

HANDOUT #1

THE AMERICAN JURY SYSTEM

HISTORY

The modern American jury system can trace its roots back to medieval England. Yet, the jury of medieval England would be unrecognizable when compared with the present jury system of the United States. In its origins, the trial itself was a form of royal inquisition. Trial by ordeal — the use of fire or hot water to test one's innocence — was the accepted means of prying facts from individuals believed to be withholding information. Originally, jurors were not called to court to hear the testimony of witnesses but to be witnesses themselves. Today the American jury consists of a group of people summoned at random from the community and sworn to decide on the facts in dispute at a trial. The jury system has come a long way — from a time in which jurors were called upon to testify about the facts in a case to the present, in which jurors are selected on the basis of their impartiality to the case and the parties involved.

The jury system was transplanted from English soil to the American colonies with the landing of the Pilgrims. Although a basic acceptance of common law existed, there was no uniform development of the jury or of jury selection procedures among the colonies. New states adopted the jury system in their constitutions one by one, but often modified such aspects as the qualifications for jurors and the means of selecting them. During the American Revolution, most state constitutions adopted the right of jury trials in criminal cases. Civil cases, however, were another matter.

THE CONSTITUTION

When the Constitutional Convention met in Philadelphia in 1787, the delegates assigned the administration of the court system to the judicial branch. There are few rights spelled out in the body of the Constitution. The lack of such protections was widely criticized and led to the first ten amendments outlining a Bill of Rights for citizens. Yet, one of the rights that was clearly spelled out concerned the right to trial by jury in federal cases:

“The trial of all crimes, except in cases of impeachment, shall be by jury; and such trial shall be held in the State where the said crimes shall have been committed; but when not committed within any State, the trial shall be at such place or places as the Congress may by law have directed.” (Article III, Section 3)

Those present at the Convention had little acquaintance with the concept of jury trials for many civil matters. For example, in 18th century England the judge alone was generally responsible for decisions on the matter of property rights. A group of delegates to the Convention, spearheaded by Alexander Hamilton, a lawyer, wrote a federal constitution without provision for the right of jury trials in civil actions.

The Bill of Rights, written by James Madison, was added to the Constitution in 1791 at the insistence of the states. It explicitly listed the rights of all citizens under the new federal government. These included the right to a jury trial in criminal and civil cases in federal trials:

“In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.” (Sixth Amendment)

“In suits at common law, where the value in controversy shall exceed twenty dollars, the right of a trial by jury shall be preserved, and no fact tried by a jury shall be otherwise reexamined in any court of the United States, than

according to the rules of the common law." (Seventh Amendment)

Although the original Constitution did not require juries in state trials, the due process and equal protection clauses of the Fourteenth Amendment have been interpreted by the Supreme Court to extend the provisions of the Bill of Rights to each state:

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, *without due process of law*; nor deny to any person within its jurisdiction *the equal protection of the laws*." (Fourteenth Amendment, 1868)

Today, there are two kinds of juries. A grand jury, usually composed of 23 jurors, examines evidence before the trial and determines whether there is justification for holding a trial. A petit jury, usually of 12 jurors, listens to the evidence during the trial and decides whether the case against the defendant has been proven sufficiently. Grand juries are appointed and serve for a year at a time, while new petit juries are chosen for each trial.

The process for choosing a petit jury is known as "*voir dire*." (pronounced: vwohr deer) This term comes from two French words—to see and to speak—and means "to speak the truth." Thus, it means to choose a jury by observing and listening carefully to how prospective jurors answer questions posed to them by the judge and attorneys. From the colonial period to the present, there have been significant changes in the use of jury trials in both civil and criminal cases, in the right of trial by jury in misdemeanors and felony cases, and in the area of jury selection. While all states provide for jury trials, they may differ slightly in the selection process. In federal courts and many states, there is an increasing tendency to use judges to conduct *voir dire* examination of jurors. Many people feel that examination by a judge is more expedient and less inclined to be prejudicial.

