

## A JURY OF YOUR PEERS: WHAT IS THE ROLE OF DIVERSITY IN JURIES?

### OUTCOMES

As a result of this lesson, students will be able to:

- Identify the skills, experiences and values essential for ideal jurors
- Explain the popular concept of “a jury of your peers” and describe its application in youth courts and adult courts
- Define diversity and discuss the benefits of a diverse jury
- Define terms such as: grand jury, petit jury, summons, jury pool, jury venire, *voir dire*, removal for cause, peremptory challenge
- Describe the right to a jury given by the United States Constitution
- Explain why the jury system is important in a democracy, especially in a pluralistic society

### MATERIALS NEEDED

- Chalkboard and chalk or flipchart paper and markers
- (Optional) Several samples of help wanted advertisements. The ads should describe the type of candidate the employer is seeking. The particular job does not matter.

### HANDOUTS

- 1 Help Wanted (enough for each student)
- 2 The Rights to Juries According to the U.S. Constitution (enough for each student)
- 3 How Are Petit Juries Selected? (enough for each student, plus an extra copy)
- 4 Options for More Diverse Juries (enough for each student)
- 5 News Flash! (enough for each student)

## TRANSPARENCY OR POSTER

(Optional) *Strauder v. West Virginia*

### PREPARING TO TEACH THIS LESSON

- Prepare the materials listed above.
- Write up and post the outcomes of the lesson.
- Write the definitions of petit and grand juries in flipchart paper or on a part of the chalkboard you can cover. The definitions are found in part three of the lesson.
- Take an extra copy of “**Handout 3: How Are Juries Selected**” and cut it into six strips. Each strip will contain information about a different stage of the process, so there will be strips for the summons, jury venire, *voir dire*, removal for cause, peremptory challenge, and seating the jury. If you plan to teach this lesson again, you may consider gluing or taping each strip to a note card so it will last longer.
- As students are entering the classroom, choose six students who might like to read something to the class later. Give those students the “jury selection” strips from Handout 3 that you prepared earlier. Tell those students to hold on to the strips until you ask for them later in the lesson.

### COMMUNITY RESOURCE PEOPLE

A community resource person (CRP) would add credibility and interest to this lesson. Invite a sitting or retired trial judge, a defense attorney and/or prosecutor. Each of these people has trial experience and could help to lead the discussion about how jury selection works in your area, especially the procedures for *voir dire*.

It would also be interesting to invite the person in your area who sends the summons to potential jurors. In some communities, this person is called the registrar of the court. The clerk of your court may be able to help you identify your registrar or the equivalent person in your community.

Send a copy of this lesson to the community resource person when confirming the date and location of the class. After he or she has received the lesson, discuss how you will work together to teach it.

For additional suggestions about working with community resource people, see the section in the section labeled “Integrating Law-Related Education Into Youth Court Program” in the front section of this manual.

## ADDITIONAL CONSIDERATIONS

- This lesson will take just under two hours to complete. If you have less than two hours with your students, a logical place to break the lesson in half would be after you complete part three. If you must break the lesson into parts for different days, try to teach the second part on the next consecutive class.
- A number of class discussions are included in this lesson. If possible, try to arrange the desks in advance so students can interact as much as possible. Two seating arrangements that work particularly well with class discussions are “U” shapes and circles. These arrangements are not required, but may help you generate more conversation and dialogue among students, rather than having the teacher at the center discussion.
- This lesson contains issues that are controversial and may prompt students to express strong, legitimate and opposing opinions. Teaching controversial issues is valued in the field of law-related education for many reasons: It engages students deeply and teaches students important skills such as conflict management, listening carefully and objectively, defending positions, and examining various perspectives and sets of evidence.

As you teach this lesson, we encourage you to welcome opposing opinions from students and to show them how to listen carefully to one another and to disagree without being disagreeable. These are life-long skills worth learning (and teaching).

- Optional: If you want to extend this lesson by two hours, you may want to show the movie *Twelve Angry Men* starring Henry Fonda. It features a jury deliberation and illustrates the importance and value of a diverse jury. If you choose to use it, show it before teaching this lesson. See the resource list at the end of the lesson for more information about the film.
- Optional: One of the topics in this lesson is *voir dire*. If you want to extend this lesson, you may consider taping and then showing a segment from Court TV that shows an actual *voir dire* process in action. Check Court TV's television listings for show times or contact their website at: [www.courttv.com](http://www.courttv.com). If you choose to show a videotape of *voir dire*, the best place to do it in the lesson is in Part Four.

## SUMMARY

At the end of each lesson is a summary section. It is very important that the lesson period be timed to allow sufficient time to complete the debrief (summary) with the students. During this reflection time the students can discuss the information learned, clarify any concerns and analyze the skills that they have practiced. This is a critical step in the learning process and must not be neglected.

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## PART ONE: THE PURPOSES OF JURIES (10 minutes)

### 1

Post and explain the outcomes of the lessons for students. If a community resource person is present, introduce him or her.

### 2

Ask students:

- How many of you have seen a youth court hearing or an adult trial that included jurors?

**NOTE:** If any students do not raise their hand or say yes, ask them if they have ever seen a jury in a television show or movie.

- What do you think our justice system would be like without juries?

*Answers will vary.*

### 3

Ask students to imagine that one person in this class is accusing another person in the class of stealing something.

