

JURY SELECTION IN A CRIMINAL CASE

NYSBA YOUNG LAWYER'S SECTION TRIAL ACADEMY-2019

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1. Statutes that control jury selection:

CPL 270.05 - 270.30 FELONIES

CPL 360.05 - 360.35 MISDEMEANORS

***(procedures are the same except for number
of peremptory challenges)***

***2. Challenges for Cause - unlimited. CPL 270.20 - must
have a reason.***

***Peremptory Challenge - no reason CPL 270.25 - limited
number A felony 20; B or C felony 15; all other felonies
10; Misdemeanors 3.***

3. BATSON 476 US 79 AND KERN 75 NY2D. 638 (1990)

***BATSON - PROSECUTION CAN NOT EXCLUDE
JURORS IN A DISCRIMINATORY MANOR BASED
UPON RACE, ETHNICITY, GENDER AND
RELIGION.***

***KERN - APPLIED BATSON TO DEFENSE
COUNSEL***

4. *New York has a three step process to determine whether a Batson violation has occurred.*

- (A) *Movant has the burden to make a prima facie showing that adversary has exercised peremptory challenges against a certain prospective juror(s) based solely on their membership in a cognizable class.*
- (B) *If Court rules that a prima facie showing of the use of peremptory challenges in a discriminatory manner has been established, then the burden shifts to the non-moving party to proffer “neutral” reasons for the exercise of the peremptory challenge(s) in question.*
- (C) *If race neutral reasons are offered, then the movant must argue that the reasons offered are pretextual. Then Court must decide if the proffered reason were pretextual and that the challenge(s) were exercised in a discriminatory manner.*
- (D) *Remedy is to seat the improperly challenged jury.*
- (E) *Important to keep notes as to race, gender ethnicity so that a valid record can be made.*
- (F) *In your materials is Point II of a brief I filed on a Batson issue.*

5. *Judge controls voir dire in a criminal case. All judges have their own “rules” and procedures.*
 1. *Some ask lots of questions.*
 2. *Some ask few questions.*
 3. *Some use questionnaires. (copy in materials)*
 4. *Some limit time/some do not.*

See cases in materials. Limits must be “reasonable” Steward - Jean restrictions imposed must afford defense counsel a fair opportunity to question prospective jurors about relevant matters.
 5. *Some fill box each round/ some only replace excused jurors.*
6. *Voir dire is your first and only opportunity to have a conversation with a prospective juror.*
7. *Not cross examination. You want the jurors to speak and express their opinions so you can get an idea of how they think about the important issues in your case. Example: Can you be fair? Yes - what do you know about your self that makes you say that? Would you want someone with your state of mind to be a juror on a friend’s case - Why?*
8. *Listen to questions by Judge and ADA. More importantly listen to answers.*
9. *Develop a relationship with jurors. Command courtroom.*

10. Did you ever have an experience with a law enforcement officer? Tell us about it? How did you feel about that experience? (Can use any type of person and situation that fits case)

11. Federal criminal jury selection totally different.

Rule 24 of the Federal Rules of Criminal Procedure. Normally voir dire is conducted in front of a Magistrate Judge. Judge asks all questions. Suggested questions can be submitted. Rarely will Judge permit attorneys to ask questions.

Government 6 Defense 10. Exercised alternatively.

12. Implicit Bias. Copy of Implicit Bias Jury Instructions - Ninth Circuit Criminal Instruction 1.1 , Western District of Washington, Illinois Pattern Jury Instructions 1.08 and California Civil Jury Instructions 113, are included in materials.