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THE TRIAL courts have for many years been plagued by the problem of controlling the voir dire examination of jurors. The essence of this problem is the limiting, as much as possible, of the time consumed by the proceeding; for it is the duty of the trial court to expedite the trial. More precisely, the question becomes that of how far the court may limit the examination of jurors by counsel, and in what manner it may itself take measures to speed up the proceeding.

There are three areas in which the court may so act: it may refuse to allow examination designed solely to lay a basis for a peremptory challenge; it may prevent the conditioning of jurors on matters pertaining to law; and it may itself take over much of the examination proper.

Examination for Peremptory Challenges

It is well settled that counsel may not ask questions of jurors solely for the purpose of determining whether to make a peremptory challenge. This rule was first laid down sixty years ago in the case of *People v. Edwards*,[1] at least as to criminal cases. The court denounced this method of questioning, saying:[2]

> The records of the cases appealed to this court in which rulings made while impanelling a jury have been involved, indicate that there is an increasing tendency to prolong the proceedings inordinately by allowing counsel on either side to indulge in tedious examination of jurors, apparently with no definite purpose or object in view, but with the hope of eliciting something indicating the advisability of a peremptory challenge, and that the supposed privilege of doing this has been greatly abused.

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[1] 163 Cal. 752, 127 Pac. 58 (1912).

[2] *Id.* at 753, 127 Pac. at 58.

The court reasoned that no authorization for such examination was to be found in the Penal Code. Under the Code, challenges are divided into two classes: for cause and peremptory.[3] A peremptory challenge is defined as "an objection to a juror for which no reason need be given, but upon which the court must exclude him."[4] So no issue of fact can possibly arise with regard to the reasons for such challenge. The Code then defines the several kinds of challenges for cause and prescribes the mode of forming issues of fact as to the grounds on which they may be predicated,[5] and provides for the manner of trying such issues of fact.[6] The court concluded that these provisions, taken with that which provides that peremptory challenges are to be taken after challenges for cause are exhausted,[7] do not relate to or authorize the examination of a juror for the purpose of enabling the parties independently to determine whether or not a peremptory challenge should be taken.

The *Edwards* case has been followed in a steady line of decisions up to the present day. The latest expression of the rule is found in *People v. Rigney*.[8] In this case, the trial court conducted an elaborate voir dire examination and then allowed each party to examine the prospective jurors. Defense counsel attempted to ask the jurors the branch of military service with which they had been affiliated, whether the defendant would be prejudiced by reason of the fact there was a "divorce in this case," and whether any of the jurors were related to a law enforcement officer. The court refused to permit these questions on the ground that they were asked to obtain information for peremptory challenges. This refusal was upheld by the Supreme Court, which applied the *Edwards* rule. The court also indicated that if counsel's questions were also designed to lay a basis for a challenge for cause the refusal would not have been justified, stating that ". . . if special circumstances in the present case made defendant's questions relevant to show bias or other grounds for a challenge for cause he should have informed the court of his reasons for asking the questions."[9]

In civil cases the rule was first applied in *Zolkover v. Pacific Elec. Ry.*[10] Here the court stated that there was no error in limiting plaintiff's voir dire examination of jurors where his questions were not propounded for the purpose of laying the foundation of a challenge for cause, but were asked simply for the purpose of enabling him to deter-

[3] CAL. PEN. CODE § 1067.
[4] CAL. PEN. CODE § 1069.
[5] CAL. PEN. CODE §§ 1071-78.
[6] CAL. PEN. CODE §§ 1081-83.
[7] CAL. PEN. CODE § 1088.
[8] 55 Cal. 2d 236, 10 Cal. Rptr. 625, 359 P.2d 23 (1961).
[9] *Id.* at 244, 10 Cal. Rptr. at 629, 359 P.2d at 27.
[10] 81 Cal. App. 772, 254 Pac. 926 (1927).

mine whether he would or would not desire to exercise peremptory challenges. Interestingly enough, the court cited as authority the *Edwards* case without comment.