A JURY OF ONE'S PEERS

English common law established the concept of a jury of one's peers. Peers are people with the same general background, chosen at random from members of the community. It is generally believed that a jury of one's peers is better able to understand the nature of the circumstances surrounding a criminal or civil matter based on local experience and can empathize with the parties involved. This does not mean that every jury must have representatives of all the economic, social, religious or ethnic groups of the community by quota, but rather court officials cannot exclude any of these groups. On several occasions, the Supreme Court has held that systematically excluding blacks from both grand and petit jury selection, for example, is unconstitutionally discriminatory. As a result, the Court has overturned decisions made by such bodies.

JUROR QUALIFICATIONS AND EXEMPTIONS

Jurors are chosen at random from the community. They are required to be citizens and residents of the state; 18 years of age or older; in possession of their faculties; and of ordinary intelligence with sufficient knowledge of the English language. At one time, certain groups were systematically excluded from jury service. For example, it was thought that police officers or lawyers might tend to have a built-in bias about a case or would be too influential with fellow jurors. The more exemptions, however, the less the jury reflects the community. Therefore, the number of recognized exemptions has decreased in recent years. Still exempt, however, are convicted felons and anyone concurrently serving on a grand jury. Also note that citizens must not be routinely denied the opportunity for jury service due to a disability, such as immobility, loss of sight or hearing, unless it can be demonstrated that the person is incapable of performing the duties of a juror without prejudice.

Most jurisdictions select jurors from county lists of registered voters. As a result, non-citizens, minors, the homeless, and those people who do not register to vote are often excluded. The fact that a larger proportion of

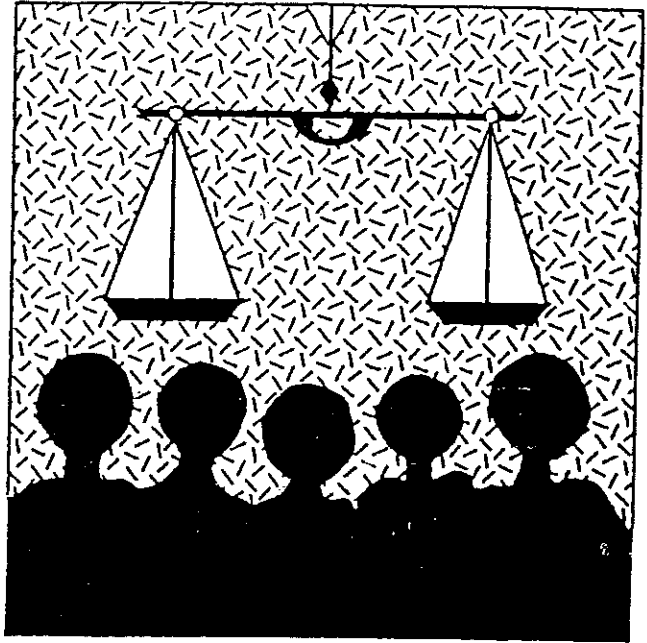
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white middle-class homeowners vote more regularly than do blacks, Chicanos, renters, transients, and poor people may result in an imbalance in the jury box where jurisdictions rely solely on voter registration lists. Some states, to broaden the selection of people, also use driver registration lists from the Department of Motor Vehicles. Even with this method certain citizens will not be included in the pool of potential jurors.

Not everyone in the community is able to serve on jury duty. Jury service requires that a citizen give up a certain amount of time, and the law excuses a person from jury duty if serving would "entail undue hardship on the person or the public served by the person." For example, it is a greater financial burden on the self-employed than on employees whose employers can afford to continue their salaries. While most employers are not required by law to compensate their employees for jury service, many have policies which do pay employees for some period of time. For this reason, exemptions are made for certain people, including the self-employed, parents of small children and people whose occupations require their guaranteed and personal presence, such as teachers, graduate students and doctors.

Serving on a jury is a difficult and demanding task. Yet jurors are in some ways the most important participants in a trial. They are required to make intelligent decisions — sometimes about life and death — without having the opportunity to ask questions themselves. They must rely on information supplied to them by people with opposing interpretations of the facts. It is the unbiased jury which must decide guilt, based on evidence (sometimes very complex and technical) and occasionally recommend punishment. It is the jury that changes the legal system from an adversarial contest into a means of serving justice for the victims, the defendant and the community.