- Invite a student to stand up and to accuse another student of stealing something.
- Ask the person accused if he or she did it. If the accused person accepts the accusation, both students can sit down and the instructor will pick two new students until there is a conflict. If the accused person denies the charges, both students to come to the front of the room. Tell them you will give them a way to figure out who is telling the truth.
- Explain that you (the instructor) are the king (or queen) and that you have decided that these two people should have a ten-second sword duel to decide who is right. Whoever wins is right.
- Allow the students to pretend to have a sword fight for just a few seconds and then declare the winner.
- Explain that in Medieval times, people accepted the decisions made at these “trials” just as most modern Americans accept the decisions of judges and jurors.

Trial by combat was relatively swift, which helped to ease chaos in the community. At times, these combats would take the form of family feuds or even wars. Trial by combat was based on the ideas that “might makes right” and that God intervenes and protects the innocent.

**4**

Invite another student to stand up and to accuse another student of stealing something.

- Ask the person accused if he or she did it. If the accused person agrees to the charge, both students should sit down and the instructor picks another accuser until there is defendant who denies the charge. Tell the accuser and defendant to remain standing near their chairs. Tell them you, the king or queen, will give them a way to figure out who is telling the truth.
- Explain that the person who is accused will be held under water or will be pressed between two boards of nails. If he or she survives, he or she must be innocent. (Obviously, they will not act out this situation.)
- Ask the person who made the accusation if he or she prefers this method of finding the truth to combat. The accuser will probably prefer this method to combat because he or she is never put in harms way.
- Tell students that the Medieval idea of “trial by ordeal” was similar to the rationale behind “trial by combat.” Some people believed that because God controlled human justice, innocent people could endure great physical pain. They also believed God would protect innocent people. Of course, accusers liked this form of justice better than trial by combat because they were protected ñ at least until someone accused them.

**5**

Invite another student to stand up and to accuse another student of stealing something.

- Ask the person accused if he or she did it. If so, they can both sit down. If not, ask those two students to come to the front of the room. Tell them you will give them a way to figure out who is telling the truth.
- Explain that you, the instructor, are the king (or queen) and that you have decided that these two people should have to “swear” (promise) under oath that they are each telling the truth.
- After each student swears they are telling the truth, ask them if they have any witnesses who will swear under oath that they are telling the truth. Give each side a chance to ask loyal witnesses to raise their hand and swear under oath. Whoever has the most “swearers” (witnesses) must be right. If all else fails, the king or

queen can decide.

- Ask students in the class if anyone lied when they swore for someone. (Of course, everyone will have lied since it was a made up situation.) Tell the liars that their cars will break down --- so will their radios, computers, and cell phones. (Use examples your students value.)
- Explain that around the year 1000, English people believed that horrible things would happen to those who broke their word. Their crops would wither, their cattle would die, their children would become ill, etc. Because a person's word was so important, the people believed trial by oath or trial by swearing would work. Later, King Henry II incorporated these ideas when he introduced the idea of a trial by jury in the late 1100s. This idea is still in place in our trial system, where witnesses take oaths to tell the truth.
- Ask students if they still want to swear about the latest theft accusation. If no one will back up the accuser of defendant, the king (or queen) will decide the outcome.

## 6

Ask students:

- So, given some of the historical alternatives, how many of you would like to live in a time or place without trial by jury?

**NOTE:** If some students laugh and suggest they would like it, ask them if they would still like it if they were the defendants.

- Why are juries important?

Record their ideas on flipchart or the chalkboard. Do not try to get an exhaustive list, just a few ideas. Tell students they will be returning to this question later in the lesson.

- What is the connection between juries and democracy?

*Answers will vary, but should reflect an understanding that when private citizens serve on juries, they are able to participate in creating justice and in giving oversight to our judicial branch of government.*

*Juries:*

- *Protect the rights of people accused of crimes*
- *Promote a sense of fairness because "regular" people sit in judgment*

- *Make it more likely that justice is impartial*
- *Give people a voice in government, which makes trials more democratic*

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## PART TWO: HELP WANTED (20 minutes)

### 1

Ask students:

- How many of you have already served on a jury for youth court?
- How many of you know you will be serving on a youth court jury at some point?
- What do you think are the most important qualities of an effective juror?
- Write a few of the students' comments down on the flip chart paper or chalkboard.
- How many of you have ever seen a "help wanted" advertisement? What do help wanted ads look like? What kinds of things do they say?

*Student answers will vary, but they will probably mention that most ads include the title, salary, skills and experience required, whom to contact, etc. If many students have never seen a help wanted ad, you may want to pass a few around the class for reference.*

### 2

Tell students that they are going to spend a few minutes planning and writing a help-wanted ad for an ideal juror. This person should be the kind of juror the students would want if they or someone they care about had to face a jury themselves in the future.

Tell students they have the option of working alone or quietly with one partner. Students who want to work with a partner should sit next to their partner now.

### 3

Distribute "**Handout 1: Help Wanted**" that can be found at the end of this lesson plan.

Ask a volunteer to read the directions aloud to the class. Clarify any questions students may have about the assignment. Write the ending time on the board. As students are working, create four columns on the chalkboard or flipchart paper: "skills" "values" "experiences" and "other." Then circulate around the room to observe the students

working. Give a one-minute warning when time is nearly up.

#### 4

Invite four student volunteers to the board to record answers. Assign each volunteer to a different word or column, so that each time a student in the class mentions a skill, that recorder writes down the skills. Another recorder writes down the values, etc.

Ask two or three students to read their want ads. Then lead a “call out” session, in which you ask students to call out other skills that had not been mentioned yet. Do the same for “values”, “experiences” and “other.”

#### 5

Thank the recorders and ask them to return to their chairs. Ask the class the following questions:

- If you were a prosecuting attorney, do you think you would be looking for the same “kind” of juror that the class just described?
- Why or why not?
- What might a prosecuting attorney look for that would be different than a defense attorney?

