

Courtroom Psychology



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Right to a Jury Trial U.S. Constitution

- 6th Amendment
 - Cases tried in criminal court
 - Potential penalty is \$500 or 6 months imprisonment
 - Right to speedy trial by impartial jury
- 7th Amendment
 - Civil cases
 - Potential penalty is \$500 or more
- 14th Amendment
 - States must honor the guarantee of a trial by jury in criminal cases

Use of Juries

- Approximately 3 million people will be called to jury duty each year
- 120,000 jury trials a year
- 90% of the jury trials in the world are held in the U.S.
- Civil Cases
 - 75% are settled prior to trial
 - Other than personal injury cases, juries are seldom chosen
- Criminal Cases
 - Juries used in 50% of trials in federal district courts
 - Juries used in 10% of state trial courts

Choosing a Jury

Intended Goal for Jury Selection

- Jury of peers
 - Defendant
 - Victim or plaintiff
- Jury representative of society
- Jury of impartial listeners
- Jury of accurate processors of information
- A jury that will vote my way

Advice from Jack McMahon

Former Philadelphia ADA

On the Goal of Jury Selection

Case law says that the object of selecting a jury is to get one that's competent, fair, and impartial. Well, that's ridiculous. You're not trying to get that. If you go in there thinking you're some noble civil libertarian, you'll lose. You're there to win, and the only way to do that is to get jurors that are unfair and likely to convict. And if you think that it's some noble thing, that it's some esoteric game, you're wrong.

Harper's Magazine, July 2000, p. 26

Where do we get our jurors?



H.L. Mencken
On Jury Duty

A jury is “a group of twelve people who, having lied to the judge about their hearing, health and business engagements, have failed to fool him.”

Choosing a Jury
Drawing a Pool of Jurors - Venire

- Master list of potential jurors
 - Voter registration
 - DMV lists
 - Welfare lists
- Jurors randomly called to jury duty
 - Eligibility (age 18, U.S. citizen, speak English, no felony conviction, resident of Virginia for 12 months, resident of county for six months, no jury service in past 3 years)
 - Jurors excused due to hardship or recent jury duty
 - Child care, work, & illness are examples of hardships
- Jurors randomly called to a particular trial
 - 20% ignore the jury summons (Dauner, 1996)

Possible Exemptions in Virginia

- Over 70 and do not wish to serve
- Child care
- Mother of a breast-feeding child
- Medical care
- Active duty in armed forces
- Licensed practicing attorney
- Law enforcement officer
- Business necessity

Popularity of Jury Duty

- 2004 American Bar Association Survey
 - 75% said jury duty is not a burden to be avoided
 - 58% considered jury duty a privilege
 - 75% said they would rather have a jury try them than a judge
- The Reality
 - 60% called to jury duty claimed a hardship (Fukurai et al., 1993)
 - Only 39.5% of those summoned were initially willing to serve (Aamodt, Raynes, & Drewry, 2004)
 - 20% of those who received a summons for a particular trial didn't show up (Dauner, 1996)

Jury Pay Depends on State and County

- States pay a certain amount, counties can usually add to that
 - Missouri pays \$6 per day
 - St. Louis County, MO adds another \$12 for a total of \$18
- Many states pay one rate for being called to jury duty and a higher rate if actually chosen to serve on a jury
- Virginia: State pays \$30 a day
- The Low
 - Illinois (\$4), Georgia (\$5), Texas & Missouri (\$6)
- The High
 - Federal government, Indiana, West Virginia pay \$40 a day
- No pay for first few days
 - Employer must pay regular wages
 - Colorado & Massachusetts, no pay for first 3 days, \$50 after that
 - Connecticut, no pay for first 5 days, \$50 after that
 - California, No pay for the first day, \$15 after that

Jury Duty in America

Many are called, few choose to serve

Aamodt, M.G., Raynes, B. L., Drewry, D. (2004). *Jury duty in America: Many are called, few choose to serve*. Paper presented at the annual meeting of the Society for Police and Criminal Psychology, Rome, Italy.

