

Randolph
Jackson



PICKING THE
JURY IN A
CRIMINAL CASE

How to Get a Fair Trial by Jury

HOW TO GET
A FAIR TRIAL
BY JURY

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*Picking the Jury in a
Criminal Case*

SECOND EDITION

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For RATHENIA

EVALUATING THE JUROR

Whom to Reject

Our job is to reject those who don't fit and to educate those who remain. Most jurors are *not* selected.

They don't pass. The system is really jury *rejection* rather than jury selection.

How and why do we reject?

1. Neighborhood
2. Face
3. Previously Convicted
4. Volunteer
5. Age
6. Prosecution Witnesses
7. Relatives
8. Occupation
9. Supervisor
10. Nationality

1. NEIGHBORHOOD

In your town, I'm sure people from a certain neighborhood are well-known for not liking people from a certain other neighborhood. If the prospective juror comes from the neighborhood known to be antagonistic to your client's part of town, watch out! Not everyone from that neighborhood is an automatic guilty vote, but be careful.

I keep on my table during jury selection a map of the town. I ask every juror for his or her zip code to pinpoint their neighborhood. I want to make sure I am getting a cross-section of the community and not an overload from the wrong neighborhood. If the count is wrong I pointedly let the jury know that my client is not getting a fair break ["Congratulations Mrs. Moore, you are the 6th person from Junction Flat to be selected for questioning. Did you all come down together?"].

2. FACE

When the juror's name is called and she comes forward to be seated, I place an "X" or a check next to their name. "X" marks an unpleasant, sour, negative face, denoting a probable guilty vote. Check means a pleas-

ant or neutral face which is worth further investigation. Many other reasons for rejection may be present but a bad face is usually a shortcut to spotting them.

Trying a case before a jury full of pleasant faces can become a love affair.

3. PREVIOUSLY CONVICTED

Habits are hard to break. When a juror has convicted before, I don't want him on my jury. You can't ask him if he's voted guilty but you can ask if he's served on a jury. ["What were the charges? Were you the foreman? Did you reach a verdict? How long did you deliberate? Were you satisfied with your verdict?"] It's not hard to guess if he's convicted before. If he has, let him go. Don't give him a chance to use his experience and "superior" knowledge of the law to convince the other jurors to vote guilty.

4. VOLUNTEER

["Were you subpoenaed or did you volunteer for jury duty?"]

Beware the court buff that's served so many times

he can't remember them all.

For most citizens, jury duty is a rare, and perhaps an inconvenient experience. Watch out for the juror who likes jury duty and who has volunteered. I seldom waive a jury trial because the average judge has seen so many guilty persons come before him, he or she thinks they're all guilty. So, too, does the sophisticated, veteran juror. Give me a new face, virgin territory on which to make a fresh impression.

5. AGE

["How old are you?"]

Call me prejudiced but young people tend to be better jurors for the defendant. An elderly person is more likely to be too set in his or her ways to put aside the bias we all have and give the defendant the benefit of the doubt.

This is not to deny that there are many good jurors of advanced age whom you very much want to select. But, all other things being equal, of two unattractive jurors, I'll choose to be stuck with the younger one on the chance he might respond better to the challenge I'm going to put before him.

6. PROSECUTION WITNESSES

Select the jury with the background of the prosecution witnesses in mind. If the major prosecution witness is a Hungarian, I don't want five Hungarian jurors sitting there, watching me tear apart their countryman, sympathizing with him all the way. I have nothing against Hungarians in any trial, except this one.

7. JUROR'S RELATIVES

["Where does your spouse work? Where did your spouse work before retirement?"]

The juror may be fine but his spouse may work for the FBI. This may make for an unexpected adverse verdict if you're in Federal Court and the principal prosecution witnesses are FBI agents.

8. OCCUPATION

["Where do you work and what do you do?"]

Don't put your life and liberty into the hands of the fellow who forecloses on mortgages, the guy who adjusts claims for an insurance company, the one who

handles collections for a utility, or the lady who investigates fraudulent businessmen. Like the jurors with extensive prior jury service, they have heard all the excuses, all the stories, all the defenses. They have found them lacking. They are liable to find your defense lacking. They may not even need to leave the jury box to decide on a guilty verdict. Let them sit on someone else's case.

9. SUPERVISOR

["How many people, if any, do you supervise in your work?"] Occasionally, despite your vigilance, a bad juror will be sworn in. Make sure that person is not also a commanding leader, accustomed to giving orders to 50 people every day. Supervisors are not bad if they are in your corner, but a bad juror who is also a supervisor can be dangerous. He or she will not be persuaded by the other jurors and may persuade them.

10. NATIONALITY

["Where were you born and where were your parents born?"]

Some countries have a long history of affording no

civil liberties to their citizens. People from those countries may tend to assume that an individual involved in a dispute against the government is automatically wrong. On the other hand, some countries have a tradition of steadfastly resisting armies of occupation. Someone from such a country may sympathize with an underdog, such as your client and may be skeptical of authority, including the prosecutor's.

I like the point system in jury rejection, also known as "the three strikes and you're out" system. A person with a bad face from the wrong *neighborhood* who has *convicted* before is an automatic rejection.

An *elderly volunteer* whose *background* parallels the main prosecution witness is also out.

About the Author

Justice Randolph Jackson was born in Bedford Stuyvesant, Brooklyn, New York. He is a graduate of Stuyvesant High School, New York University and Brooklyn Law School.

After working in the Wall Street firm of Nixon, Mudge, Rose, Guthrie, Alexander & Mitchell, (former President Richard Nixon's firm), Justice Jackson engaged in numerous community service, legal and charitable activities. He served as a Housing Court Judge, a Civil Court Judge, and a Criminal Court Judge before his election to a fourteen-year term as a Justice of the Supreme Court of the State of New York. He was re-elected in 2002 to a second consecutive fourteen-year term on the Supreme Court. Justice Jackson was formerly a commissioned officer in the New York State Guard, serving with the rank of Lieutenant Colonel. He serves as a mentor to inner-city youth. He is a life member of the NAACP and the National Bar Association. He is an author, Bible teacher, empowerment consultant, motivational speaker, and patron of the arts.

His first book, *How to Get a Fair Trial by Jury*, was published in 1978. It has been extensively revised for this edition. His second book, *Black People in the Bible*, was published in 2002 by Vantage Press (New York). It is available online at www.blackpeopleinthebible.com, www.amazon.com, www.barnesandnoble.com, or from the publisher, Vantage Press.



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