



## ★ JURY SELECTION ON TRIAL ★

A Lesson by Linda Weber

### SUMMARY

Justice in America not only requires the work of each branch of government, it also requires the voices of citizens who serve on juries in both civil and criminal trials. If the constitutional guarantee of a fair trial is to be realized, the process used for selecting jurors must also be fair.

Before *Edmonson v. Leesville Concrete Co.* (1991), the constitutional principle of equal protection under the law had been applied to federal jury selection practices in criminal trials but not in civil trials. With *Edmonson*, the Court applied the same principle to civil jury trials when it ruled that the use of race-based peremptory challenges during jury selection violates the Constitution.

*Edmonson v. Leesville* is a story about the relentless pursuit of justice under law by one ordinary citizen and his attorney. Because of their persistence, all citizens who report for jury service are protected against discriminatory practices during the selection process.

In this lesson, students learn about the process used for jury selection and how the role and responsibilities of government in civil and criminal jury trials are viewed by the Supreme Court. They also reflect on the democratic values, principles, and dispositions of character working behind the scenes.

### Notes and Considerations

- This lesson presumes that students are familiar with the following: Supreme Court cases, the court system, court-related vocabulary, the jury selection process including voir dire and the use of peremptory challenges.
- Technology is relied on to facilitate learning and instruction.
- This is a self-contained lesson with resources and activities that can be adapted to different teaching styles, length of classes, and levels of students.

### Snapshot of Lesson

**Grades:** Middle School; High School (Focus)

**Subject Focus:** Civics/Government

**Estimated Time:** 4 days

**Alignment to National Standards for Civics and Government:**

Grades 5-8; Grades 9-12

**Materials/Equipment Needed:**

- Video: *Jury Selection: Edmonson v. Leesville Concrete Company* (available on DVD and at [www.SunnylandsClassroom.org](http://www.SunnylandsClassroom.org))
- Computer with Internet connection and projector for class viewing
- Computer lab

**Materials Included:**

Readings and Resources

- Introduction: "Supreme Court as a Mirror of America" from *The Pursuit of Justice* by Kermit L. Hall and John J. Patrick
- *Edmonson v. Leesville Concrete Co.* (1991)—background story, full text
- Glossary of Jury- & Court-Related Terms
- Topics from *Understanding Democracy: A Hip Pocket Guide*: Citizenship, Justice, Rights, Rule of Law, Civic Virtue
- From *Our Constitution* by Donald A. Ritchie – Sixth, Seventh, Eighth, & Fourteenth Amendments
- Transcript for video

Student Materials

- Research: "Jury Selection Step by Step"
- Student's Video Guide
- Graphic Organizer: "Chart the Plot of the Story"
- Activity: "Profile the Legal Case"
- Character Analysis: "Going the Distance: What It Takes for Democracy to Work"
- "Take-Home Review"

Teacher Materials

- Teacher's Video Guide
- Keys for student activities

**National Standards for Civics & Government**

Standards level detail: grades 5-8; grades 9-12

## TOPICS

- Civil and criminal jury trials
- Constitutional basis for juries
- Constitutional limits and responsibilities of government
- Jury selection process
- Justice
- Rights and responsibilities of citizens
- Role and responsibilities of juries in the U.S. justice system

## NATIONAL STANDARDS

Document: *National Standards for Civics and Government* (1994) Center for Civic Education  
<http://www.civiced.org/index.php?page=stds>

### Grades 5-8 Organizing Questions

The national content standards for civics and government are organized under five significant questions. The following outline lists the high-level organizing questions supported by this lesson.

- I. What are civic life, politics, and government?
  - A. What is civic life? What is politics? What is government? Why are government and politics necessary? What purposes should government serve?
  - B. What are the essential characteristics of limited and unlimited government?
  - C. What are the nature and purposes of constitutions?
  - D. What are alternative ways of organizing constitutional governments?
  
- II. What are the foundations of the American political system?
  - A. What is the American idea of constitutional government?
  - C. What is American political culture?
  - D. What values and principles are basic to American constitutional democracy?
  
- III. How does the government established by the Constitution embody the purposes, values, and principles of American democracy?
  - A. How are power and responsibility distributed, shared, and limited in the government established by the United States Constitution?
  - E. What is the place of law in the American constitutional system?
  
- V. What are the roles of the citizen in American democracy?
  - A. What is citizenship?
  - B. What are the rights of citizens?
  - C. What are the responsibilities of citizens?
  - D. What dispositions or traits of character are important to the preservation and improvement of American constitutional democracy?
  - E. How can citizens take part in civic life?

### Grades 9-12 Organizing Questions

The national content standards for civics and government are organized under five significant questions. The following outline lists the high-level organizing questions supported by this lesson.

- I. What are civic life, politics, and government?
  - A. What is civic life? What is politics? What is government? Why are government and politics necessary? What purposes should government serve?
  - B. What are the essential characteristics of limited and unlimited government?
  - C. What are the nature and purposes of constitutions?
  - D. What are alternative ways of organizing constitutional governments?
  
- II. What are the foundations of the American political system?
  - A. What is the American idea of constitutional government?
  - C. What is American political culture?
  - D. What values and principles are basic to American constitutional democracy?
  
- III. How does the government established by the Constitution embody the purposes, values, and principles of American democracy?
  - B. How is the national government organized, and what does it do?
  - D. What is the place of law in the American constitutional system?
  
- V. What are the roles of the citizen in American democracy?
  - A. What is citizenship?
  - B. What are the rights of citizens?
  - C. What are the responsibilities of citizens?
  - D. What civic dispositions or traits of private and public character are important to the preservation and improvement of American constitutional democracy?
  - E. How can citizens take part in civic life?

Note: A more detailed standards-level alignment related to these questions can be found in the “Standards” section at the end of this lesson plan.

## STUDENT OUTCOMES

### Knowledge, skills, and dispositions

Students will . . .

1. Identify the constitutional grounds for jury trials.
2. Explore the relationship and responsibilities of the government to the people under the Constitution.
3. Describe the basic process for jury selection in federal court.
4. Explain the role of peremptory challenges in *Edmonson v. Leesville*.
5. Consider the implications of the decision in *Edmonson v. Leesville* to justice in the United States.
6. Identify values and principles in a constitutional democracy.
7. Recognize and reflect on the importance of civic dispositions and citizen involvement in the justice system.

### Integrated Skills

#### 1. Information literacy skills

Students will . . .

- Analyze primary and secondary sources to gather information.
- Extract, organize and analyze information.
- Use skimming and research skills.
- Make informed decisions.
- Use prior and background knowledge to support new learning.
- Use technology as a tool for learning.

#### 2. Media literacy skills

Students will . . .

- Read, view, and listen to information delivered via different media formats in order to make inferences and gather meaning.

#### 3. Communication skills

Students will . . .

- Write and speak clearly to contribute ideas, information, and express own point of view.
- Write in response to questions.
- Respect diverse opinions and points of view.
- Support personal opinions with facts.
- Collaborate with others to deepen understanding.

#### 4. Study skills

- Take notes.
- Manage time and materials.

#### 5. Thinking skills

Students will . . .

- Describe and recall information.
- Make personal connections.
- Explain ideas or concepts.
- Draw conclusions.
- Recognize compatible and conflicting ideas and principles.
- Analyze and compare opinions.
- Synthesize information.
- Use sound reasoning and logic.

#### 6. Problem-solving skills

Students will . . .

- Explain the interconnections within a process leading to desired results.
- Describe legal process for conflict resolution.
- Examine reasoning used in making decisions.
- Ask meaningful questions.

#### 7. Participation skills

Students will . . .

- Contribute to small and large group discussion.
- Work responsibly both individually and with diverse people.
- Express own beliefs, feelings, and convictions.
- Show initiative and self-direction.

## ASSESSMENT

Evidence of understanding may be gathered from student performance related to the following:

1. Research Activity: "Jury Selection Step by Step"
2. Responses to questions in the video discussion guide.
3. Graphic Organizer: "Chart the Plot of the Story"
4. Activity: "Profile the Case"
5. Character Analysis: "Going the Distance: What It Takes for Democracy to Work"
6. "Take-Home Review"

## VOCABULARY

appeal	jury	pro bono
Batson challenge	jury pool	prospective juror
civil case	jury selection	qualified jury wheel
counsel	justice	right
criminal case	layperson	strike a juror
discrimination	litigant	sue
facts	master jury wheel	suit
fair	panel	summons
impartial	party	trial by jury
judge	peremptory challenge	venire
juror	private action	voir dire
tyranny	U.S. Constitution	

Refer to the "Glossary of Jury- and Court-Related Terms" included with this lesson for many definitions.

### Resources for Definitions

- **FindLaw—Law Dictionary**  
<http://dictionary.lp.findlaw.com/>
- **American Bar Association**  
<http://www.abanet.org/publiced/glossary.html>
- **Federal Judicial Center: Inside the Federal Courts -- Definitions**  
<http://www.fjc.gov/federal/courts.nsf>
- **Justice Learning – Democracy Glossary**  
<http://services.justicetalking.org/dg/>
- **Merriam-Webster’s Dictionary of Law**  
<http://dictionary.getlegal.com/listing/j/3>
- **Understanding Democracy, A Hip Pocket Guide—John J. Patrick**  
<http://sunnylandsclassroom.org/Asset.aspx?id=1116>
- **U.S. Courts: Commonly Used Terms**  
<http://www.uscourts.gov/library/glossary.html>

## LESSON OVERVIEW

**Goal:** Students learn about the shared responsibilities of citizens and the government for establishing justice in America through the story of the Supreme Court case that brought justice to jury selection in civil trials—*Edmonson v. Leesville Concrete Company* (1991).

**Class-Prep Assignment:**

Students build background knowledge and understanding for the video and the class work in this lesson by reading primary and secondary sources and responding to questions.

**DAY 1: Jury Selection Step by Step**

Students conduct research to identify steps in the jury selection process in federal court.

**DAY 2: Jury Selection on Trial**

Students watch and listen to the video *Jury Selection: Edmonson v. Leesville Concrete Company*, then respond to discussion questions and chart the plot of the story.

**DAY 3: Profile the Legal Case**

Students gather information from the video and review the Supreme Court opinion to develop a case profile for *Edmonson v. Leesville* that summarizes the facts and legal arguments used.

**DAY 4: Going the Distance**

Students reflect on the interplay of democratic values, principles, and civic dispositions of character evident in the story that brought justice to jury selection.

*“Citizenship is every person’s highest calling.”*

— Ambassador Walter H. Annenberg

## TEACHING ACTIVITIES: Day by Day

### Class-Prep Assignment

Advance preparation is important for students so they have the background knowledge and understanding needed for viewing the video and completing the activities in this lesson. Provide each student with a copy of the assignment and make all the resources in this lesson available for review and study.

## DAY 1: Jury Selection Step by Step

**Overview:** Students conduct research to learn about the jury selection process in federal court.

**Goal:** Provide students with essential background knowledge about the jury selection process before viewing the video *Jury Selection: Edmonson v. Leesville Concrete Company*.

### Materials/Equipment Needed:

- Technology
  - Computer lab with Internet connection
- Readings (Included)
  - Glossary of Jury- and Court-Related Terms (available for reference)
- Student Materials (Included)
  - Research Activity: “Jury Selection Step by Step” (1 copy per student)
- Teacher Materials (Included)
  - “Teacher’s Video Guide: *Jury Selection: Edmonson v. Leesville Concrete Company*”
  - Research KEY for “Jury Selection Step by Step”

### Procedure:

1. Divide students into small research groups. Give each group 5 minutes to list everything it knows or thinks it knows about the jury selection process. Without passing judgment on any entry, have each group share its list. More than likely there will be inaccuracies. Plan on circling back to the lists after students complete the research activity to make any necessary corrections and fill in the gaps.
2. Distribute the activity, “Jury Selection Step by Step,” review the instructions, and allow enough time for completion.
3. After students complete the activity, have them revisit their original lists and make any necessary corrections.

## DAY 2: Jury Selection on Trial

**Overview:** Students watch and listen to the video *Jury Selection: Edmonson v. Leesville Concrete Company*, then respond to discussion questions and chart the plot of the story.

**Goal:** Students learn about justice in America from the people and the story behind the Supreme Court decision in *Edmonson v. Leesville Concrete Company*.

### Materials/Equipment Needed:

- Technology
  - Computer lab with Internet connection and projector for class viewing
  - Video—*Jury Selection: Edmonson v. Leesville Concrete Company* (Time 23:19) Available from [www.SunnylandsClassroom.org](http://www.SunnylandsClassroom.org)
- Readings (Included)
  - Full text of the Supreme Court opinion in *Edmonson v. Leesville Concrete Co.* (1991)
- Student Materials (Included)
  - “Student’s Video Guide: *Jury Selection: Edmonson v. Leesville Concrete Company*”
  - Graphic Organizer: “Chart the Plot of the Story”
- Teacher Materials (Included)
  - “Teacher’s Video Guide: *Jury Selection: Edmonson v. Leesville Concrete Company*”
  - Graphic Organizer KEY: “Chart the Plot of the Story”

### Procedure:

1. Refer to the Teacher’s Video Guide to prepare students for the video.
2. Distribute the Student’s Video Guide.
3. Review vocabulary and preview the questions.
4. Introduce the video:  
“How would you feel if you, a qualified citizen, reported to the court as instructed in the summons, filled out the questionnaire for jury service, and ended up being peremptorily excused by a lawyer during voir dire without having a chance to answer any questions? In the interest of seating an impartial jury, some reasons have always been acceptable for excusing prospective jurors (reasons of bias or prejudice) and some are no longer allowed (race-based reasons). The video you are about to see tells the story that prompted the change. As you watch, pay close attention to the reasoning of the Court because it hinges on the role and responsibilities of the government in the jury selection process.”
5. After showing the video, divide students into small groups to discuss the follow-up questions.
4. Conclude by having students use a literary approach for analyzing the story by filling in the plot diagram—Graphic Organizer: “Chart the Plot of the Story.” They will also need to read the Syllabus in the full text of the case to gather details.

### DAY 3: Profile the Legal Case

**Overview:** Students develop a case profile for *Edmonson v. Leesville Concrete Co.* (1991) by using information gained in the video and reading the Syllabus from the official Supreme Court opinion.

**Goal:** Students consider the circumstances, the legal issues, and the arguments used by the Supreme Court to bring justice to jury selection in a civil trial.

#### Materials/Equipment Needed:

- Technology
  - Computers with Internet connection and DVD capability
  - Video—*Jury Selection: Edmonson v. Leesville Concrete Company* (Time 23:19) Available from [www.SunnylandsClassroom.org](http://www.SunnylandsClassroom.org)
- Resources (Included)
  - Glossary of Jury- and Court-Related Terms
  - Full text pdf of the Supreme Court opinion for *Edmonson v. Leesville Concrete Co.* (1991)
  - Transcript for the video *Jury Selection: Edmonson v. Leesville Concrete Company*.
- Student Materials (Included)
  - Activity: “Profile the Case” (1 copy each)
  - “Take-Home Review” (1 copy each)
- Teacher Materials (Included)
  - Activity KEY: “Profile the Case”
  - KEY for “Take-Home Review”

#### Procedure:

1. Review the instructions for activity then allow students time to complete the case profile by working individually, with a partner, or in small groups.
2. Assign the “Take-Home Review” for homework.

## DAY 4: Going the Distance

**Overview:** Students analyze the characters in the video *Jury Selection: Edmonson v. Leesville Concrete Company* in order to identify the democratic values, principles, and civic dispositions at work behind the scenes.

**Goal:** Students gain appreciation for the shared responsibilities that government and citizens have for establishing justice in America.

### Materials/Equipment Needed:

- Technology
  - Computer Lab with Internet connection and DVD capability
  - Available to replay if needed: Video—*Jury Selection: Edmonson v. Leesville Concrete Company* (Time 23:19) Available from [www.SunnylandsClassroom.org](http://www.SunnylandsClassroom.org)
- Readings (Included)
  - Glossary of Jury- & Court-Related Terms (available for reference)
- Student Materials (Included)
  - Activity: “Going the Distance: What It Takes for Democracy to Work” (1 copy per student)

### Procedure:

1. Discuss the following statement made at the beginning of the video and how it foreshadowed the story that followed:  
“The little man can really win, but you have to fight.”—Thaddeus Edmonson
2. Extend the metaphor of a “fight” to the pursuit of justice in a democracy. Where does the fight take place? What is the nature of the fight? Who’s involved? What is the goal? Is it a worthy goal? What are the rules? How do you know who wins? What does it take to go the distance?
3. Discuss the ironic twist to the story of *Edmonson v. Leesville*.  
*Thaddeus Edmonson’s journey to the Supreme Court took three years. He wanted a representative jury and a fair trial, but he ended up settling his case with Leesville Concrete Co. out of court and not in front of a jury.*
4. Distribute the activity and allow time for students to complete it in small groups. Reconvene with enough time to debrief and reflect on the characters in the chart.