Our Research Questions

- What percentage of people in a rural area actually agree to serve on jury duty?
- For those that are not willing, what excuses do they use?
- Which excuses work best?
- How does the final jury pool compare in age, sex, and occupation to the initial jury pool?

Research Method

- Jury summonses were examined from two rural locations
 - Harrisonburg, Virginia
 - Citizen response
 - Sex
 - Age
 - Occupation
 - Montgomery County, Virginia
 - Citizen response
- Records were not well kept

A Tale of Two Cities

	Harrisonburg	Montgomery Co
Population	41,170	85,614
% women	52.6	47.6
% white	84.8	90.0
% with bachelor's degree	31.2	35.9
Median household income	\$29,949	\$32,330
Venire method	DMV	DMV + Voter Registration
Enforces jury summonses?	No	Courtesy call but never arrest

A Tale of Two Cities
Are People Willing to Serve?

Response	Harrisonburg	Montgomery Co
Number Summoned	1,153	508
Willing to serve	39.5%	36.4%
Not found	25.9%	
Not qualified	7.7%	
Asked for exemption	21.3%	63.6%
Asked for deferment	5.3%	

56% of people found and qualified (n=762) in Harrisonburg were willing to serve

A Tale of One City
Why Were People Not Qualified?

Excuse	Harrisonburg
Not a current resident	50
Not a U.S. citizen	16
Felony conviction	13
Recent jury service	8

A Tale of Two Cities
Asking for Exemptions/Deferments

	Harrisonburg	Montgomery Co
Summoned	1153	508
Asked for exemption		
Received exemption	69.8%	20.3%
Denied exemption	30.2%	79.7%
Asked for deferment		
Received deferment	77.8%	
Denied deferment	22.2%	

A Tale of One City

Asking for an Exemption

- Occupation
 - The self-employed (80%), homemakers (21.1%), and technicians (28.6%) were most likely to ask for exemptions
 - Of people for whom we had occupational information, only the self-employed received an exemption
- Sex
 - Men (20.4%) and women (22.3%) were equally likely to ask for an exemption
 - Men (67.2%) and women (72.4%) were equally likely to receive an exemption if requested

A Tale of Two Cities

What Excuses are Given for Not Serving?

Excuse	Harrisonburg	Montgomery Co
Medical reasons	84	94
Work-related	65	106
Child/elder care issues	26	40
Religious reasons	16	2
Vacation plans	8	144
Financial hardship	10	3

A Tale of Two Cities

What Excuses Work?

Excuse	Harrisonburg		Montgomery Co	
	N	% Success	N	% Success
Too old (age over 70)	6	100		
Self-employed	35	100		
Will be out of state	7	100		
Police officer/attorney	6	100		
Medical reasons	84	98	94	42
Child care issues	22	68	15	53
Work-related	25	16	106	25

A Tale of Two Cities What Excuses Don't Work?

Excuse	Harrisonburg		Montgomery Co	
	N	% Success	N	% Success
Religious reasons	16	0	2	50
Vacation plans	8	0	144	23
Work importance	5	0		
Financial hardship	10	0	3	0

Top Excuses to Get Out of Jury Duty

- I am a professional psychic so I would know who is guilty even before the trial
- I am currently in jail but if the judge will let me out, I would be happy to serve
- I'm 67 and my bladder causes me to pee quite often. I WILL NOT serve unless you can guarantee I can pee every 30 minutes.
- Would I have to bathe?
- I don't have much of an education and don't have any clothes to wear*
- I'm not smart enough and need to use the bathroom a lot*
- Don't like getting into other people's problems*
- Don't believe in judging others*

Comparing the Initial Pool to the Final Pool The Final Pool is a Little Older

	Mean Age
Summoned	42.01
Served on jury duty	43.54
Not served on jury duty	40.56
$t(1143) = 3.69, p < .001$	

Comparing the Initial Pool to the Final Pool
No Sex Differences

	% Women
Summoned	48.4
Served on jury duty	48.8
Not served on jury duty	48.0
$\chi^2 (1) = .08, \text{ not significant } (p < .78)$	

