Activity Overview

The Sixth Amendment to the United States Constitution guarantees that “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.” The Sixth Amendment’s specification that the jury should be drawn from the district or state where the crime was committed suggests the importance of the community in jury selection. For much of U.S. history, however, jury pools represented only a limited segment of the community. Another issue that has often been raised is whether our system of justice ensures trial before an “impartial” jury.

Students will examine their understanding of the functions and makeup of juries in contemporary society by analyzing jury issues raised in Susan Glaspell’s short story “A Jury of Her Peers,” and apply newly acquired knowledge about the democratization of jury pools and the development of the concept of an impartial jury.

Objectives

During this activity students will

- Prepare to read the short story “A Jury of Her Peers” by completing an Anticipation Guide examining their own stereotypes and assumptions about juries.
- Highlight points in the story that echo or contradict ideas expressed in the Anticipation Guide.
- Evaluate changes in their beliefs after they read the story.
- Apply knowledge about the development of jury functions and the democratization of jury pools across time to a second interpretation of “A Jury of Her Peers” after also learning the facts of the real-life case on which the story is based.

Estimated Time

- **Reading**: Two class periods or two nights as homework
- **Class Discussion**: Four class periods
- **Writing**: One class period or one night as homework

Materials and Preparation

- Make two copies of Handout 1, Anticipation Guide, page 28, for each student. Students will use this form two times.
When students today hear the word “jury,” they often think about verdicts in high profile cases. The trial jury, however, exemplifies the way power, political authority, and civic responsibility converge under American constitutional principles. The jury’s power to make legal decisions embodies the idea of government by the people and the democratic commitment to peaceful resolution of conflict. It is a core feature of American civic life. It is also the only American governing body through which governing generally occurs by consensus.

The Sixth Amendment’s specification that the jury should be drawn from the district or state where the crime was committed suggests the importance of the community in jury selection. As the Supreme Court wrote in *Taylor v. Louisiana*, 419 U.S. 522 (1972), “the Court has unambiguously declared that the American concept of the jury trial contemplates a jury drawn from a fair cross-section of the community.”

Until very recently, however, the concept of community as applied to jury pools was exclusive and limited. Women were not permitted to serve on juries in most states until the 1940s. Courts still monitor jury selection procedures today to ensure that members of racial or ethnic groups are not unfairly excluded from service. (See Handout 5, Facts: The Trial Jury, on p. 33, and Handout 6, U.S. Supreme Court Cases: Jury Pools on pp. 34–35 for more details.)

As with all social institutions, views differ about the trial jury’s strengths and weaknesses. One question that is often raised today is whether the modern system of justice ensures trial before an “impartial” jury. What does it mean to be impartial? How do we ensure that juries remain impartial? Is it even possible? Is bias built into the system?

The short story “A Jury of Her Peers,” by Pulitzer-prize winning author Susan Glaspell, offers a compelling way to explore historical and contemporary jury issues with students, including what it means to be “impartial” and to represent a “cross-section of the community.”

“A Jury of Her Peers” (1917) was adapted from a one-act play titled *Trifles* (1916), and it is based on the actual murder trial of Margaret Hossack, who was found guilty of the first degree murder of her husband John. Susan Glaspell covered Margaret Hossack’s first trial as a reporter for the *Des Moines Daily News*. Hossack was granted a new trial by the Iowa Supreme Court. Her second trial resulted in a hung jury, and she was not retried. (See Handout 4, Context: “A Jury of Her Peers” by Susan Keating Glaspell, pp. 31–32.) There is some indication that John Hossack had been a violent and abusive husband.

In “A Jury of Her Peers,” community members arrive at the Wright farm to investigate the murder of Minnie Wright’s husband. While the men go upstairs to the scene of the crime to

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### A Jury of Peers

The U.S. Constitution does not guarantee a trial by a jury “of peers” nor mention the phrase anywhere. Furthermore, the historical context for the term “peer” dates back to medieval times, and refers to social standing. A medieval commoner would not sit in judgment of a lord or baron. A “peer” was an enfranchised member of a community. Historically, jury service has been tied to suffrage. When the U.S. Constitution was ratified, only white men who held property could vote; similarly only white men who held property could serve on juries. A “peer” in the lexicon of eighteenth century America referred to social standing in the community—standing associated with suffrage and property ownership. With the democratizing expansion of suffrage in the United States, the word “peer” took on new meaning.

