

## NCSC Justice Case Files 3

### Goal:

This packet seeks to provide varied support materials that any teacher (grades 6-12) courthouse, or others who work with juries may use, in part or in whole, to fit specific objectives, content needs, and/or differing student abilities while teaching two fundamental concepts: the role and responsibility of jurors and the consequences of driving under the influence. Since Justice Case Files 3 combines two different ideas in one book, we have endeavored to provide separate worksheets, where appropriate, for teachers who seek to address only one of the two topics.

It is the belief of the NCSC that the U.S. court system is not designed to punish its citizens, but rather to help citizens learn how to follow the law that benefits us all. The fundamental base of a fulfilled citizen is knowledge of the system that protects her/his rights. As such, the NCSC seeks to use as many avenues as possible to educate its citizens, hence this exciting venture into the graphic novel field.

### Packet Materials:

The activities presented in this packet range from traditional worksheets, to thought-provoking Q&A's supported by preparatory worksheets, to an essay component, and finally to extended research. The packet concludes with applicable national DOE standards as well as links to state standards.

- ❖ The traditional worksheet section consists of a short answer “basic facts of the case” (1 worksheet per element), terminology worksheets, and scenario worksheets (How might jury service be similar or different, You be the Lawyer and DUI Consequences) that would lead to a fantastic classroom discussion.
- ❖ Extended research may be conducted, based on the time available to the teacher, on significant national, state, and local DUI cases and on jury service in your state.
- ❖ Extended activities such as a trip to the local court, holding a mock trial role play, having a mock process of selecting jurors for cases, having extended discussions, or assigning a concluding writing assignment, creating a public service announcement about jury roles and responsibilities or the risks of DUI.
- ❖ Guidelines for jury duty and information about the stages of a trial

# Jury Service Teacher Materials

## Suggested Uses:

1. Teachers or courts may assign students or potential jurors to read the graphic novel and respond to the questions on the “Being on a Jury” sheet.
2. Teachers or court staff may engage students or potential jurors in a discussion of the issues faced by jurors using the suggested “Extended Discussion Questions.”
3. Teachers or court staff may start with a “pre-test” to sample student or juror knowledge using the “Jury Duty Double Down “
4. Teachers or court staff may assess student/juror knowledge of jury terminology with the vocabulary matching sheet.
5. Teachers may role play the process of *voir dire* with example cases.
6. Teachers may arrange time and facilities to have students engage in extended research into state court policies for jurors.
7. Students can compare and contrast the different types of courts and cases jurors may be called to serve on using the handout.
8. Teachers can use one of the sample lesson plans provided.

# DUI Teacher Materials

## Suggested Uses:

1. Teachers may assign students to read the graphic novel and respond to the questions on the “What’s the issue?” sheet.
2. Teachers may engage students in a class discussion of the issues in the text using the suggested “Discussion Questions.”
3. Teachers may role play the trial and have students hand down a verdict in the case.
4. Teachers may arrange time and facilities to have students engage in extended research into the current state of the issue and local laws concerning DUI.
5. Teachers can have students evaluate the consequences of being convicted of a DUI.
6. Teachers can use one of the sample lesson plans provided.

## Being on a Jury

1. Who can, and is required by law, to do jury service? Why is it important to our legal system for every person to take jury service seriously?
2. The U.S. Constitution states in Article 3, Section 2 that “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” and the 6<sup>th</sup> Amendment in the Bill of Rights states ” 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.” Why is it important to our system of government to have a trial by a jury of citizens? How does this protect us and our rights?
3. How is a civil case different from a criminal case?
4. What is *voir dire*? What kinds of questions were Matt and his fellow jurors asked during this part of the trial process?
5. How does *voir dire* help achieve the Constitutional requirement of a fair and impartial jury? Why is it important to the workings of our judicial system to conduct *voir dire* and have an impartial jury?
6. Matt’s dad and 18 other people summoned for jury service with Matt were dismissed without every sitting on a jury. Why are more people called for jury service than are needed for current juries?

7. Think of juries you have seen on TV shows or movies, how many jurors do you typically see? How many are on the jury Matt serves on? Why is this the case? What is the purpose of the alternate juror on Matt's jury?
8. What is the role of a juror in the courtroom? What does the juror do and on what does he/she base his/her decisions?
9. Why were the jurors directed to not do their own research, watch the news, talk with others about the case, or blog about it? Similarly, why are the jurors not allowed access to the Internet in the courthouse? How might watching the news, searching the internet, or discussing the case affect the trial?
10. Why is it important for jurors to be impartial, to hear the whole case before making decisions and to follow the law, whether they agree with it or not? What are the possible consequences of the jury decisions? For whom?
11. Look at the jury deliberation in the graphic novel, what kinds of issues do the different jury members bring up? Why do juries deliberate and why is this process important?
12. Why, with a jury of 6 people, must the decision be unanimous?

13. In what way is jury service a right? A duty? AND a privilege?

## Being on a Jury (*Possible Answers*)

1. Who can, and is required by law, to do jury service? Why is it important to our legal system that a variety of people serve as jurors, or as Matt's dad says, "that everyone is equal when it comes to jury duty"?

*All citizens over the age of 18  
Courts need enough jurors and ones who represent the diverse people/views of the American public*

2. The U.S. Constitution states "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" and the 6<sup>th</sup> Amendment in the Bill of Rights states "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." Why is it important to our system of government to have a trial by a jury of citizens? How does this protect us and our rights?  
*Without a trial by a jury government officials or judges have all the power to decide the outcome. By having juries the people have a check on the power of the government and are better able to protect the rights and liberties of the American people from encroachment.*

3. How is a civil case different from a criminal case?  
*A civil case is a dispute between two people, companies or groups that needs to be resolved  
A criminal case is when an individual is being charged with breaking the law*

4. What is *voir dire*? What kinds of questions were Matt and his fellow jurors asked during this part of the trial process?  
*The process of selecting the jury, when lawyers and judges ask questions of potential jurors  
Age, did they know the policeman, attitude toward underage drinking, sympathy towards someone your own age*

5. How does *voir dire* help achieve the Constitutional requirement of a fair and impartial jury? Why is it important to the workings of our judicial system to conduct *voir dire* and have an impartial jury?  
*Determine if potential jury members are overly biased and prejudiced towards the case  
People have the right to be convicted or acquitted based on facts and evidence, not the personal feelings of the jurors.*

6. Matt's dad and 18 other people summoned for jury service with Matt were dismissed without every sitting on a jury. Why are more people called for jury service than are needed for current juries?  
*In case too many people get dismissed during voir dire, the courts need to make sure there are enough people to fill the jury.*

7. Think of juries you have seen on TV shows or movies, how many jurors do you typically see? How many are on the jury Matt serves on? What is the purpose of the alternate juror on Matt's jury?

*TV/movies: 12, Matt: 6 (You can tell students that juries can be anywhere from 6-12 people)*

*In case one of the 6 jurists cannot finish the case or something unexpected comes up there is enough people to fill the jury who have heard all the evidence of the case.*

8. What is the role of a juror in the courtroom? What does the juror do and what does he/she base his/her decisions on?

*Listen to the evidence, not draw assumptions and decide the case fairly based ONLY on the evidence presented in the courtroom and the law*

9. Why were jurors directed to not do their own research, watch the news, talk with others about the case, or blog about it? Why are jurors not allowed access to the Internet in the courthouse? How might watching the news, searching the internet, or discussing the case affect the trial?

*Juries have to decide a case based solely on the information presented in court. Communicating with others or researching the case may provide different information or new perspectives and possible biases that may affect the juror's view of the case and may shape their verdict.*

10. Why is it important for jurors to be impartial, to hear the whole case before making decisions and to follow the law, whether they agree with it or not? What are the possible consequences of the jury decisions? For whom?

*A person's future is being determined and the verdict may affect many different people in different ways. Someone could go to jail, lose money, gain money, lose a job or status, set a precedent or send a message to others about acceptable or unacceptable behaviors.*

*Juries then must be careful to come to the correct verdict based on the facts and the law.*

11. Look at the jury deliberation in the graphic novel, what kinds of issues do the different jury members bring up? Why do juries deliberate and why is this process important?

*Intoxilyzer results, the possibility and reality of sleep deprivation, the closeness of results to the legal limit, credibility of the police officer*

*To consider the evidence, hear one another to consider other points of view, to look for contradictions or possible areas of doubt, to come to a consensus and a verdict.*

12. Why, with a criminal jury, must the decision be unanimous?

*Because the 6<sup>th</sup> Amendment says if you have the right to a trial by jury and if lawyers can't convince at least 6 citizens of a person's guilt, then they cannot be convicted. Courts use juries of six members due to heavy case loads and a shortage of jurors, especially in rural areas.*

13. In what was is jury service a right? A duty? AND a privilege?

*Right: The Constitution states citizens get to participate in the legal system and we cannot be prevented from this (except when convicted of certain crimes)*

*Duty: As a citizen we are obligated to do our part and contribute to society by serving on a jury*

*Privilege: In other countries the government decides the outcome, we are fortunate to have a say*

## Issues For Jurors to Consider:

### Extended Discussion Questions

1. The judge tells the jury that “You must not be influenced by sympathy or prejudice against the defendant,” yet we see signs of sympathy or attempts for sympathy in the story: Ms. Witherspoon’s lawyer is in favor of Matt being on the jury thinking he may be more “understanding” and the lawyer states that his client is a “loving daughter, pre-med student.” One juror, Margaret, brings up her grandson who is always tired.
  - a. Is it possible to avoid feelings of sympathy or prejudice? Or, as Larry says, it is impossible to deal only with the facts given? Why?
  - b. How does a juror best achieve this desired level of objectivity? What can a juror do or what should they focus on to be as impartial as possible?
  - c. What strategies do you see in the legal process that can protect us from potential bias?
  - d. Is there room for human emotion and sympathy in a courtroom? Why or why not?
  - e. Does the possibility of emotional responses weaken the decisions of a jury trial in your mind? Why or why not?
  