Juror Education

- Education not listed on jury summons
- We looked at education needed for job
 - 0 = none or high school (e.g., factory, laborer, clerk)
 - 1 = post-high school training (e.g., dental asst)
 - 2 = bachelor's degree (e.g., teacher, accountant)
 - 3 = postgraduate (e.g., attorney, professor)
- No info available on unemployed, retired, or people not returning their summons

Comparing the Initial Pool to the Final Pool
Final Pool is Less Educated

	Avg Educ
Summoned	
Served on jury duty	0.60
Not served on jury duty	1.06
$t (460) = 3.14, p < .002$	

Comparing the Initial Pool to the Final Pool
Final Pool is Less Educated

Job Education	Served	Not Served
None or HS diploma	57.3%	39.4%
Post high school	27.0%	33.3%
Bachelor's degree	14.0%	9.1%
Graduate degree	1.6%	7.1%

$\chi^2(3) = 32.59, p < .001$

Comparing the Initial Pool to the Final Pool
Occupation

- Few occupational category differences
- No police officer or attorney served (n=6)
- Only 22% of self-employed served
- 82% of students, professionals, and vehicle drivers served
- All other occupations were 90-100%

Concluding Thoughts

- Our findings with rural towns are similar to those found by Fukurai et al. (1993) in a large city
- The final jury pool is not similar to the initial jury pool
- More research is needed because
 - Localities differ in building the initial roster
 - Localities differ in the ease of getting an exemption
 - Information must be collected in a standardized manner to allow comparisons

Picking the Jury *Voir Dire*



Choosing a Jury *Voir Dire*

- Jurors dismissed due to cause (bias)
 - Unlimited number
- Jurors dismissed due to peremptory challenges
 - Number of challenges varies
 - State
 - Civil versus criminal
 - Type of crime
 - The side
 - Prosecution
 - Defense
 - Number of defendants

Number of Peremptory Challenges Examples

- California
 - 6 in civil trials
 - 10 in criminal trials
 - 20 in death penalty trials
- Florida
 - 3 in misdemeanor trials
 - 6 in felony trials
 - 10 in capital trials
- Federal courts
 - Defense (10)
 - Prosecution (6)
- Virginia (4)
- Kentucky
 - Defense (8)
 - Prosecution (5)

Choosing a Jury Voir Dire

- Cannot discriminate against cognizable groups
 - Race (*Batson v. Kentucky*, 1986)
 - Gender (*J.E.B. v. Alabama ex rel T.B.*, 1994)
 - National origin (*Hernandez v. New York*, 1991)
- Who should ask the questions?
 - Judges (usually ask in Federal court)
 - Attorneys (usually ask in local court)
 - Both
 - Separate
 - Together
 - Research suggests best way is for jurors to be questioned:
 - individually
 - by attorneys
 - in the judge's chambers (Nietzel & Dillehay, 1982)

Choosing a Jury Voir Dire

- Voir Dire Strategies
 - Grand stand play
 - Priming
 - Deselection
 - Trait based
 - Case specific



Choosing a Jury Voir Dire – Why Would it Work?

- Prosecution/Defense Bias
 - 81% of prosecution biased vote guilty
 - 52% of defense biased vote guilty
- Other biases
 - Sex, race, type of crime
- Cognitive ability
 - Complexity of evidence
 - Who the evidence favors
- Prior jury experience
 - Experienced jurors more likely to vote guilty
- Life experiences
- Demographics
 - Sex, race, age
 - Occupation
- Pretrial publicity
- Implicit personality theories by attorneys

Pre-Trial Publicity

- Meta-analysis (Stebly, 1999)
 - 59% exposed voted guilty
 - 45% not exposed voted guilty
- Jurors exposed to pretrial publicity
 - Know more about the case
 - Are more likely to have an opinion of guilt or innocence
 - Know more facts that would not be admissible in the actual trial
- Potential Remedies (Wrightsmen et al., 2002)
 - Continuance
 - Expanded *voir dire*
 - Judicial instructions
 - Imported jurors
 - Change of venue

Implicit Personality Theory

- Examples
 - Clarence Darrow
 - Jack McMahon
 - O.J. Questions



Clarence Darrow

I try to get a jury with little education but with much human emotion. The Irish are always the best jurymen for the defense. I don't want a Scotchman, for he has too little human feelings; I don't want a Scandinavian, for he has too strong a respect for law as law. In general, I don't want a religious person, for he believes in sin and punishment. The defense should avoid rich men who have a high regard for the law, as they make and use it. The smug and ultra-respectable think they are the guardians of society, and they believe the law is for them.