In addition, jury service was further limited by the “key man” system for jury summonses. Under the “key man” system, which can be viewed as an American application of the English “peer” stipulation for jury service, only men thought to be particularly suited to jury duty because of their standing in the community, intelligence, or judgment were asked to serve. And, in fact, this system persisted until the 1960s, when Congress passed the Jury Selection and Service Act (28 U.S.C. 1861).
look for clues about the murder, the women remain in the kitchen where they observe “evidence” overlooked as insignificant by the men. The women then tamper with the evidence that would give motive to Minnie’s crime because it appears to them that she had been abused.

Procedures
Prereading Exercise
Before students read the story “A Jury of Her Peers,” ask them to complete Handout 1, Anticipation Guide. Explain that the guide is intended to help them think about what they will be learning. Ask them to write a sentence explaining why they agree or disagree with the statements on the Anticipation Guide and to be prepared to give reasons for their opinions during class discussion.

After students complete the guides, discuss their responses. Ask for a show of hands on each statement. Capture the results on the board. Be prepared to address stereotyping.

On Trifles
In the following excerpt, Susan Glaspell recalls how she first came to think of writing her play Trifles, from which “A Jury of Her Peers” was adapted. The play was first written for the Provincetown Players, a theater company founded by Glaspell and her husband, George Cram Cook, based in Provincetown, Mass.

So I went out on the wharf, sat alone on one of our wooden benches without a back, and looked a long time at that bare little stage. After a time the stage became a kitchen—a kitchen there all by itself. I saw just where the stove was, the table, and the steps going upstairs. Then the doors at the back opened, and people all bundled up came in—two or three men, I wasn’t sure which, but sure enough about the two women, who hung back, reluctant to enter that kitchen. When I was a newspaper reporter out in Iowa, I was sent down-state to do a murder trial, and I never forgot going into the kitchen of the woman locked up in town. I had meant to do it as a short story, but the stage took it for its own.

Susan Glaspell, The Road to the Temple, A Biography of George Cram Cook, 1927.
"A Jury of Her Peers" and Domestic Abuse

**Appropriateness of Reading Selection:** Please read “A Jury of Her Peers” before asking students to read it. The story deals with domestic abuse. You may want to be prepared to talk about it. For example, during discussion of the story, you might ask students, “How would you help a person in this situation?” Be prepared to tell them how they might help someone in your community. Consult your school counselors for ideas. Additional resources follow.

**ABA Division for Public Education: Domestic Violence Outreach**
The American Bar Association Division for Public Education offers domestic violence information, in both English and Spanish: www.abanet.org/publiced/domviol.html

**National Domestic Abuse Hotline**
You can access statistical information from the National Domestic Abuse Hotline, where you will also find a good deal of information about domestic abuse and some information specifically about teens, dating, and violence: ndvh.org/

**WomensLaw.org**
More information about teens, dating, and violence can be found on the WomensLaw.org Web site: www.womenslaw.org/teens.htm

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**Part Two**

After you believe that students have a basic understanding of the plot, return both versions of their completed Anticipation Guides. Give them a few minutes to compare their answers individually. Divide the class into small groups. Ask each group to discuss how their answers may have changed after they read the story. Ask them to discuss what made them change their answers, if anything, and passages of the story that may have led them to reconsider their responses. Students should identify the answers in common that seemed to change for their group after reading the story. They should be prepared to explain rationales for change.

Distribute Handout 3, Interpreting “A Jury of Her Peers.” The handout contains all of the statements on the Anticipation Guide. Ask each group to decide if they think that the story generally supports, refutes, or is ambiguous (capable of being understood in more than one way) on the statements on the handout and to find sections in the story that support or refute the statements or passages that make it difficult to assign a position to the statements. For example, the first statement is “Women are more observant than men.” Students might decide that the story supports that contention and cite the section in the story during which the women find Minnie’s dead bird as evidence that the statement is true. Also, ask them to make notes about aspects of the story that they don’t understand.

