

# Voir dire process

Voir dire (pronounced vwar deer) is the term used to describe the procedure for *selecting* or *impaneling* a jury that will hear a particular case. Jury selection is considered by many legal professionals to be the single most significant procedure in the entire trial process. Voir dire, a French phrase meaning “to tell the truth,” has as its ultimate objective the selection of a fair and impartial jury.

In Minnesota courts, the judge as well as lawyers ask questions of prospective jurors. Questions are limited to matters relevant to the particular case and those that help attorneys decide whether or not to challenge a person’s participation on the jury. Attorneys can *challenge for cause* any juror who exhibits a bias for or against any one of the parties. For example, jurors may be disqualified if they are related to one of the parties or attorneys, stand to benefit from a decision in the case, or if they have already formed an opinion about the case. Each attorney also has a certain number of challenges called *peremptory challenges* which can be used to strike a juror without giving any reason. For example, a defense attorney may get the impression that a prospective juror simply doesn’t like the defendant and will then use a peremptory challenge to prevent that person from being on the jury.

There are numerous social and psychological factors that enter into the selection of a jury. Studies have shown that women are thought to be more sympathetic to the defense, men to the prosecution. The wealthy are thought to be more sympathetic to the prosecution, the poor to the defense. Ethnicity and race are also thought to be important factors. Often attorneys consider the “ideal juror” to be one who has similar characteristics to their client or the victim. For example, a prosecutor would prefer potential jurors who have similar characteristics to the victim, and defense attorneys would want individuals who are similar to the defendant.

What is jury selection all about? Is the goal a fair and impartial jury or one that is more likely to sympathize with the attorney’s side? Realistically, attorneys insist on the former yet strategize for the latter as part of voir dire.

This lesson provides students with an opportunity to struggle with the concept of a fair and impartial jury as they select a jury in a hypothetical case.

## Students will:

1. Understand the purpose of voir dire examinations.
2. Understand the right to an impartial jury guaranteed in the Sixth Amendment.
3. Develop critical thinking skills in analyzing information, determining what information is relevant and evaluating its impact.

**Materials needed:** Copies of **Student Handout: IS THIS JURY FAIR?**,  
**Student Handout: MINNESOTA V. ED JONES**, and  
**Student Handout: CHOOSING A JURY**

**Time needed:** 2 class periods

**Grade level:** Grades 7-12

## Procedure:

1. Discuss introductory information on voir dire. Why is voir dire an important part of the trial process? What sort of information about jurors does an attorney want to discover during voir dire? What factors help make a jury fair and impartial? What factors might cause a juror to favor your side?
2. Ask students to read **Student Handout: IS THIS JURY FAIR?** on the voir dire exam conducted at Harold Johnson's trial. Questions that follow on the handout can be answered independently or as a class. Discuss as a class whether Mr. Johnson received a trial by a fair and impartial jury.
3. Have students read the hypothetical case in **Student Handout: MINNESOTA V. ED JONES**. Assign half the class the role of Ed's defense attorney and the other half the role of prosecuting attorney. Ask students to visualize the ideal juror for their side of the case. What type of person would best identify with your client's position, you as an attorney, or the issues in this case? Write a paragraph describing the ideal juror including such characteristics as age, social background, marital status, family status, education, occupation, employment history, residence history, personal history, hobbies and activities, and possible experiences that might be relevant to the case.
  - A. Ask students to consider and describe the type of person who would be least likely to identify with their positions. Describe this type of person in a 4-6 sentence paragraph.
  - B. Ask for volunteers from the prosecutor group to share their ideal jurors. Students should be able to reason how certain characteristics might make one person more ideal than another. Note the different opinions of the students. Suggest that lawyers often don't agree with each other on who would be the ideal juror for a particular case.
  - C. Repeat the discussion with descriptions of ideal jurors by the defense attorneys. It may dawn on the students that the ideal juror for their side is the "least sympathetic" juror for the other side.
  - D. Based on these descriptions, students should write questions they might ask during voir dire to eliminate those jurors least favorable to their side of the case.
4. On the second day, divide the prosecutors and defense attorneys into small groups of 3-4 students. Be sure that each small group has only lawyers from the same side. Each group will receive descriptions of 18 prospective jurors for Ed Jones' trial in **Student Handout: CHOOSING A JURY**. The task of each small group is to select a jury of twelve to hear Ed Jones' case. **Each group has unlimited challenges for cause but only two peremptory challenges.** Groups must state their reasoning on the handout.

Allow groups 20 minutes to complete their task.
5. In tallying results, go through names of potential jurors with groups on each side presenting challenges as they see fit. Teacher will sustain or overrule challenges for cause based on the strength of the group's reasoning. The two peremptory challenges used by each group would not be questioned by the teacher.

**Procedure cont.**

6. After all potential jurors are discussed ask students:
  - A. What characteristics of jurors did all the prosecutor groups agree would make the juror biased or unfair? What characteristics did all the defense groups agree would make the juror biased or unfair? Why is it important to have an unlimited number of challenges for cause?
  - B. What factors influenced your group's decision on when to use peremptory challenges?
  - C. Did all the prosecutor groups choose the same jury? Why or why not? Is the same true for the defense groups? Explain.

