Interview Transcript

Participant 23

\* This interview was not conducted or recorded via Zoom. There is only audio and no baseline transcript.

Notes:

Use of humor

Winning hearts of jury – controlling their emotions

32nd min +

Race asset = “they never expected me”

Interviewer: Can you tell me more about what your day to day looked like?

Participant 23: Well, let’s see. Way back when I started in 79, there wasn’t a great deal of, well— the wonderful thing about being a PD was that you were kind of like a paid outlaw. People will tell you that the public defender is often the least popular person in the courtroom. Judge wants to get out early so he can get to his tee time. DA thinks you’re the spawn of the devil. You represent the spawn of the devil. But essentially, since I had grown up around working people all my life, and I knew from my dad and my own experiences and those of my friends that uh... the state at that point in time was viewed with a great deal of suspicion—this was the late 60s early 70s—and the additional fact that I happened to be of Asian descent was kind of interesting because even today, although there are remarkably more lawyers of Asian descent, and there are a lot more women attorneys now across the board than when I started law school, I was often the only person of Asian descent in the courtroom. And I was, for a number of years, practically the only litigating— one of a bare handful of litigating Asian attorneys. Unlike the Bay Area and Los Angeles County here in Southern California, you did not see Asian attorneys as litigators. And even today, the fact of the matter is, few attorneys become litigators. And even now, in 2022, very few—I see very few. Once I get out of LA county and perhaps the Bay Area, you do not, as a general rule of thumb, you are not going to see Asian attorneys engaged in criminal defense. As representing the... you know. There still are a fair number of Asian prosecutors, but on the defense side, not so much. Much more so now.