**Part Three**

Reassemble the class. First, ask for a show of hands on who agrees or disagrees with each of the statements based on their responses on the Anticipation Guide after they read the story. Compare results to the show of hands from their prereading completion of the guide. Ask students to explain why they changed their answers.

Second, ask each group to report on their consensus about the point of view expressed in the story on each statement and which passages or quotes support the group’s contention. Note the results. Discuss how they compare with individual’s positions on the statements.
Part Four

Next, provide students with background information about Susan Glaspell and the Margaret Hossack case. (See Handout 4, Context: “A Jury of Her Peers” by Susan Keating Glaspell). Present some facts about the Sixth Amendment and the democratization of jury pools, including information about key court cases. (See Handout 5, Facts: Trial Jury and Handout 6, U.S. Supreme Court Cases: Jury Pools.)

After presenting the background, ask students why they think that Glaspell changed the murder weapon in the fictionalized account from an axe to a rope? Why do they think we never see Minnie Foster, also known as Mrs. Wright, in the story? Do they think that the author expresses a point of view about the attitudes of male characters? If, so, what is it? (Mr. Hale, Mr. Peters, the sheriff, and the county attorney) Is Glaspell sympathetic to the female characters? If so, which ones? Ask them to explain their answers.

Discuss whether they think that the story alone allows them to truly evaluate the author’s perspective. Is it possible that a point of view expressed in a work of fiction may actually differ from the perspective of an author? You will want students to understand that a position in a work of fiction may be presented to provoke thought and discussion about an issue or theme, but that it may not necessarily represent the author’s true position. Ask them to identify the issues and themes that Glaspell might be asking readers to consider about juries, crime, and sentencing through the perspectives explored in the story. (Themes: Main abstract ideas recurring in a poem or work of fiction—or universal truths—for example, Friends are a person’s most valuable possession.)

Ask students if fully discussing the story and examining their own assumptions and those identified in the story have led them to change their mind about the actions of Mrs. Hale and Mrs. Peters, and if so, why?

Conclude the discussion by asking these questions,

- Who bears responsibility for events during the county attorney’s investigation at the farm?
- To what extent do the themes examined in the story apply to real juries hearing real cases, today as opposed to the themes as applied in 1917? And what, specifically, are those themes?
- What is the difference between a jury of peers and a jury composed of a fair cross section of a community? (And, today, if our standard were a “jury of peers,” who would a peer be, as opposed to how a peer would have been defined in 1917?)
- Should a cross section of a community represent the cross section of a local community or the nation as a whole? (And, how might these differ?)
- How might empathy affect impartiality in a jury deliberation?
- What role, if any, should empathy play in a courtroom and in jury proceedings?
How might the composition of a jury affect its deliberation process and the outcome of a verdict?

What is the significance of the title of the story—“A Jury of Her Peers”? (Recall, women were excluded from jury service in 1917 when Glaspell wrote the story, and they were not universally granted the right to vote until ratification of the 19th Amendment (1920), although beginning with Wyoming in 1890, a number of western states granted voting rights to women.)

To what extent do you think the story is a valuable way to begin to think about real-life jury or courtroom situations today? (Give students an opportunity to tell you what they thought about the story in general.)

Writing Exercise and Assessment

Assessment Exercise Option One

Op Ed: For this exercise, students will write an Op Ed piece about what transpired at the Wright farm during the county attorney’s investigation from the perspective of an editorial writer who lived in 1917.

Explain that Op Ed is shorthand for “Opinions and Editorials.” Many papers have Op Ed pages and columnists who write weekly about world events. Op Ed columns are different from “Letters to the Editor,” which are written by concerned citizens. Op Ed columns are written by professional writers, frequently on the staff of papers. An Op Ed writer writes in the style of a journalist but with a strong opinion about the topic. Op Ed pieces usually express an opinion about a social problem or newsworthy event.

In this Op Ed column, students should write three paragraphs. Each paragraph should begin with a topic sentence.

1. In the first paragraph, students should briefly restate what happened at the Wright farm, thinking of all the involved parties—the men and the women. After presenting the facts, students should state their opinion about the events.

2. In the second paragraph, students should support their opinion about the events with reasons or rationales. They should explain why they hold their opinion citing evidence from the story, using at least two quotations/examples to support their opinions.