## Student Handout: IS THIS JURY FAIR?

Harold Johnson was convicted of robbery and sentenced to twelve years in prison. He felt his conviction was not fair because the jury foreperson, Mr. Spencer, was unable to be impartial in his case. The trial record shows the following exchange took place between Harold's attorney, Mr. Pickard, and Mr. Spencer during voir dire:

**Mr. Pickard (Defense Counsel):** Has anybody been robbed? (Mr. Spencer raises his hand) Mr. Spencer, due to the fact that you have recently been robbed do you think you might be a little bit more inclined to convict regardless of the evidence?

**Juror Spencer:** Yes sir, I probably would.

**Mr. Pickard:** You think you may be a little biased?

**Juror Spencer:** Yes sir.

**Mr. Pickard:** You're saying in all probability you wouldn't be able to give the defendant a fair trial and view the evidence objectively?

**Juror Spencer:** Yes sir.

**Mr. Pickard:** We challenge for cause.

**Judge:** Mr. Spencer, we're not picking on you, but I have to be very careful. Let me ask you this. In spite of your experience a couple of weeks ago, could you still listen to the evidence that comes from this witness stand, and this evidence alone, and render a fair and impartial decision concerning the defendant, Harold Johnson?

**Juror Spencer:** Yes sir, I believe I could.

**Judge:** You wouldn't let the experience that you had affect you?

**Juror Spencer:** No sir.

**Judge:** Challenge for cause is denied.

**Mr. Pickard:** We object.

**Judge:** Note an objection.

**Student Handout: IS THIS JURY FAIR cont.**

Following, a jury of twelve and one alternate was selected. **Juror Spencer became the foreperson of the jury.** The jury returned a guilty verdict, and Mr. Johnson was sentenced to twelve years in prison. The case **was appealed**, but Mr. Johnson lost the appeal. Johnson v. State, 356 So. 2d 769 (Ala.Cr.App. 1978).

**??? QUESTIONS ???**

1. Should Juror Spencer have been removed for cause? Why or why not?
2. Why did the Judge refuse to grant the challenge for cause? Do you think Juror Spencer could try the case impartially and without prejudice even though he said he would consider only the evidence brought forth at trial? Explain.
3. What else could the defense attorney, Mr. Pickard, have done in this case? If you were the attorney, what additional questions would you have asked during voir dire?
4. What do you think was the impact of Juror Spencer becoming the foreperson of the jury?
5. If you were an appellate judge on the court hearing this appeal, would you agree or disagree with the trial judge's decision? Explain.

## Student Handout: MINNESOTA v. ED JONES

Ed Jones, is charged with first degree burglary. The complaint alleges that Jones broke into the Faber residence, 3701 Harris St., at 1 a.m. on September 15. The Fabers were sleeping upstairs at the time. It is alleged that Mr. Jones broke the den window at the rear of the house, pried it open and entered the house for the purpose of stealing Mr. Faber's rare coin collection. Only the coin collection was missing, and no injuries were reported in the incident.

Jones, age 38, is white, single, and works as a self-employed carpenter doing a variety of remodeling projects. He has a previous conviction for marijuana possession and dropped out of high school at sixteen. He rents an apartment in an interracial neighborhood located near the scene of the burglary. This neighborhood has experienced a dramatic increase in reported burglary crimes.

This is the first time the Fabers have been a victim of crime, and they have lived in their home for over thirty years. The neighborhood had been a very safe one in which to raise their three children. But times have changed. Now, as retirees, the Fabers find themselves fearful of increased crime, yet they cannot afford to move away.

## Student Handout: CHOOSING A JURY

As lawyers your group must decide which of these people are acceptable on the jury. For those who are not acceptable, determine if you can strike for cause or whether you would have to use a peremptory challenge. *For the purposes of this exercise, you have unlimited challenges for cause but only 2 peremptory challenges.* For any challenge for cause you must convincingly state your reasons. If the judge sustains the challenge for cause, the juror will be excused.

Remember a challenge for cause is used when the juror is unable to be fair and impartial because the juror: 1) is related to one of the parties or attorneys, 2) stands to benefit from a decision in the case, 3) has already formed an opinion in the case.

Everyone in your group **must agree** on the 12 people selected for Ed Jones' jury. You will be asked to share your results.

### POTENTIAL JURORS

1. Sue is 34, white, single with a law degree. She is an attorney with the Legal Defense Aid where she defends clients too poor to be able to hire an attorney. Her hobby is racing sports cars on weekends.

**On Jury?**            Yes    No    **Type of Challenge:** \_\_\_\_\_  
**Reasons:** \_\_\_\_\_

2. Jonathan is 28, white, married with three small children. He is a research assistant working on a new laser burglary alarm system.