*Answers will vary, but students will likely mention that a prosecutor might be looking for someone who is “tough on crime” while defense attorneys might be looking for someone who can relate to and sympathize with the offender.*

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## PART THREE: A JURY OF YOUR PEERS (30 MINUTES)

### 1

Tell students they have been focusing on picking an individual juror. Ask them to consider how their criteria might be different if they were trying to select a whole jury.

Ask students:

- Should every juror have the same skills? experiences? values?

**NOTE:** If students in the class have already been exposed to the volunteer training materials by the American Bar Association, remind them of the “Diversity” lesson in which they discussed ways to identify and avoid bias and stereotyping. That lesson introduces other important skills and values that can help jurors work fairly.

- What is diversity? What does it mean? If you were looking into a room that was full of a diverse group of people, what would you see?

Let students come up with their own definition of diversity. If they do not mention the following characteristics, you should add these ideas to the discussion:

*“Diversity is differences between people in their attributes or characteristics. These differences can be things you are born with (like your race or gender), and they can be things you earn or acquire (like education). A group of people can be called diverse when it includes people of different ethnicities, religious backgrounds, sexual orientations, physical qualities, ages, economic backgrounds, political perspectives, etc.”*

*(Source: Carlson, Andrea, Judith A. Zimmer, and Eleanor Green, “Diversity and Bias Awareness,” Community Works: Smart Youth Make Safer Communities Washington, DC. This is a joint publication of Street Law, Inc. and the National Crime Prevention Council. Session 26, page 266. 2004.)*

- Is it a good idea to have a diverse jury? If so, why? If not, why not?
- What would be the advantages of having different perspectives on a panel of jurors, if any? What might be the disadvantages, if any?

## 2

Tell students you have a few more scenarios to demonstrate. Invite a student to stand up and to accuse another student of stealing something.

- Ask the person accused if he or she did it. If so, they can both sit down. If not, ask those two students to come to the front of the room. Tell them you will give them a way to figure out who is telling the truth.
- Tell the person accused that he or she will have to stand trial in the country of “Faraway.” The good news is that “Faraway” does have juries. The bad news is that most of the jurors are buddies of the prosecutor, have never met anyone from the United States and they do not like or trust people from here. The other bad news is that the person accused will probably have a hard time finding witnesses who are willing or able to afford the trip to “Faraway.”
- Pretend to send the defendant out of the classroom, but call him or her back before he or she actually leaves.
- Explain that one of the American colonists’ major complaints was that defendants were often sent to England to stand trial in front of juries who knew nothing of the life or culture in the colonies. They complained about this often,

including in the Declaration of Independence in 1776.

### 3

**NOTES:** This scenario will be different. You will involve the community resource person as the defendant. If you do not have a resource person present, you can use another student.

Subtly scan the room to notice the different races and ethnicity of students in your class. Try to pick a student accuser who is not in the same race or ethnic group as your community resource person (or many other students in the class). If your class is not racially or ethnically diverse, choose a student who is not the same gender as the CRP. Do NOT ask the accuser to pick someone.

- Tell the accuser that he or she does not know who committed the crime, but that the police have found evidence that proves the CRP is the thief. (Again, if no CRP is available, the “police” would identify the other student.)
- Tell students this case is going to trial, regardless of whether the defendant admits guilt. Instruct the accuser and defendant to stand. Tell them you are the government and you will give them a way to figure out who is telling the truth.
- Explain that there will be a trial by jury, but that you (the instructor) will pick the jury. When you call on students, ask them to stand to be ready for jury duty.
- One by one, ask students from only one racial or ethnic group to stand. (If possible, pick a jury that is from a different demographic group as the CRP. If you decided earlier to pick the accuser based on gender, only pick students from the other gender group to be in the jury.)
- Ask students to look at who will be on the jury. What do they have in common? How does that group of people compare to the defendant?
- Ask the defendant if he or she is concerned about the likelihood of getting a fair trial with an unbiased jury. (The CRP/defendant should express some doubts and explain his or her concerns.)

### 4

Tell students: When the jury system first began in the United States, the only people allowed to serve on juries were white men with property. Over time, the property, race, and gender requirements were dropped.

In the late 1870s, the Supreme Court ruled that states cannot prevent any citizen the opportunity to serve on a jury because of his or her race. In its decision, the Supreme Court also said a state denies an African American defendant equal protection when it puts him on trial before a jury from which members of his race have purposely been

excluded.

**NOTE:** If you made optional overhead transparency or poster 1 in advance, post it now and ask a student to read it. If not, simply read it. (It can be found at the end of this lesson plan, but the text is also italicized below.)

***STRAUDER V. WEST VIRGINIA, 100 U.S. 303 (1879)***

*The Court also said that to deny any citizen the opportunity to serve on a jury because of race “is practically a brand upon them, affixed by law; an assertion of their inferiority, and a stimulant to that race prejudice which is an impediment to securing to individuals of the race that equal justice which the law aims to secure... The very idea of a jury is that it is a body of men composed of the peers or equals of the person [who is on trial.]”*

- Ask students if they understand the quote. Suggest one of them try to put it in his or her own words. Clarify any misunderstandings.
- Remind students that despite this decision in the 1800s, many juries remained segregated well into the 1950s. Some people still remain concerned about the composition of juries and how it affects justice today.

**5**

Tell students that the questions of whether juries should be diverse and how they could be more diverse have been debated among legal scholars and people involved in the justice system for years.