### Closing:

The [Supreme Court](#) receives approximately 10,000 petitions for a writ of certiorari each year (a petition from parties seeking review of their cases). Even though it is an appeals court, the Supreme Court is not obligated to hear a case. There is a screening process and cases are selected by the Justices based their national significance, matters of federal law, and the constitutional principles at stake. The Court actually grants and hears oral arguments in about 75-80 cases each year.

1. Why do you think the Court chose to review Edmonson’s case?
2. What did Edmonson achieve for himself, for you, and for the country by going the distance?
3. What did you learn about role of citizen involvement in establishing justice in America?

## EXTENSION ACTIVITIES

### Have more time to teach?

1. **View a 9-minute video of Justices Anthony M. Kennedy, Sandra Day O'Connor and Stephen G. Breyer discussing *Edmonson v. Leesville* with a group of students.**

Available at [www.SunnylandsClassroom.org](http://www.SunnylandsClassroom.org)

Video Segment: *A Conversation on the Constitution with Justices Stephen G. Breyer, Sandra Day O'Connor, and Anthony M. Kennedy – “The Right to Trial by an Impartial Jury”*

2. **Explore the “essential dichotomy” between the private sphere and the public sphere.**

Justice Kennedy wrote in the Court’s opinion that “. . . courts must consider from time to time where the governmental sphere ends and the private sphere begins. Although the conduct of private parties lies beyond the Constitution's scope in most instances, governmental authority may dominate an activity to such an extent that its participants must be deemed to act with the authority of the government and, as a result, be subject to constitutional constraints. This is the jurisprudence of state action, which explores the ‘essential dichotomy’ between the private sphere and the public sphere, with all its attendant constitutional obligations.”

3. **Play the First Amendment Game, an online Sunnylands Civics Game from Sunnylands Classroom.**

This game gives students the opportunity to learn what happened in landmark Supreme Court cases about real events. Students move from station to station to gather information about a case as they journey onward to the Supreme Court. In the process students gain a better understanding of their rights, how our court system works, the legal language, and the role of the U.S. Supreme Court in interpreting these rights.

<http://games.sunnylandsclassroom.org/Default.aspx>

4. **Learn more about the role of the courts from short videos provided by the Leonore Annenberg Institute for Civics.**

<http://www.annenbergclassroom.org/AssetLAIC.aspx?id=1422>

5. **Learn about juries and jury selection from Justice Kennedy through his words in the Supreme Court opinion for *Edmonson v. Leesville Concrete Co. (1991)***

*United States Reports* (official source of Supreme Court opinions)

<http://ftp.resource.org/courts.gov/c/US/>

Listen to an audio of Justice Kennedy reading the opinion announcement.

[http://www.oyez.org/cases/1990-1999/1990/1990\\_89\\_7743](http://www.oyez.org/cases/1990-1999/1990/1990_89_7743)

Note: The transcripts of the audio posted by Oyez may be unreliable for researching a Supreme Court case. Oyez takes a "wiki" approach to the development of the audio transcripts.

According to Jerry Goldman, creator and director of Oyez, the first iteration of the transcripts are outsourced to India. Currently there are no disclaimers to alert readers to potential informational or grammatical errors in the transcripts. Accuracy should not be assumed. Teachers may choose to use a “draft” of an Oyez transcript along with the audio as an educational tool for improving informational literacy, listening, editing, English grammar, spelling, vocabulary, and use of legal terms and concepts.

## RESOURCES

### ***Edmonson v. Leesville Concrete Co. (1991)***

- *Supreme Court 2010*  
Available from [www.SunnylandsClassroom.org](http://www.SunnylandsClassroom.org)  
Video Segment: *A Conversation on the Constitution with Justices Stephen G. Breyer, Sandra Day O'Connor, and Anthony M. Kennedy* – “The Right to Trial by an Impartial Jury” (about 9 minutes)
- *United States Reports* (official source of Supreme Court opinions)  
<http://ftp.resource.org/courts.gov/c/US/>
- FindLaw  
<http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=us&vol=500&invol=614>
- Cornell University Law School  
<http://www.law.cornell.edu/supct/html/89-7743.ZS.html>
- Exploring Constitutional Conflicts: Racial Discrimination and the State Action Requirement  
<http://www.law.umkc.edu/faculty/projects/ftrials/conlaw/stateaction.htm>

### **Teaching Strategies**

- A Student Voices Reader  
<http://www.annenbergclassroom.org/Downloads/StudentVoices/Curriculum/Student%20Voices%20Reader.pdf>
- iCivics: Interactive curriculum on the Judicial Branch  
<http://www.icivics.org/content/judicial-branch>
- The National Archives: Teaching with Documents—Analysis Worksheets  
<http://www.archives.gov/education/lessons/>
- Street Law  
<http://www.streetlaw.org/en/Page.Landmark.TeachingStrategies.aspx>
- Teacher’s Handbook: Tips and Hints for the Student Voices Curriculum  
<http://www.annenbergclassroom.org/Downloads/StudentVoices/Curriculum/Teacher%20Handbook%20-%20Tips%20and%20Hints.pdf>

### **Sunnylands Classroom**

- *Understanding Democracy, A Hip Pocket Guide*—John J. Patrick  
<http://sunnylandsclassroom.org/Asset.aspx?id=1116>
- *Our Rights* by David J. Bodenhamer  
<http://sunnylandsclassroom.org/Asset.aspx?id=1329>

### **Annenberg Classroom**

- The Role of the Courts  
<http://www.annenbergclassroom.org/AssetLAIC.aspx?id=1422>

### Justice Learning

- Justice Learning's Guide to the Constitution: What it Says, What It Means; Interactive Timelines  
[http://www.justicelearning.org/justice\\_timeline/Articles.aspx](http://www.justicelearning.org/justice_timeline/Articles.aspx)

### American Bar Association

- Commission on the American Jury Project  
<http://www.abanet.org/jury/>
- ABA Principles for Juries and Jury Trials  
<http://www.abanet.org/juryprojectstandards/home.html>

### State Court and Jury Information

- State Links for Jury Management  
<http://www.ncsconline.org/wc/courttopics/StateLinks.asp?id=48&topic=JurMan>
- National Center for State Courts  
Information & Resources (Browse by state and topic)  
[http://www.ncsc.org/Web%20Document%20Library/IR\\_landing.aspx](http://www.ncsc.org/Web%20Document%20Library/IR_landing.aspx)

### Federal Court and Jury Information

- Supreme Court of the United States  
<http://www.supremecourtus.gov>
- Jury Service in Federal Courts  
<http://www.uscourts.gov/jury/welcomejuror.html>
- *Handbook for Trial Jurors Serving in the United States District Courts*  
<http://www.uscourts.gov/Viewer.aspx?doc=/uscourts/FederalCourts/Jury/trialhandbook.pdf>
- U.S. Courts  
[www.uscourts.gov](http://www.uscourts.gov)

### More on Juries

- *Sunnylands Seminars 2009*  
<http://sunnylandsclassroom.org>
- Race, Juries, and Justice  
<http://www.justicetalking.org/ShowPage.aspx?ShowID=224>
- The American Jury: Bulwark of Democracy  
<http://www.crfc.org/americanjury/>

*“Few places are a more real expression of the constitutional authority of the government than a courtroom, where the law itself unfolds. Within the courtroom, the government invokes its laws to determine the rights of those who stand before it. In full view of the public, litigants press their cases, witnesses give testimony, juries render verdicts, and judges act with the utmost care to ensure that justice is done.*

*Race discrimination within the courtroom raises serious questions as to the fairness of the proceedings conducted there. Racial bias mars the integrity of the judicial system and prevents the idea of democratic government from becoming a reality.”*

— Justice Kennedy, *Edmonson v. Leesville Concrete Co.* (1991)

## Readings & Resources

- Introduction: “Supreme Court as a Mirror of America” from *The Pursuit of Justice* by Kermit L. Hall and John J. Patrick
- Supreme Court Opinion: *Edmonson v. Leesville Concrete Company* (1991)
  - Full text
  - Background story
- Glossary of Jury- & Court-Related Terms
- Topics from *Understanding Democracy, a Hip Pocket Guide*
  - Citizenship
  - Justice
  - Rights
  - Rule of Law
  - Virtue, Civic
- Excerpts from *Our Constitution* by Donald A. Ritchie
  - Sixth Amendment
  - Seventh and Eighth Amendment
  - Fourteenth Amendment
- Video transcript: *Jury Selection: Edmonson v. Leesville Concrete Company*

# Introduction

## The Supreme Court as a Mirror of America



The Supreme Court of the United States seems a mysterious, distant institution. Its justices conduct their business in an imposing marble building; they don formal black robes to hear oral arguments and issue decisions; and they announce those decisions through the technical language of the law. On closer examination, however, this seemingly inscrutable institution of legal oracles turns out to be a uniquely human enterprise shaped by the personalities of its justices and by the disputes that constantly roil American society. Each case that comes before the Court is a unique slice of American life, not just an abstract legal matter, and the outcomes of these cases tell the story of the nation and its development. They also chronicle the institution's successful struggle to secure its power to review the actions of the other branches of government, to establish its independence, and to settle conclusively what the Constitution means.

The high court is simultaneously the least and the most accessible branch of government. Unlike the President and Congress, the Supreme Court invariably explains its actions through written opinions. Since the Court's founding in 1789 it has delivered enough opinions to fill more than five hundred fat volumes, known to us today as *United States Reports*. The justices reach those decisions through a process that involves open argument in court and intense media coverage. In almost every case, one justice speaks for the Court publicly, and his or her colleagues may concur or dissent with the decision, also publicly.

Still, the Court's reputation for mystery is well deserved. It reaches its decisions through highly confidential meetings, called conferences, in which the justices discuss the cases before them out of public earshot. Secrecy is so strict that the justices have adopted rules that preclude even their clerks from attending these meetings. The newest court appointee has the task of sending out messages and guarding access to the conference. We know about what transpires in these conference sessions only through the fragmentary notes that a few justices have left behind.

Even the well-known practice of an individual justice writing and signing an opinion gives way at times. The justices in some instances may decide to issue an opinion

per curiam, or "for the court." Such an opinion is rendered either by the whole Court or a majority of it, rather than being attributed to an individual justice. This practice of issuing per curiam opinions means that the public cannot readily determine how the justices aligned themselves, adding to the mystery of the entire decision-making process. Early in the Court's history such opinions were used to dispose of minor cases in a terse, summary fashion; more recently, they have also become vehicles for major opinions. For example, the Court issued one of its great and controversial twentieth-century First Amendment decisions, *Brandenburg v. Ohio* (1969), per curiam. So, too, was *Bush v. Gore* (2000), in which the justices decided who would be the next President of the United States.

The framers of the Constitution intended just such a mix of secrecy and accessibility. They meant the justices to be judges, not politicians subject to direct public pressure. The justices serve during good behavior, a virtual grant of life tenure. The President appoints them with the advice and consent of the Senate; they can be removed only through impeachment by the House of Representatives and conviction by the Senate for "Treason, Bribery, or other high Crimes and Misdemeanors." Only one justice, Samuel Chase, has been impeached, but the vote to convict him fell short of the needed two-thirds majority.

The justices are insulated from politics in other ways as well. They do not have to stand for election. Their salaries cannot be diminished while they are in office. They alone decide when they will retire from the Court, even if they are infirm. They are, in the strongest sense of the term, agents of the law, whose ultimate responsibility is to uphold the Constitution without regard to political pressures or the standing of the people whose cases they decide. The words carved above the entrance of the Supreme Court building sum up its noblest ambitions: "Equal Justice under Law."

The Court is distinctively American and has been since it first opened its doors for business in 1789. Alexis de Tocqueville, a French visitor to the United States during the early nineteenth century, was astonished by the new nation's reliance on courts and judges. In his classic

book *Democracy in America*, he wrote, “I am unaware that any nation on the globe has hitherto organized a judicial power in the same manner as the Americans....A more imposing judicial power was never constituted by a people.” In more recent times, Chief Justice Charles Evans Hughes, who served during the Great Depression of the 1930s, explained the unique nature of the Court by pointing to the justices’ power to review acts of the other branches and, if necessary, overturn them. Only a few other courts in the world have powers in scope and operation similar to that of the U.S. Supreme Court; no other court figures so centrally in the life of its nation.

The Court was the most novel, yet least debated, institution to emerge from the Constitutional Convention of 1787. One reason that the delegates gathered in Philadelphia was to address the concern that rule of law—the concept that a nation should be governed by laws, not people—was under serious threat in the newly formed United States of America. The English government had a judiciary, but its judges did not hold tenure during good behavior; instead, they were effectively servants of the crown and, as a result, distrusted by many of the colonists. The colonies had courts of their own, but the final authority on legal matters rested with the distant Privy Council in London.

Moreover, under the Articles of Confederation, which were ratified in 1781 and represented the first attempt to establish a government for the new nation, there was no national judiciary; instead, state courts addressed almost all judicial matters, even those with national consequences. The framers of the Constitution, whose staunchest advocates were known as Federalists, wanted an independent judiciary capable of upholding standards of national law and restraining what they believed were the excesses of popular government. Thus, in Article 3 of the Constitution the delegates established a national judiciary, composed of one Supreme Court and as many lower federal courts as Congress wished.

The framers granted the new Supreme Court limited original jurisdiction (the power to hear cases in the first instances as a trial court) and left Congress to sketch the boundaries of its appellate jurisdiction (the power to hear cases on appeal from other courts). Article 3 provided that the power of the federal courts in general and the Supreme Court in particular extended to “all Cases, in Law and Equity, arising under the Constitution, the Laws of the United States, and Treaties...to Controversies to which the United States shall be a Party;—to Controversies between two or more states; [between a State and Citizens of another State] between Citizens of different States....”

The framers chose the words in Article 3 carefully. Particularly important was their decision to merge the concepts of law and equity under one set of courts and judges, a practice that departed from the English system. Law constituted the formal rules adopted by legislatures and courts; equity, on the other hand, consisted of ideas about justice that rested on principles of fairness and that were administered in the English system by chancellors. Colonial Americans were deeply suspicious of equity courts because they operated under the control of English governors and were, therefore, often highly political, and they were able to defeat rights, especially property rights, that were otherwise protected through the law.

The crucial purpose of Article 3 was to empower, not limit, the courts in general and the Supreme Court in particular. The framers gave the Court a power of decision equal to that, in its appropriate sphere, of Congress. Article 6 established that the Constitution was “the Supreme law of the land,” so by inference it followed that the Court, the nation’s primary legal body, was to be its most important interpreter, one authorized to overturn an act of a state court or legislature and perhaps to set aside an act by another branch of the federal government.

It was left to Congress to determine how many justices were to exercise that power. In theory, the Supreme Court could function with only two justices—the chief justice and an associate justice. Today, the number of justices stands at nine, where it has remained since 1837 except for a brief period during the Civil War and Reconstruction, when it was as low as eight and as high as ten. At its inception, the Court had six justices, a number dictated in part by the requirement that each of these justices perform his duties in one of the six circuit courts of the United States. These circuit court duties included conducting trials, making the justices into republican teachers who brought through their circuit riding the authority of the federal government to the distant states. Circuit riding also exposed the justices to local political sentiments and legal practices. The justices continued to ride circuit until 1911, when Congress formally ended the practice.

Throughout the nineteenth and into the early twentieth century, Presidents tried to make sure that each of the circuits and the associated region had a representative on the bench. The number of justices was reduced briefly in 1801 to five, with the temporary abolition of circuit riding, but the number reverted to six with the passage of a new judiciary act in 1802. The number of justices grew to seven in 1807, and the eighth and ninth justices were added in 1837. That number remained constant until 1866, when Congress, in an attempt to deny President Andrew John-

son a chance to appoint any new justices, provided that the Court's number would decline by attrition to seven. The number dropped by one, to eight, and then the Judiciary Act of 1869 reestablished the number at nine. During the New Deal in the 1930s, President Franklin D. Roosevelt attempted unsuccessfully to expand the Court by as many as six new slots.

Whatever the number of justices, there is no constitutional requirement that they be lawyers, although all of them have been. Unlike the President, members of the Court can be foreign born, and several have been: James Wilson, James Iredell, David J. Brewer, George Sutherland, and Felix Frankfurter.

The Court has had several homes throughout its history. Until the Supreme Court moved into its present building in October 1935, it had always shared space with other government institutions. The Court held its first session at the Royal Exchange Building in New York City, which was also home to the lower house of the New York legislature. In December 1790 the nation's capital moved to Philadelphia and the justices had space in the newly constructed city hall of Philadelphia. Pierre Charles L'Enfant had designed a building for the Court in the new capital city of Washington, D.C., but it was never erected, in part because Congress never deemed a new home for the justices as particularly important. The justices moved in 1801 to an unfurnished chamber on the first floor of the Capitol. After the British burned the Capitol at the end of the War of 1812, the Court operated from a rented house on Capitol Hill for two years, but then went back to the Capitol, where the justices remained until moving to their current home in 1935. The tortured journey of the Court to its new magisterial home is a reminder of its growing prestige in the American scheme of government.

