



# JURY SELECTION

Do's, don'ts  
and wild speculation

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# Qualifications



# Out of here (disqualifications)



- Convicted of a crime carrying more than one year
- Kunde inte förstå engelska
- Incapable due to mental or physical infirmities
- Less than 6<sup>th</sup> grade education
- Works in courthouse

# Later (postponements and excusals)

- Teachers, school employees and students
- Served on a jury within 3 years
- Care and custody of a child (under 7), elderly or disabled
- Business hardship
- Grand jury service
- Over 65 is exempt



Do:

1. Take legible notes
2. Pay attention to employment for juror and spouse
3. Note posture, diction, and presentment
4. Look for any clue
5. Pre-screen (internet presence)

## Jury qualifications

Don't:

Zone out and play a game on your phone

# Voir Dire



# Limited questions

## Court's voir dire

By statute (§ 14-7-1020) the court will ask if any juror:

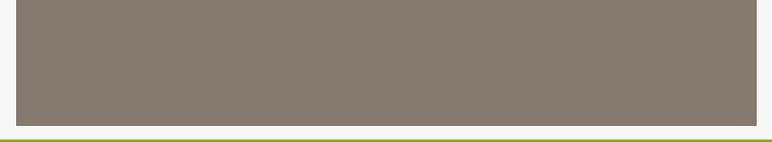
1. Is related to any party
2. Has any interest
3. Has formed any opinion
4. Has any bias or prejudice and cannot be fair

## Party's voir dire

- Limited by the trial court
- May be drawn from law (but not facts) of the case
- Designed to elicit bias that statutory questions miss

# Cause (cannot be fair)





# Peremptory Challenges

For any reason, or no reason at all...

## How Many?

- The State gets five (5) peremptory challenges, unless:
- In cases involving the prosecution of two or more defendants, the State gets ten (10) challenges.

## § 14-7-1110

- The Defense gets five (5) peremptory challenges, unless:
- The offense charged is a murder, arson, manslaughter, CSC, burglary, perjury, grand larceny, armed robbery, breach of trust, or forgery (10 but no more than 20 for multiple defendants)

# Stereotypes





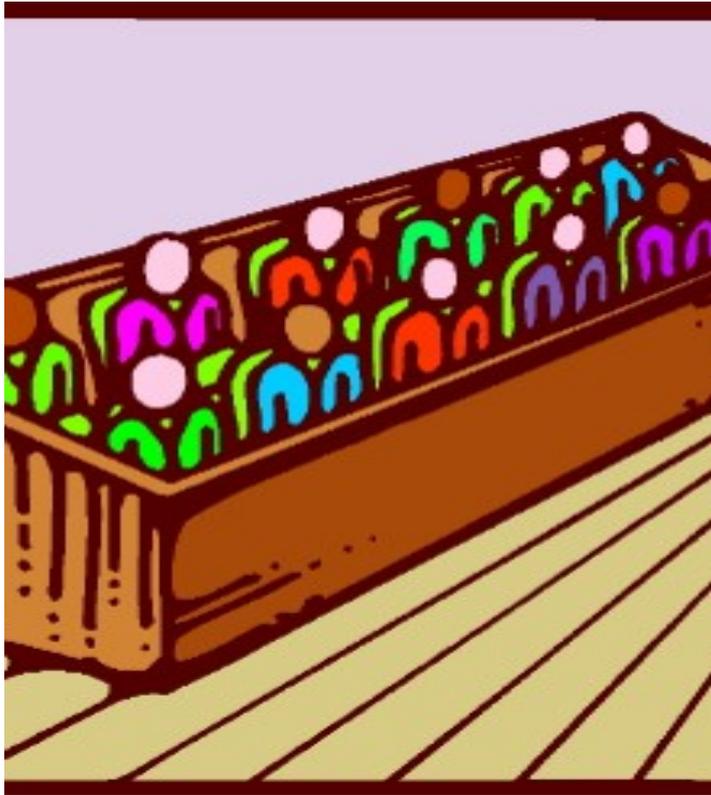
## Assumptions, based on...

- Prejudices (conscious or unconscious)
- Empirical observations with a small sample size
- Guesses and Hunches

# Answers at qualifications and to voir dire may...

...give you more than superficial insight into the qualities possessed by the juror, but, likely, you will have limited information, so...





## Be wary of Stereotypes

You don't know your jurors

Know your case and tailor your  
jury to your case



## Who is a good juror for your case?

Arm-crossers and nodders:

Find those who disagree and won't be swayed.

Are they going to buy what you are selling?