Matters Pertaining to Law

Very often counsel will ask prospective jurors if they will apply certain instructions pertaining to the law of the case. It has always been my opinion that knowledge of the law is not one of the qualifications for jury duty and that it is not the province of counsel on voir dire to attempt to instruct the jurors on matters of law. Rather, it is the duty of the court to instruct jurors on the law, and it is also the duty of the judge to expedite the trial and to restrict the examination of jurors within reasonable grounds. The Supreme Court, in stating this view, said: "The knowledge or ignorance of prospective jurors concerning questions of law is generally not a proper subject of inquiry on voir dire, for it is presumed that jurors will be adequately informed as to the applicable law by the instructions of the court.[11]

It must be borne in mind, however, that in capital cases counsel for defendant has the right to question prospective jurors for the purpose of ascertaining whether any would vote to impose the death penalty without regard to the evidence in the event of conviction. The rule, stated in *People v. Hughes*, is:[12]

> In order to intelligently exercise the right to challenge for cause prospective jurors who have fixed opinions with regard to infliction of the death penalty, defendant's counsel must be accorded reasonable opportunity to lay a foundation for the challenge by questioning such jurors on voir dire to learn whether any entertain a fixed opinion of this nature.

Suggested Procedure

The third, and most effective, method of expediting the voir dire examination is the conducting of a major part of the examination by the court. A suggested procedure is as follows:

When twelve prospective jurors have been seated in the jury box, the court will first outline the nature of the case and give a resumé of the pleadings. Then the duties of the jurors are outlined: they should be cautioned to truthfully answer all questions propounded by the court and counsel touching upon their qualifications to act as jurors; and informed that they must be open-minded, that they must not discuss the case until it is submitted to them, that they are the sole judges of the facts and credibility of the witnesses, and that they must accept

[11] People v. Love, 53 Cal. 2d 843, 3 Cal. Rptr. 665, 350 P.2d 705 (1960).

[12] People v. Hughes, 57 Cal. 2d —, 17 Cal. Rptr. 617, 620, 367 P.2d 33, 36 (1961).

the law from the court and apply it to the facts of the case in arriving at their conclusion.

Following this general outline, the court should then conduct a general examination of the jurors. The nature of this examination should be somewhat as follows:

The jurors' knowledge of the case.

Relation to the litigants or their immediate families.

If a corporation is a party, whether they are related to an officer; whether they are stockholders, debtors or creditors; whether they know the attorneys or their associates.

Prior jury service.

Whether they have been a juror or a witness in a case of a similar nature.

If the case is an accident case, they should be interrogated as to whether they or members of their families have been involved in an accident, whether they suffered serious or nominal damages, whether litigation resulted from the accident, whether they drive an automobile, and the like.

Do they have any bias or prejudice against this type of case.

In connection with the subject matter of damages, will they apply the rule of reasonableness.

Whether they can be fair and impartial in connection with the case, giving each side fair consideration.

Whether they are willing to try the case upon the facts and law presented in this case to the exclusion of all others.

Whether they have any preconceived notions or opinions concerning this type of case that would prevent them from giving both sides equal status from beginning to end.

Counsel should then be interrogated as to whether they are willing to furnish the names of their witnesses, expert or otherwise, so that the jurors may be questioned as to whether they have any acquaintance with them and, if so, whether that fact will influence their decision.

Whether they have any religious conviction that would prevent them from evaluating pain and suffering in personal injury cases.

Finally, counsel should be asked if they wish the jurors to be informed in a general or preliminary way as to matters of law. If so, counsel will request the court to do so; and to the extent that the court deems it proper to so instruct or inform at this stage of the proceeding it will do so.

Counsel then should be admonished to refrain from educating, instructing, or questioning the jurors on matters pertaining to law.

Then, to eliminate counsel's questioning on these subjects, the court should have each juror rise, state his name, residence, occupation, marital status and occupation of spouse.

When the above items have all been disposed of, counsel may be permitted to examine the jurors on any matter, not covered by the court's examination, touching upon the jurors' disqualification for cause.

It is suggested that counsel be informed at the pre-trial conference that the examination of jurors will be conducted in this manner, so that they are not taken by surprise on the date of trial and subject to admonishment concerning their conduct in this regard. If a different attorney from the one who appeared at pretrial conference is sent into court to try the case, a short conference before the trial with him will suffice to alert him of what to expect in connection with the examination.

The court, then, is in a position to most adequately control the examination of jurors with the tools and methods which have been discussed. It has been my experience that when the type of voir dire examination indicated is used, the time required in selecting the jury is reduced by at least one half—a very substantial saving.