Participant 23: My last 15 and 17 years of practice was here in San Diego County. And there were, when I joined the office, there were—one, two, it was Donna, myself—just Donna and myself. There were just two of us. When I left, there were about four. There may be up to about six or so now. Being Asian, being a litigation attorney, was rare. And still, depending on where you’re located, even here in California, it’s still relatively rare. LA county, Orange County has quite a few, but those are the areas where geographically, you’re going to have greater representation of Asians in the general population. But for years, people would come into the court for arraignment, which would be their first court appearance, and they would be… I was easy to spot. So, when people wanted me specifically, which was rather flattering, they would come into court, they’d say hey I heard there was this Chinese dude who’s in the PD office, I want him, I’ve heard good things about him, which was kind of nice. Because you had, um, as I said earlier, being of Asian descent, they didn’t expect you. It was, on more than one occasion, I would introduce myself to the jury and I literally would use that same line from um, I think it was Bridge Under River Clyde, where a Japanese commandant of the POW camp says: “you are surprised I speak your language.” So, I would use a lot of humor to get around, you know, to get people comfortable with the fact that I was, you know. And sometimes I would find that because they, you know — the worst thing was that I was opposite this Chinese, I think she was Chinese American. She was a prosecutor in Los Angeles County, and she was very dismissive of me throughout the entire case, which I found rather disconcerting. But I kept telling her from a legal standpoint that she didn’t have a leg to stand on regarding the charges against my client, and rather than reading the file and taking me seriously, we wound up in trial, and about after her first witness, she begged the judge to dismiss the case because her office, the DA’s office, would not let her dismiss the case. But it wasn’t so much — I think looking at it charmingly (?), my sense was that she wasn’t willing to do that, one, either because she was incompetent, which I hope she was not, I hope she became a better lawyer as a result of our experience together. But she felt, perhaps because she was a woman, because she was a minority attorney in the DA’s office—and this was back in—and this was relatively recent, I mean like, well, I don’t know, this probably predated your birth. It was back in 1990s, okay. So, we’re talking about almost a quarter century ago, and you know, one of the reasons why I prefer being a defense attorney was the—when you’re a prosecutor, you represent a political office. Most counties, virtually every county in the country, elect prosecutors. Only a very small minority of public defenders are actually elected officials. San Francisco has an elected public defender; I think some counties in Florida remarkably, also elect a public defender. So, being a defense attorney of minority descent was very — it gave you a great deal of independence, because I didn’t have to worry about my boss wanting to take a “tough line” on a XYZ type of defense. Because I was not what my clients expected, because I’d show up for the initials interviews and they’re looking at this face rather than an Anglo face. And because I had grown up in minority communities, I would plainly tell my clients, I’d say: “Look, whatever games you feel you need to play on the street or with the man, I understand. I just want you to know that been there, done that. Okay? I’m on your side.” The fact that I wasn’t white, the fact that I could speak to them intimately and you know, I mean if I had to, I would just get into the street language and you know, and talk so that they understand rather than be talking to some guy who’s got a college degree and all this sort of stuff. And you know, I thoroughly enjoyed the work. A lot of that came from my dad because you know, he didn’t really care for officials either. Although he was a lifelong Republican, he also understood that they’ve had to have this image. He was probably what you would call a traditional Republican, a John McCain mold, not the Lindsey Graham mold. It was the right kind of law for me. It fit me spiritually, it fit me politically. I genuinely cared for my clients. I loved going to bed for them. The most beautiful compliments I’ve ever got were from clients. I had one client who called me from out of state, he picked up a new beef, and I’d said to him: “JT, there’s nothing I can do for you. You’re in Nevada, I’m here in California. I can’t help you out.” And he said: “I didn’t call you because I want you to be my lawyer, although I would love it. But I just wanted to let you know that this might be my last hurrah.” He was looking at a potential death sentence, and he said: “I just want you to know that of all the public defenders I’ve ever had, you were the best. I just wanted you to know that.” Yeah. That was like 1984. I couldn’t have done any other kind of law, probably. And my Chinese name kind of suggested that I should become an attorney. My Chinese name kind of loosely translates to “unite us”, United States. The government with the nation. My brother’s name was also heroic, and it kind of presaged the career choice that he took and that I took. It kind of really weird and really freaky. My brother and I didn’t realize that until my dad has passed. The subtle political statements that my dad was making. He was a very unusual person, unlike my mom. My mom was horrified. For years and years, she would ask me: “are you still representing those kinds of people?” But dad was very supportive. And I tell young lawyers the same thing that my dad told me: “Just remember poor people make good lawyers too.” But yeah. It was always a different thing for me, because being the only Asian in the courtroom you know. Although I practice primarily in Southern California, most of my practice was in counties other than LA. I had a number of friends who were former public defenders and former prosecutors in LA. But until relatively recently, you didn’t see a lot of that, even in counties that were contiguous to Los Angeles. One of my law clerks is now — opened up her practice in Riverside and she happens to be Vietnamese, two of them actually. They both happen to be Vietnamese women and they are practicing in Riverside County. So, it’s a changing thing, but being Asian, being a litigator, being an attorney, those are relatively unique features.

Interviewer: Why do you think that it continues to be relatively rare for there to be Asian litigators?

Participant 23: One, because most people don’t go into law with the attitude that they’re going to be litigators. I went in with the attitude that, you know, because we were involved in civil disobedience, strikes, that sort of thing, we needed people who would be able to go into the courtroom and fight the man mono on mono as it were in that arena. So, one of the problems that people of color have always had was being understood by even people who wanted to help them. Lawyers generally come from solid middle-class, upper-middle-class backgrounds. I remember when I was at SC, I had classmates who were independently wealthy for their lifetimes, they were fourth generation, we called them old money. Talking about new low reach. But basically talking about white males. I mean those were the legacy kids. I got in as a result of affirmative action and I felt an obligation to return those skills. I was admitted to law school not for my academic prowess, but because under the affirmative action design of the period, I was an appropriate candidate. For me, I’ve always had the sense that in some way I should continue to be a champion even though I’ve been retired. It’s been at least 12-13 years since I’ve set foot in a courtroom on a daily basis. But, right up until the end I was swinging the baseball bat on behalf of my clients. It was just the right thing to do because the law, as we’ve seen recently, has so much impact on the day-to-day lives of working people. So, yeah. I mean, I never look back, you know. I found also that my choice... I’ve probably retained a great deal more satisfaction in my work than virtually anyone of my other peers who took other paths. The other law review marvel at school, really sharp guy, don’t get me wrong. He was a really nice guy, one of the few white guys whose company I enjoyed. After graduation, he went to work for a big prestigious law firm in LA. I was working as a PD. He was making easily at least twice the salary I was making. As luck would have it, one day during a recess in the trial, I was just wandering through the halls, kind of chilling out during the break, and I bumped into him. We asked each other “how are you doing” etc., and he was ecstatic because his law firm had permitted him to appear in court to argue a non-contested notion. He didn’t even have to fight anybody because the other side basically filled in their consent, but it did give him an opportunity to actually be on a record in front of a real-life judge, and he was really happy about it. It was the first time for him. And so, he told me that’s why he was there, and he asked me: “what are you doing here?” I explained to him that I was with the public defender's office. And at the moment I was engaged in a trial where my client was accused of having struck the victim with a hot pot poker. The young man had a prior record, he’s not a model citizen, he’s not a national merit scholar or anything of that sort. He was a kid from the hood. So, I explained the case to him. And he said: “Wow! Are you the second chair?” In other words, are you the junior lawyer? And I said: “No, it’s just me, the DA, and the judge. We’ve been going at it now. If I lose, my kid’s gonna wind up in kiddie prison.” Out here in California, it’s called the California Youth Authority. And he was just aghast that they would give me this responsibility to represent this young man. By that time, I was kind of used to it, just another day in the office. Although I was fully aware of what the consequences for my client would be if we lost. Long story short, we won. You know, it was that thing, representing the kinds of people that I grew up with and the kinds of people I identified with.

