

VOIR DIRE

French for “to speak the truth.” The jury selection process through which randomly selected potential jurors are questioned by either the judge or a lawyer to determine their suitability for jury service.

The right to trial by jury is guaranteed by the Sixth Amendment. When a case is called for trial, a randomly selected panel of potential jurors (called a venire) is seated in the courtroom. The trial judge begins voir dire by asking the prospective jurors questions to ensure that they are legally qualified to serve on a jury and that jury service would not cause them undue hardship (i.e. missing critical exams, upcoming surgery, caretaker of an ill or elderly family member). Next, the lawyers for each side question the potential jurors about their biases and backgrounds, as well as any pre-existing knowledge they might have about the case. The attorneys can also ask questions designed to uncover characteristics or experiences that might cause potential jurors to favor either the prosecution or the defense. But the lawyers aren't allowed to ask overly personal questions, and they aren't allowed to ask the jurors how they would decide the case in advance.

Removal of Jurors:

After they have completed questioning, the lawyers begin removing potential jurors from the venire by making challenges for cause and peremptory challenges.

Challenges for Cause:

Challenges for cause are made when voir dire reveals that a juror is not qualified, able, or fit to serve in a particular case. Lawyers generally have an unlimited number of “for cause” challenges available. Judges will dismiss jurors who can't put aside their feelings and apply the law impartially—that is, without actual or implied bias. **Actual bias** arises when potential jurors admit that they wouldn't be able to be impartial. For example, a juror who states that he/she would never vote for a guilty verdict in any case because her religious beliefs prevent her from sitting in judgment of another would be excused for cause. **Implied bias** is present when potential jurors have character traits or personal experiences that make it unlikely for them to be able to be impartial. So, a juror who is a close friend or relative of a key party, a witness, the judge, or an attorney for either side will be dismissed for cause. Once that is complete lawyers begin removing jurors by using their peremptory challenges.

Peremptory Strikes or Challenges:

No reason is required for a lawyer to use a peremptory challenge to excuse a potential juror. Such challenges allow each side to dismiss jurors who are otherwise qualified, but appear likely to favor the opposing party. However, peremptory challenges cannot be used to discriminate against jurors on the basis of race or gender. Lawyers only have a specified number of peremptory challenges available—that number varies from state to state.

Striking the Jury:

In the process known as “striking a jury,” the prosecution and defense alternate in striking jurors via peremptory challenges until those are exhausted or each side is satisfied with the jury panel. The states vary in the number of jurors required for a jury, ranging from six to 23. Once the challenges are completed and there are enough jurors for a proper jury, the trial begins.

Stop! Listen to the podcast *Object Anyway* from Radiolab's show *More Perfect*.

Before you begin here is what **studies** have revealed about the potential “biases” of jurors. These are **stereotypes** and not every juror conforms to these, but we all are influenced by our past experiences, our belief systems, our economic status, our age, gender and race.

AGE

- Older jurors are more likely to convict than younger jurors.
- Women's views do not change noticeably with age. Men's jump around a bit. Men ages 18-25 lean toward defense, ages 50-64 best for prosecution.
- When the average age of the jury pool is greater than 50, defendants are convicted 79 percent of the time. In contrast, when the average age of the jury pool is less than 50, conviction rates are only 68 percent. These differences are statistically significant. More generally, we find that conviction rates increase by about 1 percentage point for each year increase in the average age of the jury pool.

GENDER

- Women tend to be a defense choice because they are more in touch with their emotions, more willing to forgive, more sympathetic and maternal in their feelings and tend to carry grudges less.

RACE

- White jurors will convict a black defendant 16 percent more often than a white defendant.
- Whites and blacks tend to be more lenient with defendants of their own race (blacks vote conviction 80% when victim is black and 48% when victim is white; whites vote conviction 65% when victim is white and 32% when victim is black)
- When the jury pool included at least one black person, the conviction rates were nearly identical: 71 percent for black defendants, 73 percent for whites.

SOCIOECONOMIC STATUS

- Rich and powerful more likely to convict; poor and meek acquit.
- The wider the socioeconomic gap between juror and defendant the likelihood of conviction increases.

Consider other factors like education, religion occupation and politics.

Studies also show that these tendencies are some times quite unreliable when it comes to some crimes or defendants. For instance; women are not sympathetic and forgiving when it comes to sex crimes. Or, when a police officer is the defendant potentially everything changes.