**NOTE:** If you have already shown the film Twelve Angry Men, this would be an appropriate time to ask students how the composition of that jury influenced the verdict they reached. (*Each person in the jury had something in his own background that helped him make a careful decision about the defendant. When the jurors shared their own stories, they showed their own biases and eventually worked to eliminate those biases.*)

**6**

Read the following statement:

***Many people believe that what makes youth courts unique is that young offenders are judged by a jury of their peers. Today’s lesson explores the idea of a “jury of your peers.”***

Explain that throughout the lesson, people will be invited to share their opinions about

the topics of diversity and justice and that it is likely that everyone will not agree. Remind students that differences of opinion are welcome as long as students are respectful of each other.

## 7

Ask students these questions:

- When you think about youth courts, what do you think the phrase “jury of your peers” means?
- If your youth court jury was made up of adults, do you think the proceeding would be fair? Why or why not?
- How close in age should jury members be to the defendant? What are the benefits of having jurors of various ages? What are the drawbacks?
- If the jury was all male and the offender was female, do you think the proceeding would be fair? Why or why not?
- What are the benefits of having a jury that includes female jurors? What are the drawbacks?
- Should the jury be from the same part of town or same neighborhood as the offender? Why or why not?
- What are the benefits and drawbacks of having the jury and offender from the same community?
- If the jury was all-Hispanic and the offender was Asian, do you think the proceeding would be fair? Why or why not?
- What are the benefits of having a jury match the ethnicity and race of the offender? What are the drawbacks?
- Are young people who go to juvenile court judged by a jury of their peers?

*Most are not. The vast majority of young people who are referred to juvenile court have their cases heard and sentenced by a judge. When the juvenile court system was set up, there was an emphasis on protecting the privacy of kids who went to court. Remember, juvenile courts serve kids who are accused of being delinquent, (doing something wrong), and kids who need help from the court with things like parental custody suits, protection from neglect or abuse, etc. It is only in the last several years that some delinquency hearings in some states have been open to the public.*

- Do you think adults who have juries have the right to a jury of their peers?

**8**

Tell students that most people think they have a right to a jury of their peers. If it is a right, where could they find it written down? Where are most of our legal rights written?

*Students may name the Constitution right away. If they do not, you can prompt them by asking where they can read about the right to free speech, the right to free press, the right to bear arms, the right to not incriminate themselves in a court, etc.*

Explain that many of our rights come from the Constitution and some of our rights come out of decisions that the Supreme Court has made.

**9**

Break the students into four groups.

Distribute “**Handout 2: The Rights to Juries According to the U.S. Constitution**”, which can be found at the end of this lesson plan.

**10**

Read and clarify the directions to students. Ask each group to read and answer questions from a different part of this handout. Tell students they have three minutes to complete their part. Write the ending time on the board. Give them a one-minute warning when time is nearly up.

**11**

Invite a volunteer to read the excerpt from Article III while the rest of the class reads it quietly.

Ask the students who were assigned Article III these questions:

- Who found the part where the Article III that says we have a right to a jury of our peers?

*It does not say that.*

- What type of jury does it say we are guaranteed?

*We have the right to a jury from the state where the crime was allegedly committed.*

**12**

Invite a volunteer to read the Sixth Amendment aloud while the rest of the class reads

it quietly.

Ask the students who were assigned the Sixth Amendment these questions:

- Who found the part where the Sixth Amendment says we have a right to a jury of our peers?

*It does not say that.*

- What type of jury does it say we are guaranteed?

*We have the right to a jury that is “impartial” and from the state and district where the crime was committed.*

- What do you think it means to be impartial?

*Answers will vary, but students will probably suggest impartial means unbiased or unprejudiced.*

### 13

Ask the whole class:

- Raise your hand if you know anyone who is totally without bias or prejudice.
- Suggest that sometimes people’s prejudices are obvious and sometimes they are not. Ask students to think quietly about whether they have any prejudices against anyone in any of the following groups: (They should not answer aloud.)
  - Older people or younger people
  - Women or men
  - Highly educated or less educated people
  - People in any racial or ethnic group
  - People with disabilities (physical, mental, or educational)
  - People of different religions or who are not religious
  - People who are heterosexual, homosexual, bisexual, or transsexual
  - People from any part of the world other than the United States
  - Attractive or unattractive people
  - People who are politically liberal, conservative, or not political
  - People with a criminal record or people who have never been caught engaging in crime

- If it is true that everyone or nearly everyone holds some sort of bias or prejudice, how can any defendant ever hope to have an impartial jury?

*Discuss student responses briefly, then tell the students that the American legal system is set up in a way to give defendants (through their attorneys) the opportunity to attempt to screen potential jurors for bias. We will discuss this in more detail in part three of this lesson.*

*In a legal setting, the concern is not that jurors are free of every bias and prejudice, but that the jurors are willing and committed to decide a particular case on the basis of the evidence presented in the courtroom --- and to not judge the defendant or case based on their own preconceptions.*

- Why do you think the framers of the Amendments included the guarantee that the jury would be from the state and district where the crime took place?

*One reason might be that a jury from the place where the crime was committed helps to ensure that the people on the jury can understand the perspective of people in the community that was harmed by the crime. It also makes it more likely that the jury will be able to view the defendant fairly because the jurors may know people who are similar to the defendant.*

#### 14

Invite a volunteer to read the Seventh Amendment aloud while the rest of the class reads it quietly and underlines the part about the right to a jury.

Ask students who were assigned the Seventh Amendment these questions:

- Does the Seventh Amendment guarantee a jury of your peers?  
*It does not.*
- What does this Amendment guarantee about juries in civil trials (lawsuits)?

*That people (defendants and plaintiffs) involved in lawsuits may request a jury trial.*

#### 15

Invite a volunteer to read the Fourteenth Amendment aloud while the rest of the class reads it quietly and underlines the part about the right to a jury.