2. The judge says “In deciding the facts of this case, you must consider which parts of the testimonies to believe and which ones to reject.”
  - a. Think about movie or TV scenes with juries. What has swayed the juries and outcomes of the case in those situations? What might affect a real jury’s decision of which parts to believe or reject?
  - b. Matt said that the case rested on the “credibility of the police officer.” What affects a juror’s perception of the credibility of a witness?
  - c. Whose job is it to decide the credibility of evidence or witnesses? What may affect the ability to do that?
  - d. How does a juror best decide, without bias or prejudice, what to believe and what not to?
  
3. The American legal system requires that in order for someone to be found guilty, there must be proof beyond a reasonable doubt.
  - a. Why do we uphold this policy? What is the goal of this?
  - b. How would you define reasonable doubt? Why might it be difficult to come to a consensus on what is reasonable doubt?
  - c. What problems does the idea of reasonable doubt create for a jury?
  - d. Do you feel there is reasonable doubt in this case? Why or why not?

4. The judge directs the jurors to follow the law whether they agree with it or not. Why is this important for jurors to remember? How might this be problematic for a juror?
5. One of the jurors, Bill, says “For a court case to be fair, you have to put human beings together in a room. If I’m ever on trial, I want to be able to see the faces of the judge and the jury.”
  - a. Do you agree with this sentiment? Why or why not?
  - b. How might it change the decision of the judge and jury if they did not see the person being accused? Should it matter?
  - c. Do you think it is possible that eventually court cases could take place online? Why or why not?
  - d. What guidelines would have to be put in place to protect people if courts moved online?
6. Matt has just turned 18. His teacher tells Matt his age may get him dismissed and the defense attorney wonders if Matt’s age makes him biased. Later in the trial an older juror is shown “tsk-tsking” at the case.
  - a. What are the advantages to having young jurors? Disadvantages?
  - b. What are the advantages to having older jurors? Disadvantages?
  - c. How might age affect the *voir dire* process?
  - d. What about other categorizations, such as race, gender, ethnicity?
  - e. Should any of these be a factor in choosing a jury? Why or why not?
  - f. In most courts, lawyers are allowed to excuse some prospective jurors without explaining the reason to the judge. This is called a peremptory challenge. What are the advantages of this? Disadvantages? Does it allow the lawyer to unfairly shape the jury?
7. Not all people are in favor of *voir dire*. Those who support it argue that lawyers tend to uncover bias in jurors more effectively than jurors because the lawyers have better knowledge of the case and lawyers are more highly motivated to search out bias. Some feel that jurors may be less intimidated by lawyers and answer more honestly and the participation of the lawyers may build juror trust and participation in the system. Critics of *voir dire* argue that the process lengthens trials, and could lead to inappropriate use of the process by lawyers who may enter inappropriate pretrial arguments.
  - a. What are the strengths of the process of *voir dire*? Weaknesses?
  - b. Which of these arguments do you agree with? Disagree? Why?
  - c. How might lawyers abuse the process to their own advantage?

8. A summons to jury service is sometimes seen as a burden or annoyance. What would happen if American citizens did not fulfill their responsibility as a juror? How would this alter our society? How might it affect our legal rights and status? What could happen if we removed this requirement?
  
9. Some courts are allowing certain jury trial innovations such as allowing jurors to take notes during the trial, allowing jurors to ask questions of witnesses, providing jurors with written instructions and permitting jurors to discuss the evidence before formal deliberations.
  - a. Do you agree with these innovations? Which ones? Why or why not?
  - b. Do these techniques affect juror impartiality? Why or why not?
  - c. Do they inappropriately wrest control of the presentation of evidence away from counsel?
  - d. Must jurors “be passive to be impartial”?

Question 8 “Jury Trial Innovations” National Center for State Courts <http://www.ncsconline.org/WC/CourTopics/overview.asp?topic=JurInn>

## Justice Case Files 3 Vocabulary

1. \_\_\_\_ Bench Trial
  2. \_\_\_\_ Civil Case
  3. \_\_\_\_ Counsel
  4. \_\_\_\_ Criminal Case
  5. \_\_\_\_ Deliberation
  6. \_\_\_\_ D.U.I.
  7. \_\_\_\_ Federal Court
  8. \_\_\_\_ Felony
  9. \_\_\_\_ For Cause  
Challenge
  10. \_\_\_\_ Foreperson
  11. \_\_\_\_ Grand Jury
  12. \_\_\_\_ Indictment
  13. \_\_\_\_ Jurors
  14. \_\_\_\_ Jury Trial
  15. \_\_\_\_ Misdemeanor
  16. \_\_\_\_ Peremptory  
Challenge
  17. \_\_\_\_ Petit Jury
  18. \_\_\_\_ Plaintiff
  19. \_\_\_\_ Sentencing
  20. \_\_\_\_ Sequestering
  21. \_\_\_\_ State Court
  22. \_\_\_\_ Unanimous
  23. \_\_\_\_ Venire
  24. \_\_\_\_ Verdict
  25. \_\_\_\_ Voir Dire
- A. Court that hears cases based on regional law
  - B. Citizen juror chosen to direct discussion and speak for the group
  - C. Citizens chosen to judge the innocence or guilt of another person
  - D. Attorney representing the plaintiff or the defendant
  - E. Decision by a petit jury
  - F. Private, jury decision making process after final arguments
  - G. Jurors chosen to decide innocence or guilt
  - H. Offense punishable by a year or more in jail
  - I. Person who is bringing the charges in a case
  - J. Trial conducted solely by the judge
  - K. Grand jury decision to proceed with action against an individual
  - L. Court that hears cases based on national law
  - M. Jury selection process meaning “to speak the truth”
  - N. Verdict where all the jury agree
  - O. Term for a person called for possible selection on a jury
  - P. Trial conducted by a judge and six to twelve citizens
  - Q. Case that deals with someone who broke the law
  - R. Jurors chosen to decide if enough evidence exists to indict
  - S. Keeping the jury from outside contact that might influence the vote
  - T. Case that deals with disagreements between two or more people
  - U. Court charge for driving while impaired
  - V. Offense punishable by less than one year in jail
  - W. Possible jurors excused for comments made when questioned
  - X. Possible jurors excused by counsel without a given reason
  - Y. Post trial phase of a case where punishment is given to the guilty

## Justice Case Files 3 Vocabulary Key

- |                                   |  |
|-----------------------------------|--|
| 1. <u>J</u> Bench Trial           | A. Court that hears cases based on regional law                        |
| 2. <u>T</u> Civil Case            | B. Citizen juror chosen to direct discussion and speak for the group   |
| 3. <u>D</u> Counsel               | C. Citizens chosen to judge the innocence or guilt of another person   |
| 4. <u>Q</u> Criminal Case         | D. Attorney representing the plaintiff or the defendant                |
| 5. <u>F</u> Deliberation          | E. Decision by a petit jury  |
| 6. <u>U</u> D.U.I.                | F. Private, jury decision making process after final arguments         |
| 7. <u>L</u> Federal Court         | G. Jurors chosen to decide innocence or guilt                          |
| 8. <u>H</u> Felony                | H. Offense punishable by a year or more in jail                        |
| 9. <u>W</u> For Cause Challenge   | I. Person who is bringing the charges in a case                        |
| 10. <u>B</u> Foreperson           | J. Trial conducted solely by the judge                                 |
| 11. <u>R</u> Grand Jury           | K. Grand jury decision to proceed with action against an individual    |
| 12. <u>K</u> Indictment           | L. Court that hears cases based on national law                        |
| 13. <u>C</u> Jurors               | M. Jury selection process meaning “to speak the truth”                 |
| 14. <u>P</u> Jury Trial           | N. Verdict where all the jury agree                                    |
| 15. <u>V</u> Misdemeanor          | O. Term for a person called for possible selection on a jury           |
| 16. <u>X</u> Peremptory Challenge | P. Trial conducted by a judge and six to twelve citizens               |
| 17. <u>G</u> Petit Jury           | Q. Case that deals with someone who broke the law                      |
| 18. <u>I</u> Plaintiff            | R. Jurors chosen to decide if enough evidence exists to indict         |
| 19. <u>Y</u> Sentencing           | S. Keeping the jury from outside contact that might influence the vote |

20. \_\_S\_\_ Sequestering      T. Case that deals with disagreements between two or more people
21. \_\_A\_\_ State Court      U. Court charge for driving while impaired
22. \_\_N\_\_ Unanimous      V. Offense punishable by less than one year in jail
23. \_\_O\_\_ Venire      W. Possible jurors excused for comments made when questioned
24. \_\_E\_\_ Verdict      X. Possible jurors excused by counsel without a given reason
25. \_\_M\_\_ Voir Dire      Y. Post trial phase of a case where punishment is given to the guilty

## Jury Duty Double Down introductory worksheet

Directions: In small groups discuss and decide if each statement about jury duty is true or false and CIRCLE the appropriate T or F. If your group is sure about your answer and would like to double your points, place a LINE under the circled T or F. Correct answers are worth 5 points while incorrect answers are -5 points. Doubled down answers are worth 10 points or minus 10 points. A maximum score is 200! Enjoy!