# Jurors

## State Jurors

- Significant ties to the community
- Job and life stability
- Able to distinguish television from life

## Defense Jurors

- Lowest common denominator: less education, job skills, participation in community
- Must see everything (concrete vs. abstract thinking)



## Caveats for special cases

- Rape cases and child sexual assaults
- Drug cases
- Violent crimes
- White Collar crime

- Men are less likely to convict attractive women
- Women are more likely to convict in rape cases (*really?*)
- Women have an affinity for the underdog in litigation
- Women are more likely to be swayed to vote guilty by pre-trial publicity
- Men talk more in jury deliberations
- Women have more empathy for the defendant, less for victims
- Both genders are equally likely to convict in murder cases

## Studies have found that...

(believe all or none of these studies, just because they call it science doesn't make it so)

# Batson v. Kentucky

NEW YORK AMSTERDAM NEWS

1/11  
1/11

.....5,576  
...4,576

....11,443  
....14,209  
.... 3,862

## All-White Jury Uses 21 Minutes To Convict Man

RALEIGH, Miss. (ANP)—Johnny Craft, a former marine, was the first of five defendants to be con-

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# Do not strike jurors based upon:

- Race
- Gender

The defendant has a right to a jury of his peers and the juror has a right to serve.



# After the jury is selected and sent out of the room...

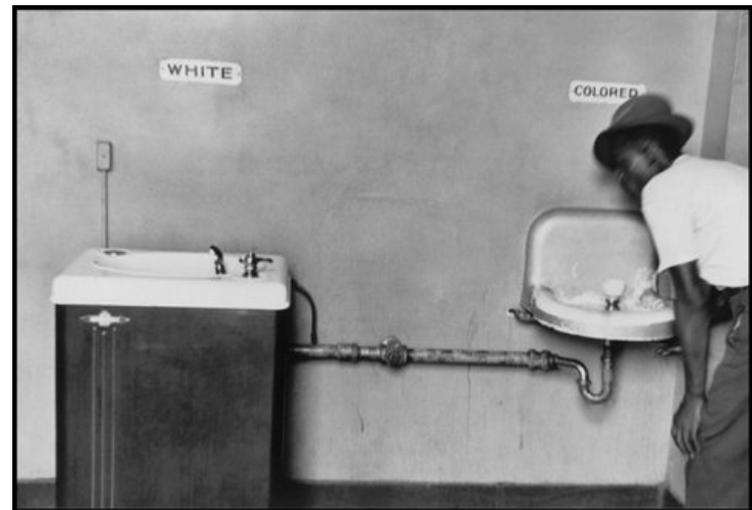
- Either side may make a motion pursuant to *Batson* (there is no such thing as *reverse Batson*)
- The moving party must make a *prima facie* case that the opposition has improperly struck jurors solely for reasons of race or gender.
- The *prima facie* case may involve only one juror (not necessarily a pattern)
- The race or gender of the defendant is immaterial
- South Carolina courts routinely skip right to “race-neutral” reasons

# Race (or gender) neutral reasons

- Once an objection is made, the proponent of the strike must give race neutral reasons for the strike
- The reasons need not be well thought-out, clear, reasonably specific or legitimate, only race neutral.
- The burden of persuasion always remains with the objecting party
- The opponent must then show that the reason offered was mere pretext (disparate treatment)
- If a reason is so fundamentally implausible a court may find it to be a pretext without a showing of disparate treatment
- Use only one reason.
- Composition of the jury panel is to be considered

# If a court finds a *Batson* violation...

...the court is finding the proponent of the strike has engaged in willful discrimination in violation of the juror's and defendant's rights, the juror is placed back on the jury.



# Protect yourself...and your jury

- When you strike a member of a cognizable minority, make a contemporaneous notation of your race (or gender) neutral reason for the strike
- Your demeanor in explaining your strike may be the best evidence of the sincerity of your race neutral reasoning.



# Legitimate or Pretext?

- Juror wears dreadlocks
- Wears beard of unkempt hair
- Want to get to next or another juror
- Too young (want an older jury)
- Juror was a housewife
- Juror's wife was unemployed
- Doesn't read or write well
- Lives near defendant
- Attractive women, muscular men
- Flashy clothing, gold teeth

# Legitimate or pretext?

- Juror gives equivocal or vacillating answers to voir dire questions
- Place or type of employment (Head Start)
- May know defendant, or law enforcement
- Criminal convictions
- Unemployment
- Past prosecutions
- Juror looks “too intelligent”
- Juror knows too much about the criminal justice system
- Retired

# Race Salience: The Why

- When a case is “racially charged” white jurors do not show bias towards black defendants
- They do when race is not an issue in a case (effect is small)
- Black jurors less likely to convict black defendants
- Studies conducted on mock juries, not trial conditions



## Win by losing

Make your record: the State has more to lose by an improvidently granted *Batson* challenge.