In the next few days, you will have the opportunity to participate in the *voir dire* process of selecting a jury. How can you secure a fair trial for both the defendant and the community? How will you choose a jury of the defendant's peers and, at the same time, use this process to help you win the case?



HANDOUT #2

VOIR DIRE PROCEDURE

SELECTING A JURY

Citizens are chosen at random from whatever source is used for juror lists in the county. They are then notified by mail to report to a specific location at a given date and time. When they arrive, they are ushered into a room (sometimes called "the jury pool") with other prospective jurors. From here, groups of prospective jurors will be called to report to the various courtrooms where jury trials are to begin. Individuals may be called right away, or may wait hours or days for a trial in which they are needed. Jury duty generally lasts a minimum of two weeks. However, if the two weeks end in the middle of a trial, a juror generally must complete the trial no matter how long it lasts. Trials may take one day or many months, depending on the nature of the case, so a juror could serve in a single trial, several trials, or might not be selected at all during the two weeks. Always having enough potential jurors at the courthouse saves the court much time.

When a case is ready to go to trial, a group of jurors from the jury pool go to the courtroom. The court clerk draws at random the names of 12 of them (called prospective jurors) and asks them to take seats in the jury box. Prospective jurors are asked to provide background information about themselves and are questioned by the judge and attorneys. The questioning continues until the prosecution and defense (or the plaintiff and defense in a civil case) can agree on a jury of 12 people plus one or more alternates. The alternates will hear the entire case but only participate in the jury process if any of the 12 are unable to finish the trial. Jurors who are excused return to the jury pool and are replaced by other prospective jurors.

PREJUDICE AND DISCRIMINATION

All human beings are prejudiced. This merely means they have attitudes and values that enable them to have opinions and assist them in making judgments. Indeed, the purpose of an education is to make people more

discriminatory — able to choose well among alternatives. Human nature makes it impossible to be completely objective. Our frame of reference — which includes religion, politics, family history, nationality, personal experiences — shapes the way we look at people and events and changes over time. Nevertheless, it is possible to secure an impartial jury that is not biased for or against the defendant and can arrive at a fair and just verdict. Judges and attorneys must determine that the jury can set aside their prejudices and use their discrimination to examine the evidence and decide who is telling the truth. Jurors who are unable to do this should be excluded from the jury.

Most people do not readily admit their prejudices. Therefore, judges and lawyers look for clues that reveal the attitudes and values of prospective jurors. These clues include the answers to certain questions, as well as the person's posture, clothing and demeanor. Lawyers attempt to include those people whose biases will help their case and to exclude those people whose biases will hurt their case. For that reason, it is important that they learn as much as they can about the 12 people who will decide who wins the case. They must ask revealing but not prying questions.

CHALLENGES

Each attorney will challenge or dismiss any prospective juror who will not be sympathetic to his or her case. There are two ways an attorney may challenge or exclude a prospective juror from serving on a particular jury. A *challenge for cause* means the lawyer has some obvious evidence that the juror may not be able to be objective about the case. This would include an admission of prejudice about the case or the defendant, previous involvement with any of the parties, or opinions that may interfere with reaching a verdict, such as a strong belief about the death penalty in a case involving such a punishment. Each side can use an unlimited number of challenges for cause.

HANDOUT # 2

A *peremptory challenge* is an objection for which no reason must be stated. The law limits the number of peremptory challenges each side can use in a trial. Lawyers make peremptory challenges for many reasons. They might include a "gut feeling" about the juror based on the answers to questions, body language, or something else that is not on its face a clear bias but makes the party uncomfortable. These feelings are based on the lawyers' own ideas and instincts. Jurors challenged either for cause or peremptorily will return to the pool and wait to be called for another trial.

THINGS TO CONSIDER WHEN CHOOSING A JURY

Before we look at factors used in selecting jurors it is important to distinguish between *generalizations*, which tend to be true of members of a given group, and *stereotypes*, which predict behavior based on one characteristic. Generalizations are not always true in each situation, and stereotypes, which exaggerate and distort, prevent one from seeing other possibilities and differences among people.