- 30% of cases go to trial.  
T    F    \_\_\_\_\_    Total Points Achieved So Far \_\_\_\_\_  
**(\*remember to underline circled answer if doubling down!)**
- Jury duty is not required if you have children.  
T    F    \_\_\_\_\_    Total Points Achieved So Far \_\_\_\_\_
- Most courtrooms do not allow cell phones, blackberries, or similar electronic devices.  
T    F    \_\_\_\_\_    Total Points Achieved So Far \_\_\_\_\_
- Trial juries must have 12 citizens according to the Bill of Rights (impartial jury of your peers).  
T    F    \_\_\_\_\_    Total Points Achieved So Far \_\_\_\_\_
- It is a matter of common procedure that every petit (trial) jury starts out with at least one alternate juror who sits through the whole trial.  
T    F    \_\_\_\_\_    Total Points Achieved So Far \_\_\_\_\_
- Voir Dire is the process of deciding innocence or guilt.  
T    F    \_\_\_\_\_    Total Points Achieved So Far \_\_\_\_\_
- Sometimes a lawyer may dismiss a potential juror during the selection process without giving the judge a reason.  
T    F    \_\_\_\_\_    Total Points Achieved So Far \_\_\_\_\_
- If the defendant is under the legal B.A.C. (blood alcohol limit) adult limit, he/she cannot be charged or convicted.  
T    F    \_\_\_\_\_    Total Points Achieved So Far \_\_\_\_\_
- Generally, jury duty is a legal requirement for every age appropriate citizen when called to serve.  
T    F    \_\_\_\_\_    Total Points Achieved So Far \_\_\_\_\_

10. Jurors are not paid for their time or traveling expenses.  
 T F \_\_\_\_\_ Total Points Achieved So Far \_\_\_\_\_
11. A typical jury trial takes less than one week.  
 T F \_\_\_\_\_ Total Points Achieved So Far \_\_\_\_\_
12. Even though a juror has a close relationship with the defendant, he/she is still required to serve on that jury.  
 T F \_\_\_\_\_ Total Points Achieved So Far \_\_\_\_\_
13. The judge will always instruct the jury as to the current law applicable to the case.  
 T F \_\_\_\_\_ Total Points Achieved So Far \_\_\_\_\_
14. A jury trial can't begin until the day after a jury is selected.  
 T F \_\_\_\_\_ Total Points Achieved So Far \_\_\_\_\_
15. No jurors are allowed to ask a question or take notes during the trial.  
 T F \_\_\_\_\_ Total Points Achieved So Far \_\_\_\_\_
16. The jury process of discussing innocence or guilt is called deliberation.  
 T F \_\_\_\_\_ Total Points Achieved So Far \_\_\_\_\_
17. A citizen will be used only once every two years for a jury trial.  
 T F \_\_\_\_\_ Total Points Achieved So Far \_\_\_\_\_
18. The judge can overturn a jury's verdict.  
 T F \_\_\_\_\_ Total Points Achieved So Far \_\_\_\_\_
19. In many courts, being age 70 or older allows a citizen to choose whether or not to participate on a jury.  
 T F \_\_\_\_\_ Total Points Achieved So Far \_\_\_\_\_
20. Lawyers do not want smart people on the jury.  
 T F \_\_\_\_\_ Total Points Achieved So Far \_\_\_\_\_

Total Points Achieved = \_\_\_\_\_ / out of 200 possible points

175 to 200 = Supreme Court Chief Justice

125 to 174 = District Attorney

75 to 124 = Bailiff

Less than 74 = Not quite ready to be an adult member of a democratic government

## Jury Duty Double Down introductory worksheet - KEY

Directions: In small groups discuss and decide if each statement about jury duty is true or false and CIRCLE the appropriate T or F. If your group is sure about your answer and would like to double your points, place a LINE under the circled T or F. Correct answers are worth 5 points while incorrect answers are -5 points. Doubled down answers are worth 10 points or minus 10 points. A maximum score is 200! Enjoy!

1. 30% of cases go to trial. F (around 10% go to a bench or jury trial, the other roughly 90% reach plea agreements before the trial)
2. Jury duty is not required if you have children. F (you could still be given jury duty even though you have children)
3. Most courtrooms do not allow cell phones, blackberries, or similar electronic devices.  
T (they are disruptive and allow internet searches for information during a trial or the transfer of data out of a sealed courtroom)
4. Trial juries must have 12 citizens according to the Bill of Rights (impartial jury of your peers).  
F (no fewer than six jurors are allowed)
5. It is a matter of common procedure that every petit (trial) jury starts out with at least one alternate juror who sits through the whole trial. T (should a juror need to be released the alternate takes her/his place and the trial continues)
6. Voir Dire is the process of deciding innocence or guilt. F (voir dire is the process of jury selection)
7. Sometimes a lawyer may dismiss a potential juror during the selection process without giving the judge a reason. T (this is called a peremptory challenge)
8. If the defendant is under the legal B.A.C. (blood alcohol limit) adult limit, he/she cannot be charged or convicted. F (he/she can fail the balance and coordination tests, be driving erratically, or be under the age of 21 which has a much lower legal B.A.C.)
9. Generally, jury duty is a legal requirement for every age appropriate citizen when called to serve. T (some people are exempted from jury duty because of their contacts with law makers, elected political officials, or court officers; felons are prohibited from serving on a jury)
10. Jurors are not paid for their time or traveling expenses. F (jurors receive a small daily fee which varies plus mileage reimbursement)
11. A typical jury trial takes less than one week. T

12. Even though a juror has a close relationship with the defendant, he/she is still required to serve on that jury. F (an impartial jury is required so past experience with the defendant makes impartiality unlikely)
13. The judge will always instruct the jury as to the current law applicable to the case. T (jury verdicts need to be based on the law, not emotion since we have a constitutional form of government – rule based on written law)
14. A jury trial cannot begin until the day after a jury is selected. F (jury trials can begin immediately after the possible jurors not selected are dismissed from the courtroom)
15. No jurors are allowed to ask a question or take notes during the trial. F  
(increasingly some courts are allowing clarifying, written questions by jurors, but most courts now allow jurors to write reminder notes about testimony)
16. The jury process of discussing innocence or guilt is called deliberation. T
17. A citizen will be used only once every two years for a jury trial. F (although few are statistically called, a juror may be called one year after serving on a previous jury or being called and being rejected.)
18. The judge can overturn a jury's verdict. T (although seldom done, a judge may overturn a verdict if the evidence presented and the applicable law do not allow such a finding by the jury)
19. In many courts, being age 70 or older allows a citizen to choose whether or not to participate on a jury. T
20. Lawyers do not want smart people on the jury. F (lawyers rarely want unintelligent jurors, however in particular cases, lawyers would prefer jurors who are more or less emotional or analytical in their decision making or whose own life experiences make them more or less sympathetic)

## How might my jury service look similar to or different from Matt's?

Matt was serving on a trial or petit jury, which listens to the evidence and renders a verdict in a criminal case where Kaye Witherspoon was charged with breaking the law. There are different jury experiences from Matt's. Instead of petit juries, some jurors serve on grand juries which if there is probable cause to indict (accuse) individuals or corporations on criminal charges based upon the evidence presented. In addition to criminal cases, juries can hear civil cases which resolve a dispute between two people, corporations, or groups. Finally, Matt was serving on a jury in a state-level court which has greater jurisdiction, types of cases it can hear, than federal courts. Federal courts hear cases in which the United States is a party; cases involving violations of the U.S. Constitution or federal laws; and bankruptcy, copyright, patent, and maritime law cases.

Each of these types of cases carry different responsibilities for the jurors. Consider how jury duty might look different and/or similar in each type.

	<b>Role/Responsibility of the jury:</b> How might the nature of what you are asked to do be different/ similar in each?
<b>Petit/Trial Jury</b>	
<b>Grand Jury</b>	
<b>Civil Case</b>	
<b>Criminal Case</b>	
<b>State Court</b>	
<b>Federal Court</b>	

## How might my jury service look similar to or different from Matt's?

### Possible Answers

Each of these types of cases carry different responsibilities for the jurors. Consider how jury duty might look different and/or similar in each type.

