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NOTES

CHALLENGING JURORS

By

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Believing that it will be of interest to prospective lawyers to have some information on the challenging of jurors, I am contributing this article for publication in the Dickinson Law Review.

Since this article deals with jurors, it may be of interest to pass on this information:

"It was Cambyses II, King of Persia (now Iran), who inaugurated the 'twelve-man-jury' 500 years before Christ.

"He contended it was necessary for all twelve — good men and true — serving on jury duty, each to have been born under one of the 12 Zodiacal Signs, thereby according each member a different planetary influence enabling them to render a just verdict."

This contribution to the article comes from my good friend, John W. Whitstone, a distinguished barrister of the New York and New Jersey State Bars, to whom I am thankful and publicly express my appreciation.

The first step, and a very important step in a trial before a jury, is the selection of fair, honest, impartial, and qualified jurors to try the case.

It is a very important step, for the reason that the verdict rendered must be the unanimous action of the twelve jurors. One juror dissenting may be the cause of a "locked jury", or "a jury unable to arrive at a verdict", which, incidentally, results in another trial of the case.

The lawyer may spend much time preparing a trial brief of the law and the facts pertaining to the case, interviewing and carefully questioning each witness before the witness testifies in court, and preparing hypothetical questions for the expert, but may be unsuccessful in court—because he failed to give time and attention to the personnel of the jury before the day of trial, thereby failing to gain knowledge concerning the panel of jurors, which is very essential in the proper exercise of challenges.

For instance, the lawyer should have knowledge of the jurors' political affiliations, political associates, fraternal and social connections, occupations, social standing in the community, and reputation for being human and fairminded men. Have they been in court charged with a crime or convicted and sentenced? Are they related to counsel in the case, or have they had business connections or relations with counsel in the case?

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Proper investigations may be made by the lawyer as long as the lawyer does not actually approach those summoned for jury service.

Equipped with such knowledge before the day of trial, the lawyer is in an excellent position to exercise the challenges provided by statute to the best interest of his client.

Challenges Allowed by Statute

Section 1, of Act No. 11, P. L. 16, approved the 6th day of March, A. D. 1901, as amended by Act No. 316, P. L. 629, approved the 9th day of July, A. D. 1901, provides as follows:

"Be it enacted by the Senate and House of Representatives of the Commonwealth of Pennsylvania in General Assembly met, and it is hereby enacted by the authority of the same, That from and after the passage of this act it shall be unlawful for any district attorney of any county in this Commonwealth, in empanelling any jury for the trial in any court of any indictment charging a felony or a misdemeanor, to stand aside jurors, but in every such case the Commonwealth and the defendant shall, in addition to the challenges for cause now allowed, be entitled to peremptory challenges as follows: In all trials for misdemeanors, except for perjury, forgery and misdemeanors, triable exclusively in the courts of oyer and terminer and general jail delivery, the Commonwealth and the defendant shall each be entitled to six peremptory challenges; in the trial of felonies, other than those triable exclusively in the courts of oyer and terminer and general jail delivery, and in the trial of persons charged with perjury and forgery the Commonwealth and the defendant shall each be entitled to eight peremptory challenges; and in the trial of misdemeanors and felonies, triable exclusively in the courts of oyer and terminer and general jail delivery, the Commonwealth and the defendant shall each be entitled to twenty peremptory challenges; all of which challenges shall be made and assigned by the Commonwealth and the defendant respectively when the juror is called: Provided, That in cases not triable exclusively in the courts of oyer and terminer and general jail delivery, the court in which a case is called for trial may, by a general rule, fix a different manner and time for exercising said peremptory challenges in the process of empaneling a jury."

If no investigation of the jurors is made prior to the day of trial, counsel must depend upon a close observation of the jurors' personal appearance, demeanor, manner in which jurors respond to questions, and draw therefrom their intelligence and mental alertness, their manner in looking at things in general, their likely prejudices and the powers of perception and dissemination.

However, if counsel is without knowledge of the background of the juror, he may be placed in a position of disadvantage in the trial of a case, as there may be something about the background of a juror which may make him unacceptable as a juror.

In civil cases, the prothonotary draws the names of twenty jurors from the box, numbering them consecutively, and those twenty jurors take their places in the jury box. The prothonotary submits the list of the twenty names to counsel. The plaintiff and the defendant each have the right to four peremptory challenges without stating any reason and, when the plaintiff and the defendant exercise their right to four peremptory challenges, those challenged are removed from the jury box, leaving twelve qualified jurors to try the case.

Challenging For Cause

Examination of Jurors on Voir Dire: "Voir Dire," literally means "to speak the truth" and denotes preliminary examination under oath of prospective jurors as to their qualifications.

Voir dire denotes preliminary examination which the court may make of one presented as a juror, where his competency or interest is objected to.

Examination on voir dire is usually restricted by the court to questions pertaining to relationship or bias in favor of either of the party litigant, prior knowledge of the case, newspaper articles read, opinions formed therefrom and expressed, relevant conscientious scruples, and other material matters which may disqualify a juror.

There is no limit to the number of jurors who may be disqualified and challenged for cause.

When a jury is being drawn, and while you are exercising the right of challenge in the interest of your client, your client should be at your side and should be consulted prior to a challenge.

Many lawyers meet with difficulty in exercising challenges, particularly in criminal cases, and unfortunate experiences in court may easily be overcome if they will give some thought and study to the suggestions herein contained as a formula for selecting fair, honest, impartial, and qualified jurors to try their case.