

Selecting the Jury—A Simulation Activity

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For use in conjunction with “The Chicago Seven: 1960s Radicalism in the Federal Courts,” by Bruce A. Ragsdale, available at <http://www.fjc.gov/history/home.nsf>. A unit in the Teaching Judicial History Project, developed by the Federal Judicial Center in partnership with the American Bar Association’s Division for Public Education.

Activity Objectives

Through simulation of the jury selection process for the Chicago Seven conspiracy trial, students will gain insights into the political context of the trial, the strategies of the defense and the prosecution, and the challenges in impaneling a “fair and impartial” jury in a highly publicized trial. Students will compare their simulated process with the actual impaneling of the Chicago conspiracy trial jury and consider the effect on the outcome of the trial.

Essential Questions

- How do courts determine if jury pools reflect the community within which a defendant is tried?
- What responsibility do judges have to determine the influence of pretrial publicity on potential jurors?
- What information do defense and prosecution attorneys need to make reasonable challenges to the seating of jurors?
- What were the obstacles to impaneling an impartial jury in the Chicago Seven conspiracy trial in 1969?

Legal Issues Raised by the Chicago Seven Case

Attorneys for the convicted defendants in the Chicago Seven conspiracy trial challenged the verdict in part on the basis of the hasty jury selection and the trial judge’s refusal to ask any of the questions submitted by the defense for the screening of jurors. On appeal, the U.S. Court of Appeals for the Seventh Circuit needed to determine if the jury selection process violated the defendants’ right to trial by an impartial jury.

Estimated Time Frame

Five 50-minute class periods.

Recommended Prep Work

Students will need to be familiar with the events leading up to the Democratic National Convention in 1968 and with the growth of protest against U.S. involve-

ment in the Vietnam War. Teachers should review “The Chicago Seven: 1960s Radicalism in the Federal Courts,” by Bruce A. Ragsdale, available online at [http://www.fjc.gov/history/chicago7.nsf/page/chicago_seven_pdf/\\$file/chicago7.pdf](http://www.fjc.gov/history/chicago7.nsf/page/chicago_seven_pdf/$file/chicago7.pdf).

Make student copies of excerpts from the trial unit and the handouts attached to this activity. (*Note:* All page numbers refer to the PDF copy of the unit.)

Excerpts:

1. “The Chicago Conspiracy Trial: A Short Narrative” (pp. 1–5)
2. “Media Coverage and Public Debates” (pp. 45–48)
3. “The Strategy of Confrontation,” report of the Daley administration (pp. 68–69)
4. Walker Report summary (pp. 69–70)
5. Legal Questions Before the Federal Courts, “Did the jury selection process protect the defendants’ right to a fair trial?” (pp. 18–19)
6. U.S. Court of Appeals for the Seventh Circuit, decision on the defendants’ appeal of the criminal convictions, jury selection (pp. 62–65)

Handouts:

1. Timeline Worksheet
2. Guidelines for the Simulated Voir Dire
3. Worksheet for Developing the Roles for the Jury Pool
4. Worksheet for Voir Dire Questions

Description of the Activity

Activity Overview

Teachers will lead students in a discussion of the background to the Chicago conspiracy trial and then will divide the class into groups that will take on the roles of the judge, attorneys, and potential jurors in a simulation of the challenge phase of the jury selection. Participants will follow as closely as possible a set of professionally developed guidelines.

Introduction

The teacher should review with students the political events of 1968 and the growing opposition to U.S. involvement in the Vietnam War. Students will read several excerpts, followed by a class period devoted to discussing the reading and clarifying students’ understanding of the events surrounding the trial.

Homework assignment: Students should complete the “Timeline Worksheet” as they read about the events leading up to the Chicago Seven trial discussed in “The Chicago Conspiracy Trial: A Short Narrative” (pp. 1–5); they should also read the account of media coverage (pp. 45–48), and the Daley and Walker reports (pp. 68–70).