Gerry Spence

Women are more punitive than men by a score of about five to one. There's a reason for that: Women always had to toe the line. Women are splendid jurors for the prosecution in rape cases, baby cases. As a defense attorney I prefer men because men had more experience hell-raising and were more forgiving of it. Obese people are desirable because they lack self-control and don't demand as much law-abiding discipline from others. Yuppies are the worst because they fear crime, love property, and haven't suffered enough to be sympathetic to the accused.

Advice from Jack McMahon Former Philadelphia ADA On Leading Questions

- When you have a juror you obviously like, you lead them. You don't say, "*Ma'am, would your having been a victim of a crime have any effect on you?*" because she may say, "Yes," and that's not the answer you want.
- So you say, "*Ma'am, you indicated that you were robbed at knifepoint. Now of course that wouldn't have any effect on your deciding whether this guy is innocent or guilty, because that has nothing to do with your incident, right?*"

Advice from Jack McMahon Former Philadelphia ADA On Leading Questions

- For a juror you don't want you would say:
Well, sir, the fact that your brother was killed in a violent crime, that terrible trauma that happened to you might affect you in deciding whether this guy is guilty or not, right?

Harper's Magazine, July 2000, p. 26

Advice from Jack McMahon
Former Philadelphia ADA
On African American Jurors

Let's face it, blacks from low-income areas are less likely to convict. There is a resentment of law enforcement, there's a resentment of authority, and as a result, you don't want those people on your jury. And it may appear as if you're being racist or whatnot, but you are just being realistic.

Harper's Magazine, July 2000, p. 26

Advice from Jack McMahon
Former Philadelphia ADA
On African American Jurors

Another thing in selecting blacks is, you don't want the real educated ones. This goes across the board, all races. If you're gonna take blacks, you want older blacks. Older black men are very good. A well-dressed 72-year old black man is a great juror...They're from a different era and they have a different respect for the law.

Harper's Magazine, July 2000, p. 26

Advice from Jack McMahon
Former Philadelphia ADA
On African American Jurors

The other thing is, blacks from the South are excellent. I don't think you'll ever lose with blacks from South Carolina. They're dynamite. They just have a different way of living down there, a different philosophy. They're law and order and they're on the cop's side.

Harper's Magazine, July 2000, p. 26

Advice from Jack McMahon
Former Philadelphia ADA
On African American Jurors

Black women are very bad. There's an antagonism. I guess maybe because they're down-trodden in two respects: they're women and they're blacks, and they want to take it out on somebody, and you don't want it to be you.

Harper's Magazine, July 2000, p. 26

Advice from Jack McMahon
Former Philadelphia ADA
On Intelligent Jurors

You don't want smart people. I wish you could ask everyone's IQ. If you could know their IQ you could pick a great jury. You don't want smart people because smart people will analyze the hell out of your case. They take those words "reasonable doubt" and actually try to think about them. You want people who are going to say, "If they say she did it, she did it." You don't want the town idiot either, but you want something in the middle.

Harper's Magazine, July 2000, p. 26

Advice from Jack McMahon
Former Philadelphia ADA
On Social Class

If you take well-dressed, middle-class people, you're going to do well. It's that simple. Look at their dress, how they act. If the guy is reading Karl Marx, you don't want him. Use your common sense. If the guy is reading a spy book or a police book, you're gonna like that person because he's more philosophically attuned to conservative aspects.