Ask students who were assigned the Fourteenth Amendment this question:

- Does the Fourteenth Amendment literally guarantee a jury of your peers?

*While the word “jury” does not appear in the 14th Amendment, the U.S. Supreme Court and many legal scholars have interpreted this Amendment’s “due process clause” and “equal protection clause” to give defendants the right to a fair trial and the chance for a jury that is representative of a defendant’s community. In fact, most legal challenges about jury diversity and representative juries are centered on the Fourteenth Amendment.*

## 16

Stress this point: The Sixth, Seventh, and Fourteenth amendments do not literally and specifically guarantee a diverse or “representative” jury of the peers of a defendant, however they do guarantee the right to an impartial jury.

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## PART FOUR: JURY SELECTION (15 minutes)

### 1

Ask students:

- How are jurors picked for your youth court?

*In most youth courts, juries are made up a combination of youth court volunteers and respondents who show up that day. Many youth courts attempt to get as many potential jurors as possible, through extensive recruiting and training programs.*

*Some youth courts post signs in schools or community centers looking for volunteers. Other youth courts might be in a school and could be made up of people taking a special youth court class, etc.*

- Do you know anyone who has served on a jury in (an adult) criminal or civil case? If so, do you know how he or she was picked for jury duty?

*The process for getting selected for jury duty varies slightly from place to place and for different types of juries.*

### 2

Tell students that in the adult legal system there are two types of juries: grand juries and petit juries. Ask students:

- Do you know the difference between a grand jury and a petit jury?

*A grand jury is a group of 12 -- 23 people who hear preliminary evidence to decide if there is sufficient reason to formally charge a person with a crime. These people meet before the case*

*goes to trial. There are some states that do not use grand juries.*

*A petit jury (pronounced “petty”) is a group of people who hear evidence in a trial and determine whether a defendant is guilty or not. In some states, juries also decide the punishment a guilty person receives. In other states, judges decide the sentence after a jury determines the person on trial is guilty. In civil cases, juries decide if a defendant owes the plaintiff (the person who is bringing the suit) money based on the facts of a lawsuit.*

Ask students if they understand the difference between the two types of juries.

Tell students today’s lesson is mostly focused on petit juries. If, after the lesson, they are interested in learning more about the role of diversity in grand juries, they can do further study.

### 3

Tell students that some federal courts and some state courts rely on juries. Appellate courts (courts that hear appeals about lower court decisions) do not use juries. They rely on judges or panels of judges, similar to the “tribunal model” used in some youth courts.

### 4

Ask the six students who received strips about jury selection to bring those strips to the front of the room.

### 5

Distribute “**Handout 3: How Are Petit Juries Selected?**”, which can be found at the end of this lesson plan.

### 6

Ask the student who has the term “summons” to read it to the class as the rest of the students read their handout.

**NOTE:** If your class has students who have difficulty reading, you can modify this part of the activity by asking a volunteer to read about “summons” while the student with the summons strip stands. Follow the same procedure for the rest of the strips.

Ask students if they understand the definition of summons.

### 7

Follow the same procedures for each part of the handout, pausing after each section

to clarify, if necessary.

Optional: If time allows, you may consider showing a videotape from Court TV that shows an actual *voir dire* process in action. Be sure to plan your time so you can finish the entire lesson if you add this step.

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## **PART FIVE: EVALUATE OPTIONS TO CREATE MORE DIVERSE JURIES (20 minutes)**

### **1**

Ask students:

- If your youth court has juries, do you think your juries are diverse? If your youth court uses a tribunal, is it typically diverse? Remember diversity refers to characteristics beyond race and ethnicity.
- Are the numbers of females and males fairly balanced?
- Are there enough people from various religious groups in your community?
- Do your juries reflect people who live in various neighborhoods of your community?
- Are there jurors with various educational levels?
- Are there jurors from various economic levels?
- Do any young people with disabilities serve on your juries?
- Are there enough people from each of the racial and ethnic groups in your community?

### **2**

Tell students that according to research done by the American Probation and Parole Association (APPA), there are two groups who are often underrepresented among youth volunteers who participate in youth courts: males and minorities. (The study does not comment on the composition of youthful offenders who also often serve on juries.)

In 1994, the APPA found the youth court volunteer population was: 58% female, 42% male; 69% White, 16% Hispanic, 10% African American, and 4% of the volunteers

came from other races. (Tracy M. Godwin, Peer Justice and Youth Empowerment: An Implementation Guide for Teen Court Programs, American Probation and Parole Association, Lexington, KY, 1998, pp 115 - 117)

**NOTE:** This publication also includes excellent suggestions for ways to recruit a more diverse youth court volunteer pool. Another publication containing helpful information and suggestions for recruiting youth court volunteers is National Youth Court Guidelines, by Tracy M. Godwin and published in 2000 by the American Probation and Parole Association and distributed by the National Youth Court Center.

### 3

Ask students:

- Do you have any suggestions for ways to make your youth court juries (or tribunals) more diverse?
- Can you think of new ways to recruit youth court volunteers who reflect various parts of your community?
- What steps are you willing to take in this effort?

### 4

Tell students to switch gears and think again about adult juries. Explain that many people are looking at ways to make adult juries more diverse, particularly after historical cases like the rape trial known as the Scottsboro case and the murder trial after the assassination of Emmet Till. More recently some Americans were skeptical of high profile and racially-charged cases, like those cases involving O.J. Simpson, Amadou Diallo, Rodney King and others.

**NOTE:** If students want to learn more about these cases, you may wish to encourage them to conduct some research about a case or two and report back to you or the group about the effect of the composition of juries on the sense of justice some people perceived in those cases.