Class Discussion (1 class period)

The Events Preceding the Democratic National Convention

- Review and clarify student entries on their respective timelines focusing first on the events prior to August 1968.
- How would students characterize the cultural and political climate in the summer of 1968?

The Convention Events

- What was happening outside the Convention hall? What inside?
- What actions did the demonstrators take? The police?
- What is the “essential rite” that the author refers to in the following quotation? “The violence surrounding one of the essential rites of American democracy deepened the widespread perception that the nation faced a political and cultural crisis in 1968.”

The Post-Convention Events

- What did the Daley administration’s report say about the role of the media? Did the Walker Report agree? What were the implications of these reports for the jury selection process?
- What information would prospective jurors likely have been exposed to by the time the trial got underway on September 24, 1969?

Preparing for the Simulation

Step 1 (1 class, homework if necessary)

The teacher should briefly discuss the beginning of the trial and the subsequent appeal, with a focus on the jury selection.

The class should briefly review the protections regarding juries in criminal trials guaranteed by Article III and the Sixth Amendment of the Constitution.

Distribute excerpt #5, *Legal Questions Before the Federal Courts*, “Did the jury selection process protect the defendants’ right to a fair trial?” (pp. 18–19), and excerpt #6, “Jury Selection” from the “U.S. Court of Appeals for the Seventh Circuit, Decision on the defendants’ appeal of the criminal convictions, November 21, 1972” (pp. 63–64). (These readings may be assigned as homework.) Debrief these readings and have the class identify the four topics that the court of appeals said should have been explored during the voir dire: opinions about the Vietnam War; opinions about the youth counterculture; opinions about the police; and access to information about the demonstrators and the demonstration. What do the students think are the reasons the judges selected these four topics? (Ex-

plain to the students that voir dire, which literally translates as “to speak the truth,” refers to the process of examining of potential jurors for a trial.)

Step 2 (1 class, homework if necessary)

Divide the students into three groups to prepare for the simulation. One group of three students will serve as the judge. Of the remaining students, half will serve as the potential jurors, and the other half will assume the roles of the defense and prosecution attorneys.

Distribute the guidelines for simulated voir dire (Handout #2) to the students representing the judge, distribute the worksheet for developing the roles for the jury pool (Handout #3) to the students representing the potential jurors, and the worksheet for voir dire questions (Handout #4) to the students portraying the attorneys.

Step 3 (1 class, homework if necessary)

Explain how the simulation will proceed and the responsibilities of each group of students. Explain and discuss the differences between challenges for cause and peremptory challenges, and explain that this simulation will focus on challenges for cause. The students representing the judge will use the guidelines to develop their criteria for accepting or rejecting challenges for cause. The students representing the jury pool will develop characters and provide the judge and attorneys with a short description of each member of the jury pool. These characters should reflect individuals likely to have been among the jury pool in the Northern District of Illinois in 1969, and should represent a cross-section of popular opinion about politics and youth culture of the time. Each group of attorneys will draft five questions they think are relevant to determining the impartiality of potential jurors in this trial.

Step 4 (1 class)

Students will work in their assigned group to draft their parts in the simulation. Encourage those playing the roles of potential jurors to “flesh out” their role with more details and consider their perspective on the case.

Voir Dire Simulation (1 class period)

As the potential jurors introduce themselves, the attorneys for both sides will ask their questions and follow up. Following the questioning of all the potential jurors, the attorneys will announce and explain each challenge, and the panel of judges will decide whether on not to accept the challenge.

Debrief and Wrap-up (1 class period, preceded by the homework assignment)

Ask students to prepare as homework a brief essay explaining whether they think the simulated voir dire met the standards set out by the majority decision of the U.S. court of appeals and explaining why it did or did not.

Begin this debriefing by examining the student judges' reasons for rulings on the challenges for cause. Do the students agree? Why or why not?

Review the profiles of the selected jurors. Ask the students to give their assessments of the capacity of this jury panel to be impartial.

After participating in the simulation, ask students what they think was the major obstacle in jury selection in the Chicago conspiracy trial.

