that the defense has very little to say or ask.
9. If a juror hesitates when you ask them --if we prove our case, would you be able to vote guilty -- get rid of that juror. Women are generally much more sympathetic, especially with young defendants.
10. If there is going to be an alibi defense -- don't leave a member of that racial or ethnic group on the jury because you will be attacking the credibility of the defense witnesses.
11. Make your questions as simple as possible, in order to avoid

12. Type up a list of questions for each case so that you don't forget to cover certain areas.
13. Avoid jurors with very strong personalities -- they are very opinionated and you don't know which way they will go.
14. Don't hesitate to joke with jurors at the proper occasion. But don't overdo it because we want the trial to be as serious as possible.
15. Familiarize the jurors with your theory of the case from jury selection to summation.
16. Always ask if there is any reason that they would not like to sit on the case.
17. With the jurors that you like -- always ask -- would you like to be a juror here? They will always say yes. A good counsel will do the same thing to jurors whom he likes in order to make it difficult for you to challenge.