The student's next task is to evaluate some of those options to create more diverse juries. Explain that the students in this class have been selected to serve on an important citizens' committee to make recommendations about the best way to improve diversity on their community's juries.

### 5

Put students into groups of between three and five students. Ask students to arrange their chairs so they can easily hear other members of their group. Tell one group of students they will be the panel to make the final decision after the other groups make recommendations. These groups should read the scenarios and discuss them, but not make any final conclusions yet.

**6**

Distribute “**Handout 4: Options For More Diverse Juries**” which can be found at the end of this lesson plan.

**7**

Ask a student volunteer to read the directions aloud to the class. Clarify any questions students may have about the task. Tell students they have ten minutes to read the options aloud as a group and then pick the best one. Write the ending time on the board. Ask the panel to move to the front of the room, facing the other students. Invite students to begin as you circulate around the room to observe their work. Give a two-minute warning when time is nearly up.

**8**

Ask if any group selected option A. If so, ask a representative of that group to explain why they selected it. If more than one group selected “A”, ask the second group if it had any different reasons for doing so. Follow the same steps for options B - E.

**9**

Ask each member of the panel to vote on the options and to give a twenty-second explanation about why he or she was most persuaded by that option.

---

## **PART SIX: SPEAK YOUR MIND (15 minutes)**

**1**

Distribute “**Handout 5: News Flash**” that can be found at the end of this lesson plan.

**2**

Ask several volunteers to take turns reading sections of the news flash aloud while the rest of the class reads it silently.

**3**

Confirm that students understand the directions. Tell students they have five minutes to write their letters to the Governor. Write the ending time on the chalkboard or flipchart paper.

**4**

As students are working, circulate around the room to observe their work and answer questions. Give a one-minute warning when time is nearly up.

**5**

After five minutes, ask students to share their letters with someone they are sitting next to.

**6**

If time permits, ask students to raise their hands if they supported the Governor's plan. From that group, ask a student to volunteer to read his or her letter. Then switch and ask students who opposed the Governor's plan and let a volunteer from that group read his or her letter aloud.

---

**PART SEVEN: SUMMARY AND CONCLUSION (5 minutes)****1**

Ask students:

- Why is the jury system important?
- Do you think public confidence (trust) in juries will be eroded if juries are not more diverse?

**2**

Tell students:

- The fictional governor was right --- some adults try to avoid jury duty. If a community resource person is present, ask him or her to explain the penalties assigned to people who refuse to serve. (Note: The penalties vary from state to state.)
- According to research, 75% of jurors leave the courthouse feeling better about justice than when they arrived. In another study, 91% of jurors came away with a

more favorable impression of the jury system after the trial in which they served and 99% of the jurors surveyed said they would encourage others to serve. (Dwyer, William L. In The Hands Of The People: The Trial Jury's Origins, Triumphs, Troubles, and Future in American Democracy, St. Martin's Press, New York, NY 2002 p137-138.)

- Ask students what they could do to make jury service more appealing. Why should people be eager to serve?

### 3

Ask students:

- How does service fit in with citizenship?
- Do you agree or disagree with this statement? Why or why not?

*"Participating in juries is the most powerful symbolic evidence of democracy, second only to voting. The jury represents the people's opportunity to participate directly in governance."* (Jeffrey N. Herman and Scott L. Berman, "Justice Gone Awry: Getting the U.S. Jury System Back On Track." Viewpoint, Marsh and McLennan Companies, Inc., Fall 1996)

### 4

Thank the students and community resource person for their participation.

## RESOURCES

*Batson v. Kentucky*, 476 .S. 79 (1986)

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Available: <http://www.s-t.com/daily0506-96/diver.htm>

The Constitutional Rights Foundation- Chicago: "What are the purposes of the jury?"  
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"Dane County Court Grant To Improve Jury Diversity," Wisconsin Lawyer, March 2001 Available: [www.wisbar.org/wislawmag/2001/03/lnews.html](http://www.wisbar.org/wislawmag/2001/03/lnews.html)

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Herman, Jeffrey N. and Scott L. Berman, "Justice Gone Awry: Getting the U.S. Jury System Back On Track." Viewpoint, Marsh and McLennan Companies, Inc., Fall 1996.

Kennedy, Randall Race, Crime, and the Law, New York: Pantheon Books, 1997.

McNulty, Jennifer, "Sociologist Testifies About How To Overcome Racial Bias In Jury Selection," Currents. University of California, Santa Cruz. March 3, 1997.

Twelve Angry Men. Dir. Sidney Lumet. With Henry Fonda, Lee Cobb, Ed Begley, Jack Klugman, E.G. Marshall. MGM, 1957. (Note: the film is one hour and 36 minutes long.)

[www.courtstv.com](http://www.courtstv.com)

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## HANDOUT 1

### HELP WANTED

#### Directions:

1. Imagine you are getting ready to place an advertisement to recruit new youth court jurors.
2. Think about the skills, values, and experiences you are looking for in an effective juror?

The term "skills" describes things jurors should be able to do.

The term "values" describes things jurors should believe in.

The term "experiences" describes what jurors have gone through or observed to give them their unique perspectives.

3. Besides skills, values, and experiences, is there any other quality you are looking for in a juror?
4. Take eight minutes to write a two or three paragraph help-wanted ad for a juror. Use the space below and on the back to plan and write your help-wanted advertisement.