The new building was the singular triumph of Chief Justice William Howard Taft, the only justice also to have served as President of the United States. Following the design of architect Cass Gilbert, the building was constructed of white marble, with a central portico and matching wings. The imposing "White Palace" has come to symbolize the power and independence of not just the justices but the entire judicial branch.

The Court's most important business has always been exercised through its appellate jurisdiction. Again, this term simply means cases that have been heard and decided before they are brought—appealed—to the justices. For the first hundred years of the nation's history Congress was wary of giving the Court too much responsibility, fearing in part that the justices might become too powerful. For example, through the Judiciary Act of 1789, Con-

gress granted the Court power to hear cases and controversies appealed to it based on diversity jurisdiction. This concept, contained in Article 3 of the Constitution, means that in order for a case to come to the Court, the parties to it must be from different, or diverse, states. Congress in 1789 could have granted the Court greater power by designating that it could hear any case—even if the parties were from the same state. The framers of the Constitution had also provided that Congress could specify that the justices could hear cases "arising under" the Constitution, but the members of the First Congress decided not to invoke the broader power that these words in Article 3 conveyed.

Since then, Congress has not only significantly expanded the Court's jurisdiction but has also given it greater discretion in deciding which cases to hear. The Court has increasingly moved from one that decided cases it had to, to a court that decided those cases it wanted to. In the early years of the Court, the justices typically heard cases based on a mandatory writ of error, an assertion by a plaintiff that a lower court had made a mistake of law. The justices were required to hear these cases. Not surprisingly, as the nation expanded, the docket of the high court grew dramatically. In the first ten years of the new nation, the justices heard just one hundred cases, but by the 1880s they were drowning, hearing and deciding more than six hundred cases a year.

Beginning in the late 1890s and gaining momentum in the 1920s, Congress granted the justices far more discretion over their docket. One of the most important steps was the Judiciary Act of 1925, a measure for which Chief Justice Taft lobbied intensively. It broadened the use of the writ of certiorari and brought an immediate decline in the numbers of cases heard and decided by the justices.

The law often relies on Latin words to convey meaning. For example, the word "writ" means a formal written order by a court commanding someone to do something or to refrain from doing something. Certiorari is a Latin word that means "to ascertain" or, more liberally translated, "to make more certain."

The words are important because this particular writ, or order, is meant to bring cases to the Court that will make the law more certain in areas where there is conflict. But as Tocqueville so wisely reminded us, the resolution of conflicting legal interpretations almost always has political repercussions. Through this writ a petitioner comes to the Court and asks that the justices order a case to be heard. The writ is discretionary; the Court is not required to issue it or hear a case from anyone seeking such a writ. There are more than seven thousand petitions for "cert" sent to the Supreme Court annually. Only a handful—less

than 2 percent—of these are accepted; the others are usually dismissed, almost always without written comment, leaving the parties to wonder why their plea for justice went unanswered. When that happens, the law stands as it was before. The denial of a writ of certiorari does not mean that the Court has decided that the lower court was correct; it only indicates that the justices are unwilling to make a decision, although as a matter of law the decision below stands.

The expanded use of the writ of certiorari and the declining use of the writ of error have helped the justices better manage their caseload. In recent years, the Court has decided as few as seventy cases a term, compared with the hundreds that it was deciding through most of the twentieth century. Moreover, with fewer cases to decide the justices are able to devote more time to the ones that they do decide. Throughout its history the Court has been important in resolving disputes, but it has become even more important in addressing major political issues, such as the limits of free speech, the boundaries of church-state relations, and reproductive rights. The Court can choose which cases it wishes to hear, and that means the justices can have an even deeper influence on the particular issues they do address, such as the rights of criminal defendants. And even when the justices refuse to hear a case they shape public policy by leaving the law to stand as it was. The broadened use of the writ of certiorari has permitted the Court to emerge as a tribunal of constitutional and statutory interpretation rather than as a mere forum to resolve disputes among parties making competing claims under the Constitution.

The Court has also further refined the rules that it imposes when considering which cases to decide. The most important of these is justiciability. That term entails an important principle: the justices will hear and decide only those disputes that are subject to being resolved through the judicial process. The Court's actions have political consequences, but the Court itself should not be overtly political. The rule of justiciability is the Court's way of deflecting those cases that seek to use it as a political rather than a legal tool. To be justiciable the dispute must present a real case and controversy, the parties to it must have a direct interest in it (called standing), it must be ready for decision (ripeness), and it must not have already been decided by other actions (mootness). For example, the Supreme Court, although not explicitly prohibited from rendering advisory opinions, early in its history decided that it would not do so. The justices reasoned that their future influence depended on being a court of law rather than a political forum.

The justices have also resisted hearing collusive suits (suits in which the parties conspire to bring a case before the Court) and ones that raise political questions (that is, questions better settled by the elected branches). As the contested role of the Court in the 2000 Presidential election between George W. Bush and Al Gore reminds us, the political questions doctrine has itself become the subject of controversy. In the 2000 election, the Court decided by a narrow margin that Al Gore, although he had won the popular vote nationally, could not have officials in Florida perform a recount of the ballots there to see whether he had captured that state's electoral votes. The Court's per curiam opinion made Bush the President of the United States. Critics charged that the Court was never intended to resolve such weighty political matters as who should be President and that the justices should never have agreed to hear the case in the first place.

These rules underscore that the Supreme Court is first and foremost a legal institution. Cases have to come to it; it cannot go looking for parties to plead cases of interest to the justices. Those who do appear must argue through the conventional processes of the law, including the use of the important concept *stare decisis* (literally, "let the decision stand"), or precedent. This idea holds that the justices should extend respect to previous decisions made by the Court as a way of promoting constitutional stability and certainty.

Controversy and constitutional change, however, have gone hand in hand on the Court. The Court is a place where advocates for conflicting political, social, economic, and cultural demands seek the blessing of the justices. Once again, Tocqueville had a critical insight. "Scarcely any political question arises in the United States that is not resolved, sooner or later," he observed, "into a judicial question." Americans generally and their political leaders especially have willingly transformed divisive political disputes—whether over slavery, the hours of work of men and women, the practice of segregation by race, or abortion—into constitutional conflicts. The Court's constitutional decisions, then, reflect the society it serves. Justice Oliver Wendell Holmes Jr. summed up matters nicely when he described the law as a "magic mirror" that reflected the assumptions, attitudes, and priorities of each generation. In that light, the Court can be thought of as the hand holding and turning that mirror. For example, through the nineteenth century, issues involving speech, press, church-state relations, and civil rights drew little attention from the justices. In the twentieth century, on the other hand, just such concerns have framed central conflicts in American society and dominated the Court's docket.

The Court's history has moved through clear phases or epochs. The first of these ran from the English founding in 1607 through the Constitutional Convention in 1787. Though neither the Court nor the Constitution existed, these years were nevertheless critical to establishing broad constitutional principles that endure to this day and to which the Court often turns. These included the value of a written constitution, the doctrine of limited government, the concept of federalism, and the idea of separation of powers.

From the nation's founding in 1787 through the end of Reconstruction in 1877, the most crucial constitutional issues were framed as conflicts between the states and the nation. These included disputes about the power of the federal courts in relation to their counterparts in the states, the power of the national government to regulate commerce, the right of property holders to remain free of regulation by either state or federal governments, and the expansion of slavery into the new territories and states. The struggle over state versus federal authority culminated in the secession movement, the Civil War, and Reconstruction. The constitutional legacy of the era appeared dramatically in the Thirteenth, Fourteenth, and Fifteenth Amendments to the Constitution. Of these, the Fourteenth, through its due process, equal protection, and state action clauses, reframed the work of the high court for the following century and a quarter in the areas of civil liberties and civil rights.

Among the most pressing issues in America from 1877 to 1937 were industrialization and immigration. Industrialization raised new questions about the role of government in regulating the conditions of labor, the rights of laborers to organize, the rights of corporations to control and use their capital, and the appropriateness of government intervention in the marketplace. The First World War brought a direct challenge to the civil liberties of Americans and the first sustained debate in the Court about the scope of freedom of speech and press. Equally important, a wave of immigration and a newly freed black population raised questions about the authority of government to regulate social change. The justices were forced to fit a document crafted in the eighteenth century to the realities of the industrial market economy of the late nineteenth and early twentieth centuries.

Initially, the justices gave preference to the rights of property holders, raised strong objections to government involvement in the marketplace, and viewed corporations more favorably than unions in the struggle between capital and labor. The Great Depression, however, placed increasing pressure on government to take an active role

in the economy. The Court raised constitutional objections to many of President Franklin D. Roosevelt's solutions to the massive economic dislocation caused by the depression. In the face of FDR's proposal to pack the Court, the justices in 1937 retreated from their strong objections to government involvement in the economy and signaled their support for both state and federal initiatives designed to bolster the well-being of Americans.

After 1937 the Court again shifted gears, this time placing an emphasis on equality and such human rights as freedom of conscience, expression, and privacy. The emergence of the nation onto the world stage also posed new questions about the scope of Presidential power. The Second World War and then the Cold War, along with conflicts from Korea, to Vietnam, to Iraq, were accompanied by increasingly bold assertions about the authority of the chief executive in time of war. Moreover, the emergence of a national civil rights movement for African Americans, Native Americans, and Latinos, along with the emergence of feminism, tested the boundaries of long-accepted discriminatory practices in housing, employment, schooling, jury service, the right to hold and seek office, and the administration of the death penalty. It also produced a powerful counter-reaction from groups that believed the state should not engage in programs such as affirmative action that were designed to favor one group over another as a way of ameliorating the consequences of past discrimination.

These eras of the Court remind us of how the Court has mirrored the times while trying to administer the rule of law. That makes any determination about the most important cases in the history of the Court a challenge. Lawyers interested in serving the immediate needs of their clients might find the most important cases to be those that address a current point of constitutional law. Historians, on the other hand, may search for the impact of the Court over time, attempting to explain how crucial decisions have shaped and been shaped by conflicts in American society. Throughout these various epochs of its history, the Court has developed routine processes by which to dispatch its business.

The modern Court has settled on an established routine for its operations. The justices begin their term the first Monday in October and continue through the third week of June. They meet twice a week, typically on Wednesday afternoon, to hear cases argued on the previous Monday, and on Friday to hear cases argued on Tuesday and Wednesday. At these conferences they screen petitions, deliberate on cases that have been argued, and transact miscellaneous business. They do so in a paneled confer-

ence room to which they are summoned by a buzzer. Tradition requires that the justices exchange handshakes and then take preassigned seats around a long table with the chief justice at one end and the senior associate justice at the other end. Once the door closes the conference begins and no other person may enter.

The chief justice presides over the conference, making him first among equals and providing an important opportunity to exercise leadership. The chief directs the justices to consider the certiorari petitions that at least one of the justices considers worthy. Indeed, one of the chief's duties is to indicate to his colleagues why a particular petition should be considered on its merits. If four of the justices conclude that a case on this "discuss list" is sufficiently important, it will be added to the Court's docket for full briefing and oral argument. After the chief speaks, the other eight justices comment in order of seniority.

The chief is responsible for leading the discussion of cases that have been argued. He will start with a review of the facts in the case, its history, and the relevant legal precedent. In descending order of seniority, the other justices then present their views. The justices typically signal how they will likely vote on the case and on that basis the chief justice tallies the vote. If the chief justice is in the majority he will assign responsibility for preparing an opinion; if he is not, then the senior justice in the majority assumes that role. The greatest of the chief justices have used their power to assign opinions to shape the overall direction of the Court.

The conference is a critical stage in the development of the Court's work, but it is not the end of the process. The justice assigned to prepare an opinion will often work through several drafts, sharing her or his work with colleagues and invariably revising and refining the opinion in response to their comments. An important part of the Court's work is the informal interaction among the justices as they develop an opinion. A justice's opinion may well change through the process, and in especially difficult cases maintaining a majority can be challenging. The deliberations that began with the conference continue until the Court announces its decision, a process that can take months.

When the Court convenes in public, the justices sit according to seniority. The chief justice is in the center and the associate justices are on alternating sides, with the most senior associate justice on the chief justice's immediate right. The most junior member of the Court is seated on the left farthest from the chief justice.

To assist them through this process the justices have law clerks. The practice of hiring law clerks began

in 1882 when Justice Horace Gray hired a Harvard Law School graduate to assist him with his work on the Court. Today, a justice may have as many as seven clerks, who come from a pool of about 350 applicants to each justice, who has total control over whom is selected. Most of these clerks are graduates of prestigious law schools with extraordinary academic records who have usually clerked for a lower federal court judge. Their duties include reading, analyzing, and preparing memoranda for the justices and assisting in preparing opinions. Thirty-three clerks have gone on to become justices. They are today the most important of the Court's support staff, without whom the justices could not conduct their business.

Over the course of more than two centuries the justices have issued thousands of opinions. Culling from this long list the handful of decisions that represent pivotal moments in the Court's impact on American life is more an art than a science. With that consideration in mind, we have applied several general criteria. First, the Court's decision had to be a response to a pivotal public issue, which had a deep and abiding impact on the course of U.S. history. The *Dred Scott* case, for example, represents dead law. No lawyer today would attempt to defend a client based on the Court's actions. Still, the decision was a milestone in the history of the nation with regard to slavery. Second, a case must have overturned a significant precedent and thereby acted as a catalyst for political and social change. The benchmark case of *Brown v. Board of Education* (1954, 1955) signaled an end to segregation by race and opened a new chapter in the history of civil rights. Third, the Court's decision must include memorable and edifying statements of enduring American constitutional principles expressed in opinions of justices either for the Court or in dissent. The opinion of Chief Justice John Marshall in *McCulloch v. Maryland* (1819), for example, continues to resonate today because of Marshall's approach to the question of the powers of Congress and the Court and the memorable words with which he framed his opinion (for example, "the power to tax, is the power to destroy"). We likewise turn to Justice John Marshall Harlan's dissent in *Plessey v. Ferguson* (1896) precisely because it so forcefully rejected the majority's view that race relations could never change.

Fourth, the Court's decision must have been a definitive or illuminating response to an issue about a core principle of American constitutionalism, such as federalism, separation of powers, checks and balances, civil liberties, or civil rights. The justices' decision in *United States v. Nixon* (1974) dealt with the fundamental idea that the President is not above the law and the belief that the Court

has a duty to establish the outer boundaries of executive privilege. Fifth, the Court's decision in some way must be included in the content standards or curricular frameworks of state departments of education, an indicator of the case's importance in cultivating standards of civic education.

Sixth, and finally, we have selected cases that tell compelling stories about the personal courage required to bring and sustain a case before the high court, whether on the winning or the losing side.

We also settled on this list of cases because individually and collectively each of them contributed to the dramatic rise in the high court's powers. Not all Americans have agreed with the Court's decisions; indeed, not all Americans agree that the Court should have the final word in saying what the Constitution means. The debates about the justices' powers today stand in sharp relief from the promise made by Alexander Hamilton in *The Federalist* No. 78 that the Court would be the "least dangerous branch" to the liberties of Americans. What has emerged is a powerful national institution that has through its history staked out the right to review the constitutionality of the actions of the other branches of federal government and of state governments. This power of judicial review, nowhere explicitly specified in the Constitution, has been a flashpoint for controversy. That power, however, could not have been exercised had the justices not also achieved independence from direct popular and political pressure. But, most important, the Court has fostered successfully the concept of judicial sovereignty. This idea holds, in simple terms, that what the Court says the Constitution means is what it means; its power to interpret the Constitution is final, unless and until it is amended by the people.

No matter how one feels about the current power exercised by the justices, there is no disputing that historically they have played and continue to play an extraordinary role in American life. The United States has had only one national constitutional convention, in part because the Supreme Court has emerged as a kind of continuing constitutional convention, adjusting and modifying the ruling document to suit changing demands. Each case in this volume reminds us of how central the development of judicial review, judicial independence, and judicial sovereignty have been not only to the fate of the Court but to our entire constitutional experiment. As Justice Holmes might have noted, the Supreme Court has been a mirror of America.

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500 U.S. 614

111 S.Ct. 2077

114 L.Ed.2d 660

Thaddeus Donald EDMONSON, Petitioner  
v.  
LEESVILLE CONCRETE COMPANY, INC.