3. In the third paragraph, students should write about the impact of the events. How will the actions of Mrs. Hale and Mrs. Peters affect the ability of the jury to make an accurate decision in the case? Are the men who were present at the time of the county attorney’s investigation blameless? Why or why not? What will the outcome be for Minnie Foster (also known in the story as Mrs. Wright)? How effective can the jury system be when evidence is destroyed or jurors don’t accurately identify facts and interpret clues to motivation?
Assessment Exercise Option Two

Pursuing Law v. Pursuing Justice in “A Jury of Her Peers”: As the student writes an essay in response to two questions. The essay should be at least three paragraphs in length. Each paragraph of the essay should begin with a topic sentence.

1. Students should begin their essays by considering this question: In the story, to what extent or in what ways are pursuing the law and pursuing justice the same or different?

2. Students should explain their answer to the question and cite evidence from the story, using at least four quotations and/or examples to support their opinions.

3. Students should conclude their essays by answering these questions: What do you think the story says about the role of the jury in pursuing the law and what does it say about the role of the jury in pursuing justice?

4. Ask students to explain their rationales or reasons. Again, students should cite evidence from the story using at least four quotations and/or examples to bolster their opinions, or they may cite an example from the story and refute it.

Resources

American Bar Association American Jury Initiative

See abanet.org/jury/moreinfo/home

This Web site includes resources on the jury, including an annotated bibliography, a juror appreciation kit, and links to classroom lessons.

American Bar Association Division for Public Education, Dialogue on the American Jury

See www.abanet.org/publiced/features/dialogues.html

This discussion program suitable for high school classrooms on the American jury is designed to explore the many issues related to trial by jury. Topics include history of trial by jury, issues confronting the jury today (e.g., unanimous verdicts, exemptions from service), and landmark rulings on the jury.


Looking at the role of juries, this 40-page booklet covers grand juries, trial juries, and major issues facing the jury system today.


The entire edition of this magazine for teachers, which includes teaching strategies, focuses on the goals and functions of the jury, both historically and today, alternatives to the American jury system presented by world jury systems, and visions for the American jury of the future, bias in the jury system, and more.

American Judicature Society: National Jury Center

See www.ajs.org/jc

This professional society Web site provides extensive information about all aspects of the jury, including jury improvements, right to a jury trial, Frequently Asked Questions, juror privacy, decision-making, and more. A topical bibliography of jury-related articles is also available.

This article discusses domestic abuse themes in both their literary treatment and legal context of Glaspell’s time.


This extensively researched article provides an extensive overview of the Hossack case, legal approaches and social thinking about women as agents of violent crime during Glaspell and Hossack’s time, as well as the news coverage of the case.

Center for Jury Studies
See www.ncsconline.org/Juries

Part of the National Center for State Courts, this research center Web site includes jury news items, such as accommodating jurors with disabilities and free public transportation for jurors, as well as recommended books and reviews.


This biography by Susan Glaspell of her husband, George Cram Cook, with whom she founded the Provincetown Players theater company, is a combination of biography and autobiography and offers a portrait of Midwestern America in the late nineteenth and early twentieth centuries. This 2005 edition includes annotations and notes, and an introductory essay by Glaspell scholar Ben-Zvi.
# Anticipation Guide

**Directions:** Read each statement. If you agree with the statement, check “Agree.” If you disagree with a statement, check “Disagree.” Be ready to explain your answers.

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<tr>
<th>Agree</th>
<th>Disagree</th>
<th>Statement</th>
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<tr>
<td></td>
<td></td>
<td>1. Women are more observant than men. Why?</td>
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<td>2. Men are smarter than women. Why?</td>
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<td>3. Americans juries should be fair when administering justice. Why?</td>
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<td>4. You can tell a criminal from an innocent person by how he/she looks. Why?</td>
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<td>5. Murder is always wrong. Why?</td>
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<td>6. A jury should include people who are of the same sex, race, or ethnicity as the accused person. Why?</td>
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<td>7. Evidence of a crime should never be destroyed. Why?</td>
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<td>8. Women are more concerned about motivation [the reasons for doing something] for a crime than men are. Why?</td>
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<td>9. No crime is ever justified. Why?</td>
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“A Jury of Her Peers” Terms and Vocabulary

“a little more red up”
A phrase meaning a little more ready or prepared.