The following considerations suggest only possibilities and probabilities, not predictions of juror behavior! For each of these factors, the lawyer must decide if there is anything in the case that is relevant to the juror's own experience that might bias the ability to make a fair decision.

- Age
- Marital status and experience
- Family makeup
- Occupation — self and family members
- Previous experience as party to lawsuit or as juror or a party to or victim of crime
- Residence
- Ethnic background
- Physical appearance, including handicaps
- Membership in religious or social organizations

Lawyers must be careful not to offend jurors by their questions or their demeanor. *Voir dire*

is also the first time the lawyer will be addressing the jury. The first impression made will create a certain atmosphere under which the remainder of the trial will take place. The lawyer needs to find out information about the jurors, make judgments about them and begin making a positive impression on them as well. It is difficult to successfully accomplish all of these things simultaneously.

HANDOUT #3

HOW TO PREPARE EFFECTIVE QUESTIONS

Voir dire is the attorneys' first opportunity to communicate with the jury and to begin winning them over. In this assignment, you are an attorney preparing to question prospective jurors. Draw up a list of questions that will aid you in determining jurors' possible prejudices in a criminal or civil case. Open-ended questions reveal more information than "yes-or-no" questions.

Your role in *voir dire* is to discover jurors' attitudes that are either antagonistic or sympathetic toward your side and to establish a rapport with individual jurors. Think about what issues are most relevant. Phrase your question carefully and know why you are asking it. Remember that attitudes are formulated by many things, including family values, experiences and media (especially television). Possible areas for questioning might include the following:

Criminal cases:

- attitudes toward police, law, punishment
- attitudes about certain kinds of defenses such as self defense or insanity pleas
- experiences with police, courtroom, justice system

Civil cases:

- attitudes toward corporations, insurance companies, etc.
- experiences as stockholder, victim of fraud, etc.

All cases:

- occupation
- racist or sexist attitudes
- desire to serve and previous jury experience
- group membership (political, MADD, Chamber of Commerce, etc.)
- connections with parties involved in the case, directly or indirectly
- beliefs that may directly/indirectly prejudice the case
- ability to weigh conflicting testimony
- knowledge about case

Tips:

1. Word your questions carefully, but try to compose them conversationally.
2. Speak distinctly and listen carefully to the answer, maintaining eye contact. Follow up on any answers that need clarification. Avoid sexist language or any other references that rely on stereotypes and prejudices.
3. Do not duplicate questions already asked by the judge or other attorneys.
4. When in doubt, word the question so that the juror states explicitly that he or she can be open-minded and apply the law, not personal opinion.
5. Where feasible, direct your initial questions collectively to the original group of jurors summoned to the jury box rather than repeating each question to each juror individually. Direct specific questions to individuals to follow up or clarify.

HANDOUT #12

THE COURTROOM

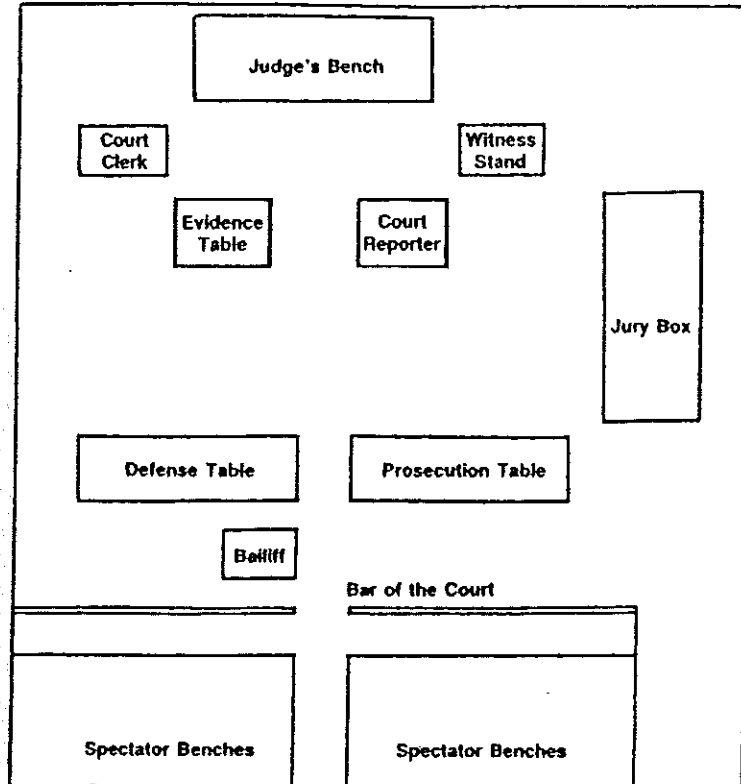


Diagram of court. (Courtrooms may be reversed, but relative positions are the same.)