Compare the questions provided to Judge Hoffman by the defendants with the questions of the defense attorneys in the simulation. Why do they think Judge Hofmann rejected the defense attorneys' questions? Do students agree or disagree with the conclusions of the majority of the court of appeals?

Assessment

- Observation of engagement in the preparation and conduct of the voir dire.
- Analysis of the groups' written scripts.
- Analysis of final homework assignment.

Alternative Modalities and Enrichment

Students could develop questionnaires for potential jurors to complete prior to voir dire in this trial.

Have students research and report on what transpired regarding the jury for *Peters v. Kiff*, 407 U.S. 493, 502 (1972), in which Justice Thurgood Marshall stated: "Illegal and unconstitutional jury selection procedures cast doubt on the integrity of the whole judicial process. They create the appearance of bias in the decision of individual cases, and they increase the risk of actual bias as well."

Have students write individual essays on the role of juries in our legal system, obstacles encountered in impaneling impartial juries, or the importance of one of the principles in the commission's report.

Have students write an essay in which they agree or disagree with Thomas Jefferson's observation: "I consider trial by jury as the only anchor ever yet imagined by man, by which a government can be held to the principles of its constitution." (1789)

Involving a Judge

Invite a judge to discuss the challenges of impaneling a jury in highly publicized and controversial cases. What is the judge's role in ensuring an impartial jury?

Standards Addressed

U.S. History Standards (Grades 5–12)

Era 9—Postwar United States (1945 to early 1970s)

Standard 2C: The student understands the foreign and domestic consequences of U.S. involvement in Vietnam.

Era 10—Contemporary United States (1968 to the present)

Standard 2E: The student understands how a democratic polity debates social issues and mediates between individual or group rights and the common good.

Standards in Historical Thinking

Standard 2: Historical Comprehension

- A. Identify the author or source of the historical document or narrative and assess its credibility.
- C. Identify the central question(s) the historical narrative addresses.
- F. Appreciate historical perspectives.

Standard 3: Historical Analysis and Interpretation

- A. Compare and contrast differing sets of ideas, values, etc.
- B. Consider multiple perspectives.
- E. Distinguish between unsupported expressions of opinion and informed hypotheses grounded in historical evidence.

Standard 5: Historical Issues-Analysis and Decision-Making

- A. Identify issues and problems in the past and analyze the interests, values, perspectives, and points of view of those involved in the situation.
- D. Evaluate alternative courses of action, keeping in mind the information available at the time, in terms of ethical considerations, the interests of those affected by the decision, and the long- and short-term consequences of each.
- F. Evaluate the implementation of a decision by analyzing the interests it served; estimating the position, power, and priority of each player involved; assessing the ethical dimensions of the decision; and evaluating its costs and benefits from a variety of perspectives

Handout 1
Timeline Worksheet

The Chicago Conspiracy Trial—Chronology of Some Key Events
Leading to the Trial

Directions: As you read the excerpt from “The Chicago Conspiracy Trial: A Short Narrative,” complete this timeline identifying at least one key event that occurred during each date listed.

1967

Fall 1967 (2 events)

1.

2.

1968

March 1968 (2 events)

1.

2.

April 1968

June 1968

“Eve of the convention” (no date specified)

August 25–August 28, 1968

September 6, 1968

September 9, 1968

December 1968

1969

January 1969

March 20, 1969

April 9, 1969

Defendants in the conspiracy case were arraigned in the district court and pleaded not guilty.

June 1969 [not reported in the narrative]

Committee to Defend the Conspiracy issued a statement in support of the defendants signed by “notable writers, academics, and performers” that was published in the *New York Review of Books* and elsewhere

September 24, 1969

Start of the conspiracy trial

Handout 2

Guidelines for the Simulated Voir Dire

[Excerpted and adapted from: *Principles for Juries and Jury Trials*, American Bar Association, Commission on the American Jury Project (2005), available online at <http://www.abanet.org/jury/>.]