Interviewer: In this study, I’m especially interested in how people feel and express emotions at work. And so, I’m wondering, well first of all are you an emotional person? Do you consider yourself who wears their heart on their sleeve? Or are you more private about what you’re feeling.

Participant 23: Within a close group of colleagues, I feel like the... the space, if you will. Being criminal defense attorneys, particularly if you are in a public defender type of setting, the people who understand you best are the people who are beside you everyday. Case in point, it was a tradition in the first PD office that I worked in, in Riverside, where if you won your case, there was one particular bar — the criminal law bar hung out here — one section of the bar which was where the defense attorneys hung out, and there was a section where the DAs hung out, and there was a section where the cops would hang out. It was all in the same bar. It was called “the office”. They would call and ask “where are you?” and you would say “I’m at the office.” There tradition was that if you won a case, you would show up at the end of the day at the bar and you would buy a round of drinks for everybody who showed up from the defense. But if you lost a case, you would go to the same bar after work, and your colleagues would buy a round for you. So, within that group, you could always feel free to express whatever it was that you were feeling. So, basically, I mean sometimes you would get a verdict that you didn’t particularly care for, you felt it was totally unjustified, and your colleagues would take care of you. So, win or lose, you always had that backup. And within that group, you would feel supported. But then there were also limits to that because not everybody has the same emotional investment in the case or may not have the background to fully appreciate why you felt a particular case went the way it did. Whether the result was justified. When you’re dealing with stuff in the courtroom, there are certain limits to what you can or cannot do. A great example would be the changes in the kinds of defenses that you can raise. One of my mentors have lost a case involving a battered woman who finally turned around and just killed her abuser. He lost that case because the law at that point in time would not permit him to introduce the history of abuse that she had suffered from on a chronic basis, and that disturbed him so much that he subsequently left the practice of law. It was that kind of thing. But what you would do is you would try to put into the record the times of arguments the court should consider, and hope that somewhere down the line when a change of law would take place, you get to release that you were entitled to — and that’s happened. You always have an opportunity to explain the unexplainable and introduce new concepts, new theories of defense, to a jury and hope that they can absorb that and try to feel: “Hey, Mr. Defender may not be as nasty as he first appears.”

Interviewer: Can you think of any times when you felt particularly emotional at your job? This could be any kind of emotion, it could be like super nervous, excited, upset, angry?