	<b>Role/Responsibility of the jury:</b> How might the nature of what you are asked to do be different/ similar in each?
<b>Petit/Trial Jury</b>	<i>Decide innocence or guilt Weigh only the evidence presented Weigh the evidence from both the plaintiff and the defendant</i>
<b>Grand Jury</b>	<i>Determine if there is enough evidence to go to trial, you DO NOT decide innocence or guilt Weigh only the evidence from the prosecution, the defense is not present</i>
<b>Civil Case</b>	<i>Trying to resolve differences between two individuals Attempting to decide who is more in the right Usually awarding monetary compensation to one party Does not involve jail time for either party</i>
<b>Criminal Case</b>	<i>Deciding innocence or guilt of the defendant charged with a crime Felonies mean a year or more in jail for the defendant Weigh only the evidence that is presented Follow the law in making a decision</i>
<b>State Court</b>	<i>Deals with possible violations of state laws Punishments and fines are determined by each individual state</i>
<b>Federal Court</b>	<i>Deals with possible violations of federal law Punishments and fines are determined by the national legislature and judiciary</i>

## You Be the Lawyer

Imagine you are a lawyer, either defense or prosecution, in each of these cases. What types of questions will you ask your potential jurors in the *voir dire*? What kinds of experiences, ideas, prejudices, or prior knowledge will make them good or bad jurors? What can you ask to insure that you have the most impartial group of jurors possible? Would you ask different questions if you were the defense rather than the prosecution? Why?

**TASK:** Make a list of questions you the lawyer will ask the pool of potential jurors. Write your questions from the perspective of either the defense or the prosecution. Keep in mind the various characteristics or perspectives that may affect a juror's bias or objectivity. The Constitutional Rights Foundation Chicago has one such set of questions that may help you consider the variety of questions to be asked at [www.crfc.org/americanjury/lessons/voir\\_dire/voir\\_dire3.html](http://www.crfc.org/americanjury/lessons/voir_dire/voir_dire3.html) "Voir Dire: A Simulation, Voir Dire: Creating the Jury"

### *People v. Kevorkian (1994) 447MICH.436,527 N.W. 2d714 (Michigan)*

Dr. Jack Kevorkian is being charged with two counts of murder after two women with terminal illnesses came to him and asked him for help committing suicide. He provided them with a device that could administer drugs and the women were successful in ending their own lives.

### *Headwaters Forest Defense v. County of Humboldt (2000) 211F.3d1121 (9<sup>th</sup> Circuit, Federal)*

9 environmental activists and an environmental group are suing Humboldt County police officers for use of excessive and unreasonable force. In the fall of 1997, environmental activists staged three nonviolent protests against the logging of ancient redwood trees in the Headwaters Forest along California's northern coast. During each protest, two to seven protesters linked themselves together using self-releasing lock-down devices known as "black bears." Although the protesters were not physically daunting and posed no immediate safety threat, the officers used pepper spray to arrest the protesters. Defendants videotaped each of the arrests. The videotapes revealed that the officers did not attempt to negotiate with the protesters before applying the pepper spray. Sometimes the officers used Q-tips to apply the pepper spray to the eyelids of the protesters; other times the officers simply sprayed the pepper spray directly into the faces of the protestors. This occurred multiple times during each protest. The videos demonstrated that the protesters were in tremendous pain from the pepper spray. To ease the pain, the officers sprayed water on the protesters; however, the video showed that this actually caused more pain for at least one of the protesters. Summary from [http://www.elawreview.org/summaries/constitutional\\_issues/headwaters\\_forest\\_defense\\_v\\_co.html](http://www.elawreview.org/summaries/constitutional_issues/headwaters_forest_defense_v_co.html)

### *Popov v. Hayashi (2002) S.F. Sup. Ct. CA (California)*

Popov is suing Hayashi for *conversion*, *injunctive relief* and *constructive trust*. (*Conversion* is the wrongful exercise of dominion over the personal property of another. There must be actual interference with the plaintiff's dominion. Popov and Hayashi were sitting in the stands during a baseball game when Barry Bond's record-winning homerun ball landed in Popov's glove. Before

he had full control of the ball, he was mobbed by a crowd and the ball went flying. It eventually ended up in the possession of Hayashi.

***US v. Zacarias Moussaoui (2001) Federal***

Zacarias Moussaoui is being charged with conspiracy to commit terrorism. The US government believes that Moussaoui was involved with the September 11<sup>th</sup> attacks. While Moussaoui admits he is a member of al Qaeda and did intend to commit acts of terrorism, he and other high-ranking al Qaeda operatives claim he was not involved in the September 11<sup>th</sup> hijackings. Summary from <http://www.cnss.org/Moussaoui.htm>

***Eisel v. Board of Education of Montgomery County (1991) 597A.2d447 (Maryland)***

The family of Nicole Eisel, 13, is suing the school counselors for negligence. Nicole, who had an interest in death and self-destruction, told friends she intended to kill herself. The friends reported this to guidance counselors who did not act on the information and Nicole was killed by another student in a murder-suicide.

***State v. Jason Harlan (NCSC Justice Case Files #2)***

Jason Harlan is being accused of identity theft after allegedly sending an email to Maria Garcia posing as her bank and fraudulently obtained her personal information. Mrs. Garcia's bank account was then emptied and the computer transactions were traced back to a computer in Mr. Harlan's home.

***US v. Megan Robbins (NCSC Justice Case Files #1)***

Megan is being tried for copyright infringement. A friend told Megan about downloading music from the Internet. Megan downloaded numerous songs for free and her electronic transfers were detected. Because the songs are copyrighted and Megan obtained them without payment, she is accused of stealing the music.

***Summers v. Tice, et al (1948) 33CAL.2d80,1992d1 (California)***

Summers is accusing Tice and Simonson of negligence. The three men went hunting together and Summers told the other two to remain in a line. Summers moved ahead of the other two remaining in plain sight. When a quail flew up between Summers and the other two men, the two men shot at the quail, in Summers direction. Summers was hit in the face by both shots almost simultaneously.

***People v. O.J. Simpson (1995) (California)***

O.J. Simpson, a former football star, is accused of murdering his ex-wife, Nicole Brown Simpson, and Ronald Goldman. O.J. took police on a televised, low-speed chase through Los Angeles before turning himself in and pleading not guilty.

### **What's the Issue? DUI**

1. With what is Kaye Witherspoon being charged?
2. What do the lawyers do to try to obtain a fair and impartial jury? What kinds of things was Ms. Witherspoon's lawyer, Mr. Fargo, looking for in a jurist? What might he want to avoid? Why?
3. Once the jury was selected, how did the trial begin? Why do trials start this way?
4. Which side of the case presented arguments first? Who questioned the witness first? Who was second in both cases? Why this order of arguments?
5. Why doesn't Kaye Witherspoon testify on her own behalf? What are the advantages of this strategy? Disadvantages?
6. What does Kaye's lawyer have to do to show a video? Why is this procedure in courts and why is it important?
7. After the two lawyers present their evidence and witnesses, how do they end the case? Why do they do this, what is the purpose?

8. What are the arguments/evidence presented in the case:

	<b>Prosecution</b>	<b>Defense</b>
<b>Evidence/ Arguments presented</b>		
<b>Strengths of the argument</b>		
<b>Weaknesses or areas of possible doubt in the argument</b>		

9. The final decision of the jury is not given in the graphic novel. How do you feel the jury should have ruled: guilty or not guilty? Why?

10. Which evidence or arguments were the most persuasive to you? Which most shaped your decision? Why is this?

## What's the Issue? DUI (*Possible Answers*)

1. With what is Kaye Witherspoon being charged?  
*Driving under the influence*
2. What do the lawyers do to try to obtain a fair and impartial jury? What kinds of things was Ms. Witherspoon's lawyer, Mr. Fargo, looking for in a jurist? What might he want to avoid? Why?  
*Find out the biases of potential jurors and eliminate those with prejudices that will affect the trial*  
*Fargo: Someone who will be willing to look beyond the fact that she was drinking and consider the circumstances, not someone who is opposed to drinking and be quick to convict*
3. Once the jury was selected, how did the trial begin? Why do trials start this way?  
*Opening statements: Each side clearly states their position so everyone involved is clear on their position*
4. Which side of the case presented arguments first? Who questioned the witness first? Who was second in both cases? Why this order of arguments?  
*The prosecution goes first, defense second. This way the person who is being accused can hear the arguments against them and be able to defend his/herself*
5. Why doesn't Kaye Witherspoon testify on her own behalf? What are the advantages of this strategy? Disadvantages?  
*Her lawyer feels it is best for evidence to speak for itself*  
*Answers will vary*
6. After the two lawyers present their evidence and witnesses, how do they end the case? Why do they do this, what is the purpose?  
*Closing arguments. To summarize their point of view on the evidence and convincingly state their position on the case before the jury deliberates.*

7. What are the arguments/evidence presented in the case:

	<b>Prosecution</b>	<b>Defense</b>
<b>Evidence/ Arguments presented</b>	<i>Driving erratically</i> <i>Shaky</i> <i>Intoxilyzer results, BAC .08</i> <i>Eyes bloodshot</i>	<i>Pass all field sobriety tests</i> <i>Testimony on dissipation of alcohol in blood stream</i> <i>Tired</i> <i>1 beer</i> <i>.08 is bare minimum to convict</i>
<b>Strengths of the argument</b>	<i>Answers will vary</i>	<i>Answers will vary</i>
<b>Weaknesses or areas of possible doubt in the argument</b>	<i>Answers will vary</i>	<i>Answers will vary</i>

8. The final decision of the jury is not given in the graphic novel. How do you feel the jury should have ruled: guilty or not guilty? Why?