*No. 89-7743.*

*Argued Jan. 15, 1991.*

*Decided June 3, 1991.*

***Syllabus***

Petitioner Edmonson sued respondent Leesville Concrete Co. in the District Court, alleging that Leesville's negligence had caused him personal injury. During *voir dire*, Leesville used two of its three peremptory challenges authorized by statute to remove black persons from the prospective jury. Citing *Batson v. Kentucky*, 476 U.S. 79, 106 S.Ct. 1712, 90 L.Ed.2d 69, Edmonson, who is black, requested that the court require Leesville to articulate a race-neutral explanation for the peremptory strikes. The court refused on the ground that *Batson* does not apply in civil proceedings, and the impaneled jury, which consisted of 11 white persons and 1 black, rendered a verdict unfavorable to Edmonson. The Court of Appeals affirmed, holding that a private litigant in a civil case can exercise peremptory challenges without accountability for alleged racial classifications.

*Held:* A private litigant in a civil case may not use peremptory challenges to exclude jurors on account of race. Pp. 618–619.

(a) Race-based exclusion of potential jurors in a civil case violates the excluded persons' equal protection rights. Cf., e.g., *Powers v. Ohio*, 499 U.S. ----, ----, 111 S.Ct. 1364, ----, 113 L.Ed.2d 411. Although the conduct of private parties lies beyond the Constitution's scope in most instances, Leesville's exercise of peremptory challenges was pursuant to a course of state action and is therefore subject to constitutional requirements under the analytical framework set forth in *Lugar v. Edmondson Oil Co.*, 457 U.S. 922, 939–942, 102 S.Ct. 2744, 2754–2756, 73 L.Ed.2d 482. First, the claimed constitutional deprivation results from the exercise of a right or privilege having its source in state authority, since Leesville would not have been able to engage in the alleged discriminatory acts without 28 U.S.C. § 1870, which authorizes the use of peremptory challenges in civil cases. Second, Leesville must in all fairness be deemed a government actor in its use of peremptory challenges. Leesville has made extensive use of government procedures with the overt, significant assistance of the government, see, e.g., *Tulsa Professional Collection Services, Inc. v. Pope*, 485 U.S. 478, 486, 108 S.Ct. 1340, 1345, 99 L.Ed.2d 565, in that peremptory challenges have no utility outside the jury trial system, which is created and governed by an elaborate set of statutory provisions and administered solely by government officials, including the trial judge, himself a state actor, who

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exercises substantial control over *voir dire* and effects the final and practical denial of the excluded individual's opportunity to serve on the petit jury by discharging him or her. Moreover, the action in question involves the performance of a traditional governmental function, see, e.g., *Terry v. Adams*, 345 U.S. 461, 73 S.Ct. 809, 97 L.Ed. 1152, since the peremptory challenge is used in selecting the jury, an entity that is a quintessential governmental body having no attributes of a private actor. Furthermore, the injury allegedly caused by Leesville's use of peremptory challenges is aggravated in a unique way by the incidents of governmental authority, see *Shelley v. Kramer*, 334 U.S. 1, 68 S.Ct. 836, 92 L.Ed. 1161, since the courtroom is a real expression of the government's constitutional authority, and racial exclusion within its confines compounds the racial insult inherent in judging a citizen by the color of his or her skin. Pp. 618–628.

(b) A private civil litigant may raise the equal protection claim of a person whom the opposing party has excluded from jury service on account of race. Just as in the criminal context, see *Powers, supra*, all three of the requirements for third-party standing are satisfied in the civil context. First, there is no reason to believe that the daunting barriers to suit by an excluded criminal juror, see *id.*, at ----, 111 S.Ct., at ----, would be any less imposing simply because the person was excluded from civil jury service. Second, the relation between the excluded venireperson and the litigant challenging the exclusion is just as close in the civil as it is in the criminal context. See *id.*, at ----. Third, a civil litigant can demonstrate that he or she has suffered a concrete, redressable injury from the exclusion of jurors on account of race, in that racial discrimination in jury selection casts doubt on the integrity of the judicial process and places the fairness of the proceeding in doubt. See *id.*, at ----, 111 S.Ct., at ----. Pp. 628–631.

(c) The case is remanded for a determination whether Edmonson has established a prima facie case of racial discrimination under the approach set forth in *Batson, supra*, 476 U.S., at 96–97, 106 S.Ct. at 1722–23, such that Leesville would be required to offer race-neutral explanations for its peremptory challenges. P. 631.

895 F.2d 218 (CA1990), reversed and remanded.

KENNEDY, J., delivered the opinion of the Court, in which WHITE, MARSHALL, BLACKMUN, STEVENS, and SOUTER, JJ., joined. O'CONNOR, J., filed a dissenting opinion, in which REHNQUIST, C.J., and SCALIA, J., joined. SCALIA, J., filed a dissenting opinion.

James B. Doyle, Lake Charles, La., for petitioner.

John S. Baker, Jr., Baton Rouge, La., for respondent.

Justice KENNEDY delivered the opinion of the Court.

1 We must decide in the case before us whether a private litigant in a civil case may use peremptory challenges to exclude jurors on account of their race. Recognizing the impropriety of racial bias in the courtroom, we hold the race-based exclusion violates the equal protection rights of the challenged jurors. This civil case originated in a United States District Court, and we apply the equal protection component of the Fifth Amendment's Due Process Clause. See *Bolling v. Sharpe*, 347 U.S. 497, 74 S.Ct. 693, 98 L.Ed. 884 (1954).

2 \* Thaddeus Donald Edmonson, a construction worker, was injured in a job-site  
accident at Fort Polk, Louisiana, a federal enclave. Edmonson sued Leesville  
« up Concrete Company for negligence in the United States District Court for the  
Western District of Louisiana, claiming that a Leesville employee permitted one of  
the company's trucks to roll backward and pin him against some construction  
equipment. Edmonson invoked his Seventh Amendment right to a trial by jury.

3 During *voir dire*, Leesville used two of its three peremptory challenges  
authorized by statute to remove black persons from the prospective jury. Citing our  
decision in *Batson v. Kentucky*, 476 U.S. 79, 106 S.Ct. 1712, 90 L.Ed.2d 69 (1986),  
Edmonson, who is himself black, requested that the District Court require Leesville  
to articulate a race-neutral explanation for striking the two jurors. The District  
Court denied the request on the ground that *Batson* does not apply in civil  
proceedings. As impaneled, the jury included 11 white persons and 1 black person.  
The jury rendered a verdict for Edmonson, assessing his total damages at \$90,000.  
It also attributed 80% of the fault to Edmonson's contributory negligence, however,  
and awarded him the sum of \$18,000.

4 Edmonson appealed, and a divided panel of the Court of Appeals for the Fifth  
Circuit reversed, holding that our opinion in *Batson* applies to a private attorney  
representing a private litigant and that peremptory challenges may not be used in a  
civil trial for the purpose of excluding jurors on the basis of race. 860 F.2d 1308  
(1989). The Court of Appeals panel held that private parties become state actors  
when they exercise peremptory challenges and that to limit *Batson* to criminal cases  
"would betray *Batson*'s fundamental principle [that] the state's use, toleration, and  
approval of peremptory challenges based on race violates the equal protection  
clause." *Id.*, at 1314. The panel remanded to the trial court to consider whether  
Edmonson had established a prima facie case of racial discrimination under  
*Batson*.

5 The full court then ordered rehearing en banc. A divided en banc panel affirmed  
the judgment of the District Court, holding that a private litigant in a civil case can  
exercise peremptory challenges without accountability for alleged racial  
classifications. 895 F.2d 218 (CA5 1990). The court concluded that the use of  
peremptories by private litigants does not constitute state action and, as a result,  
does not implicate constitutional guarantees. The dissent reiterated the arguments  
of the vacated panel opinion. The courts of appeals have divided on the issue. See  
*Dunham v. Frank's Nursery & Crafts, Inc.*, 919 F.2d 1281 (CA7 1990) (private  
litigant may not use peremptory challenges to exclude venirepersons on account of  
race); *Fludd v. Dykes*, 863 F.2d 822 (CA11 1989) (same). Cf. *Dias v. Sky Chefs, Inc.*,  
919 F.2d 1370 (CA9 1990) (corporation may not raise a *Batson*-type objection in a  
civil trial); *United States v. De Gross*, 913 F.2d 1417 (CA9 1990) (government may  
raise a *Batson*-type objection in a criminal case), reh'g en banc ordered, 930 F.2d  
695 (1991); *Reynolds v. Little Rock*, 893 F.2d 1004 (CA8 1990) (when government  
is involved in civil litigation, it may not use its peremptory challenges in a racially  
discriminatory manner). We granted certiorari, 498 U.S. ----, 111 S.Ct. 41, 112  
L.Ed.2d 18 (1990), and now reverse the Court of Appeals.

## II

### A.

In *Powers v. Ohio*, 499 U.S. ----, 111 S.Ct. 1364, 113 L.Ed.2d 411 (1991), we held  
that a criminal defendant, regardless of his or her race, may object to a prosecutor's  
race-based exclusion of persons from the petit jury. Our conclusion rested on a two-  
part analysis. First, following our opinions in *Batson* and in *Carter v. Jury*

6        *Commission of Greene County*, 396 U.S. 320, 90 S.Ct. 518, 24 L.Ed.2d 549 (1970),  
« up we made clear that a prosecutor's race-based peremptory challenge violates the  
equal protection rights of those excluded from jury service. 499 U.S., at ----, 111  
S.Ct., at ----. Second, we relied on well-established rules of third-party standing to  
hold that a defendant may raise the excluded jurors' equal protection rights. *Id.*, at -  
---, 111 S.Ct., at ----.

7        *Powers* relied upon over a century of jurisprudence dedicated to the elimination  
of race prejudice within the jury selection process. See, e.g., *Batson*, *supra*, 476  
U.S., at 84, 106 S.Ct., at 1716; *Swain v. Alabama*, 380 U.S. 202, 203-204, 85 S.Ct.  
824, 826-827, 13 L.Ed.2d 759 (1965); *Carter*, *supra*, 396 U.S., at 329-330, 90 S.Ct.,  
at 523-524; *Neal v. Delaware*, 103 U.S. 370, 386, 26 L.Ed. 567 (1881); *Strauder v.*  
*West Virginia*, 100 U.S. 303, 25 L.Ed. 664 (1880). While these decisions were for  
the most part directed at discrimination by a prosecutor or other government  
officials in the context of criminal proceedings, we have not intimated that race  
discrimination is permissible in civil proceedings. See *Thiel v. Southern Pacific Co.*,  
328 U.S. 217, 220-221, 66 S.Ct. 984, 985-986, 90 L.Ed. 1181 (1946). Indeed,  
discrimination on the basis of race in selecting a jury in a civil proceeding harms the  
excluded juror no less than discrimination in a criminal trial. See *id.*, at 220, 66  
S.Ct., at 985-86. In either case, race is the sole reason for denying the excluded  
venireperson the honor and privilege of participating in our system of justice.

8        That an act violates the Constitution when committed by a government official,  
however, does not answer the question whether the same act offends constitutional  
guarantees if committed by a private litigant or his attorney. The Constitution's  
protections of individual liberty and equal protection apply in general only to action  
by the government. *National Collegiate Athletic Assn. v. Tarkanian*, 488 U.S. 179,  
191, 109 S.Ct. 454, 461, 102 L.Ed.2d 469 (1988). Racial discrimination, though  
invidious in all contexts, violates the Constitution only when it may be attributed to  
state action. *Moose Lodge No. 107 v. Irvis*, 407 U.S. 163, 172, 92 S.Ct. 1965, 1971, 32  
L.Ed.2d 627 (1972). Thus, the legality of the exclusion at issue here turns on the  
extent to which a litigant in a civil case may be subject to the Constitution's  
restrictions.

9        The Constitution structures the National Government, confines its actions, and,  
in regard to certain individual liberties and other specified matters, confines the  
actions of the States. With a few exceptions, such as the provisions of the Thirteenth  
Amendment, constitutional guarantees of individual liberty and equal protection do  
not apply to the actions of private entities. *Tarkanian*, *supra*, 488 U.S., at 191, 109  
S.Ct., at 461; *Flagg Bros, Inc. v. Brooks*, 436 U.S. 149, 156, 98 S.Ct. 1729, 1733, 56  
L.Ed.2d 185 (1978). This fundamental limitation on the scope of constitutional  
guarantees "preserves an area of individual freedom by limiting the reach of federal  
law" and "avoids imposing on the State, its agencies or officials, responsibility for  
conduct for which they cannot fairly be blamed." *Lugar v. Edmondson Oil Co.*, 457  
U.S. 922, 936-937, 102 S.Ct. 2744, 2753, 73 L.Ed.2d 482 (1982). One great object of  
the Constitution is to permit citizens to structure their private relations as they  
choose subject only to the constraints of statutory or decisional law.

To implement these principles, courts must consider from time to time where the  
governmental sphere ends and the private sphere begins. Although the conduct of  
private parties lies beyond the Constitution's scope in most instances, governmental  
authority may dominate an activity to such an extent that its participants must be  
deemed to act with the authority of the government and, as a result, be subject to  
constitutional constraints. This is the jurisprudence of state action, which explores  
the "essential dichotomy" between the private sphere and the public sphere, with all

10 its attendant constitutional obligations. *Moose Lodge, supra*, 407 U.S., at 172, 92  
S.Ct., at 1971.

« up

11 We begin our discussion within the framework for state action analysis set forth  
in *Lugar, supra*, 457 U.S., at 937, 102 S.Ct., at 2753-54. There we considered the  
state action question in the context of a due process challenge to a State's procedure  
allowing private parties to obtain prejudgment attachments. We asked first whether  
the claimed constitutional deprivation resulted from the exercise of a right or  
privilege having its source in state authority, 457 U.S., at 939-941, 102 S.Ct., at 2754  
-2756; and second, whether the private party charged with the deprivation could be  
described in all fairness as a state actor, *id.*, at 941-942, 102 S.Ct., at 2755-2756.

12 There can be no question that the first part of the *Lugar* inquiry is satisfied here.  
By their very nature, peremptory challenges have no significance outside a court of  
law. Their sole purpose is to permit litigants to assist the government in the  
selection of an impartial trier of fact. While we have recognized the value of  
peremptory challenges in this regard, particularly in the criminal context, see  
*Batson*, 476 U.S., at 98-99, 106 S.Ct., at 1723-1724, there is no constitutional  
obligation to allow them. *Ross v. Oklahoma*, 487 U.S. 81, 88, 108 S.Ct. 2273, 2278,  
101 L.Ed.2d 80 (1988); *Stilson v. United States*, 250 U.S. 583, 586, 40 S.Ct. 28, 29-  
30, 63 L.Ed. 1154 (1919). Peremptory challenges are permitted only when the  
government, by statute or decisional law, deems it appropriate to allow parties to  
exclude a given number of persons who otherwise would satisfy the requirements  
for service on the petit jury.

13 Legislative authorizations, as well as limitations, for the use of peremptory  
challenges date as far back as the founding of the Republic; and the common-law  
origins of peremptories predate that. See *Holland v. Illinois*, 493 U.S. 474, 481, 110  
S.Ct. 803, ----, 107 L.Ed.2d 905 (1990); *Swain*, 380 U.S., at 212-217, 85 S.Ct., at 831  
-834. Today in most jurisdictions, statutes or rules make a limited number of  
peremptory challenges available to parties in both civil and criminal proceedings. In  
the case before us, the challenges were exercised under a federal statute that  
provides, *inter alia*:

14 "In civil cases, each party shall be entitled to three peremptory challenges.  
Several defendants or several plaintiffs may be considered as a single party for the  
purposes of making challenges, or the court may allow additional peremptory  
challenges and permit them to be exercised separately or jointly." 28 U.S.C. § 1870.

15 Without this authorization, granted by an Act of Congress itself, Leesville would  
not have been able to engage in the alleged discriminatory acts.

Given that the statutory authorization for the challenges exercised in this case is  
clear, the remainder of our state action analysis centers around the second part of  
the *Lugar* test, whether a private litigant in all fairness must be deemed a  
government actor in the use of peremptory challenges. Although we have  
recognized that this aspect of the analysis is often a factbound inquiry, see *Lugar*,  
*supra*, 457 U.S., at 939, 102 S.Ct., at 2754-55, our cases disclose certain principles  
of general application. Our precedents establish that, in determining whether a  
particular action or course of conduct is governmental in character, it is relevant to  
examine the following: the extent to which the actor relies on governmental  
assistance and benefits, see *Tulsa Professional Collection Services, Inc. v. Pope*,  
485 U.S. 478, 108 S.Ct. 1340, 99 L.Ed.2d 565 (1988); *Burton v. Wilmington*  
*Parking Authority*, 365 U.S. 715, 81 S.Ct. 856, 6 L.Ed.2d 45 (1961); whether the  
actor is performing a traditional governmental function, see *Terry v. Adams*, 345  
U.S. 461, 73 S.Ct. 809, 97 L.Ed. 1152 (1953); *Marsh v. Alabama*, 326 U.S. 501, 66

16 S.Ct. 276, 90 L.Ed. 265 (1946); cf. *San Francisco Arts & Athletics, Inc. v. United States Olympic Committee*, 483 U.S. 522, 544-545, 107 S.Ct. 2971, 2985-2986, 97 L.Ed.2d 427 (1987); and whether the injury caused is aggravated in a unique way by the incidents of governmental authority, see *Shelley v. Kraemer*, 334 U.S. 1, 68 S.Ct. 836, 92 L.Ed. 1161 (1948). Based on our application of these three principles to the circumstances here, we hold that the exercise of peremptory challenges by the defendant in the District Court was pursuant to a course of state action.