The Preamble of *Principles for Juries and Jury Trials* reads in part: “The American jury is a living institution that has played a crucial part in our democracy for more than two hundred years. The American Bar Association recognizes the legal community’s ongoing need to refine and improve jury practice so that the right to jury trial is preserved and juror participation enhanced.” The document includes specific principles to guide the selection of juries in order to help achieve the Commission’s goal “to refine and improve jury practice.”

During this simulation, students should strive to enact a voir dire that meets the following criteria from the Commission’s report.

Basic Rules

1. Voir dire should be sufficient to disclose grounds for challenges for cause and to facilitate the intelligent exercise of peremptory challenges.

2. Fair procedures should be utilized in the exercise of challenges. All challenges, whether for cause or peremptory, should be exercised so that the jury panel is not aware of the nature of the challenge, the party making the challenge, or the basis of the court’s ruling on the challenge.

3. In ruling on a challenge for cause, the court should evaluate the juror’s demeanor and substantive responses to questions. If the court determines that there is a reasonable doubt that the juror can be fair and impartial, then the court should excuse him or her from the trial. The court should make a record of the reasons for the ruling including whatever factual findings are appropriate.

Challenges for Cause

1. There should be no limit to the number of challenges for cause.
2. Each party should have the opportunity, under the supervision of the court and subject to reasonable time limits, to question jurors directly, both individually and as a panel.

3. Where there is reason to believe that jurors have been previously exposed to information about the case or are likely to have preconceptions concerning the case, the parties should be given liberal opportunity to question jurors individually about the existence and extent of a juror's knowledge and preconceptions.

4. At a minimum, a challenge for cause to a juror should be sustained if the juror has an interest in the outcome of the case, may be biased for or against one of the parties, is not qualified by law to serve on a jury, has a familial relation to a participant in the trial, or may be unable or unwilling to hear the subject case fairly and impartially.

Peremptory Challenges

1. The number of peremptory challenges should be sufficient, but limited to a number no larger than necessary to provide reasonable assurance of obtaining an unbiased jury and to provide the parties confidence in the fairness of the jury.

2. Following completion of the examination of jurors, the parties should exercise their peremptory challenges by alternately striking names from the list of panel members until each side has exhausted or waived the permitted number of challenges.

Handout 3
Worksheet for Developing Roles for the Jury Pool

Assignment

Your group will write role cards for jury pool members who are likely to have differing opinions or perspectives on the case. Write brief descriptions of several potential jurors in each of the three categories listed below. Don't provide more than basic information so that the persons playing these roles can make up their own details. You may want to divide into three groups to complete this assignment.

1. Potentially biased or predisposed for the prosecution
Example: A father, an ex-Marine, whose son was killed in Vietnam.
2. Potentially biased or predisposed for the defense
Example: A teacher who sent money to the committee to defend the conspiracy.
3. Potentially impartial, no readily evident predispositions
Example: An actor who was in Peru on vacation during the Convention.

Make lists of these potential jurors to give to the judge, the defense attorneys, and prosecution attorneys.

Handout 4

Worksheet for Voir Dire Questions

Assignment

Divide your group into two teams to act as “attorneys for the defense” or “attorneys for the prosecution.” Each set of attorneys should generate questions to ask potential jurors during voir dire of the Chicago Seven conspiracy trial, *United States v. Dellinger et al.* Questions should probe for any bias that a potential juror might have toward your position in this case. It is quite possible that each side would ask the same question but want quite different answers. Each team should keep its questions confidential.

A review of the key documents will help you formulate your questions and make them specific to the events and issues that surrounded this case. See especially Documents 2, 5, and 6.

In generating your questions consider issues such as the following.

- How might media exposure affect someone’s opinion of the case?
- What circumstances would likely influence someone to support the Vietnam war? To oppose it?
- What circumstances would likely cause someone to be sympathetic or unsympathetic to the youth counterculture of the ’60s?
- How might participation in the Civil Rights movement affect someone’s opinion of the defendants?
- What kinds of encounters or experiences with the police might cause someone to react negatively or positively to the defendants?