Participant 23: I guess it’s kind of typical for... Trial lawyers have this thing called “trial psychosis”, you become so convinced of your position that you kind of lose sight of the reality of thing. And then there were times where you just know in your bones that the decision that came down was not justified, and you knew that there was nothing that you could do about it. That was particularly hard. Case in point, I once represented a young man who was charged with child molestation. And the victim, who was of tender age, I think she was under 10, really couldn’t tell a coherent story. And the judge was very frustrated, as were we all, because you really couldn’t tell from the testimony whether anything illegal had happened. The judge decided, and this is on the record: “I don’t know what happened, but I’m gonna find him guilty anyway.” The proper thing to do under the law would have been to just say: “Okay, you haven’t met the burden of proof. Case dismissed.” Sometimes you realize that the court will make certain decisions without any particular - it just defies common sense. And the reason will be something that can’t be stated and can’t be challenged. That’s the kind of stuff that will really infuriate me. Sometimes I would argue that the cultural expectations and backgrounds of a client were absolutely imperial to understand why he or she did what they were accused of having done, and if the jury would consider that, they might not necessarily find them not guilty, but they would have at least understood, and that’s how you build the leniency. It’s like, alright, we know what the end result was, but there are many ways for a person to get there, and unless you can introduce those other directions, that’s the whole thing of “there’s more than one way to skin a cat.” And if you can appreciate that it’s not so much the end result but how that person got there, then you can, you know... And I think you have to be able to project that emotion, I find that if you can humanize your client, you’ve got a shot, because oftentimes what my clients were charged with is... shall we say “inhuman”? But if you can get the jury or the court to see the accused as a human being, however flawed, you got a chance for him or her. And I guess more than anything else, it would be projecting on a controlled emotional basis, the humanity of your client. Then they don’t see your client as a monster. It helps them get over their surprise like: “hey, who’s this Chinese dude? The last time I saw a guy like that was maybe at the takeout place with the panda.” So, you have to be able to express and control your emotions in such a way that it doesn’t control you but assist you. That’s something that a lot of Asians feel comfortable doing, which explains - because we’re supposed to be stoic and inscrutable and all that other horseshit right? You and I know that within our families, there's a lot of screaming and shouting and whatnot. When I used to work at as waiter, I used to think: “why is the chef always so pissed off at us? Just use a normal tone of voice.” When it is as noisy as it is in Chinese restaurant kitchen, you gotta raise your voice. But at the same time, you have to make your emotions work for you. You can’t suppress it, it becomes depression. You have to have some way of letting it out. I would use humor. Criminal defense lawyers have an incredibly bizarre sense of humor, we can laugh at the weirdest things. That’s not only because we’re nuts, but it’s just a way of relieving the pressure.

Interviewer: So, to what content would you say that your race was an asset and to what extent was it a liability in terms of capturing the hearts of the jury and trying to make them see the humanity of your clients?

Participant 23: Well, since they never expected me there, I always had them a little bit on the backfoot. I subscribe to this theory that if you don’t have a sense of humor, you’re not a compassionate individual. I mean, humor is the ability to laugh at oneself and at others, and not necessarily in a demeaning way, but just to realize that there’s a humanist thread that runs throughout all of us regardless. And if you can reach that... every so often, you can sense, I mean people of color with a particular background will have that sensitivity that’s just baked into them as a result of growing up as a person of color in the United States. It’s just a fact of life. There are entire states that I will never want to visit. I’ve been threatened.

Interviewer: Like at work you mean? Or just in general?

Participant 23: Yeah, at work sometimes I’d be out there trying to find witnesses and meet witnesses. They might be somewhat aggressive towards me. And you know, you deal with it. You can deal with it. Once they realize why you’re there, most people can get past that. At least in my experience, they can get past that. A lot it depends on how you want to approach the person. It’s not necessary to confront them aggressively. But once they realize that you’re there to perform a particular function, to represent someone that they know and love and care for, they have a sense of that (…) And also appreciate that people will have... People from certain segments of communities. Frankly, I’ve probably gotten more racist comments from people that you wouldn’t think would do that than people that you think that would normally go off in that direction. I’ve not had that, but I’m fully aware that is always a possibility. My brothers were the only Chinese kids in our school. I didn’t have a significant amount of Asian classmates until the end of college.

Interviewer: Did you ever have a difficult time building trust with clients because of your race or because of racial differences or did you feel like that was usually pretty easy for you?