THE CRIME: In the parking lot of an auto parts store, Officer Michael Slager stopped Walter Scott for a non-functioning brake light. The video from Officer Slager's dashcam shows him approaching Scott's car, speaking to Scott, and then returning to his patrol car. Scott then exited his car and fled with Slager giving chase on foot, pursuing Scott into a lot behind a pawn shop where the two became involved in a physical altercation. At some point during the struggle, Slager fired his Taser, hitting Scott. Scott grabbed the taser and fled, and Slager then drew his handgun, firing eight rounds at him from behind. The coroner's report stated that Scott was struck a total of five times: three times in the back, once in the upper buttocks, and once on one of his ears. Immediately following the shooting, Slager radioed a dispatcher, stating, “Shots fired and the subject is down. He grabbed my Taser.” Slager said he had feared for his life because Scott had taken his Taser, and that he shot Scott because he “felt threatened”. A toxicology report showed that Scott had cocaine and alcohol in his system at the time of his death. The state of South Carolina has charged Officer Walter Scott with 2nd degree murder.

On the back side you will conduct a voir dire of a random jury panel for this trial.

In this exercise you will play the roles of both sides, prosecution and defense. There are 24 prospective jurors who would normally be questioned during voir dire, but in this activity you have been given their identities which you will use to help decide each side's peremptory strikes (challenges). Each side gets six challenges and they should be employed on the jurors who you think would be the worst for each side. The goal is to try to impanel the best jury for each side. Begin by designating in the box below each juror whether the juror is "pro" prosecution (likely to convict the police officer), "pro" defense (likely to acquit) the police officer, or neutral (not likely to favor either side).

<p>#1 Joseph male white age 63 married chemical engineer avid golfer & gardner Freemason</p>	<p>#2 Ellie female white age 25 separated high school dropout waitress at a diner</p>	<p>#3 Michelle female black age 34 single attorney member local Republican Organization</p>	<p>#4 James male black age 52 widower high school principal 2 college age daughters Avid hunter</p>	<p>#5 Emilio male hispanic age 48 married sales manager son convicted of DUI last year</p>	<p>#6 Linda female white age 60 married 7 grandchildren Mormon hospital volunteer</p>

<p>#7 Nancy female white age 55 married elementary art specialist married to a coach</p>	<p>#8 Gary male white age 59 married teaches law soccer coach married to an artist</p>	<p>#9 Bill male black age 58 divorced retired Navy airline pilot marathon runner</p>	<p>#10 Kathy female white age 34 married attorney member local Republican Organization</p>	<p>#11 Naja female asian age 25 single criminal justice training program psychology degree</p>	<p>#12 Jayden male asian age 20 single Apple store tech avid video game enthusiast</p>

<p>#13 Thomas male white age 42 married owns a car dealership avid fly fisherman retired pro athlete</p>	<p>#14 Vivian female hispanic age 48 3 children grocery checker husband manages plant nursery</p>	<p>#15 Sandy female age 40 native american crafts store owner mother of 4 children husband is a police officer</p>	<p>#16 Elmer male white age 72 widower retired pilot church elder bee keeper</p>	<p>#17 Wayne male Asian age 49 married hospital administrator Elks club president</p>	<p>#18 Jazz female black age 29 single nurse aspiring singer performs in clubs</p>

<p>#19 Leslie female white age 44 teaches social studies husband is a computer coder</p>	<p>#20 Curtis male white age 35 divorced father of 2 custodian MMA enthusiast</p>	<p>#21 Clive male white age 76 retired insurance wife has ALS son is a successful trial attorney</p>	<p>#22 Claudia female black age 51 teaches at a day care center husband is a baptist minister</p>	<p>#23 Ava female hispanic age 19 single junior college enrolled in the beautician program</p>	<p>#24 Taylor male white age 18 senior in high school boxboy at grocery store</p>

<p><i>State of South Carolina (Prosecution)</i></p> <p>1. # ___ - _____</p> <p>2. # ___ - _____</p> <p>3. # ___ - _____</p> <p>4. # ___ - _____</p> <p>5. # ___ - _____</p> <p>6. # ___ - _____</p>	<p>Peremptory Challenges</p> <p>Now it's time to employ each side's 6 challenges. Look at your designations above and rank. #1 should be the one who is the worst for each side working your way down to #6. Write the juror # in the first space, followed by your reason for removal after the hash.</p>	<p><i>Officer Michael Slager (Defense)</i></p> <p>1. # ___ - _____</p> <p>2. # ___ - _____</p> <p>3. # ___ - _____</p> <p>4. # ___ - _____</p> <p>5. # ___ - _____</p> <p>6. # ___ - _____</p>
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