**OVERHEAD TRANSPARENCY OR POSTER 1**

***STRAUDER V. WEST***  
***VIRGINIA,***  
**100 U.S. 303 (1879)**

The Court said that to deny any citizen the opportunity to serve on a jury because of race:

“is practically a brand upon them, affixed by law; an assertion of their inferiority, and a stimulant to that race prejudice which is an impediment to securing to individuals of the race that equal justice which the law aims to secure... The very idea of a jury is that it is a body of men composed of the peers or equals of the person [who is on trial.]”

## HANDOUT 2

### THE RIGHTS TO JURIES ACCORDING TO THE U.S. CONSTITUTION

Directions: Your instructor will assign you and your group to read part of this handout. After you have read that part, answer the questions right below it as a group. Your group will be the experts on that section. When all groups have finished preparing, the instructor will pick one person in your group to read the passage from the Constitution. The whole group should be prepared to answer the questions.

\*\*\*\*\*

*Article III, Section 2:*

*"The trial of al 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..."*

The right to a jury trial in criminal cases was the only explicit guarantee to appear in both the original constitution and in the Bill of Rights that was added later. In fact, while the framers of the Constitution disagreed on many points, they agreed most consistently on the need to safeguard the right to a trial by jury.\*

- a.) Does Article III say that we have a right to a jury of our peers? If so, underline that part.
- b.) What type of jury does it say we are guaranteed?

\*\*\*\*\*

*Sixth Amendment:*

*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, which District shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.*

In modern times, the Supreme Court has said adults charged with felonies or misdemeanors for which they could receive jail time of six months or more are entitled to a jury. People who are accused of minor offenses that would be punishable by a fine or jury time less than six months are not entitled to a jury. Minor offenses could be things like minor traffic violations, or other petty misdemeanor crimes.

## HANDOUT 2, continued

- a.) Does the Sixth Amendment say we have a right to a jury of our peers? If so, underline that part.
- b.) What type of jury does it say we are guaranteed?
- c.) What do you think it means to be impartial?

\*\*\*\*\*

### *Seventh Amendment:*

*In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by jury, shall be otherwise re-examined in any court of the United States, than according to the rules of common law.*

In modern times, the Court has allowed states to require defendants and plaintiff involved in lawsuits to request a jury trial. The Court has also allowed states to put limits on the length of time someone has to request a trial by jury in civil cases, also known as lawsuits.

- a.) Does the Seventh Amendment say we have a right to a jury of your peers? If so, underline that part.
- b.) What does this Amendment say about juries in civil trials (lawsuits?)

\*\*\*\*\*

### *Fourteenth Amendment, Section 1:*

*All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of laws.*

- a.) Does this Amendment literally guarantee a jury of your peers?

\*\*\*\*\*

\* (Albert W. Alshuler and Andrew G. Deiss, "A Brief History of Criminal Jury In The United States" University of Chicago Law Review, Summer 1994, p. 2)

## HANDOUT 3

### HOW ARE PETIT JURIES SELECTED?

#### Step One: THE SUMMONS

The first step in selecting a jury is to call a group of potential jurors to the courthouse for "jury duty." Most people who are asked to serve on juries get a letter in the mail called a "summons," that tells them where and when they should report for duty. The people who get summons usually have their names picked from a list of people who have registered to vote in that state. Some states also send summons to people who have a driver's license or an official state-issued identification card. Some communities are considering other lists to use for pulling names to receive summons. Anyone who is on those designated lists is in the "jury pool" and could be summoned for duty.

#### Step Two: THE JURY VENIRE (pronounced "va-nee-ray")

Most people who appear for jury duty are not actually picked to serve on a jury because the court sends summons to more people than it needs.

Once you are summoned for duty and you show up, you are officially in the "jury venire." Imagine you show up for jury duty and 100 other people show up for jury duty the same day. You are each assigned a number and are all waiting in a big waiting area. Then the clerk calls for jurors by number to go to a particular courtroom. Once you arrive in a courtroom, the potential of being picked for duty is much higher. Depending on how many juries are needed that day, the rest of the people who were summoned will be sent home.

#### THE VOIR DIRE (pronounced "vwaa deer")

To narrow down the group even more, lawyers representing the defendant and lawyers representing the prosecutor or plaintiff ask questions to potential jurors. Through the questioning process, lawyers try to find if a potential juror holds defendant or the victim personally?" "Have you seen media coverage about this case?" "Have you made up your mind about whether the defendant is guilty?" In some places, the *voir dire* is done by a judge, not by lawyers.

## HANDOUT 3, continued

### REMOVAL FOR CAUSE

If, based on answers given in *voir dire*, lawyers think a potential juror would be biased against their side of the case, they can ask that juror to be removed from the pool. This is called "removal for cause." As potential jury members are removed, the venire gets smaller.

### PEREMPTORY CHALLENGES

Remember, in our adversarial system of justice, lawyers want jurors who will be sympathetic to their side of the case. In addition to removing jurors "for cause" it has been a long tradition to allow lawyers to remove certain potential jurors from the venire without stating a reason. This is called peremptory challenge. When lawyers use peremptory challenges, they base their requests on instinct and probability. The Supreme Court has ruled that judges and lawyers cannot use peremptory challenges to remove potential jurors because of their race\* or gender\*\*. There are also restrictions on the total number of peremptory challenges each side can use. \* *Batson v. Kentucky*, 476 U.S. 79 (1986) \*\**J.E.B. v. Alabama Ex Rel T.B.* 511 U.S. 127 (1994)

### Step Three: SEATING (or empanelling) THE JURY

Once the *voir dire* is finished and potential jurors are removed for cause or through peremptory challenges, a jury is selected. In most criminal trials, twelve people serve on a jury and may be joined by one or two alternates. Some civil trials, cases involving lawsuits, use twelve jurors; others use six jurors

## HANDOUT 4

### OPTIONS FOR MORE DIVERSE JURIES

#### Directions:

1. Read and discuss the following options within your group. (If you were assigned to be in the panel making the final decision, do not complete steps 2 - 4 until after the other groups have presented their recommendations to you.)
2. After you have discussed each, rank them from one to five, with one being the best option.
3. Once you have selected the best option, write down one or two sentences about why it is the best solution.
4. A member of your group should be ready to explain your recommendation to the group of state officials.