Harper's Magazine, July 2000, p. 26

Choosing a Jury Voir Dire

- How long does it take?
 - Average (Hans, 1982)
 - 1 hour in civil trials
 - 2 hours in criminal trials
 - New York study (Joseph, 2000)

<u>Court</u>	<u>Unsupervised</u>	<u>Supervised</u>
Manhattan	12.9	6.7 hours
Nassau County	8.1	7.1 hours
Erie County	8.9	7.2 hours
 - Wide range of times
 - 18 minutes in one jurisdiction
 - Examples of lengthy voir dire
 - 49 days for the Hillside Strangler
 - 41 days for O.J. Simpson's criminal trial

Voir Dire for Famous Cases

Case	Days	Pool Size	Pages	Questions
O.J. Simpson	41	250	79	294
Scott Peterson	23	200	23	
Michael Jackson	23	250	7	41
Martha Stewart	38		40	
Robert Blake	30		32	139
Kobe Bryant	n/a		10	82

Jury Selection for O.J.

- 250 prospective jurors answered 294 questions in a 79-page survey
- 6 jurors, 1 replacement, and 2 alternates were removed during the trial
- Sample Questions:
 - Have you ever worked in a laboratory or in any medical research or testing facility?
 - Have you ever worked in the entertainment industry?

Jury Selection for O.J.

- Sample Questions:
 - What is the last level of education you completed?
 - While in school, what was your favorite subject? Your least favorite?
 - As part of your service on this case, the Court will order you not to read, listen to or watch any accounts of this case reported by television, radio, or other news media. Will you have any difficulty following this order?
 - Have you ever seen O.J. Simpson as he appeared in movies such as *Roots* or *Naked Gun 21/2*?

Jury Selection for O.J.

- Sample Questions:
 - Have you ever experienced domestic violence in your home either growing up or as an adult?
 - Have you ever dated a person of a different race?
 - Are you or have you been a member of Neighborhood Watch?
 - What is your political affiliation?
 - Did you vote in the last election?

Jury Selection for O.J.

- 250 prospective jurors answered 294 questions in a 79-page survey
- 6 jurors, 1 replacement, and 2 alternates were removed during the trial

	Pool of 250	Initial 12	Alternates	Voting 12
Black	28%	66% (8)	58% (7)	75% (9)
White	40%	17% (2)	34% (4)	17% (2)
Hispanic	17%	17% (2)	8% (1)	8% (1)
Asian	15%	0% (0)	0% (0)	0% (0)
Male		33% (4)	17%	17% (2)
Female		67% (8)	83%	80% (10)

Jury Selection for O.J. The Voting Jury

- All 12 were democrats
- Only two were college graduates
- None regularly read a newspaper
- Five had family members who had a negative experience with the police
- Five thought that domestic violence is at times justified
- Nine thought it was unlikely that O.J. could murder because he was a star football player

The Peterson Jury

- **Initial Pool**
 - 200 Jurors
 - 23-page questionnaire
 - Jury selection took 23 days
 - 12 jurors (8 men; 10 white, 1 Asian, 1 African American)
 - 6 alternates (3 men, 6 white)
 - Trial lasted 23 weeks, 184 witnesses
- **Final Jury**
 - 3 jurors were dismissed (2 men; 2 white, 1 Asian)
 - 7 men, 5 women
 - 11 white, 1 African American

The Trial



The Trial

Opening Statements

- Order
 - Prosecution or plaintiff goes first
 - Defense has option
 - Go immediately after
 - Wait until prosecution rests
- Opening statements are so powerful they can override evidence
- Good Strategy
 - Should be a story of the case
 - Inoculate against other sides' evidence
- First Impressions are Formed
 - Defendant and victim
 - Attorneys
 - Quality of the evidence



The Trial

Processing Testimony

- Jurors are usually not allowed to take notes
 - Distraction causing missed testimony
 - Note taking might influence others
 - Jurors take more notes during the earlier parts of the trial
 - Person with notes becomes more powerful during deliberation
- Jurors don't have "handouts" that can be referred to throughout testimony
- Jurors usually cannot ask questions
 - Submitted to judge
 - Judge and attorneys decide
- First impressions
 - Juror judgments and decisions often made early