“done up”
A version of the phrase “done in,” meaning worn out or exhausted.

knotting
Knotting and quilting are the methods to hold the fill in place in quilts. Quilting is time intensive. It involves in and out stitching. Knotting requires one quick stitch only.

linger
A word meaning to stay in a place longer than necessary.

pleatin’
Pleatin’ is an abbreviated form of the word pleating. It means folding, particularly folding in parallel folds.

reproach
Reproach means criticize or blame.

“speak a piece”
To speak a piece is to give a short speech; in this context it refers particularly to a child at school giving a speech or presentation.

team
In the context of this story, team refers to two or more horses drawing a cart or buggy.

trifles
Trifles are small issues. In this story, the word is used to refer to small domestic problems.

venture
Venture in this context means suggest.
Interpreting “A Jury of Her Peers”

Read the statements below. Indicate whether your group thinks that the story supports, refutes or presents an ambiguous stance on each of the statements. Find passages in the story to support your contention. Make notes so that you will be able to explain your rationale.

1. Women are more observant than men.

2. Men are smarter than women.

3. American juries should be fair when administering justice.

4. You can tell a criminal from an innocent person by how he/she looks.

5. Murder is always wrong.

6. A jury should include people who are of the same sex, race, or ethnicity as the accused person.

7. Evidence of a crime should never be destroyed.

8. Women are more concerned about motivation (the reasons for doing something) for a crime than men are.

9. No crime is ever justified.
The short story “A Jury of Her Peers” was based on an actual murder case covered by Pulitzer-prize winner Susan Glaspell when she worked as a reporter for the Des Moines Daily News after graduating from Drake University. The trial was attended by hundreds of spectators.

Glaspell first wrote a play, Trifles, based on the case, in 1916, and the play was performed by the Provincetown Players that same year; however, the play was not published until three years after the short story “A Jury of Her Peers” was first published in the March 5, 1917, edition of Everyweek magazine.

At the time the story was published, women could not vote under the federal Constitution. They could not be legislators. And, they could not serve on juries. In fact, women could not serve on juries in most states until the 1940s, although they received the right to vote in 1920 when the 19th Amendment to the U.S. Constitution was ratified.

About the Hossack murder:
- John Hossack was a successful farmer in Warren County, Iowa.
- He and his wife Margaret had nine children.
- John Hossack was murdered with an axe while he slept.
- His wife maintained that she slept through the murder.

According to law professor Patricia Bryan, during the inquest, neighbors specifically testified that John Hossack was a violent and abusive man, who had “frequently threatened his entire family and who had made his wife and children fear for their lives on numerous occasions.” Neighbors had apparently often intervened to “quiet” him. Despite their testimony, these same neighbors made it clear that they thought the family should have kept its troubles to itself. After one incident, a year before the murder, men in the neighborhood “induced” Margaret Hossack to return home and accompanied her to convince the Hossacks not to separate. The family itself was not forthcoming about the environment in the home while testifying during both the coroner’s inquest and trial.

Jury selection took “longer than usual,” according to Bryan, because “many potential jurors were excused” because they thought Margaret Hossack was guilty. Bryan contends that many of the neighbors presented testimony damaging to Margaret Hossack’s defense. According to one newspaper account, “the women seemed either unaware of the impact of their testimony on the defendant or not averse to making a strong case against her.” The sheriff’s wife was “one of the few women who seemed to show public sympathy and support for Margaret Hossack.”

According to Bryan, the case against Hossack presented during her first trial “was based on strong circumstantial evidence … Nothing in the case clearly proved that Mrs. Hossack was the attacker. But in their closing arguments prosecutors focused on evidence that seemed to prove she was lying in certain critical aspects of her story, including her claims that she was in bed when the attack occurred.”

While prosecutors highlighted the discord in the home to establish motive for the crime, the defense team downplayed the environment in the home preceding the murder, not wishing to provide a motive for Margaret Hossack. Bryan notes that the defense maintained that Margaret Hossack’s experiences were irrelevant to the case and made much of a reconciliation that apparently had been brokered between the couple the Thanksgiving prior to the murder.