*Answers will vary*

9. Which evidence or arguments were the most persuasive to you? Which most shaped your decision? Why is this?

*Answers will vary*

## Extended Discussion Questions: DUI

1. Mr. Fargo, states in his opening arguments that “Ms. Witherspoon is not a criminal. She’s a loving daughter, a pre-med student, and a person unlucky enough to be at the wrong place at the wrong time.”
  - a. Was she really at the wrong place at the wrong time? Could you argue she was in fact lucky? How?
  - b. How might making a claim like this affect the jury’s belief in the lawyer and his case? Does this claim help, hurt, or not influence the case? Why?
  - c. Does her status as loving daughter and pre-med student pertain to the outcomes of the case and the jury’s decision? In what way?
  - d. Would she be viewed differently if she were less successful or had a different background? In a court of law and to a jury, should it matter? Why or why not?
2. Mr. Fargo recommends that Kaye Witherspoon not testify on her own behalf. Would you want to testify in a case where you were the defendant? Why or why not? Do you think his advice was wise? Why or why not?
3. What if she hadn’t been stopped by a policeman and instead had gotten into an accident, would her blood alcohol level be viewed differently? Should the circumstances affect the outcome of the case? In this case should judges/jurors be influenced by the conditions by which she was stopped and the lack of negative consequences for her actions?
4. The defense rests its case on arguing being right at the legal limit is too close to convict, he says “is it possible to say that a mere difference of 0.01 and we wouldn’t be in this courtroom.” He points to the fact that she passed the other field sobriety tests and argues his client may have been overtired to support his ideas.
  - a. Does he create reasonable doubt with this line of reasoning? Why or why not?
  - b. Which holds greater weight as evidence, the Intoxilyzer or the field sobriety tests? Why? What are the strengths/weaknesses of each as evidence?
  - c. Should the fact that she is underage affect the deliberations? Why or why not?
5. How might being convicted affect Kaye?
  - a. Should the jury be swayed by her age and future and the effects this case will have on it? Why or why not?
  - b. What if she had had a prior record, would that alter your views of the case and the best verdict? Why?
  - c. Should a defendant’s past behaviors affect the current situation? Why or why not?



# The Stages of a Trial

- I. Pretrial
  - A. Grand jury indictment
  - B. Trial date set
- II. Trial
  - A. Selection of petit jury (voir dire) and oath
  - B. Opening statements by the prosecution and defense
  - C. Plaintiff witnesses and evidence
  - D. Defendant witnesses and evidence
  - E. Rebuttal witnesses for plaintiff
  - F. Closing arguments by the prosecution and defense
  - G. Judge's instructions for the jury (charge to the jury)
  - H. Jury deliberation
  - I. Jury verdict read in court
- III. Sentencing if guilty verdict  
(judge only, jury has been excused and thanked for its service)
  - A. Character witnesses for prosecution and defense
  - B. Sentencing by the judge

\*for greater detail refer to <http://courts.delaware.gov/jury%20services/?jurorpetit.htm>

## DUI Consequences

If the jury finds Kaye Witherspoon not guilty, then she is acquitted and free to go.

If the jury finds Kaye Witherspoon guilty, then the process continues. The judge will then set a date for sentencing. Before the sentencing hearing there will be an investigation into Kaye’s history to determine the appropriate sentence from the range set by law. The judge will consider her criminal record, if there is one, her work or educational history, her family status and health, along with any other relevant information.

Penalties for first time convictions of driving under the influence of alcohol or drugs vary from state to state. Every state has the convicted person pay fines ranging from \$150 to \$3000 depending on the state and the pre-sentencing investigation. Every state suspends the driver’s license for at least 90 days while some are a year. All states require some sort of alcohol educational program, treatment or evaluation at the expense of the convicted. Some states require jail time of at least 48 hours, some are longer and some have no minimum. States have various policies on probation and community service.

If Kaye is found guilty how will her life be altered by these penalties? How would your life be affected if facing these penalties? How would the lives of other people you know be changed by these penalties?

Penalty	Think of all the consequences
<p><b>Fines:</b> How would you pay hundreds or a couple thousand dollars in fines? What would the financial consequences be? What might you have to give up to cover these costs? What other aspects of your life would be affected by having to pay this much money?</p>	
<p><b>Alcohol/Drug treatment/education program:</b> How would it feel to have to go to these classes? What might you have to give up to be able to</p>	

attend? How will you pay for these?	
<b>Penalty</b>	<b>Think of all the consequences</b>
<p><b>Suspended Driver's license:</b> Imagine living your life for at least 3 months without being able to drive yourself anywhere. How will you get to school? Work? If you don't get there what will happen? What activities might you not be able to participate in as a result? How will you perform your other responsibilities without a car?</p>	
<p><b>Jail time:</b> What would it be like to spend a few nights in jail? Or a few months? How will people respond to you when you get out? How might it affect how people see or treat you? How might that experience affect your choices and opportunities in the future?</p>	
<p><b>Criminal Record:</b> When a prospective employer goes to check your criminal record, you have one. What type of job do you hope to get one day? Will having a criminal record or having to explain your criminal record create a problem in getting that job? How will it affect your relationships with a future boss who knows you were convicted of a crime?</p>	



## **Jury Trials: For and Against**

### **Jury Trials: In Favor** By Neil Vidmar

*Neil Vidmar is Russell M. Robinson II professor of law at Duke University School of Law in North Carolina. This article appears in the July 2009 issue of eJournal USA, Anatomy of a Jury Trial.*

The jury is a unique institution. Twelve ordinary citizens, sometimes as few as six, who have no legal training, are summoned to hear evidence about an important criminal or civil dispute. While the trial judge decides what evidence they can hear and instructs them on the law, in the end these ordinary citizens deliberate alone and render verdicts about guilt or innocence; sometimes about who should be sentenced to die; or, in civil cases, who should prevail in a dispute that sometimes involves many millions of dollars. But are juries competent and responsible enough to make these decisions? Overwhelming evidence indicates that they are.

Hundreds of studies have assessed the competence of jurors. A classic 1966 study by two University of Chicago professors, Harry Kalven and Hans Zeisel, involving 3,576 criminal trials and more than 4,000 civil trials, asked the trial judges, who heard the same evidence as the jurors, to render their own verdict before they learned what the jury decided. Judges and juries agreed about 80 percent of the time.

What about the other 20 percent? The study showed that jurors understood the evidence and the law in those cases, but simply differed from the judges in the perspectives and values they applied to the issues. In short, the juries applied community standards while the judges applied technical legal standards. That study's findings have been replicated many times.

Still other research has compared jury verdicts in medical malpractice cases with independent judgments made by physicians regarding whether negligence occurred. The jury verdicts corresponded closely with the doctors' judgments. Moreover, juries often sided with defendants, even when the patients were severely injured, indicating that the jurors were not swayed by sympathy in making their decisions.

Detailed interviews with jurors after they rendered verdicts in trials involving complex expert testimony have demonstrated careful and critical analysis. The interviewed jurors clearly recognized that the experts were selected within an adversary process. They employed sensible techniques to evaluate the experts' testimony, such as assessing the completeness and consistency of the testimony, comparing it with other evidence at the trial, and evaluating it against their own knowledge and life experience. Moreover, the research shows that in deliberations jurors combine their individual perspectives on the evidence and debate its relative merits before arriving at a verdict.

### **Collective Wisdom**

There are many logical reasons to believe that, under the guidance of a judge who explains the law to them, a group of 12 laypersons can do a better job sifting the factual evidence and deciding a case than a judge can alone.

Why should we assume that judges are better than juries at determining the credibility of a witness who claims the defendant uttered death threats, or that she was running a sophisticated scheme to inflate stock prices?

Cultural variables abound in any trial verdict, by judge or jury. Thus, in a murder case involving an African-American victim and defendant, would a jury composed of at least some African-American jurors be better able to understand the spoken insult that led the defendant to claim that his life was in danger than a white judge who grew up in a white suburb?

In one of the Arizona jury trials involving a Hispanic plaintiff injured in an auto accident, a Hispanic juror told the other jurors that Hispanic people tend to prefer chiropractors over medical doctors, thereby possibly explaining why the plaintiff did not follow a recommendation that she seek follow-up care by a physician.

In another trial, two jurors who had backgrounds familiar with car repairs were able to explain how a truck caught fire and burned down a house.

In short, the varied backgrounds jurors bring to their task can give juries an intuitively better understanding of the facts than the trial judge, who may have little actual experience with the specific setting in which the contested events occurred.

### **Addressing Critics**

Critics of jury trials often point to some iconic cases. One is a notorious 1994 product liability lawsuit brought by a 79-year-old woman who burned herself by spilling hot coffee served at a McDonald's chain restaurant. The jury's award of \$2.7 million in punitive damages to the woman created debate about what some people considered frivolous lawsuits.

Yet most people probably don't know the evidence the jurors had to consider about that case:

- McDonald's sold its coffee 20 degrees hotter than recommended by the manufacturer to satisfy customer preference.
- The woman sustained second- and third-degree burns to her genital area, requiring extensive surgery and skin grafts.
- McDonald's had had more than 700 prior complaints about its coffee but never consulted a burn specialist.
- Testimony by McDonald's executives at trial allegedly projected arrogance and expressed resistance to changing their marketing strategy (though after the verdict McDonald's did lower the coffee temperature).

- The jury punitive award of \$2.7 million was equivalent to just two days of McDonald's overall coffee sales. Moreover, the judge reduced the punitive award to \$480,000.

