

# Tactical Jury Selection

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Jury selection is where courtroom litigation begins. Jury selection involves selecting and empanelling a legally viable jury, and the selection process permits attorneys an opportunity to craft the jury to their liking. Crafting a favorable jury is an art that every proficient attorney must master. Wasatch Defense Lawyers understands the value of selecting a favorable jury; and our attorneys will zealously exercise all the skill, intelligence, and talent they possess to craft a jury that most favors our client!

## What is Voir Dire?

Voir dire is the questioning of prospective jurors by the judge and attorneys prior to the commencement of trial. The phrase is derived from a French term that means “to see to speak.” Voir dire is conducted to determine if any jurors harbor latent biases and/or cannot for any reason deal with the issue objectively; or identify any cause that might disqualify a juror from service (e.g. prior knowledge of the underlying facts; relationship with the parties, witnesses, or attorneys; occupational biases; prejudice against the death penalty; or previous legal experiences). Additionally, there is an unspoken understanding in the legal community that voir dire is an opportunity for the attorneys to get a sense of the personalities and views of those empaneled on the jury. In some courts, the judge will predominate the questioning, while other courts permit the lawyers substantial latitude and time to question the veniremen. Some jurors may be dismissed for cause by the judge, and the attorneys are permitted to excuse a limited number of jurists via “peremptory challenges” which may be submitted without any articulable cause. This process enables a savvy legal team to craft the jury in such a way so as to maximize the

likelihood of a favorable outcome. The process is both complex and subtle, but it is tactically desirable, and ultimately critical to the ultimate outcome of any case, to empanel a jury that is willing to grant a favorable verdict!

### How is Jury Selected?

When a case is called for trial, randomly selected potential jurists (called veniremen) are presented to the judges and lawyers for questioning in open court. The judge will generally begin voir dire by determining if the prospective jurors are legally qualified to serve on the jury and whether service would cause them undue hardship. Thereafter, attorneys from each party will have an opportunity to question the veniremen about any biases or relevant features of their background. Lawyers typically ask questions intended to identify characteristics or experiences that may cause the juror to favor one side or the other. However, attorneys may not ask overly intrusive questions, nor directly inquire about how they hypothetically would decide the case.

After questioning is completed, the parties have an opportunity to remove potential jurors from the venire by submitting challenges for cause, as well as peremptory challenges. For cause, challenges are made when voir dire reveals that a juror is not qualified, able, or fit to serve in a particular case. What renders veniremen qualified, able, and fit has been articulated in a substantial body of case law; and lawyers generally have an unlimited number of “for cause” challenges available. In order to serve on a jury, a person must be a U.S. citizen, over the age of 18, live within the court’s jurisdiction, and have the right to vote. Additionally, every person empaneled on the jury must be physically healthy enough to be able to sit through the trial; and each juror must be mentally acute enough to comprehend the testimony and jury instructions. Anyone who is not physically or mentally capable on the jury may be dismissed “for cause.”

Judges may dismiss veniremen who have demonstrated an inability to put aside any personal feelings and administer the law impartially—that is, without actual or implied bias. Actual bias arises when potential jurists openly admit that they would not be able to be impartial. For example, someone who categorically opposes the death penalty for religious reasons may be dismissed from a death penalty jury “for cause.” Implied bias is demonstrated when potential jurors have characteristics or experiences that make it unlikely for them to serve impartially, regardless of their statements during voir dire. For example, if a person works as a police officer would likely be dismissed for cause (even if that officer swears in voir dire that they could serve impartially).

Peremptory challenges may be submitted to excuse a potential juror without articulating any reason. However, each party has a limited number of peremptory challenges—that number varies based on jurisdiction and the nature of the case (i.e. a civil action, misdemeanor, or felony), and peremptory challenges cannot be used to excuse jurors based on race or class. The peremptory process allows attorneys to dismiss otherwise qualified jurors that may be unfavorable to their position.

Through a process known as “striking a jury,” the parties take turns arguing their challenges for cause. If the court grants the challenge, the juror will be excused from the venire. Once the court has ruled on all viable challenges for cause, the parties will next alternate striking jurors via peremptory challenges until each side has either exhausted their limit of peremptory challenges, or each side is satisfied with the jury panel. Once all challenges are heard, and there are enough jurors for a proper jury, the jurors are sworn in. The selection process comes to a close at that time—and the trial officially begins!

### Why Is Picking the Right Veniremen Important?

Picking the right jury can make all the difference in a case. Everybody has personal idiosyncrasies that impact their decision-making process. Identifying and tactically accounting for these personal idiosyncrasies allows attorneys to strategically select an audience that is most receptive to their arguments. Attorneys must exercise a certain degree of psychological understanding when questioning and eliminating potential jurors. Uncovering hidden biases that are either deliberately concealed, or unknown consciously, is a subtle and complex art. To navigate the intricacies of voir dire, an attorney must not only understand the law, but also the human heart and mind. At [Wasatch Defense Lawyers](#) we are well acquainted with the subtleties of Voir Dire—let our attorneys choose the right jury!