Bryan also claims that even though the prosecution could show that Hossack had the “means, the opportunity, and the motive to kill her husband,” the prosecution still faced the obstacle of convincing an all-male jury that a woman was constitutionally capable of murder. Some historians believe that at the time of the Hossack trial, juries were lenient with female defendants, especially those who were “feminine in manner.” Based on their analysis of trial accounts, Bryan and the historian Ann Jones...
conclude that defense lawyers for women who were tried contemporaneously to Hossack relied on stereotypes and idealized beliefs about womanhood and the institution of marriage that appealed to all-male juries. Many guilty women, they maintain, went free during this period.

Bryan argues that in the Hossack case, the prosecutors did their best to portray Hossack as “unwomanly” to counter the reluctance of an all-male jury to accept that a woman might be capable of murdering a man, let alone her husband. Bryan also believes that questions about Margaret Hossack’s character were raised because she had discussed her “husband’s treatment of the family” with neighbors, violating a social taboo of the time. Bryan claims that to an all-male jury of the day, Hossack had “behaved in a way that was uncharacteristic of a good wife and mother,” by airing the family problems. She notes, “It seems likely that Susan Glaspell concluded that the jury could not have judged Maraget Hossack fairly because neither of the competing stories [prosecution and defense] told in the courtroom fully represented the complexities of her life or raised the appropriate questions.”

Margaret Hossack was convicted during her first trial and sentenced to life imprisonment. The Iowa Supreme Court reversed the verdict and granted her a new trial. Family members urged defense lawyers to seek a change of venue for the second trial because of their concerns that she would not be judged fairly by the members of her community.

During the second trial, one newspaper account noted “It is generally conceded that the women have great sympathy for Mrs. Hossack, regardless of the former trial or the statements of the prosecution.” Another account noted Hossack was “talked to by women and girls, who shake hands with her, consoling her and expressing their sympathy.”

Bryan notes that whereas during the first trial, the jury hardly deliberated at all before rendering its verdict, during the second trial, the second jury deliberated for 30 hours and was unable to reach a verdict, resulting in a hung jury.

Hossack was not retried. Two weeks after the second trial ended, the Board of Supervisors of Warren County passed a resolution that it would not aid prosecution, and that the case should be dismissed. The state’s attorney in Madison County, where the second trial took place, issued a statement that he thought Hossack was guilty, but there was no new evidence to make a difference to a verdict in another trial. A year later, he issued another statement urging the case be dismissed not because Hossack was innocent, but because “it will be impossible to secure her conviction.”

Reference
Facts: The Trial Jury

- The Sixth Amendment to the U.S. Constitution (1791) guarantees the right to trial by jury in criminal cases in both state and federal courts. This right applies to people charged with a "serious" offense, for which a person can be imprisoned for more than six months.
- The first juries in medieval England were self-informing; jury members were expected to come to court with knowledge of the facts of the case.
- Colonial jurors were instructed to decide both the law and the facts. In contrast, the judge today tells jurors that their role in a case is to decide the facts and the judge's role is to decide the law.
- Until the 1800s, service on juries was limited to white males who owned property.
- In 1879, the U.S. Supreme Court ruled that a West Virginia law allowing only white males over the age of 21 to serve on juries was unconstitutional and that state laws could not exclude black men from jury pools. But, minorities were still routinely excluded from juries in practice.
- The Supreme Court has held that the requirement of an impartial jury means that jurors must be chosen from a representative cross section of the community, with no persons excluded on the basis of race, sex, or other impermissible factors. In Taylor v. Louisiana, 419 U. S. 522 (1975), the Court wrote “The purpose of a jury is to guard against the exercise of arbitrary power to make available the common sense judgment of the community as a hedge against the overzealous or mistaken prosecutor. ... This prophylactic vehicle is not provided if the jury pool is made up of only special segments of the populace.”
- Although a criminal defendant is entitled to a grand jury or a trial jury selected from a fair cross section of the community, this doesn't mean that a Latino defendant is entitled to have Latino jurors on the jury; it means that the government must employ a fair procedure to produce an impartial and random jury.
- During jury selection (voir dire), attorneys use “challenges” to remove jurors. Challenges for cause can be used to remove jurors who show a bias that may impair their ability to be impartial; peremptory challenges allow attorneys to remove jurors without a cause or supplying a reason.
- In the past, African Americans and members of other racial and ethnic groups have been excluded from jury service based on their race or ethnicity. They were often excluded despite a series of Supreme Court cases mandating otherwise. As late as 1986, the U.S. Supreme Court tried to ensure that a fair cross section of the community would serve on juries by declaring that lawyers couldn’t use peremptory challenges to remove people based on race in Batson v. Kentucky, 476 US 79 (1986).
- In the first decades of the twentieth century, many jurors were called from voting lists. This system effectively excluded minorities from juries at a time when Jim Crow laws kept blacks, Hispanics, Native Americans, immigrants, and poor people from voting.
- By 1944, the majority of state courts had ruled that the 19th Amendment granting women the right to vote also gave women the right to serve on juries.
- Some state courts excluded women from jury service unless they actively volunteered for service. In 1975, the Supreme Court ruled that all women should automatically be called for jury service, on the same basis as men.
- Today juries are not used in juvenile courts, domestic violence cases, or in most traffic cases.
- You are not eligible for federal jury service if you are not a citizen, are under eighteen, cannot read or write, are not capable because of a mental or physical disability, or have been convicted of a felony.
U.S. Supreme Court Cases: Jury Pools