The McDonald's case also serves as a reminder that trial by jury is really "trial by judge and jury," and that the judge supervises the evidence the jury hears, instructs the jurors on the law, and scrutinizes their verdict before it is entered as a judgment of the court.

Many other criticisms of criminal and civil jury verdicts that appear in newspapers and Web sites likewise fail to withstand close scrutiny. Juries can make mistakes, as can judges or any other decisionmakers, but hard evidence indicates that, on the whole, juries perform exceedingly well. And surveys of American judges who preside over trials indicate their overwhelming and enthusiastic support for the jury system.

### **Crime, Negligence, and Community**

Trials concern events that affect the community in which they occur. Having members of the community decide who is guilty or innocent, or who has been negligent or not, provides legitimacy to the verdict, especially when the case is controversial.

In the many surveys that I have conducted over the past four decades, prospective jurors consistently say that they would be inclined to accept the verdict of a jury who heard the evidence at trial, even when that verdict is inconsistent with their own views derived from newspaper and television reporting of the case.

Recent research also has demonstrated quite convincingly that after people have served on a jury, they not only have a better appreciation of the legal system but also become more engaged in civic affairs and more inclined to volunteer for community service.

In short, hard evidence indicates not only that juries are competent decisionmakers, but also that the jury system is an important democratic institution.

From: America.gov <http://www.america.gov/st/usg-english/2009/July/20090706164826ebyessedo0.4126551.html>  
[Accessed 8/17/2009](#)

### **Jury Trials: Opposed By Peter J. van Koppen**

*The jury trial system is so complicated and expensive that it forces most defendants to accept plea bargains arranged in secret. In the relatively few cases that go to trial, jurors are often considering technical issues beyond their aptitude. Peter J. van Koppen is professor of legal psychology at Maastricht University Law School and Free University Law School, both in the Netherlands. This article appears in the July 2009 issue of eJournal USA, "Anatomy of a Jury Trial."*

One day you visit your general physician. You are greeted there by a panel of 12 individuals. The one person who apparently is the chairwoman cheerfully tells you that this panel is replacing your doctor for the next month. With confidence she adds: "Do not worry, dear, most of what doctors do is common sense anyway." What would you do?

In fact, the chairwoman is right: Most of what doctors do is common sense. But an important part is not. And that part is the vital part of your doctor's work. Even more vital, maybe, is that your doctor is able to distinguish the odd difficult case and the dangerous condition of a patient from the average run-of-the-mill disease.

The defendant who enters the courtroom and who has decided not to plea bargain is confronted with such a cheerful bunch of jurors. They are there to evaluate the evidence and decide whether the defendant is guilty or not. The question is whether such a jury is better than the alternative. What I mean by alternative, I shall discuss shortly.

For sure, everybody would prefer a general physician with a diploma to the general physician-jury, and that holds for almost all professionals. So a first question is: Is decision-making or fact-finding in criminal cases such that it can be done by laypersons? In order to answer that question, let me dissect the problem that faces the jury in a criminal trial. A jury must make a decision about the truth. American lawyers reply immediately that criminal trials are not about the truth, but about a certain version of the truth: Which party has the better argument about the truth?

Either way, the work to be done by a jury does not differ much from what any scientist has to do. A scientist has to make inferences about states of affairs that cannot be observed directly, inferring from evidence that can be observed. And that is precisely what a jury has to do: make a decision about the guilt of the defendant based on the evidence presented at trial. That is a scientific enterprise that surpasses the intellectual aptitude of most laypersons who are called to jury duty.

Proponents of the jury tend to use the seminal study by Harry Kalven and Hans Zeisel from 1966 here. In a large number of cases, Kalven and Zeisel, while the jury was in the jury room deliberating, asked the single judge presiding over a trial what he would decide. They found that in most cases the judges would have rendered the same verdict as the jury somewhat later returned.

### **Training Matters**

That study warrants some comments. As with the example of the physician, the professional judge and the jury may agree most of the time, but that does not mean that they agree in the most important cases, the cases where decision making on the facts of the case is in some way difficult and where knowledge and training would matter.

Why would we turn to the judge to assess the quality of jury decisions? That assumes two things: that the judges are so good that they can be used as a criterion for the evaluation of the jury, and that law matters for the decision problem faced by the jury. The latter point is a common misconception. The jury decision is a purely factual decision that takes the form of a scientific

decision. Most important, the law has nothing to do with that decision. The decision may be embedded in all kinds of legal rules – for instance about what evidence can be presented to the jury or can enter the decision — but that does not make the decision itself a legal decision. Jury proponents then would argue that the standard of decision making in criminal trials, beyond a reasonable doubt, is a legal rule. That is not so. It is the same kind of decision rule that is applied widely in science, just with a different name. In psychology, for instance, the same decision rule is called significance level.

And single judges are indeed the wrong kind of people to use as a criterion for scientific decision making. First of all, a panel of judges would be a fairer comparison. In most countries, cases without a jury are decided by panels of three or five judges. But, secondly, aren't judges as much laypersons on factual decision making as juries? Those who enter law school usually do that because they do not like scientific thinking or hate math or detest doing experiments. And surely legal thinking considerably departs from scientific thinking.

Judges, as such, thus are not better qualified than jurors for fact-finding unless they are trained. And in countries with professional judges, the judges are trained. In fact, when I serve as an expert witness in my small country, I often encounter courts in which one or more judges have been in my class where I taught them about witness statement, identification, and evaluation of evidence. How could proponents of jury trials argue that training does not matter in solving the kind of complicated problems in some criminal cases? Why do they ignore that there are more known miscarriages of justice in jury countries such as the United States and Great Britain than in continental nonjury countries?

### **Other Disadvantages**

A system with jury trials has some additional disadvantages that are seldom discussed. First, a jury trial is more complicated than a bench trial (a trial where a judge or panel of judges reaches a verdict). That places higher demands on the defense attorney. Jury trials require better lawyers, but most defendants in the United States are too poor to hire a good-quality attorney. In countries with bench trials, a not-very-good attorney is a lesser disadvantage for the defendant.

The jury trial also is very time consuming and labor intensive. In fact, it is so expensive that a jury system can only be maintained if the vast majority of cases are dealt with differently. In the United States that occurs through plea bargaining, a negotiated agreement between prosecution and defense with a marginal check by a judge. In practice this is a system where most cases end in a way that nobody really has evaluated the evidence, without public scrutiny and with disproportionate power for the prosecution.

In short: In the jury system most cases are handled in secret, and a minute number of cases are decided by little groups of people who apply their common-sense ideas to complicated problems beyond their training.

## Evaluating Jury Trials

Based on the articles “Jury Trials: In Favor” and “Jury Trials: Opposed” as well as ideas discussed in class and in the graphic novel, what do you think: Are jury trials an important tool in protecting our rights and liberties or do they “promote greater miscarriage of justice”?

Evidence: List the evidence and ideas you have from the graphic novel, class discussions, the two articles and any other reliable sources to support each side of the argument:

Jury trials protect our rights and liberties	Jury trials promote greater miscarriage of justice

Which side do you agree with more? Why? Write a persuasive essay/editorial/article that argues your point of view.

## **Extended Research and Assessment**

1. Research your state court system. Find out the responsibilities and expectations of being called to jury service in your state. Have students create some type of public service announcement: brochure, poster, spoken, video format, to educate their peers about the responsibilities and roles involved in being summoned for jury service.
2. Research the DUI/DWI consequences and laws for your state. Have students create some type of public service announcement: brochure, poster, spoken, video format, to educate their peers about the dangers and consequences of driving under the influence.

## **Recommendation for Role play**

1. Have students read through page 10 of the graphic novel on their own for background. Students may answer some of the questions on the “Being on a Jury” sheet or talk through some of the “Extended Discussion Questions” before engaging in the role play to give them some understanding of the function of juries.
2. Pick 4 students to act out the trial. One will be the prosecuting attorney, Ms. Medina, one the defense attorney, Mr. Fargo, one the defendant Kaye Witherspoon and the last one will be the witness Officer Ardner. Have the 4 students in the front of the room and have them act out the trial. Stop on page 16 with the judge’s final instructions to go to the jury room.
3. Divide the rest of the class up into roughly 6 member juries, like in the graphic novel. Tell them that the graphic novel presents the facts of the case as presented in court. This is all the information the jury had to make its decision. For additional support you could provide each group/jury with your state’s DUI laws. Tell each jury to deliberate and come to a consensus, was Kaye Witherspoon guilty or not. They need to write down their unanimous decision as well as their reasoning for it.
4. After they have made their own decisions, have students read the rest of the graphic novel and the deliberations of the jury. Have students review their own decisions and decide if they are going to keep their decision, if reading the deliberations altered their thinking have students write a new decision and justification. Ask: Did reading the deliberations in the graphic novel change or affect your decision on the case in any way? Do the ideas in the graphic novel add something new to your thinking? Why or why not? What can you learn about what a juror should keep in mind when deciding a case?