17 Although private use of state-sanctioned private remedies or procedures does not rise, by itself, to the level of state action, *Tulsa Professional, supra*, 485 U.S., at 485, 108 S.Ct., at 1344-45, our cases have found state action when private parties make extensive use of state procedures with "the overt, significant assistance of state officials." 485 U.S., at 486, 108 S.Ct., at 1345; see *Lugar v. Edmondson Oil Co.*, 457 U.S. 922, 102 S.Ct. 2744, 73 L.Ed.2d 482 (1982); *Sniadach v. Family Finance Corp.*, 395 U.S. 337, 89 S.Ct. 1820, 23 L.Ed.2d 349 (1969). It cannot be disputed that, without the overt, significant participation of the government, the peremptory challenge system, as well as the jury trial system of which it is a part, simply could not exist. As discussed above, peremptory challenges have no utility outside the jury system, a system which the government alone administers. In the federal system, Congress has established the qualifications for jury service, see 28 U.S.C. § 1865, and has outlined the procedures by which jurors are selected. To this end, each district court in the federal system must adopt a plan for locating and summoning to the court eligible prospective jurors. 28 U.S.C. § 1863; see, e.g., *Jury Plan for the United States District Court for the Western District of Louisiana* (on file with Administrative Office of United States Courts). This plan, as with all other trial court procedures, must implement statutory policies of random juror selection from a fair cross section of the community, 28 U.S.C. § 1861, and non-exclusion on account of race, color, religion, sex, national origin, or economic status, 18 U.S.C. § 243; 28 U.S.C. § 1862. Statutes prescribe many of the details of the jury plan, 28 U.S.C. § 1863, defining the jury wheel, § 1863(b)(4), voter lists, §§ 1863(b)(2), 1869 (c), and jury commissions, § 1863(b)(1). A statute also authorizes the establishment of procedures for assignment to grand and petit juries, § 1863(b)(8), and for lawful excuse from jury service, §§ 1863(b)(5), (6).

18 At the outset of the selection process, prospective jurors must complete jury qualification forms as prescribed by the Administrative Office of the United States Courts. See 28 U.S.C. § 1864. Failure to do so may result in fines and imprisonment, as might a willful misrepresentation of a material fact in answering a question on the form. *Ibid*. In a typical case, counsel receive these forms and rely on them when exercising their peremptory strikes. See G. Bermant, *Jury Selection Procedures in United States District Courts 7-8*, (Federal Judicial Center 1982). The Clerk of the United States District Court, a federal official, summons potential jurors from their employment or other pursuits. They are required to travel to a United States courthouse, where they must report to juror lounges, assembly rooms, and courtrooms at the direction of the court and its officers. Whether or not they are selected for a jury panel, summoned jurors receive a per diem fixed by statute for their service. 28 U.S.C. § 1871.

The trial judge exercises substantial control over *voir dire* in the federal system. See Fed.Rule Civ.Proc. 47. The judge determines the range of information that may be discovered about a prospective juror, and so affects the exercise of both challenges for cause and peremptory challenges. In some cases, judges may even conduct the entire *voir dire* by themselves, a common practice in the District Court where the instant case was tried. See Louisiana Rules of Court, Local Rule W.D.La. 13.02 (1990). The judge oversees the exclusion of jurors for cause, in this way determining which jurors remain eligible for the exercise of peremptory strikes. In

19 cases involving multiple parties, the trial judge decides how peremptory challenges  
« up shall be allocated among them. 28 U.S.C. § 1870. When a lawyer exercises a  
peremptory challenge, the judge advises the juror he or she has been excused.

20 As we have outlined here, a private party could not exercise its peremptory  
challenges absent the overt, significant assistance of the court. The government  
summons jurors, constrains their freedom of movement, and subjects them to  
public scrutiny and examination. The party who exercises a challenge invokes the  
formal authority of the court, which must discharge the prospective juror, thus  
effecting the "final and practical denial" of the excluded individual's opportunity to  
serve on the petit jury. *Virginia v. Rives*, 100 U.S. 313, 322, 25 L.Ed. 667 (1880).  
Without the direct and indispensable participation of the judge, who beyond all  
question is a state actor, the peremptory challenge system would serve no purpose.  
By enforcing a discriminatory peremptory challenge, the court "has not only made  
itself a party to the [biased act], but has elected to place its power, property and  
prestige behind the [alleged] discrimination." *Burton v. Wilmington Parking  
Authority*, 365 U.S., at 725, 81 S.Ct., at 862. In so doing, the government has  
"create[d] the legal framework governing the [challenged] conduct," *National  
Collegiate Athletic Assn.*, 488 U.S., at 192, 109 S.Ct., at 462, and in a significant way  
has involved itself with invidious discrimination.

21 In determining Leesville's state-actor status, we next consider whether the action  
in question involves the performance of a traditional function of the government. A  
traditional function of government is evident here. The peremptory challenge is  
used in selecting an entity that is a quintessential governmental body, having no  
attributes of a private actor. The jury exercises the power of the court and of the  
government that confers the court's jurisdiction. As we noted in *Powers*, the jury  
system performs the critical governmental functions of guarding the rights of  
litigants and "insur[ing] continued acceptance of the laws by all of the people." 499  
U.S., at ----, 111 S.Ct., at 1369. In the federal system, the Constitution itself commits  
the trial of facts in a civil cause to the jury. Should either party to a cause invoke its  
Seventh Amendment right, the jury becomes the principal factfinder, charged with  
weighing the evidence, judging the credibility of witnesses, and reaching a verdict.  
The jury's factual determinations as a general rule are final. *Basham v.  
Pennsylvania R. Co.*, 372 U.S. 699, 83 S.Ct. 965, 10 L.Ed.2d 80 (1963). In some  
civil cases, as we noted earlier this Term, the jury can weigh the gravity of a wrong  
and determine the degree of the government's interest in punishing and deterring  
willful misconduct. See *Pacific Mutual Life Ins. Co. v. Haslip*, 499 U.S. ----, 111 S.Ct.  
1032, 113 L.Ed.2d 1 (1991). A judgment based upon a civil verdict may be preclusive  
of issues in a later case, even where some of the parties differ. See *Allen v. McCurry*,  
449 U.S. 90, 101 S.Ct. 411, 66 L.Ed.2d 308 (1980). And in all jurisdictions a true  
verdict will be incorporated in a judgment enforceable by the court. These are  
traditional functions of government, not of a select, private group beyond the reach  
of the Constitution.

If a government confers on a private body the power to choose the government's  
employees or officials, the private body will be bound by the constitutional mandate  
of race-neutrality. Cf. *Tarkanian*, 488 U.S., at 192-193, 109 S.Ct., at 462-463;  
*Rendell-Baker v. Kohn*, 457 U.S. 830, 102 S.Ct. 2764, 73 L.Ed.2d 418 (1982). At  
least a plurality of the Court recognized this principle in *Terry v. Adams*, 345 U.S.  
461, 73 S.Ct. 809, 97 L.Ed. 1152 (1953). There we found state action in a scheme in  
which a private organization known as the Jaybird Democratic Association  
conducted whites-only elections to select candidates to run in the Democratic  
primary elections in Ford Bend County, Texas. The Jaybird candidate was certain to  
win the Democratic primary and the Democratic candidate was certain to win the  
general election. Justice Clark's concurring opinion drew from *Smith v. Allwright*,

22 321 U.S. 649, 664, 64 S.Ct. 757, 765, 88 L.Ed. 987 (1944), the principle that "any  
« up 'part of the machinery for choosing officials' becomes subject to the Constitution's  
constraints." *Terry, supra*, 345 U.S., at 481, 73 S.Ct., at 819. The concurring  
opinion concluded:

**"[W]hen a state structures its electoral apparatus**

23 in a form which devolves upon a political organization the uncontested choice of  
public officials, that organization itself, in whatever disguise, takes on those  
attributes of government which draw the Constitution's safeguards into play." 345  
U.S., at 484, 73 S.Ct., at 821.

24 The principle that the selection of state officials, other than through election by  
all qualified voters, may constitute state action applies with even greater force in the  
context of jury selection through the use of peremptory challenges. Though the  
motive of a peremptory challenge may be to protect a private interest, the objective  
of jury selection proceedings is to determine representation on a governmental  
body. Were it not for peremptory challenges, there would be no question that the  
entire process of determining who will serve on the jury constitutes state action.  
The fact that the government delegates some portion of this power to private  
litigants does not change the governmental character of the power exercised. The  
delegation of authority that in *Terry* occurred without the aid of legislation occurs  
here through explicit statutory authorization.

25 We find respondent's reliance on *Polk County v. Dodson*, 454 U.S. 312, 102 S.Ct.  
445, 70 L.Ed.2d 509 (1981), unavailing. In that case, we held that a public defender  
is not a state actor in his general representation of a criminal defendant, even  
though he may be in his performance of other official duties. See *id.*, at 325, 102  
S.Ct., at 453-54; *Branti v. Finkel*, 445 U.S. 507, 519, 100 S.Ct. 1287, 1295, 63  
L.Ed.2d 574 (1980). While recognizing the employment relation between the public  
defender and the government, we noted that the relation is otherwise adversarial in  
nature. 454 U.S., at 323, n. 13, 102 S.Ct., at 452, n. 13. "[A] defense lawyer is not,  
and by the nature of his function cannot be, the servant of an administrative  
superior. Held to the same standards of competence and integrity as a private  
lawyer, . . . a public defender works under canons of professional responsibility that  
mandate his exercise of independent judgment on behalf of the client." *Id.*, at 321,  
102 S.Ct., at 451.

26 In the ordinary context of civil litigation in which the government is not a party,  
an adversarial relation does not exist between the government and a private  
litigant. In the jury-selection process, the government and private litigants work for  
the same end. Just as a government employee was deemed a private actor because  
of his purpose and functions in *Dodson*, so here a private entity becomes a  
government actor for the limited purpose of using peremptories during jury  
selection. The selection of jurors represents a unique governmental function  
delegated to private litigants by the government and attributable to the government  
for purposes of invoking constitutional protections against discrimination by reason  
of race.

27 Our decision in *West v. Atkins*, 487 U.S. 42, 108 S.Ct. 2250, 101 L.Ed.2d 40  
(1988), provides a further illustration. We held there that a private physician who  
contracted with a state prison to attend to the inmates' medical needs was a state  
actor. He was not on a regular state payroll, but we held his "function[s] within the  
state system, not the precise terms of his employment, [determined] whether his  
actions can fairly be attributed to the State." *Id.*, at 55-56, 108 S.Ct., at 2259. We  
noted that:

28 "Under state law, the only medical care West could receive for his injury was that  
provided by the State. If Doctor Atkins misused his power by demonstrating  
« up deliberate indifference to West's serious medical needs, the resultant deprivation  
was caused, in a sense relevant for state-action inquiry, by the State's exercise of its  
right to punish West by incarceration and to deny him a venue independent of the  
State to obtain needed medical care." *Id.*, at 55, 108 S.Ct., at 2259.

29 In the case before us, the parties do not act pursuant to any contractual relation  
with the government. Here, as in most civil cases, the initial decision whether to sue  
at all, the selection of counsel, and any number of ensuing tactical choices in the  
course of discovery and trial may be without the requisite governmental character  
to be deemed state action. That cannot be said of the exercise of peremptory  
challenges, however; when private litigants participate in the selection of jurors,  
they serve an important function within the government and act with its substantial  
assistance. If peremptory challenges based on race were permitted, persons could  
be required by summons to be put at risk of open and public discrimination as a  
condition of their participation in the justice system. The injury to excluded jurors  
would be the direct result of governmental delegation and participation.

30 Finally, we note that the injury caused by the discrimination is made more severe  
because the government permits it to occur within the courthouse itself. Few places  
are a more real expression of the constitutional authority of the government than a  
courtroom, where the law itself unfolds. Within the courtroom, the government  
invokes its laws to determine the rights of those who stand before it. In full view of  
the public, litigants press their cases, witnesses give testimony, juries render  
verdicts, and judges act with the utmost care to ensure that justice is done.

31 Race discrimination within the courtroom raises serious questions as to the  
fairness of the proceedings conducted there. Racial bias mars the integrity of the  
judicial system and prevents the idea of democratic government from becoming a  
reality. *Rose v. Mitchell*, 443 U.S. 545, 556, 99 S.Ct. 2993, 3000, 61 L.Ed.2d 739  
(1979); *Smith v. Texas*, 311 U.S. 128, 130, 61 S.Ct. 164, 165, 85 L.Ed. 84 (1940). In  
the many times we have addressed the problem of racial bias in our system of  
justice, we have not "questioned the premise that racial discrimination in the  
qualification or selection of jurors offends the dignity of persons and the integrity of  
the courts." *Powers*, 499 U.S., at ----, 111 S.Ct., at 1366. To permit racial exclusion  
in this official forum compounds the racial insult inherent in judging a citizen by  
the color of his or her skin.

## B

32 Having held that in a civil trial exclusion on account of race violates a prospective  
juror's equal protection rights, we consider whether an opposing litigant may raise  
the excluded person's rights on his or her behalf. As we noted in *Powers*: "[I]n the  
ordinary course, a litigant must assert his or her own legal rights and interests, and  
cannot rest a claim to relief on the legal rights or interests of third parties." *Id.*, at --  
--, 111 S.Ct., at 1370. We also noted, however, that this fundamental restriction on  
judicial authority admits of "certain, limited exceptions," *ibid.*, and that a litigant  
may raise a claim on behalf of a third party if the litigant can demonstrate that he or  
she has suffered a concrete, redressable injury, that he or she has a close relation  
with the third party, and that there exists some hindrance to the third party's ability  
to protect his or her own interests. All three of these requirements for third-party  
standing were held satisfied in the criminal context, and they are satisfied in the  
civil context as well.

33 Our conclusion in *Powers* that persons excluded from jury service will be unable  
 « up to protect their own rights applies with equal force in a civil trial. While individual  
 jurors subjected to peremptory racial exclusion have the right to bring suit on their  
 own behalf, "[t]he barriers to a suit by an excluded juror are daunting." *Id.*, at ----,  
 111 S.Ct., at 1373. We have no reason to believe these barriers would be any less  
 imposing simply because a person was excluded from jury service in a civil  
 proceeding. Likewise, we find the relation between the excluded venireperson and  
 the litigant challenging the exclusion to be just as close in the civil context as in a  
 criminal trial. Whether in a civil or criminal proceeding, "[v]oir dire permits a party  
 to establish a relation, if not a bond of trust, with the jurors," a relation that  
 "continues throughout the entire trial." *Id.*, at ----, 111 S.Ct., at 1372. Exclusion of a  
 juror on the basis of race severs that relation in an invidious way.

34 We believe the only issue that warrants further consideration in this case is  
 whether a civil litigant can demonstrate a sufficient interest in challenging the  
 exclusion of jurors on account of race. In *Powers*, we held:

35 "The discriminatory use of peremptory challenges by the prosecution causes a  
 criminal defendant cognizable injury, and the defendant has a concrete interest in  
 challenging the practice. See *Allen v. Hardy*, 478 U.S., [255], at 259 [106 S.Ct.  
 2878, at 2880, 92 L.Ed.2d 199 (1986)] (recognizing a defendant's interest in  
 'neutral jury selection procedures'). This is not because the individual jurors  
 dismissed by the prosecution may have been predisposed to favor the defendant; if  
 that were true, the jurors might have been excused for cause. Rather, it is because  
 racial discrimination in the selection of jurors 'casts doubt on the integrity of the  
 judicial process,' *Rose v. Mitchell*, [*supra*, at 556, 99 S.Ct., at 3000], and places the  
 fairness of a criminal proceeding in doubt." *Id.*, at ---- - ----, 111 S.Ct. at 1371.

36 The harms we recognized in *Powers* are not limited to the criminal sphere. A civil  
 proceeding often implicates significant rights and interests. Civil juries, no less than  
 their criminal counterparts, must follow the law and act as impartial factfinders.  
 And, as we have observed, their verdicts, no less than those of their criminal  
 counterparts, become binding judgments of the court. Racial discrimination has no  
 place in the courtroom, whether the proceeding is civil or criminal. See *Thiel v.*  
*Southern Pacific Co.*, 328 U.S., at 220, 66 S.Ct., at 985-86. Congress has so  
 mandated by prohibiting various discriminatory acts in the context of both civil and  
 criminal trials. See 18 U.S.C. § 243; 28 U.S.C. §§ 1861, 1862. The Constitution  
 demands nothing less. We conclude that courts must entertain a challenge to a  
 private litigant's racially discriminatory use of peremptory challenges in a civil trial.