Participant 23: Well, from time to time I would have a client who might be charged with a hate crime, and it would be kind of weird for him to see me opposite, it was “uh-oh.” I’d explain to them why I am there. I’m not there to judge them, I’m there to let them know what they’re looking at, what their options are. It’s kind of like when you go to see a doctor, you’re less concerned about the doctor’s ethnicity, gender affiliation, or what have you. You’re there because you’ve got a pain, and you have to have someone qualified, you know. The whole idea is to convince the party that you are qualified to fulfill the function that you’re there to perform, they’ll get past that. If I sense that they’re uncomfortable about it, I’ll just say: “Okay, tell me about it.” And sometimes we might even talk about it. And more often than not, I would find out why they feel like that. And I would just say: “Look, that analysis is not factually based. If you want to, we can talk about that. But right now, we’ve got this other thing to discuss.” It would be an opportunity to give a little bit of education, which is always a good thing. As the Chinese say, “knowledge is a treasure that travels well.”

Interviewer: That’s a nice saying, I like that. Did you ever experience any sort of emotional exhaustion or burnout from your job?

Participant 23: In my time of work, yes. It’ll hit you. The challenge is to realize that it’s gotten to a point where it’s debilitating and your effectiveness as an advocate is severely compromising. You have to have the courage... Like my mentor, when he lost that case and he had to have the courage to realize that and walk away from it. Because if you’re burnout, you’re burnout. You’re not gonna be as good as you could be or should be. That’s a disservice to your client. And if you have to bow out, then you do so gracefully because you don’t want to be thinking later on that “well, if I haven’t been so tired or burnout or disgusted with my client...” Always have the... I guess it’s just the amount of courage and self-awareness that you have to have. After about 30 years of being in the field, you feel a lot of that, and it feels good. Miss it in some ways, you know. It was having the premier ticket to all the best attractions at the amusement park.

Interviewer: Yeah, it sounds like a really interesting job. This is not really related to your job per say but in the last couple of years, there has been an increase in news reports of violence against Asian Americans. Is that something that has affected you at all or that you’ve been following in the news, and what do you think about that?

Participant 23: It’s not affected me directly. But my wife has been called out. She happens to be Filipino, and during COVID, some woman got into her face about it. They failed to take into account that my wife’s a no-nonsense kind of woman. Myself, I haven’t had to... I think a part of it is — physically, I just project an attitude that I can take care of myself. Racists tend to pick vulnerable victims. My friend and I were talking about this a couple months ago, he lives in New York and as you know there’s been a lot of assaults on Asians there. We were talking about that. Because he’s in New York, he rides the subway a lot, and what he’ll do — he’s actually, he and I are the same age, neither of us look like, you know, we’re not martial artists or anything of that sort, but we’ve got enough street knowledge. But what he’ll do, and what I’ve also done, is that if you see a potential situation, he would position himself so that the person who might be perceived as a witness would know that he was present, and that he would provide support if necessary. I do the same thing. So, until I can no longer physically do that, I probably would keep doing that. Fortunately, my family lives around the suburbs, we’re in a fairly wielded area. We don’t get a lot of that stuff. We live in a cul-de-sac, there’s seven houses. We all know each other. So, it hasn’t hit me directly for a long time. I mean, when I was younger, sometimes I’d have to be ready to deal with it, but never on a what I would call chronic or constant basis.

Interviewer: Great. Well, I want to be mindful of your time and I know that it’s been a little over an hour at this point, partly due to our technical difficulties in the beginning, but this has been a really, really great conversation and I’m honored to hear some of your stories. So, thank you so much for all of that. I have a couple things. One, I’m still looking for more participants, so if you know anybody else who would maybe be interested, even someone like your wife, perhaps. If they would be interested in participating, I would be really happy to... if you would refer them to me.

Participant 23: I think I got passed on from my friend, (name).

Interviewer: Yeah, I met (name). You guys had some overlapping stories.

Participant 23: He’s got a bunch of good stuff, and his wife will also have some (…) .

Interviewer: Oh right, yes. I remember he mentioned that. I think some other people you maybe referred have contacted me... Do you know (name)?

Participant 23: Yep, he’s my nephew.

Interviewer: Oh okay! Yeah! They both contacted me. So, that was really great. Thank you so much for that.