## **Dos and Don'ts for Jurors**

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- ☑ **DO** dress appropriately for court (collared shirts, work attire, long pants)
  - ☑ **DO** arrive at least 15 minutes early to allow time for security screening
    - ☑ **DO** check the location of the courthouse to be sure of your destination
  - ☑ **DO** park in an approved parking lot that will allow your car to remain for several hours (exact change is often required)
  - ☑ **DO** bring money to pay for parking as few courts pay for jurors parking
  - ☑ **DO** check every night (telephone or computer) to see if you have been chosen to report for a petit jury
  - ☑ **DO** show on the appointed day and time for grand jury selection
  - ☑ **DO** bring a picture ID with you each time you enter the courthouse
  - ☑ **DO** ask the Deputy Clerk any questions you may have when you have jury service
  - ☑ **DO** keep an open mind and consider only the evidence presented in the courtroom
- X DON'T** dress inappropriately (no blue jeans, shorts, or t-shirts)
  - X DON'T** be late for jury service (give yourself some extra time to find the courthouse, park, and clear security)
  - X DON'T** park in short term parking (you may be in the courthouse for 8 hours)
  - X DON'T** expect parking lots to take checks or credit cards (some only accept cash)
  - X DON'T** "forget" to show for jury duty (jury duty is a requirement of American citizens)
  - X DON'T** bring any electronic devices into the courthouse (you will have to return them to your car and clear security again)
  - X DON'T** ever discuss the case you are hearing with anyone outside of the jury
  - X DON'T** discuss the case with anyone on the jury until you are in the jury deliberation room
  - X DON'T** make your decision during the trial (wait for all the evidence to be presented and to hear the thoughts of the other jurors)

## Example Lesson Plan: DUI

### Objectives:

1. To identify the major issues and events in the case
2. To decide the case of Kaye Witherspoon based on the evidence
3. To evaluate the case against Kaye Witherspoon

### Activities:

1. Give students a copy of the graphic novel and a “Being on a Jury” sheet. Have students read the novel through page 10 and complete the sheet. Discuss student answers.
2. Pick 4 students to act out the trial. One will be the prosecuting attorney, Ms. Medina, one the defense attorney, Mr. Fargo, one the defendant Kaye Witherspoon and the last one will be the witness Officer Ardner. Have the 4 students in the front of the room and have them act out the trial. Stop on page 16 with the judge’s final instructions to go to the jury room.
3. Divide the rest of the class up into roughly 6 member juries, like in the graphic novel. Tell them that the graphic novel presents the facts of the case as presented in court. This is all the information the jury had to make its decision. For additional support you could provide each group/jury with your state’s DUI laws. Tell each jury to deliberate and come to a consensus, was Kaye Witherspoon guilty or not. They need to write down their unanimous decision as well as their reasoning for it.
4. After they have made their own decisions, have students read the rest of the graphic novel and the deliberations of the jury. Have students review their own decisions and decide if they are going to keep their decision, if reading the deliberations altered their thinking have students write a new decision and justification. Ask: Did reading the deliberations in the graphic novel change or affect your decision on the case in any way? Do the ideas in the graphic novel add something new to your thinking? Why or why not? What can you learn about what a juror should keep in mind when deciding a case?
5. To wrap up, have students write a response: Do you feel the defense attorney did a good job in establishing reasonable doubt in this case? Why or why not? Do you feel the prosecution did a good job in proving guilt beyond a reasonable doubt? Why or why not? As a juror, what could either side have done better to help you decide the case?

## Example Lesson Plan: DUI Consequences

### Objectives:

1. To identify the major issues and events in the case
2. To research local laws concerning DUI
3. To create a public service announcement to educate people about the consequences of driving under the influence

### Activities:

1. Give students a copy of the graphic novel and a “What’s the Issue?” sheet. Have students read the novel and complete the sheet. Discuss student answers.
2. Have a class discussion using the Extended discussion questions.
3. Have students complete the DUI Consequences Sheet. Discuss student responses and ideas.
4. Break students into small groups. Have them develop a public service announcement that will educate their peers and community about the dangers and legal consequences of DUI. Share these with the class.

## Example Lesson Plan: Being a Juror

### Objectives:

1. To identify the roles and responsibilities of jurors
2. To compare and contrast different forms of jury service
3. To evaluate innovations in jury trials.

### Activities:

1. Start class with the “Jury Duty Double Down” sheet to assess student prior knowledge about courts and juries.
2. Give students a copy of the graphic novel and a “Being a Juror” sheet. Have students read the novel and complete the sheet. Discuss student answers.
3. Tell students that there are different types of juries and different types of cases. Not everyone who is summoned for jury duty will have an experience just like Matt. Give students the “How might my jury service look similar to or different from Matt’s?” sheet and have them work in small groups to brainstorm how different cases would look from a jury’s perspective.
4. Tell students some courts are allowing certain jury trial innovations. Some courts are allowing jurors to take notes during proceedings, allowing jurors to ask questions of witnesses, providing jurors with written instructions and permitting jurors to discuss the evidence before formal deliberations.
  - a. Do you agree with these innovations? Which ones? Why or why not?
  - b. Do these techniques affect juror impartiality?
  - c. Do they inappropriately wrest control of the presentation of evidence away from counsel?
  - d. Must jurors “be passive to be impartial”?
5. Have students write a letter to the U.S. Court system either supporting or arguing against one of the new jury innovations.
6. OR Discuss: One of the jurors, Bill, says “For a court case to be fair, you have to put human beings together in a room. If I’m ever on trial, I want to be able to see the faces of the judge and the jury.”
  - a. Do you agree with this sentiment? Why or why not?
  - b. How might it change the decision of the judge and jury if they did not see the person being accused? Should it matter?
  - c. Do you think it is possible that eventually court cases could take place online? Why or why not?

d. What guidelines would have to be put in place to protect people if courts moved online?

## Example Lesson Plan: Being a Juror

### Objectives:

1. To identify the roles and responsibilities of being a juror
2. To analyze the issues facing jurors
3. To develop guidelines for responsible jury service

### Activities:

1. Give students a copy of the graphic novel and a “Being a Juror” sheet. Have students read the novel and complete the sheet. Discuss student answers.
2. Have a class discussion about the issue using some of the discussion questions as springboards for the discussion.
  - a. The American legal system requires that in order for someone to be found guilty, there must be proof beyond a reasonable doubt.
    - i. Why do we uphold this policy? What is the goal of this?
    - ii. How would you define reasonable doubt? Why might that be difficult?
    - iii. What problems does the idea of reasonable doubt create for a jury?
    - iv. Do you feel there is reasonable doubt in this case? Why or why not?
  - b. The judge directs the jurors to follow the law whether they agree with it or not. Why is this important for jurors to remember? How might this be problematic as a juror?
  - c. The judge tells the jury that “You must not be influenced by sympathy or prejudice against the defendant. How does a juror best achieve this desired level of objectivity? What can a juror do or what should they focus on to be as impartial as possible?
3. Explain to students that jury service is an important part of being an American citizen and protecting the rights and liberties of our country. Given this, students are to develop a set of guidelines or a handbook for responsible jury service to help their peers and community members be aware and responsible jury members. You could use the “Dos and Don’ts for Jurors” to help get students started.

## Example Lesson Plan: Being a Juror

### Objectives:

1. To identify the roles and responsibilities of being a juror
2. To create a set of *voir dire* questions for different types of cases
3. To evaluate the jury selection process.

### Activities:

1. Give students a copy of the graphic novel and a “Being a Juror” sheet. Have students read the novel and complete the sheet. Discuss student answers.
2. Give students a “You be the Lawyer” sheet. Divide the class into groups of 4. Give each group a different case and have 2 members of the group act as prosecution and 2 members act as the defense team. Have each pair develop a set of *voir dire* questions that they would want to ask potential jurors for each case. Have students determine what types of characteristics or backgrounds might make a potential juror biased for or against your position and make them a more or less desirable jury candidate.
3. Tell the groups that they have to select a jury of 6 from the rest of the class. Each group of 4 will ask the rest of the class their *voir dire* questions and select the 6 people who they feel make the most fair and impartial jury. Students can be asked to justify their selections verbally or in writing.
4. Have students reflect on what difficulties they faced being the lawyer in the *voir dire* process. What are the advantages to this process? What might be some problems with this process? What could be done to improve the process of jury selection?

## National Standards for Government addressed in Justice Case Files #3

### I. WHAT ARE CIVIC LIFE, POLITICS, AND GOVERNMENT?

#### A. What is civic life? What is politics? What is government? Why are government and politics necessary? What purposes should government serve?

1. Defining civic life, politics, and government. Students should be able to explain the meaning of the terms civic life, politics, and government.

To achieve this standard, students should be able to

- distinguish between civic life--the public life of the citizen concerned with the affairs of the community and nation--and private life--the personal life of the individual devoted to the pursuit of private interests
- describe politics as the process by which a group of people, whose opinions or interests might be divergent,
  - reach collective decisions that are generally regarded as binding on the group and enforced as common policy
  - seek the power to influence decisions about such matters as how their government will manage the distribution of resources, allocation of benefits and burdens, and management of conflicts
  - accomplish goals they could not realize as individuals
- describe government as the formal institutions with the authority to make and implement binding decisions about such matters as the distribution of resources, the allocation of benefits and burdens, and the management of conflicts
  - define political authority, identify its sources and functions, and differentiate between authority and power without authority
  - identify examples of formal institutions with the authority to control and direct the behavior of those in a society, e.g., tribal councils, courts, monarchies, democratic legislatures

3. The purposes of politics and government. Students should be able to evaluate, take, and defend positions on competing ideas regarding the purposes of politics and government and their implications for the individual and society.