A Clerk — assistant to the judge; administers oath to jurors and witnesses; keeps all official papers and marks evidence when it is introduced during trial

B Judge — decides issues of law; insures that the trial is fair and the jury unbiased; rules on objections; pronounces sentence in a criminal case

C* Witness — testifies as to what he/she knows or saw

D* Court Reporter — takes stenographer's notes of everything said during the trial and prepares an official transcript in the event of an appeal

E Bailiff — maintains order in the court at all times; executes orders of the judge

F Defense — represents the defendant's interests at all times; job is to win the case

Defendant — the person on trial in a criminal case or being sued in a civil case; innocent until proven guilty

G Prosecution — represents the state in a criminal case; has the burden of proof; job is to convict the defendant

Plaintiff — (civil case) the person bringing suit against the defendant; has the burden of proof

H Jury — decides issues of fact; in a criminal case determines if prosecution has proven case beyond a reasonable doubt (defendant is guilty) or prosecution failed to prove case (not guilty); in a civil case decides which side was more convincing

I Observers — members of the public and witnesses before/after testifying; 6th Amendment guarantees the right to a public trial

* roles not included in *We the Jury*

HANDOUT #14

VOIR DIRE SEQUENCE

You will be directing the activity by following these directions. Read this page carefully in advance and underline everything you are expected to do so that you will be ready when it is your turn.

1. Bailiff collects juror cards, places them in a box and hands the box to the **court clerk**. Clerk then mixes them up in the box so that names will be called at random.

2. Judge welcomes prospective jurors and tells them to take a seat in the jury box as their names are called. All other jurors are to remain seated in the audience until they are called or dismissed.

3. Bailiff calls court to order.

4. Clerk administers the oath to the prospective jurors. Clerk then calls the names of 14 prospective jurors selected at random from the box. As each name is called, the juror collects that juror card and a paper clip from the clerk and takes a seat in the jury box. The card should then be worn as a badge.

5. Lawyers should write down the names of the jurors as they are called and cross them off as they are excused. (Use a diagram showing the positions of the jurors in the jury box.) Keep track of how many challenges both sides have used.

6. Jurors should provide the information listed on the sign posted by the **clerk**. The **judge** may ask additional questions of the jurors and excuse those who have proper reasons for not being able to stay and serve for the duration of the trial. If any jurors are dismissed, the clerk should pull more names so that there will be 12 jurors in the jury box and two alternates. Begin with Juror #1 and continue until all 14 have answered.

7. Attorneys now take turns questioning the jurors. In a criminal case, the defense starts, followed by the prosecution. In a civil case, the plaintiff's attorney begins. You may dismiss any juror for cause, but be prepared to explain your reasons outside the hearing of the jury. If the challenge is granted, state "Your honor, please excuse juror number _____ for cause." When you have no further challenges for cause say: "The state/plaintiff/defense passes for cause on juror(s) number _____." You don't have to state a reason.

8. Excused jurors return to the audience. **Clerk** then calls additional names to take their places in the jury box. New jurors provide the information requested on the sign and are asked if they have listened to all the questions and if they would have answered anything differently.

9. After counsel for all parties (**attorneys**) have approved the same 12 jurors or used up all their peremptory challenges, both sides say to the judge that the jury is accepted as constituted. The jury is then sworn in by the **clerk**.

10. The judge should tell the two jurors at the end of the jury box closest to the audience that they will serve as alternates. They will listen to the entire case but will not participate in jury deliberations unless one or two of the regular jurors is unable to complete the trial. The judge also warns jurors not to discuss the case with anyone, including fellow jurors, until deliberations begin.