**On Jury?**            Yes    No    **Type of Challenge:** \_\_\_\_\_  
**Reasons:** \_\_\_\_\_

3. Romano is 42, Hispanic, married and works as a computer technician. He is saving money to buy a new home in the suburbs. He is an excellent tennis player.

**On Jury?**            Yes    No    **Type of Challenge:** \_\_\_\_\_  
**Reasons:** \_\_\_\_\_

4. Helen is 43, white, single with a journalism degree. She is managing editor of *Neighborhood Watch*, a community based newspaper helping citizens keep their neighborhoods safe.

**On Jury?**            Yes    No    **Type of Challenge:** \_\_\_\_\_  
**Reasons:** \_\_\_\_\_

**Student Handout: CHOOSING A JURY cont.**

5. Darren is 27, white, single, and a high school drop out. He plays lead guitar in a local band. He was recently involved in a drug raid by local authorities.

**On Jury?**            **Yes**    **No**    **Type of Challenge:** \_\_\_\_\_

**Reasons:** \_\_\_\_\_

6. George is 65, white, retired widower who enjoys watching law shows on television. He is married to Mrs. Faber's sister.

**On Jury?**            **Yes**    **No**    **Type of Challenge:** \_\_\_\_\_

**Reasons:** \_\_\_\_\_

7. Jan is 46, white, and recently divorced after a bitter court battle. She has a graduate degree in history and teaches at the University. Her former husband is a well-known trial lawyer.

**On Jury?**            **Yes**    **No**    **Type of Challenge:** \_\_\_\_\_

**Reasons:** \_\_\_\_\_

8. Lee is 55, black, married with two grown children. He sells insurance and sold a policy to Mr. Faber to insure his coin collection.

**On Jury?**            **Yes**    **No**    **Type of Challenge:** \_\_\_\_\_

**Reasons:** \_\_\_\_\_

9. Elaine is 53, black, and married. She is active in her church. Her two sons are married. Her husband is a plant supervisor and active in the trade union.

**On Jury?**            **Yes**    **No**    **Type of Challenge:** \_\_\_\_\_

**Reasons:** \_\_\_\_\_

10. Jane is 25, white, separated from her husband. She lives with two other women in a condominium and works as a waitress at a local bar. She didn't finish high school.

**On Jury?**            **Yes**    **No**    **Type of Challenge:** \_\_\_\_\_

**Reasons:** \_\_\_\_\_

**Student Handout: CHOOSING A JURY cont.**

**11.** Marie is 37, white, divorced and works as a secretary. She was a victim of a purse-snatching and has recently taken a self-defense course to protect herself.

**On Jury?**            **Yes**    **No**    **Type of Challenge:** \_\_\_\_\_

**Reasons:** \_\_\_\_\_

**12.** Dorothy is 51, white, and married. Her son was arrested on theft charges and convicted last month. She is a buyer for a large retail store.

**On Jury?**            **Yes**    **No**    **Type of Challenge:** \_\_\_\_\_

**Reasons:** \_\_\_\_\_

**13.** Clinton is 62, white, and married. He's president of the country club, enjoys visiting his four grandchildren and retires next year as bank vice-president. He lives next door to the judge in this case.

**On Jury?**            **Yes**    **No**    **Type of Challenge:** \_\_\_\_\_

**Reasons:** \_\_\_\_\_

**14.** Donald is 45, black, a widower with a degree in education administration. He is a high school principal and very involved in community sports programs.

**On Jury?**            **Yes**    **No**    **Type of Challenge:** \_\_\_\_\_

**Reasons:** \_\_\_\_\_

**15.** Ryan is 36, black, married, and is an accountant. He recently hired Ed Jones to refinish his basement. He was very satisfied with Ed's work.

**On Jury?**            **Yes**    **No**    **Type of Challenge:** \_\_\_\_\_

**Reasons:** \_\_\_\_\_

**16.** Claudia is 39, white, and married with a college degree. She is a homemaker with three small children. Her husband is an architect.

**On Jury?**            **Yes**    **No**    **Type of Challenge:** \_\_\_\_\_

**Reasons:** \_\_\_\_\_

**Student Handout: CHOOSING A JURY cont.**

**17.** Hyon is 22, Asian, and single. He was born in South Korea and became a naturalized U.S. citizen after being adopted by a U.S. family. He is working two full-time jobs to earn tuition for graduate school.

**On Jury?**            **Yes**    **No**    **Type of Challenge:** \_\_\_\_\_

**Reasons:** \_\_\_\_\_

**18.** Joe is 34, white, single and a recovering alcoholic. Six years ago, he completed a court ordered chemical dependency treatment program following a conviction for drug possession. His civil rights have been restored (which means he may be a juror).

**On Jury?**            **Yes**    **No**    **Type of Challenge:** \_\_\_\_\_

**Reasons:** \_\_\_\_\_

**Check the following:**

**Q.** Did your group select 12 jury members?

**Q.** For each *challenge for cause*, have you explained your reasons?

**Q.** Have you used only 2 *peremptory challenges*?