The Trial

Instructions to Disregard

- Broeder's (1959) auto accident study
 - No insurance \$33,000
 - Insurance \$37,000
 - Disregard answer \$46,000
- Subsequent research suggests instructions to disregard
 - Often are not effective (Wolf & Montgomery, 1977; Fein, 1997)
 - Might work when initial evidence is strong (Sue, Smith, & Caldwell; 1993)
 - Might work if jurors are told why they should ignore the question (Pickel, 1995)
- Why don't they work?
 - Psychological reactance
 - Ironic processing model (try not to think about sex)
 - Belief perseverance

The Trial

Closing Arguments



The Trial

Judicial Instructions

- “Rules” for the jury to use when considering evidence and reaching a verdict
- To be effective, must be given at the beginning of the trial (Kassin and Wrightsman, 1979)

Judicial Instructions Given	% voting guilty
Beginning of trial	37
End of trial	59
Not given	63



Trial Length

- Typical length of a trial is 3-4 days
- Celebrity trials can last much longer
 - O.J. Simpson
 - Trial (January 24, 1995 – Sept. 28, 1995) 247 days
 - Deliberation – 4 hours
 - Robert Blake
 - Trial (December 20, 2004 – March 4, 2005) 74 days
 - Deliberation – 11 days
 - Scott Peterson
 - Trial (June 1, 2004 – November 1, 2004) 153 days
 - Deliberation – 9 days

The Verdict Jury Research

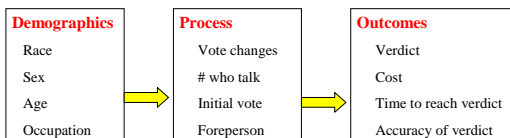
- **Important Issues**
 - Subjects
 - Actual jurors
 - Sample from community
 - Students
 - Trial mode
 - Live trial
 - Video
 - Audiotape
 - Written transcript
 - Length of trial
- **Dependent Variables**
 - Deliberation time
 - Verdict
 - \$ amount of award
 - Length of sentence
 - Accuracy of the verdict
 - Number of jurors who talk
 - Voting changes
 - Ratings of degree of guilt or innocence

The Verdict Jury Size

- **Traditional**
 - 12 members
 - Unanimous verdict
- **Judicial History**
 - Williams v Florida (1970)
 - No constitutional barrier to juries with less than 12 members
 - Colgrove v. Battin (1973)
 - 6 member juries acceptable in federal civil cases
 - Ballew v. Georgia (1978)
 - Allow juries as small as 6 (5 is too small)
 - Allows majorities as small as 75%
 - Burch v. Louisiana (1979)
 - 6-person, non-unanimous juries are not constitutional

The Verdict Jury Size

- **Issues**
 - Conformity
 - 5-1 vote
 - 10-2 vote
 - Minority representation
- **Jury Process Model**



The Verdict

Jury Size Research – Actual Cases

Verdict	6-person	12-person
Guilty	46.6% (n=131)	53.6% (n=143)
Not guilty	53.0% (n=149)	44.9% (n=123)
Hung	0.4% (n=1)	1.5% (n=4)

The Verdict

Jury Size Research – Mock Juries

	Verdict		
	Guilty	Not Guilty	Hung
Low Guilt			
6	12.8%	72.3%	14.9%
12	4.8%	73.8%	21.4%
Ambiguous			
6	38.9%	41.1%	19.9%
12	35.2%	33.0%	31.7%
High Guilt			
6	90.0%	10.0%	0.0%
12	20.0%	20.0%	60.0%
TOTAL			
6	36.5%	45.1%	18.4%
12	30.1%	38.7%	31.2%

The Verdict

Jury Size - Summary

- Compared to 6-person juries, 12-person mock juries
 - take 46% more time to deliberate
 - Are 69% less likely to reach a verdict
- When a verdict is made, 6- and 12-person juries reach similar verdicts



The Verdict

Comparing Judges and Juries

- Judges and juries generally agree
 - Civil trials 78%
 - Criminal trials 75%
- When they disagree, judges are more likely to convict