How To Successfully Challenge Jurors For Cause In 5 Steps

By **Ken Broda-Bahm** (August 15, 2025)

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If and when it does get to the stage of jury selection, the trial of Luigi Mangione is likely to pose some challenges for prosecutors looking for jurors to focus only on the facts and the law.[1]

Mangione is currently facing New York, Pennsylvania and federal charges stemming from the shooting of UnitedHealthcare's CEO Brian Thompson. Prosecutors in the case will likely seek to identify potential jurors who are inclined to see the case more through the prism of commentary on the U.S. healthcare system, and less through the lens of the case's specific facts, evidence and statutory requirements.

This kind of difficulty looking at the facts apart from the social message would be a reason for a cause challenge. In fact, this is exactly the kind of case that illustrates the need for litigators to rethink the process of a cause challenge.

Cause challenges play an important role in jury selection. When a potential juror has acknowledged a barrier that may interfere with their ability to base their decision on a neutral understanding of the evidence and the law, they should not serve on the jury.

However, when lawyers are exploring potential cause issues, they often take an approach that reduces the likelihood of a cause challenge's success. The principal mistake is jumping to the qualification question too soon, asking, "Can you follow the law?" or some variant of that question right out of the gate, as soon as the potential juror has revealed an experience or an attitude that could serve as a foundation for cause challenge.

Of course, that question will need to be posed to the potential juror at some point in order to satisfy the judge that the cause challenge has merit, but using the qualification question as a starting point can too often push jurors to agree that they can just follow the law, because following the law is the socially desirable response.[2]

When pressed on that question too soon, jurors will generally say they can be fair and follow instructions because that is perceived as the right answer in that situation.

An advocate might say to themselves: If they say they can be fair, then I don't need a cause challenge. But this is wishful thinking. Social science research indicates that a promise to be fair, in practice, is shallow. And rehabilitation — i.e., the process of a judge or an examining attorney asking the juror whether they could set aside bias and follow the instructions under the law — has not been shown to eliminate or even reduce bias.[3]

As an advocate during voir dire, you should only rush to the "Can you be fair?" question when your goal is to reach a surface-level rehabilitation in order to deprive the other side of a cause challenge and force them to use a strike.

When your goal is to actually learn more about the individual, or to steer the potential juror toward a cause challenge, you should ask other questions first. Jurors need to be eased into and precommitted to a position before they are challenged. An effective cause challenge is often built on a five-part structure.

Each conversation with a potential juror should be moved through these five phases, with distinct goals at each step.

1. Identify.

Start by identifying an attitude or experience that can be the basis for a cause challenge. This will be an issue that bears on the case and that would potentially set the juror apart from others in the pool. This can be anything that comes up as an answer to a well-designed juror questionnaire or emerges during questioning by counsel or the court.

Importantly, don't signal to the potential juror that the response is wrong in any way. Instead, you are simply interested in learning about their attitude or experience.

2. Perform.

Before connecting the issue to their qualification and fitness to serve, encourage the juror to perform or wear that attitude or experience a bit in order to remind the juror of their views and experiences, and to learn more about the nature of the issue.

Ask questions like the following:

- Why do you feel that way?
- Can you tell me more about that?
- Why do you feel that could be relevant to our case?

3. Amplify.

Set the stage for jurors to add strength to the experience or the opinion in order to move the juror — and the court — toward an understanding that the bias is significant, important, powerful and hard to set aside.

Clearly, if the potential juror does not go along with you in moving in this direction, or if they minimize or take back the attitude, then they may not be a good candidate to strike for cause. Importantly, though, self-rehabilitation is not a reliable cure for any bias that they've expressed, so they may still be a good target for a peremptory challenge.

To amplify, ask questions about the strength of their perspective:

- Have you held that view for some time?
- Is that something you found yourself thinking about as you heard what this case is about?
- Would you say that your feelings about that are pretty firm?

4. Set.

Move to get the juror to commit to having a particular bias using the qualification question — e.g., "Can you be fair?" While you want to employ whatever "magic words" the judge is expecting to hear, you should still try to phrase the question in a way that makes it easier for the juror to admit to bias than to deny it.

Avoid the term "bias" itself, because most people see that as something negative that they

would not want to apply to themselves. Instead, emphasize the challenges they would have in being truly neutral, asking questions like:

- So am I safe in believing that you wouldn't be truly neutral on this?
- It would be difficult for you to treat the two sides equally, wouldn't it?
- You would face a challenge in trying to fully set that aside, correct?

5. Protect.

Knowing that your questions are unlikely to be the final word, anticipate that the judge or the other side will attempt to rehabilitate the juror away from that expressed bias.

You can build in some resistance to that rehabilitation by attempting to seal off the position from any attempt to get them to soften their view, asking questions like.

- That isn't an opinion that is likely to change today, is it?

- Knowing that you would do your best to follow the rules, it sounds like completely setting this experience aside isn't fully in your control. Is that correct?

- Can we expect you to stick with that view, even if the judge or the other side asks you this same question?

If they initially say they could set it aside, ask them how they would accomplish this, with the message being this compartmentalization may be easy to say, but harder to do.

Final Thoughts

You might also consider bundling several potential cause concerns for a single juror by moving through steps one through three for a number of different issues before addressing steps four and five based on their full set of answers. Cause challenges are generally most effective when you can pull together a cluster of attitudes and experiences as the rationale for the challenge.

The main implication is this: Take your time to acclimate the potential juror to the cause challenge. Instead of rushing to ask the ultimate question of whether they can be fair, take some time to let the individual expand on and own the reasons why they may not be.

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[1] https://news.northeastern.edu/2025/02/19/luigi-mangione-trial-jury/.

[2] https://yourtrialmessage.com/by-dr-ken-broda-bahm-so-a/.

[3] Salerno et al, 2020.