It may be true that the role of litigants in determining the jury's composition  
 provides one reason for wide acceptance of the jury system and of its verdicts. But if  
 race stereotypes are the price for acceptance of a jury panel as fair, the price is too  
 high to meet the standard of the Constitution. Other means exist for litigants to  
 satisfy themselves of a jury's impartiality without using skin color as a test. If our  
 society is to continue to progress as a multiracial democracy, it must recognize that  
 the automatic invocation of race stereotypes retards that progress and causes  
 continued hurt and injury. By the dispassionate analysis which is its special  
 distinction, the law dispels fears and preconceptions respecting racial attitudes. The  
 quiet rationality of the courtroom makes it an appropriate place to confront race-  
 based fears or hostility by means other than the use of offensive stereotypes.  
 Whether the race generality employed by litigants to challenge a potential juror  
 derives from open hostility or from some hidden and unarticulated fear, neither  
 motive entitles the litigant to cause injury to the excused juror. And if a litigant  
 believes that the prospective juror harbors the same biases or instincts, the issue

37 can be explored in a rational way that consists with respect for the dignity of  
« up persons, without the use of classifications based on ancestry or skin color.

### III

38 It remains to consider whether a prima facie case of racial discrimination has  
been established in the case before us, requiring Leesville to offer race-neutral  
explanations for its peremptory challenges. In *Batson*, we held that determining  
whether a prima facie case has been established requires consideration of all  
relevant circumstances, including whether there has been a pattern of strikes  
against members of a particular race. 476 U.S., at 96-97, 106 S.Ct., at 1722-23. The  
same approach applies in the civil context, and we leave it to the trial courts in the  
first instance to develop evidentiary rules for implementing our decision.

39 The judgment is reversed, and the case is remanded for further proceedings  
consistent with our opinion.

40 *It is so ordered.*

41 Justice O'CONNOR, with whom THE CHIEF JUSTICE and Justice SCALIA join,  
dissenting.

42 The Court concludes that the action of a private attorney exercising a peremptory  
challenge is attributable to the government and therefore may compose a  
constitutional violation. This conclusion is based on little more than that the  
challenge occurs in the course of a trial. Not everything that happens in a  
courtroom is state action. A trial, particularly a civil trial, is by design largely a stage  
on which private parties may act; it is a forum through which they can resolve their  
disputes in a peaceful and ordered manner. The government erects the platform; it  
does not thereby become responsible for all that occurs upon it. As much as we  
would like to eliminate completely from the courtroom the specter of racial  
discrimination, the Constitution does not sweep that broadly. Because I believe that  
a peremptory strike by a private litigant is fundamentally a matter of private choice  
and not state action, I dissent.

43 \* In order to establish a constitutional violation, Edmonson must first  
demonstrate that Leesville's use of a peremptory challenge can fairly be attributed  
to the government. Unfortunately, our cases deciding when private action might be  
deemed that of the state have not been a model of consistency. Perhaps this is  
because the state action determination is so closely tied to the "framework of the  
peculiar facts or circumstances present." See *Burton v. Wilmington Parking  
Authority*, 365 U.S. 715, 726, 81 S.Ct. 856, 862, 6 L.Ed.2d 45 (1961). Whatever the  
reason, and despite the confusion, a coherent principle has emerged. We have  
stated the rule in various ways, but at base, "constitutional standards are invoked  
only when it can be said that the [government] is *responsible* for the specific  
conduct of which the plaintiff complains." *Blum v. Yaretsky*, 457 U.S. 991, 1004,  
102 S.Ct. 2777, 2785-86, 73 L.Ed.2d 534 (1982). Constitutional "liability attaches  
only to those wrongdoers 'who carry a badge of authority of [the government] and  
represent it in some capacity.'" *National Collegiate Athletic Assn. v. Tarkanian*,  
488 U.S. 179, 191, 109 S.Ct. 454, 461, 102 L.Ed.2d 469 (1988), quoting *Monroe v.  
Pape*, 365 U.S. 167, 172, 81 S.Ct. 473, 476, 5 L.Ed.2d 492 (1961).

The Court concludes that this standard is met in the present case. It rests this  
conclusion primarily on two empirical assertions. First, that private parties use  
peremptory challenges with the "overt, significant participation of the government."  
*Ante*, at 622. Second, that the use of a peremptory challenge by a private party

44 "involves the performance of a traditional function of the government." *Ante*, at  
 « up 624. Neither of these assertions is correct.

A.

45 The Court begins with a perfectly accurate definition of the peremptory challenge. Peremptory challenges "allow parties to exclude a given number of persons who otherwise would satisfy the requirements for service on the petit jury." *Ante*, at 620. This description is worth more careful analysis, for it belies the Court's later conclusions about the peremptory.

46 The peremptory challenge "allow[s] parties," in this case *private* parties, to exclude potential jurors. It is the nature of a peremptory that its exercise is left wholly within the discretion of the litigant. The purpose of this longstanding practice is to establish for each party an " 'arbitrary and capricious species of challenge' " whereby the " 'sudden impressions and unaccountable prejudices we are apt to conceive upon the bare looks and gestures of another' " may be acted upon. *Lewis v. United States*, 146 U.S. 370, 376, 13 S.Ct. 136, 138, 36 L.Ed. 1011 (1892), quoting 4 W. Blackstone, Commentaries \*353. By allowing the litigant to strike jurors for even the most subtle of discerned biases, the peremptory challenge fosters both the perception and reality of an impartial jury. *Ibid.*; *Hayes v. Missouri*, 120 U.S. 68, 70, 7 S.Ct. 350, 351, 30 L.Ed. 578 (1887); *Swain v. Alabama*, 380 U.S. 202, 219, 85 S.Ct. 824, 835, 13 L.Ed.2d 759 (1965); *Holland v. Illinois*, 493 U.S. 474, 481-482, 110 S.Ct. 803, ---- - ----, 107 L.Ed.2d 905 (1990). In both criminal and civil trials, the peremptory challenge is a mechanism for the exercise of *private* choice in the pursuit of fairness. The peremptory is, by design, an enclave of private action in a government-managed proceeding.

47 The Court amasses much ostensible evidence of the Federal Government's "overt, significant participation" in the peremptory process. See *ante*, at 624. Most of this evidence is irrelevant to the issue at hand. The bulk of the practices the Court describes—the establishment of qualifications for jury service, the location and summoning of perspective jurors, the jury wheel, the voter lists, the jury qualification forms, the per diem for jury service—are independent of the statutory entitlement to peremptory strikes, or of their use. All of this government action is in furtherance of the Government's distinct obligation to provide a qualified jury; the Government would do these things even if there were no peremptory challenges. All of this activity, as well as the trial judge's control over *voir dire*, see *ante*, at 623-624, are merely prerequisites to the use of a peremptory challenge; they do not constitute participation *in* the challenge. That these actions may be necessary to a peremptory challenge—in the sense that there could be no such challenge without a venire from which to select—no more makes the challenge state action than the building of roads and provision of public transportation makes state action of riding on a bus.

The entirety of the Government's actual participation in the peremptory process boils down to a single fact: "When a lawyer exercises a peremptory challenge, the judge advises the juror he or she has been excused." *Ante*, at 623-624. This is not significant participation. The judge's action in "advising" a juror that he or she has been excused is state action to be sure. It is, however, if not *de minimis*, far from what our cases have required in order to hold the government "responsible" for private action or to find that private actors "represent" the government. See *Blum, supra*, 457 U.S., at 1004, 102 S.Ct., at 2785-86; *Tarkanian, supra*, 488 U.S., at 191, 109 S.Ct., at 461. The government "normally can be held responsible for a private decision only when it has exercised coercive power or has provided such significant

48 encouragement, either overt or covert, that the choice must in law be deemed to be  
« up that of the State." *Blum, supra*, 457 U.S., at 1004, 102 S.Ct., at 2786.

49 As an initial matter, the judge does not "encourage" the use of a peremptory  
challenge at all. The decision to strike a juror is entirely up to the litigant, and the  
reasons for doing so are of no consequence to the judge. It is the attorney who  
strikes. The judge does little more than acquiesce in this decision by excusing the  
juror. In point of fact, the government has virtually no role in the use of peremptory  
challenges. Indeed, there are jurisdictions in which, with the consent of the parties,  
*voir dire* and jury selection may take place in the absence of any court personnel.  
See *Haith v. United States*, 231 F.Supp. 495 (ED Pa.1964), *aff'd*, 342 F.2d 158 (CA3  
1965) (*per curiam*); *State v. Eberhardt*, 32 Ohio Misc. 39, 282 N.E.2d 62 (1972).

50 The alleged state action here is a far cry from that the Court found, for example,  
in *Shelley v. Kraemer*, 334 U.S. 1, 68 S.Ct. 836, 92 L.Ed. 1161 (1948). In that case,  
state courts were called upon to enforce racially restrictive covenants against sellers  
of real property who did not wish to discriminate. The coercive power of the State  
was necessary in order to enforce the private choice of those who had created the  
covenants: "[B]ut for the active intervention of the state courts, supported by the  
full panoply of state power, petitioners would have been free to occupy the  
properties in question without restraint." *Id.*, at 19, 68 S.Ct., at 845. Moreover, the  
courts in *Shelley* were asked to enforce a facially discriminatory contract. In  
contrast, peremptory challenges are "exercised without a reason stated [and]  
without inquiry." *Swain, supra*, 380 U.S., at 220, 85 S.Ct., at 835-36. A judge does  
not "significantly encourage" discrimination by the mere act of excusing a juror in  
response to an unexplained request.

51 There is another important distinction between *Shelley* and this case. The state  
courts in *Shelley* used coercive force to impose conformance on parties who did not  
wish to discriminate. "Enforcement" of peremptory challenges, on the other hand,  
does not compel anyone to discriminate; the discrimination is wholly a matter of  
private choice. See Goldwasser, *Limiting a Criminal Defendant's Use of Peremptory  
Challenges: On Symmetry and the Jury in a Criminal Trial*, 102 Harv.L.Rev. 808,  
819 (1989). Judicial acquiescence does not convert private choice into that of the  
state. See *Blum*, 457 U.S., at 1004-1005, 102 S.Ct., at 2785-2786.

52 Nor is this the kind of significant involvement found in *Tulsa Professional  
Collection Services, Inc. v. Pope*, 485 U.S. 478, 108 S.Ct. 1340, 99 L.Ed.2d 565  
(1988). There, we concluded that the actions of the executrix of an estate in  
providing notice to creditors that they might file claims could fairly be attributed to  
the State. The State's involvement in the notice process, we said, was "pervasive and  
substantial." *Id.*, at 487, 108 S.Ct., at 1345-46. In particular, a state statute directed  
the executrix to publish notice. In addition, the District Court in that case had  
"reinforced the statutory command with an order expressly requiring [the  
executrix] to 'immediately give notice to creditors.'" *Ibid.* Notice was not only  
encouraged by the State, but positively required. There is no comparable state  
involvement here. No one is compelled by government action to use a peremptory  
challenge, let alone to use it in a racially discriminatory way.

The Court relies also on *Burton v. Wilmington Parking Authority*, 365 U.S. 715,  
81 S.Ct. 856, 6 L.Ed.2d 45 (1961). See *ante*, at 621, 624. But the decision in that case  
depended on the perceived symbiotic relationship between a restaurant and the  
state parking authority from whom it leased space in a public building. The State  
had "so far insinuated itself into a position of interdependence with" the restaurant  
that it had to be "recognized as a joint participant in the challenged activity."  
*Burton, supra*, at 725, 81 S.Ct., at 861-62. Among the "peculiar facts [and]

53 circumstances" leading to that conclusion was that the State stood to profit from the  
restaurant's discrimination. 365 U.S., at 726, 724, 81 S.Ct., at 862, 861. As I have  
« up shown, the government's involvement in the use of peremptory challenges falls far  
short of "interdependence" or "joint participation." Whatever the continuing vitality  
of *Burton* beyond its facts, see *Jackson v. Metropolitan Edison Co.*, 419 U.S. 345,  
358, 95 S.Ct. 449, 457, 42 L.Ed.2d 477 (1974), it does not support the Court's  
conclusion here.

54 *Jackson* is a more appropriate analogy to this case. Metropolitan Edison  
terminated Jackson's electrical service under authority granted it by the State,  
pursuant to a procedure approved by the state utility commission. Nonetheless, we  
held that Jackson could not challenge the termination procedure on due process  
grounds. The termination was not state action because the State had done nothing  
to encourage the particular termination practice:

55 "Approval by a state utility commission of such a request from a regulated utility,  
where the commission has not put its own weight on the side of the proposed  
practice by ordering it, does not transmute a practice initiated by the utility and  
approved by the commission into "state action." . . . *Respondent's exercise of the  
choice allowed by state law where the initiative comes from it and not from the  
State, does not make its action in doing so "state action" for purposes of the  
Fourteenth Amendment.*" *Id.*, at 357, 95 S.Ct., at 456-57 (emphasis added; footnote  
omitted).

56 The similarity to this case is obvious. The Court's "overt, significant" government  
participation amounts to the fact that the government provides the mechanism  
whereby a litigant can choose to exercise a peremptory challenge. That the  
government allows this choice and that the judge approves it, does not turn this  
private decision into state action.

57 To the same effect is *Flagg Bros., Inc. v. Brooks*, 436 U.S. 149, 98 S.Ct. 1729, 56  
L.Ed.2d 185 (1978). In that case, a warehouseman's proposed sale of goods  
entrusted to it for storage pursuant to the New York Uniform Commercial Code was  
not fairly attributable to the State. We held that "the State of New York is in no way  
responsible for Flagg Brothers' decision, a decision which the State in § 7-210  
permits but does not compel, to threaten to sell these respondents' belongings." *Id.*,  
at 165, 98 S.Ct., at 1738. Similarly, in the absence of compulsion, or at least  
encouragement, from the government in the use of peremptory challenges, the  
government is not responsible.

58 "The essential nature of the peremptory challenge is that it is one exercised  
without a reason stated, without inquiry and without being subject to the court's  
control." *Swain*, 380 U.S., at 220, 85 S.Ct., at 836. The government neither  
encourages nor approves such challenges. Accordingly, there is no "overt,  
significant participation" by the government.

## B

The Court errs also when it concludes that the exercise of a peremptory challenge  
is a traditional government function. In its definition of the peremptory challenge,  
the Court asserts, correctly, that jurors struck via peremptories "otherwise . . .  
satisfy the requirements for service on the petit jury." *Ante*, at 620. Whatever  
reason a private litigant may have for using a peremptory challenge, it is not the  
government's reason. The government otherwise establishes its requirements for  
jury service, leaving to the private litigant the unfettered discretion to use the strike  
for any reason. This is not part of the government's function in establishing the  
requirements for jury service. "Peremptory challenges are exercised by a party, not

59 in selection of jurors, but in rejection. It is not aimed at disqualification, but is  
exercised upon qualified jurors as matter of favor to the challenger." C. Lincoln,  
« up Abbott's Civil Jury Trials 92 (3d ed. 1912), quoting *O'Neil v. Lake Superior Iron Co.*,  
67 Mich. 560, 35 N.W. 162 (1887). For this reason, the Court is incorrect, and  
inconsistent with its own definition of the peremptory challenge, when it says that  
"[i]n the jury-selection process [in a civil trial], the government and private litigants  
work for the same end." See *ante*, at 627. The Court is also incorrect when it says  
that a litigant exercising a peremptory challenge is performing "a traditional  
function of the government." See *ante*, at 624.

60 The peremptory challenge is a practice of ancient origin, part of our common law  
heritage in criminal trials. See *Swain, supra*, at 212-218, 85 S.Ct., at 831-835  
(tracing history); *Holland*, 493 U.S., at 481, 110 S.Ct., at ---- (same). Congress  
imported this tradition into federal civil trials in 1872. See ch. 333, 17 Stat. 282;  
*Swain*, 380 U.S., at 215, n. 14, 85 S.Ct., at 833, n. 14. The practice of unrestrained  
private choice in the selection of civil juries is even older than that, however. While  
there were no peremptory challenges in civil trials at common law, the struck jury  
system allowed each side in both criminal and civil trials to strike alternately, and  
without explanation, a fixed number of jurors. See *id.*, at 217-218, and n. 21, 85  
S.Ct., at 834-835, and n. 21, citing J. Proffatt, *Trial by Jury* § 72 (1877), and F.  
Busch, *Law and Tactics in Jury Trials* § 62 (1949). Peremptory challenges are not a  
traditional government function; the "tradition" is one of unguided private choice.  
The Court may be correct that "[w]ere it not for peremptory challenges, . . . the  
entire process of determining who will serve on the jury [would] constitut[e] state  
action." *Ante*, at 626. But there are peremptory challenges, and always have been.  
The peremptory challenge forms no part of the *government's* responsibility in  
selecting a jury.