**Strauder v. West Virginia**, 100 U.S. 303 (1879)
This decision struck down a West Virginia law limiting jury service to white males as a violation of the 14th Amendment’s equal protection guarantee.

**Smith v. Texas**, 311 U.S. 128 (1941)
This case affirmed that the 14th Amendment prohibits racial discrimination in the selection of grand juries, and that “It is part of the established tradition in the use of juries that the jury be a body truly representative of the community.”

**Ballard v. United States**, 329 U.S. 187 (1946)
The Court affirmed that exclusion of women from the jury pool unconstitutionally violated the standard for federal jury service that juries represent a “fair cross section of the community.”

**Swain v. Alabama**, 380 U.S. 202 (1965)
The Court held that racial discrimination in exercising peremptory challenges by a prosecutor violated the 14th Amendment’s equal protection guarantee. Swain established a high burden of proof for a defendant to prove that peremptory challenges had been used in a racially discriminatory manner (Partially overruled by **Batson v. Kentucky** (1986), which established a lower burden of proof.)

**Duncan v. Louisiana**, 391 U.S. 145 (1968)
The Court held that the 14th Amendment guaranteed that “in the American States, as in the federal judicial system, a general grant of jury trial for serious offenses is a fundamental right, essential for preventing miscarriages of justice and for assuring that fair trials are provided for all defendants.”

The Court held that a system that automatically included men on the master jury list but included women only if they opted in was unconstitutional. “The selection of a petit [trial] jury from a representative cross section of the community is an essential component of the Sixth Amendment right to a jury trial.”

**Duren v. Missouri**, 439 U.S. 357 (1979)
This decision established a test for when a cross section is unfair: (1) the underrepresented or excluded group is distinctive (for example, a racial minority or women); (2) the representation of this group in the jury pools is not fair and reasonable when compared to its proportional representation in the community population; and (3) underrepresentation is due to systematic exclusion during the jury selection process.

The Court held that a defendant could establish discriminatory use of peremptory challenges if a prosecutor struck jurors on the basis of race in the particular case at hand. To establish discrimination, Batson determined that (1) a defendant must make sufficient allegations to establish an inference of discrimination; (2) the prosecutor must offer a race-neutral explanation of a preemptory challenge; (3) the defendant must try to counter the prosecutor’s argument and show that the prosecutor’s stated race-neutral reasons were false or a pretext.
The Court held that the fair cross section requirement applies only to the jury pool from which a trial jury is selected.

This decision suggested that the principles established by *Batson* might apply to all races and ethnicities.

The Court held that the principle that peremptory challenges must be racially neutral applies even when the defendants and the dismissed jurors do not share the same race or ethnicity.

*Georgia v. McCollum*, 505 U.S. 42 (1992)
The Court ruled that criminal defendants cannot engage in purposeful discrimination when using peremptory challenges.

This decision held that the 14th Amendment’s equal protection guarantee prohibits using peremptory challenges to dismiss potential jurors on the basis of their gender.