To achieve this standard, students should be able to

- a. explain competing ideas about the purposes of politics and government, e.g.,
  - i. improving the moral character of citizens
  - ii. promoting individual security and public order
    - protecting individual rights

## B. What are the essential characteristics of limited and unlimited government?

1. Limited and unlimited governments. Students should be able to explain the essential characteristics of limited and unlimited governments.

To achieve this standard students should be able to

- describe the essential characteristics of limited and unlimited governments
  - limited governments have established and respected restraints on their power, e.g.,
    - constitutional government--governments characterized by legal limits on political power

2.

3. The rule of law. Students should be able to evaluate, take, and defend positions on the importance of the rule of law and on the sources, purposes, and functions of law.

To achieve this standard, students should be able to

- explain why the rule of law means more than simply having laws
  - explain alternative ideas about the purposes and functions of law such as
    - regulating relationships among people and between people and their government
    - providing order, predictability, security, and established procedures for the management of conflict
    - specifying the allocation of rights and responsibilities and of benefits and burdens
4. Civil society and government. Students should be able to explain and evaluate the argument that civil society is a prerequisite of limited government.

To achieve this standard, students should be able to

- explain how civil society makes it possible for people individually or in association with others to bring their influence to bear on government in ways other than voting and elections

## C. What are the nature and purposes of constitutions?

2. Conditions under which constitutional government flourishes. Students should be able to evaluate, take, and defend positions on what conditions contribute to the establishment and maintenance of constitutional government.

To achieve this standard, students should be able to

- identify the most important responsibilities individual citizens and people serving in government should assume to insure the preservation and improvement of constitutional government

## **II. WHAT ARE THE FOUNDATIONS OF THE AMERICAN POLITICAL SYSTEM?**

### **D. What values and principles are basic to American constitutional democracy?**

- 2.** Republicanism and American constitutional democracy. Students should be able to explain how and why ideas of classical republicanism are reflected in the values and principles of American constitutional democracy.

To achieve this standard, students should be able to

- a. define a "republic" as a state in which the citizenry as a whole is considered sovereign but which is governed by elected representatives rather than directly by the people, as in direct democracy
- b. explain major ideas of republicanism, i.e.,
  - i. government of a republic seeks the public or common good rather than the good of a particular group or class of society
  - ii. "civic virtue" of citizens is essential; civic virtue means that citizens put the public or common good above their private interests
- 3.** Fundamental values and principles. Students should be able to evaluate, take, and defend positions on what the fundamental values and principles of American political life are and their importance to the maintenance of constitutional democracy.

To achieve this standard, students should be able to

- a. explain the following values which are widely considered to be fundamental to American civic life
  - i. individual rights, i.e., life, liberty, property, and the pursuit of happiness
  - ii. the public or common good
  - iii. self government
  - iv. justice
  - v. equality
  - vi. diversity
  - vii. openness and free inquiry
  - viii. truth

## **III. HOW DOES THE GOVERNMENT ESTABLISHED BY THE CONSTITUTION EMBODY THE PURPOSES, VALUES, AND PRINCIPLES OF AMERICAN DEMOCRACY?**

### **C. How are state and local governments organized and what do they do?**

2. Organization of state and local governments. Students should be able to evaluate, take, and defend positions on issues regarding the relationships between state and local governments and citizen access to those governments.

To achieve this standard, students should be able to

- describe how their state and local governments are organized, e.g., the organization of legislative, executive, and judicial functions at state and local levels

#### D. What is the place of law in the American constitutional system?

1. The place of law in American society. Students should be able to evaluate, take, and defend positions on the role and importance of law in the American political system.

To achieve this standard, students should be able to

- explain why the rule of law has a central place in American society, e.g., it
  - establishes limits on both those who govern and the governed
  - makes possible a system of ordered liberty that protects the basic rights of citizens
  - promotes the common good.
- explain how the individual's rights to life, liberty, and property are protected by the trial and appellate levels of the judicial process and by the principal varieties of law, e.g., constitutional, criminal, and civil law

2. Judicial protection of the rights of individuals. Students should be able to evaluate, take, and defend positions on current issues regarding the judicial protection of individual rights.

To achieve this standard, students should be able to

- explain the importance of an independent judiciary in a constitutional democracy
- explain the importance of the right to due process of law for individuals accused of crimes, e.g., habeas corpus, presumption of innocence, impartial tribunal, trial by jury, right to counsel, right against self-incrimination, protection against double jeopardy, right of appeal
- explain why due process rights in administrative and legislative procedures are essential for the protection of individual rights and the maintenance of limited government
- describe the adversary system and evaluate its advantages and disadvantages
- explain how the state and federal courts' power of judicial review reflects the American idea of constitutional government, i.e., limited government

#### V. WHAT ARE THE ROLES OF THE CITIZEN IN AMERICAN DEMOCRACY?

##### A. What is citizenship?

1. The meaning of citizenship in the United States. Students should be able to explain the meaning of citizenship in the United States.

To achieve this standard, students should be able to

- explain the idea that citizenship
  - is legally recognized membership in a self-governing community
  - confers equal rights under the law
  - confers certain rights and privileges, e.g., the right to vote, to hold public office, to serve on juries
- explain that Americans are citizens of both their state and the United States

## B. What are the rights of citizens?

1. Personal rights. Students should be able to evaluate, take, and defend positions on issues regarding personal rights.

To achieve this standard, students should be able to

- explain the meaning of personal rights as distinguished from political rights, e.g., the right to privacy or the right to freedom of conscience as distinguished from the political right to peaceably assemble and petition for a redress of grievances
- explain the importance to the individual and to society of such personal rights as
  - right to due process of law and equal protection of the law
- explain how personal rights are secured in American constitutional democracy by such means as the rule of law, checks and balances, an independent judiciary, a vigilant citizenry

2. Political rights. Students should be able to evaluate, take, and defend positions on issues regarding political rights.

To achieve this standard, students should be able to

- identify the major documentary statements of political rights--the Declaration of Independence, the Northwest Ordinance, the United States Constitution including the Bill of Rights, state constitutions and bills of rights, civil rights legislation, court decisions
- explain the importance to the individual and society of such political rights as
  - right to vote and run for public office
- explain how political rights are secured by constitutional government and by such means as the rule of law, checks and balances, an independent judiciary, and a vigilant citizenry

## C. What are the responsibilities of citizens?

2. Civic responsibilities. Students should be able to evaluate, take, and defend positions on issues regarding civic responsibilities of citizens in American constitutional democracy.

To achieve this standard, students should be able to

- evaluate the importance of each citizen reflecting on, criticizing, and reaffirming basic constitutional principles
- evaluate the importance for the individual and society of
  - obeying the law
  - serving as a juror
- evaluate whether and when their obligations as citizens require that their personal desires and interests be subordinated to the public good

**D. What civic dispositions or traits of private and public character are important to the preservation and improvement of American constitutional democracy?**

1. Dispositions that lead the citizen to be an independent member of society. Students should be able to evaluate, take, and defend positions on the importance to American constitutional democracy of dispositions that lead individuals to become independent members of society.

To achieve this standard, students should be able to

- explain the meaning and importance of individual responsibility-- fulfilling the moral and legal obligations of membership in society

2. Dispositions that foster respect for individual worth and human dignity. Students should be able to evaluate, take, and defend positions on the importance to American constitutional democracy of dispositions that foster respect for individual worth and human dignity.

To achieve this standard, students should be able to

- explain the meaning and importance of compassion--concern for the well-being of others

3. Dispositions that incline the citizen to public affairs. Students should be able to evaluate, take, and defend positions on the importance to American constitutional democracy of dispositions that incline citizens to public affairs.

To achieve this standard, students should be able to

- explain the meaning of civic mindedness--what the Founders called civic virtue--or attentiveness to and concern for public affairs

4. Dispositions that facilitate thoughtful and effective participation in public affairs. Students should be able to evaluate, take, and defend positions on the importance to American constitutional democracy of dispositions that facilitate thoughtful and effective participation in public affairs.

To achieve this standard, students should be able to

- evaluate the usefulness of the following traits in facilitating thoughtful and effective participation in public affairs

- civility--treating other persons respectfully, regardless of whether or not one agrees with their viewpoints; being willing to listen to other points of view; avoiding hostile, abusive, emotional, and illogical argument
- respect for the rights of other individuals--having respect for others' right to an equal voice in government, to be equal in the eyes of the law, to hold and advocate diverse ideas, and to join in associations to advance their views
- respect for law--willingness to abide by laws, even though one may not be in complete agreement with every law; willingness to work through peaceful, legal means to change laws which one thinks to be unwise or unjust

#### E. How can citizens take part in civic life?

1. The relationship between politics and the attainment of individual and public goals. Students should be able to evaluate, take and defend positions on the relationship between politics and the attainment of individual and public goals.

To achieve this standard, students should be able to

- explain the relationship of individual participation in the political process to the realization of the fundamental values of American constitutional democracy
- explain the relationship between participation in the political process and the attainment of individual and collective goals

2. The difference between political and social participation. Students should be able to explain the difference between political and social participation.

To achieve this standard, students should be able to

- evaluate the importance of both political and social participation to American constitutional democracy

3. Forms of political participation. Students should be able to evaluate, take, and defend positions about the means that citizens should use to monitor and influence the formation and implementation of public policy.

To achieve this standard, students should be able to

- describe the many ways citizens can participate in the political process at local, state, and national levels