61 A peremptory challenge by a private litigant does not meet the Court's standard;  
it is not a traditional government function. Beyond this, the Court has misstated the  
law. The Court cites *Terry v. Adams*, 345 U.S. 461, 73 S.Ct. 809, 97 L.Ed. 1152  
(1953), and *Marsh v. Alabama*, 326 U.S. 501, 66 S.Ct. 276, 90 L.Ed. 265 (1946), for  
the proposition that state action may be imputed to one who carries out a  
"traditional governmental function." *Ante*, at 621. In those cases, the Court held  
that private control over certain core government activities rendered the private  
action attributable to the State. In *Terry*, the activity was a private primary election  
that effectively determined the outcome of county general elections. In *Marsh*, a  
company that owned a town had attempted to prohibit on its sidewalks certain  
protected speech.

62 In *Flagg Bros., supra*, the Court reviewed these and other cases that found state  
action in the exercise of certain public functions by private parties. See 436 U.S., at  
157-160, 98 S.Ct., at 1733-35, reviewing *Terry, Marsh, Smith v. Allwright*, 321 U.S.  
649, 64 S.Ct. 757, 88 L.Ed. 987 (1944), and *Nixon v. Condon*, 286 U.S. 73, 52 S.Ct.  
484, 76 L.Ed. 984 (1932). We explained that the government functions in these  
cases had one thing in common: exclusivity. The public-function doctrine requires  
that the private actor exercise "a power 'traditionally exclusively reserved to the  
State.'" 436 U.S., at 157, 98 S.Ct., at 1734, quoting *Jackson*, 419 U.S., at 352, 95  
S.Ct., at 454. In order to constitute state action under this doctrine, private conduct  
must not only comprise something that the government traditionally does, but  
something that *only* the government traditionally does. Even if one could fairly  
characterize the use of a peremptory strike as the performance of the traditional  
government function of jury selection, it has never been exclusively the function of  
the government to select juries; peremptory strikes are older than the Republic.

63        *West v. Atkins*, 487 U.S. 42, 108 S.Ct. 2250, 101 L.Ed.2d 40 (1988), is not to the  
 « up contrary. The Court seeks to derive from that case a rule that one who "serve[s] an  
 important function within the government," even if not a government employee, is  
 thereby a state actor. See *ante*, at 628. Even if this were the law, it would not help  
 the Court's position. The exercise of a peremptory challenge is not an important  
 government function; it is not a government function at all. In any event, *West* does  
 not stand for such a broad proposition. The doctor in that case was under contract  
 with the State to provide services for the State. More important, the State hired the  
 doctor in order to fulfill the State's constitutional obligation to attend to the  
 necessary medical care of prison inmates. 487 U.S., at 53, n. 10, 57, 108 S.Ct., at  
 2257, n. 10, 2260. The doctor's relation to the State, and the State's responsibility,  
 went beyond mere performance of an important job.

64        The present case is closer to *Jackson, supra*, and *RendellBaker v. Kohn*, 457 U.S.  
 830, 102 S.Ct. 2764, 73 L.Ed.2d 418 (1982), than to *Terry, Marsh*, or *West*. In the  
 former cases, the alleged state activities were those of state-regulated private actors  
 performing what might be considered traditional public functions. See *Jackson*  
 (electrical utility); *Rendell-Baker* (school). In each case, the Court held that the  
 performance of such a function, even if state regulated or state funded, was not  
 state action unless the function had been one exclusively the prerogative of the  
 State, or the State had provided such significant encouragement to the challenged  
 action that the State could be held responsible for it. See *Jackson*, 419 U.S., at 352-  
 353, 357, 95 S.Ct., at 454-455, 456-57; *Rendell-Baker, supra*, 457 U.S., at 842, 840,  
 102 S.Ct., at 2771-72, 2770-71. The use of a peremptory challenge by a private  
 litigant meets neither criterion.

### C

65        None of this should be news, as this case is fairly well controlled by *Polk County*  
*v. Dodson*, 454 U.S. 312, 102 S.Ct. 445, 70 L.Ed.2d 509 (1981). We there held that a  
 public defender, employed by the State, does not act under color of state law when  
 representing a defendant in a criminal trial.\* In such a circumstance, government  
 employment is not sufficient to create state action. More important for present  
 purposes, neither is the performance of a lawyer's duties in a courtroom. This is  
 because a lawyer, when representing a private client, cannot at the same time  
 represent the government.

66        Trials in this country are adversarial proceedings. Attorneys for private litigants  
 do not act on behalf of the government, or even the public as a whole; attorneys  
 represent their clients. An attorney's job is to "advanc[e] the 'undivided interests of  
 his client.' This is essentially a private function . . . for which state office and  
 authority are not needed." *Id.*, at 318-319, 102 S.Ct., at 449-450 (footnotes  
 omitted). When performing adversarial functions during trial, an attorney for a  
 private litigant acts independently of the government:

67        "[I]t is the function of the public defender to enter 'not guilty' pleas, move to  
 suppress State's evidence, object to evidence at trial, cross-examine State's  
 witnesses, and make closing arguments in behalf of defendants. All of these are  
 adversarial functions. We find it peculiarly difficult to detect any color of state law  
 in such activities." 454 U.S., at 320, 102 S.Ct., at 451.

Our conclusion in *Dodson* was that "a public defender does not act under color of  
 state law when performing a lawyer's traditional functions as counsel to a defendant  
 in a criminal proceeding." *Id.*, at 325, 102 S.Ct. at 453. It cannot be gainsaid that a  
 peremptory strike is a traditional adversarial act; parties use these strikes to further  
 their own perceived interests, not as an aid to the government's process of jury

68 selection. The Court does not challenge the rule of *Dodson*, yet concludes that  
« up private attorneys performing this adversarial function are state actors. Where is the  
distinction?

69 The Court wishes to limit the scope of *Dodson* to the actions of public defenders  
in an adversarial relationship with the government. *Ante*, at 626-627. At a  
minimum then, the Court must concede that *Dodson* stands for the proposition that  
a criminal defense attorney is not a state actor when using peremptory strikes on  
behalf of a client, nor is an attorney representing a private litigant in a civil suit  
against the government. Both of these propositions are true, but the Court's  
distinction between this case and *Dodson* turns state action doctrine on its head.  
Attorneys in an adversarial relation to the state are not state actors, but that does  
not mean that attorneys who are not in such a relation *are* state actors.

70 The Court is plainly wrong when it asserts that "[i]n the jury-selection process,  
the government and private litigants work for the same end." See *ante*, at 627. In a  
civil trial, the attorneys for each side are in "an adversarial relation," *ibid.*; they use  
their peremptory strikes in direct opposition to one another, and for precisely  
contrary ends. The government cannot "work for the same end" as both parties. In  
fact, the government is neutral as to private litigants' use of peremptory strikes.  
That's the point. The government does not encourage or approve these strikes, or  
direct that they be used in any particular way, or even that they be used at all. The  
government is simply not "responsible" for the use of peremptory strikes by private  
litigants.

71 Constitutional "liability attaches only to those wrongdoers 'who carry a badge of  
authority of [the government] and represent it in some capacity.'" *Tarkanian*, 488  
U.S., at 191, 109 S.Ct., at ----. A government attorney who uses a peremptory  
challenge on behalf of the client is, by definition, representing the government. The  
challenge thereby becomes state action. It is antithetical to the nature of our  
adversarial process, however, to say that a private attorney acting on behalf of a  
private client represents the government for constitutional purposes.

## II

72 Beyond "significant participation" and "traditional function," the Court's final  
argument is that the exercise of a peremptory challenge by a private litigant is state  
action because it takes place in a courtroom. *Ante*, at 628. In the end, this is all the  
Court is left with; peremptories do not involve the "overt, significant participation  
of the government," nor do they constitute a "traditional function of the  
government." The Court is also wrong in its ultimate claim. If *Dodson* stands for  
anything, it is that the actions of a lawyer in a courtroom do not become those of the  
government by virtue of their location. This is true even if those actions are based  
on race.

73 Racism is a terrible thing. It is irrational, destructive, and mean. Arbitrary  
discrimination based on race is particularly abhorrent when manifest in a  
courtroom, a forum established by the government for the resolution of disputes  
through "quiet rationality." See *ante*, at 631. But not every opprobrious and  
inequitable act is a constitutional violation. The Fifth Amendment's Due Process  
Clause prohibits only actions for which the Government can be held responsible.  
The Government is not responsible for everything that occurs in a courtroom. The  
Government is not responsible for a peremptory challenge by a private litigant. I  
respectfully dissent.

74 Justice SCALIA, dissenting.

75 I join Justice O'CONNOR's dissent, which demonstrates that today's opinion is  
 « up wrong in principle. I write to observe that it is also unfortunate in its consequences.

76 The concrete benefits of the Court's newly discovered constitutional rule are problematic. It will not necessarily be a net help rather than hindrance to minority litigants in obtaining racially diverse juries. In criminal cases, *Batson v. Kentucky*, 476 U.S. 79, 106 S.Ct. 1712, 90 L.Ed.2d 69 (1986), already prevents the *prosecution* from using race-based strikes. The effect of today's decision (which logically must apply to criminal prosecutions) will be to prevent the *defendant* from doing so—so that the minority defendant can no longer seek to prevent an all-white jury, or to seat as many jurors of his own race as possible. To be sure, it is ordinarily more difficult to *prove* race-based strikes of white jurors, but defense counsel can generally be relied upon to do what we say the Constitution requires. So in criminal cases, today's decision represents a net loss to the minority litigant. In civil cases that is probably not true—but it does not represent an unqualified gain either. *Both* sides have peremptory challenges, and they are sometimes used to *assure* rather than to *prevent* a racially diverse jury.

77 The concrete costs of today's decision, on the other hand, are not at all doubtful; and they are enormous. We have now added to the duties of already-submerged state and federal trial courts the obligation to assure that race is not included among the other factors (sex, age, religion, political views, economic status) used by private parties in exercising their peremptory challenges. That responsibility would be burden enough if it were not to be discharged through the adversary process; but of course it is. When combined with our decision this Term in *Powers v. Ohio*, 499 U.S. ----, 111 S.Ct. 1364, 113 L.Ed.2d 411 (1991), which held that the party objecting to an allegedly race-based peremptory challenge need not be of the same race as the challenged juror, today's decision means that *both* sides, in *all* civil jury cases, no matter what their race (and indeed, even if they are artificial entities such as corporations), may lodge racial-challenge objections and, after those objections have been considered and denied, appeal the denials—with the consequence, if they are successful, of having the judgments against them overturned. Thus, yet another complexity is added to an increasingly Byzantine system of justice that devotes more and more of its energy to sideshows and less and less to the merits of the case. Judging by the number of *Batson* claims that have made their way even as far as this Court under the *pre-Powers* regime, it is a certainty that the amount of judges' and lawyers' time devoted to implementing today's newly discovered Law of the Land will be enormous. That time will be diverted from other matters, and the overall system of justice will certainly suffer. Alternatively, of course, the States and Congress may simply abolish peremptory challenges, which would cause justice to suffer in a different fashion. See *Holland v. Illinois*, 493 U.S. 474, 484, 110 S.Ct. 803, ----, 107 L.Ed.2d 905 (1990).

78 Although today's decision neither follows the law nor produces desirable concrete results, it certainly has great symbolic value. To overhaul the doctrine of state action in this fashion—what a magnificent demonstration of this institution's uncompromising hostility to race-based judgments, even by private actors! The price of the demonstration is, alas, high, and much of it will be paid by the minority litigants who use our courts. I dissent.

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*Dodson* was a case brought under 42 U.S.C. § 1983, the statutory mechanism for many constitutional claims. The issue in that case, therefore, was whether the public defender \* had acted "under color of state law." 454 U.S., at 314, 102 S.Ct., at 447-48. In *Lugar v. Edmondson Oil Co.*, 457 U.S. 922, 929, 102 S.Ct. 2744, 2749-50, 73 L.Ed.2d 482 (1982),

« up the Court held that the statutory requirement of action "under color of state law" is identical to the "state action" requirement for other constitutional claims.

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## **Background Story Excerpted from *Edmonson v. Leesville Concrete Co.* (1991)**

Source: *United States Reports*

<http://ftp.resource.org/courts.gov/c/US/500/500.US.614.89-7743.html>

Thaddeus Donald Edmonson, a construction worker, was injured in a job-site accident at Fort Polk, Louisiana, a federal enclave. Edmonson sued Leesville Concrete Company for negligence in the United States District Court for the Western District of Louisiana, claiming that a Leesville employee permitted one of the company's trucks to roll backward and pin him against some construction equipment. Edmonson invoked his Seventh Amendment right to a trial by jury.

During *voir dire*, Leesville used two of its three peremptory challenges authorized by statute to remove black persons from the prospective jury. Citing our decision in *Batson v. Kentucky*, 476 U.S. 79, 106 S.Ct. 1712, 90 L.Ed.2d 69 (1986), Edmonson, who is himself black, requested that the District Court require Leesville to articulate a race-neutral explanation for striking the two jurors. The District Court denied the request on the ground that *Batson* does not apply in civil proceedings. As impaneled, the jury included 11 white persons and 1 black person. The jury rendered a verdict for Edmonson, assessing his total damages at \$90,000. It also attributed 80% of the fault to Edmonson's contributory negligence, however, and awarded him the sum of \$18,000.

## Glossary of Jury- and Court-Related Terms

**actors**—those with roles and responsibilities in a courtroom (see state actor, private actor)

**Batson challenge**—An objection to the validity of a peremptory challenge, on grounds that the other party used it to exclude a potential juror based on race, ethnicity, or sex. The result of a Batson challenge may be a new trial. The name comes from *Batson v. Kentucky*, 476 U.S. 79 (1986) - which held this type of peremptory challenge to be unconstitutional when used by criminal prosecutors. Another case, *Edmonson v. Leesville Concrete*, 500 U.S. 614 (1991), permitted private litigants in a civil case to successfully make the same kind of objection.

**bench trial**—a trial in which the parties agree not to have a jury trial and to leave the fact-finding to the judge who also renders the verdict. Some statutes also provide that a judge must decide the facts in certain types of cases.

**case**—a legal dispute or controversy involving a civil or criminal lawsuit or action brought to a court for resolution. Cases can be resolved by a court after fact-finding or resolved by agreement of the parties or some other third party such as an arbitrator or administrative judge.

**certiorari** —A formal request to a superior court challenging a legal decision of a lower court alleging the decision that was made.

**challenge for cause** —an attorney may request the judge to excuse a prospective juror during voir dire if it is revealed through questioning that the prospective juror may be prejudiced. There is no limit to the number of challenges for cause that a party may make.

**civil court**—courts with jurisdiction over civil matters, as opposed to criminal ones, involving disputes between individuals or between private businesses or institutions (e.g., a disagreement over the terms of a contract or over who shall bear responsibility for an automobile accident).

**civil law** —the body of law dealing with the private rights of individuals, as opposed to criminal law.

**complaint**—a written statement by the person (called the "plaintiff") starting a civil lawsuit that details the wrongs allegedly committed against that person by another person (called the "defendant").

**court**—an agency of government authorized to resolve legal disputes. Judges and lawyers sometimes use the term *court* to refer to the judge, as in "the court has read the pleadings."

**criminal court**—a court having jurisdiction over criminal cases.

**criminal law**—law governing the relationship between individuals and society. Deals with the enforcement of laws and the punishment of those who, by breaking laws, commit crimes.

**defendant**—a party at the trial level being sued in a civil case or charged with a crime in a criminal case. In a civil action, the party denying or defending itself against charges brought by a plaintiff. In a criminal action, the person accused by the government of breaking the law.

**dissenting opinion**—an opinion by a judge who disagrees with the result reached by the court in a case.

**district court**—the trial courts of general jurisdiction in the federal system.

**due process**—government procedures that follow principles of essential fairness.

**en banc**—an appellate court hearing with all the judges of the court participating.

**federal courts**—courts established under the U.S. Constitution. The term usually refers to courts of the federal judicial branch, which include the Supreme Court of the United States, the U.S. courts of appeals, the U.S. District Courts (including U.S. bankruptcy courts), and the U.S. Court of International Trade. Congress has established other federal courts in the executive branch, such as immigration courts.

## Glossary of Jury- and Court-Related Terms

**federalism**—a principle of our Constitution that gives some functions to the U.S. government and leaves the other functions to the states. The functions of the U.S. (or federal) government involve the nation as a whole and include regulating commerce that affects people in more than one state, providing for the national defense, and taking care of federal lands. State and local governments perform such functions as running the schools, managing the police departments, and paving the streets.