---

#### **A. USE DRIVER'S LICENSE LISTS AND REGISTERED VOTER LISTS**

Some states only summon potential jurors who are registered to vote. Analysts who have studied juries say that this group of people tend to be more civic minded (more likely to feel jury duty is an important responsibility of citizenship) than average people. This group also tends to be less diverse than the general public.

Many people want states to also use lists of people who are licensed to drive or who have state identification cards. Analysts say this group of people tend to be younger and less affluent than most registered voters. They are also more likely to be angry about being called for jury duty and more likely to have criminal records than most people who are just registered to vote.

*Concerns about this option: Are the driver and state identification lists accurate? Do these lists include enough people and enough of a variety of people? Should there be additional lists added to draw from for the jury pool?*

## HANDOUT 4, continued

### **B. INVEST TIME AND MONEY TO BE SURE VOTER REGISTRATION LISTS AND DRIVER'S LICENSE LISTS ARE ACCURATE**

Obviously, people who do not receive their summons do not show up for jury duty, so if the addresses are wrong, there is a problem. For example, in one Wisconsin county, court officials found that 50% of the summonses sent to minorities are undeliverable. In comparison, only 17% of summonses to nonminorities are undeliverable. Of all the jurors summoned to serve, 3% are minorities. However, minorities comprise nearly 9% of the county population and 37% of that county's jail population.

*Concerns about this option: Where would the money come from to do the on-going research and data collection? Will this require expensive new computers or software? Is it worth it?*

### **C. PAY JURORS MORE MONEY AND FIND DAY CARE FOR JURORS WHO NEED IT**

Most people who serve on juries are paid less than minimum wage for their time. Many people try to get out of jury duty because they cannot afford to take off from work and their employers will not pay for their time on a jury. Other potential jurors have difficulty finding someone to care for their children while they serve on a jury.

*Concerns about this option: Where would the money come from to implement this? Our government does not require much of us ó jury duty is our way to participate in democratic justice. We should be willing to serve on juries for little or no money.*

### **D. REQUIRE THAT JURIES REFLECT THE COMPOSITION OF THEIR COMMUNITIES.**

Several states are considering ways to be sure that at least a few minorities serve on each jury so the composition of juries reflects the composition of the community. For example, one county asks potential grand jurors to complete a questionnaire asking them if they would like to be identified as a minority. Then 21 of the 23 grand jurors are picked at random. If that group contains two minorities, the remaining jurors are picked randomly. If the original group

does not contain two minorities, the remaining jurors are picked exclusively from the self-identified minority pool.

*Concerns with this option: Some legal scholars think that it is unconstitutional*

#### **HANDOUT 4, continued**

*to use racial quotas in jury selection. They say the Supreme Court has established very strict standards about when the government can consider race as a factor in any government action.*

#### **E. DO NOT CHANGE THE SYSTEM**

If we try to manipulate the composition of juries by considering race, gender, religious background, etc, we're assuming people of various groups cannot be fair. We also would be using discrimination to achieve the goal of diversity, and discrimination is not right or fair. We should not try for juries that "look like America" we should attempt to empanel jurors who "look beyond looks."

*Concerns about this option: Many Americans view the justice system with suspicion and even antagonism. They perceive the system is biased against people like them. If we do not take proactive steps to be sure all types of voices will be heard in jury boxes, we risk the general public losing confidence in justice altogether ñ fewer people being willing to testify as witnesses, to report crime, or to participate in any of the processes of justice.*

## HANDOUT 5 NEWS FLASH

### **Governor Considers Plan to Stop Mandatory Jury Duty**

Today, in a surprising move, the Governor announced what could be a major shift for our state's court system. Faced with a growing budget crisis, the Governor suggested that he might cut payments for jurors and let jury duty be a volunteer experience. The Governor justified the proposal saying, "Everybody complains about having to serve, anyway. You should hear some of the crazy excuses they come up with to get out of it. If somebody wants to volunteer to be on a jury, that's great, but we can't afford to pay 'em. Besides, the Constitution doesn't say we have to pay jurors and some other states are simply eliminating juries in some kinds of civil trials."

In response to a reporter's question about whether the Governor is concerned about a sharp decrease in the number of jurors, the Governor said that he has asked the lawyers on his staff to make recommendations about who might have to go without a jury. "Maybe we could do without juries in all lawsuits. Or we could make it so only people who face the death penalty or life in prison get a jury. Or maybe we could cut it off at someone who's facing ten years or more in jail. Everyone else would only get a judge. That might even speed things up a bit!" the Governor said.

Opposition to the Governor's proposal is already mobilizing. This afternoon, protesters gathered outside the Governor's office "We're the citizens! Don't cut us out!" and carrying signs that read "We need more voices in our jury boxes, not fewer." One particularly irate protester was heard saying, "What do you want, Governor? Juries made up of rich folks and people like you with nothin' better to do?"

Clearly this battle is just beginning. And don't be surprised if it ends up in court.

\*\*\*\*\*

Directions: Think about the purpose of a jury. Then decide whether you think jury diversity is important. If so, think about how the Governor's proposal might affect jury diversity. Then write a letter to the Governor explaining why you agree or disagree with his proposal. Your letter should be at least two paragraphs long.