**grand jury**—a jury that examines accusations against persons charged with crime and if the evidence warrants makes formal charges on which the accused persons are later tried.

**held**—express as a judgment, opinion, or belief.

**impartial jury**—a jury that can make decisions free of bias and prejudice and render a verdict based only on the facts

**judge**—a governmental official with authority to preside over and decide lawsuits brought to courts.

**judiciary**—the branch of government created by Article III of the Constitution that has the power to interpret the Constitution and laws passed by Congress. The courts determine whether the other branches of government are operating as the Constitution requires but must work with the two other branches to ensure that its orders are obeyed.

**jurisdiction**—(1) the legal authority of a court to hear and decide a certain type of case; (2) the geographic area over which the court has authority to decide cases.

**juror** —a member of a jury or an alternate.

**juror questionnaire**—series of questions mailed to potential jurors used by the jury commission to determine one's legal eligibility to serve on a federal or state jury.

**jury** —a certain number of citizens, selected according to law, and sworn to inquire of certain matters of fact, and declare the truth upon evidence laid before them. A group of citizens whose duty is to weigh evidence fairly and impartially and decide the facts in a trial (see "petit jury") or to decide whether evidence against a defendant is sufficient to file an indictment charging him or her with a crime.

**jury commission**—group of officials charged with the responsibility of randomly choosing the names of prospective jury members or of selecting the list of jurors for a particular term in court. In some states, they are elected and in others, they are appointed by governors or judges.

**jury instructions**—a judge's directions to the jury before it begins deliberations regarding the factual questions it must answer and the legal rules that it must apply.

**jury of one's peers**—Though frequently used, this phrase does not appear in the Constitution. The Sixth Amendment guarantees the right to "a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed." According to the Constitution, the jury is to be representative of the community. "Peers" is used by the courts to mean that the available jurors include a broad spectrum of the population, particularly of race, national origin and gender. Jury selection may include no process that excludes those of a particular race or intentionally narrows the spectrum of possible jurors. It does not mean that women are to be tried by women, Asians by Asians, or African Americans by African Americans.

**jury panel**—a list of prospective jurors to serve in a particular court, or for the trial of a particular action; denotes either the whole body of persons summoned as jurors for a particular term of court or those the clerk selects by lot.

## Glossary of Jury- and Court-Related Terms

**jury pool**—the body of prospective jurors summoned for jury duty.

**jury selection** —the process by which jurors for a particular trial are selected from the larger group of potential jurors summoned to the courthouse. Once the jurors arrive in the courtroom, the judge and lawyers ask the jurors questions for the purpose of determining whether jurors are free of bias, or prejudice, or anything might interfere with their ability to be fair and impartial.

**jury summons**—the paper sent to potential jurors that requires their appearance in court for possible service on a jury.

**jury service**—the civic responsibility and duty of qualified citizens to serve justice by participating, if called, as part of a jury.

**justice**—the quality of being just, impartial, or fair; the principle or ideal of just dealing; the establishment or determination of rights according to law or equity; fair, just, or impartial legal process.

**law** —a public rule that is issued by an established authority, backed by an institutional structure and enforced by sanctions. In the United States, a federal law is typically enacted when a measure passes a majority vote in both the House of Representatives and the Senate and is then signed by the president. A measure can become law without the president’s signature if it passes by a 2/3 vote in both the House and the Senate. State laws are usually created by a similar process, with legislatures and governors taking the place of Congress and the president.

**lawsuit**—any one of various proceedings in a court of law.

**litigant**—a party to a lawsuit.

**majority opinion** -- an opinion in a case written by one judge in which a majority of the judges on the court join.

**oral argument**—in appellate cases, an opportunity for the lawyers for each side to appear before the judges to summarize their positions and answer the judges’ questions.

**order** —a written command issued by a judge.

**panel**— (1) in appellate cases, a group of three judges assigned to decide the case; (2) in the process of jury selection, the group of potential jurors from which the jury is chosen; (3) in criminal cases, a group of private lawyers whom the court has approved to be appointed to represent defendants unable to afford to hire lawyers.

**party**—one of the litigants. At the trial level, the parties are typically referred to as the plaintiff and defendant. On appeal, they are known as the appellant and appellee, or, in some cases involving administrative agencies, as the petitioner and respondent.

**peremptory challenge**—A district court may grant each side in a civil or criminal trial the right to exclude a certain number of prospective jurors without cause or giving a reason. Each side has a predetermined number of peremptory challenges.

**petit jury** —a trial court jury to decide criminal or civil cases.

**petitioner** —someone who files a petition with a court seeking action or relief, including the plaintiff or appellant. When a writ of certiorari is granted by the Supreme Court, the party seeking review is called the petitioner, and the party responding is called the respondent.

**plaintiff**—an individual or group that institutes a legal action or claim.

## Glossary of Jury- and Court-Related Terms

**plea**—in a criminal case, the defendant’s statement to the court that he or she is "guilty" or "not guilty" of the charges.

**precedent**—a court decision in an earlier case with facts and legal issues similar to a dispute currently before a court. Judges will generally "follow precedent"- meaning that they use the principles established in earlier cases to decide new cases that have similar facts and raise similar legal issues. A judge will disregard precedent if a party can show that the earlier case was wrongly decided, or that it differed in some significant way from the current case.

**prima facie case** —The minimum amount of evidence a plaintiff must produce to overcome a motion to dismiss.

**private actors**—in a courtroom setting, individuals or entities from the private sector with no governmental authority or connections (see private party)

**private party**—individual or entity not holding a governmental position or not connected to the government (e.g., private citizen, private corporation, private school)

**pro bono**—being, involving, or doing legal work donated for the public good

**procedural justice**—justice pursued through due process of law to resolve conflicts between individuals or between individuals and their government. The government administers fair and impartial procedures equally to everyone under its authority in order to settle disputes among them or to prosecute persons charged with crimes against the state.

When procedural due process prevails, conflicts are settled in an orderly and fair manner in a court of law, according to the rule of law, and not by the arbitrary actions of people in power. This equal justice under the law regulates the interactions among private individuals and between individuals and government. Punishments, such as incarceration in prison, payment of fines, or performance of community service, may be carried out against a wrongdoer. One party harmed by another may receive compensation from the perpetrator of the grievance.

**prosecute**—to charge a person or organization with a crime and seek to gain a criminal conviction against that person or organization.

**record**—all the documents filed in a case and a written account of the trial proceedings.

**recovery**—the obtaining, getting back, or vindication of a right or property by judgment or decree; the obtaining of damages; an amount awarded by or collected as a result of a judgment or decree

**remand**—to send a case back to an inferior court for additional action.

**respondent**—the individual or group compelled to answer or defend claims or questions posed in a court by a petitioner; also, the person or group against whom a petition, such as a writ of habeas corpus seeking relief is brought, or a person or group who wins at trial and defends that outcome on appeal.

**reverse**—the act of an appellate court setting aside the decision of a trial court. A reversal is often accompanied by a remand to the lower court for further proceedings.

**rule of law**—The rule of law exists when a state’s constitution functions as the supreme law of the land, when the statutes enacted and enforced by the government invariably conform to the constitution. The rule of law, however, is not merely rule by law; rather, it demands equal justice for each person under the authority of a constitutional government. So, the rule of law exists in a democracy or any other kind of political system only when the following standards are met:

- laws are enforced equally and impartially

## Glossary of Jury- and Court-Related Terms

- laws are made and enforced according to established procedures, not the rulers' arbitrary will
- laws are not enacted or enforced retroactively
- laws are reasonable and enforceable
- no one is above the law, and everyone under the authority of the constitution is obligated equally to obey the law
- there is a common understanding among the people about the requirements of the law and the consequences of violating the law

**sentence**—a judgment of the court imposing punishment upon a defendant for criminal conduct.

**settlement**—an agreement between the parties to a lawsuit to resolve their differences among themselves without having a trial or before the judge or jury renders a verdict in a trial.

**state action requirement**—The state action requirement stems from the fact that the constitutional amendments which protect individual rights (especially the Bill of Rights and the 14th Amendment) are mostly phrased as prohibitions against government action. For example, the First Amendment states that “[c]ongress shall make no law” infringing upon the freedoms of speech and religion. Because of this requirement, it is impossible for private parties (citizens or corporations) to violate these amendments, and all lawsuits alleging constitutional violations of this type must show how the government (state or federal) was responsible for the violation of their rights. This is referred to as the state action requirement.

**state actors**—in a courtroom setting, those individuals or entities acting with the authority of the government (e.g., elected officials, law enforcement officers, officers of the court, or other public agencies)

**state court**—a court established in accordance with a state constitution that has the jurisdiction to decide matters of law. State courts are courts of general jurisdiction, meaning that they can handle matters of both state and federal law. They are usually governed by rules of procedure set up by the highest court in the state.

**summoned to jury service**—sent a jury summons.

**Supreme Court of the United States**—the highest court in the judicial branch of the U.S. government; the court of last resort. It is the only court specifically established by the Constitution in Article III. Congress is given the power to establish the other lower federal courts. Currently, the Supreme Court sits in Washington, D.C., and has nine Justices.

**tort**—a civil wrong for which a remedy may be obtained, usually in the form of damages; as breach of a duty that the law imposes on everyone in the same relation to one another as those involved in a given transaction.

**trial by jury**—a trial in which the issues of fact are to be determined by the verdict of the jury.

**trial court**—court in which trials take place at the local or district level.

**trial jury**—see “petit jury.”

**trial**—the proceeding at which parties in a civil case, or the government and the defense in a criminal case, produce evidence for consideration by a fact finder in court. The fact finder, who may be a judge or a jury, applies the law to the facts as it finds them and decides whether the defendant is guilty in a criminal case or which party should win in a civil case.

## Glossary of Jury- and Court-Related Terms

**U.S. District Court**—a federal court with general trial jurisdiction. It is the court in which the parties in a lawsuit file motions, petitions, and other documents and take part in pretrial and other types of status conferences. If there is a trial, it takes place in the district court. Also referred to as a *trial court*.

**venire**—a panel from which a jury is to be selected

**venireperson**—a member of a venire called also venireman or veniremember.

**verdict**—a petit jury's or a judge's decision on the factual issues in a case.

**voir dire**—("to speak the truth") the act or process of questioning prospective jurors to determine which are qualified (as free of bias) and suited for service on a jury

**witness** —a person called upon by either side in a lawsuit to give testimony before the court.

**writ of certiorari**—an order by a court requiring that the lower court produce the records of a particular case tried so that the reviewing court can inspect the proceedings and determine whether there have been any irregularities. Almost all parties seeking review of their cases in the U.S. Supreme Court file a petition for a writ of certiorari. The Court issues a limited number of writs, thus indicating the few cases it is willing to hear among the many in which parties request review.

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## Citizenship

Citizenship is the legal relationship between citizens and their government and country. Citizens owe their government loyalty, support, and service. The government owes the citizens the protection of constitutionally guaranteed rights to life, liberty, property, and equal justice under law.

The rights of citizenship are set forth in the constitution of a democratic government, which may distinguish between the rights of citizens and noncitizens within the country. For example, in the United States, only citizens have the right to vote, serve on juries, and be elected to certain offices of the government, and only a natural-born citizen can become President. All other constitutional rights are guaranteed to citizens and noncitizens alike.

Citizenship in a democracy entails serious responsibilities. For example, good citizens in a democracy exhibit civic engagement, which means they are ready, willing, and able to use their constitutionally protected political rights to advance the common good. Citizens are expected to be loyal and patriotic, to assume responsibility for the defense of their country against internal and external threats or attacks. Citizenship also entails certain duties, such as paying taxes, serving on juries when summoned, joining the country's armed forces if drafted, and obeying the laws.

In the world today, citizenship is the fundamental condition that connects individuals to the protective institutions of a democratic government and provides the means through which they can participate politically and civically in their governance. The rights, responsibilities, and duties of citizenship in a democracy have practical meaning today only within a particular kind of political order, a constitutional democracy. Only within the authority of a democratically governed country are there dependable institutional means to enforce constitutional guarantees of rights.

SEE ALSO Citizen; Civil Society; Government, Constitutional and Limited; State

## Justice

Justice is one of the main goals of democratic constitutions, along with the achievement of order, security, liberty, and the common good. The Preamble to the Constitution of the United States, for example, says that one purpose of the document is to “establish Justice.” And, in the 51st paper of *The Federalist*, James Madison proclaims, “Justice is the end of government. It is the end of civil society. It ever has been and ever will be pursued until it be obtained, or until liberty be lost in the pursuit.” So, what is justice? And how is it pursued in a constitutional democracy?

Since ancient times, philosophers have said that justice is achieved when everyone receives what is due to her or him. Justice is certainly achieved when persons with equal qualifications receive equal treatment from the government. For example, a government establishes justice when it equally guarantees the human rights of each person within its authority. As each person is equal in her or his membership in the human species, each one possesses the same immutable human rights, which the government is bound to protect equally.

By contrast, the government acts unjustly if it protects the human rights of some individuals under its authority while denying the same protection to others. The racial segregation laws that prevailed in some parts of the United States until the mid-1960s, for example, denied justice to African American people. America’s greatest civil rights leader, Martin Luther King Jr., said that racial segregation laws were “unjust laws” because they prevented black Americans from enjoying the same rights and opportunities as other citizens of the United States. When he opposed unjust racial segregation laws, King asserted that the worth and dignity of each person must be respected equally because each one is equally a member of the human species. Thus, any action by the government or groups of citizens that violated the worth and dignity of any person, as did the racial segregation laws, was unjust and should not be tolerated. King and his followers, therefore, protested these laws and eventually brought about their demise.

Another example of justice is *procedural justice*. It is pursued through *due process of law* to resolve conflicts between individuals or between individuals and their government. The government administers fair and impartial procedures equally to everyone under its authority in order to settle disputes among them or to prosecute persons charged with crimes against the state. For example, the 5th Amendment of the U.S. Constitution says that no person shall “be deprived of life, liberty, or property without due process of law, nor shall private property be taken for public use without just compensation.” The 4th, 5th, and 6th Amendments include several guarantees of fair procedures for anyone accused of criminal behavior, including “the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed.”

When procedural due process prevails, conflicts are settled in an orderly and fair manner in a court of law, according to the rule of law, and not by the arbitrary actions of people in power. This equal justice under the law regulates the interactions among private individuals and between individuals and government. Punishments, such as incarceration in prison, payment of fines, or performance of community service, may be carried out against a wrongdoer. One party harmed by another may receive compensation from the perpetrator of the grievance.

*Distributive justice*, another type of justice pursued in every constitutional democracy, pertains to the government’s enactment of laws to distribute benefits to the people under its authority. Distributive justice certainly is achieved when equals receive the same allocation of benefits. For example, public programs that provide social security or medical care to all elderly and retired persons are examples of distributive justice in a constitutional democracy. Public schools, which all children have an equal opportunity to attend, are another example.

When the government of a constitutional democracy protects individuals’ rights to liberty, order, and safety, individuals can freely use their talents to produce wealth and enjoy the results of their labor. Thus, they are able to provide for their basic human needs and to satisfy many, if not all, of their wants. But some per-

sons in every democracy are unable for various reasons to care adequately for themselves. Therefore, the government provides programs to distribute such basic benefits for disadvantaged persons as medical care, housing, food, and other necessities. These public programs for needy persons are examples of distributive justice in a constitutional democracy.

In the various democracies of our world, people debate the extent and kind of distributive justice there should be to meet adequately the social and economic needs of all the people. Should the regulatory power of government be increased greatly so that it can bring about greater social and economic equality through redistribution of resources?

Countries that provide extensive social and economic benefits through the redistribution of resources are known as social democracies or welfare states. The consequences of distributive justice in a social democracy, such as Sweden, are to diminish greatly unequal social and economic conditions and to move toward parity in general standards of living among the people. However, the achievement of this kind of social justice requires a substantial increase in the power of government to regulate the society and economy. Thus, as social and economic equality increase through government intervention in the lives of individuals, there is a decrease in personal and private rights to freedom. People in democracies throughout the world debate whether justice is generally served or denied by big public programs that extensively redistribute resources in order to equalize standards of living among the people.

SEE ALSO Equality; Liberalism; Liberty; Rule of Law; Social Democracy

## Rights

The constitution of a democracy guarantees the rights of the people. A right is a person's justifiable claim, protected by law, to act or be treated in a certain way. For example, the constitutions of democracies throughout the world guarantee the political rights of individuals, such as the rights of free speech, press, assembly, association, and petition. These rights must be guaranteed in order for there to be free, fair, competitive, and periodic elections by the people of their representatives in government, which is a minimal condition for the existence of a democracy. If a democracy is to be maintained from one election to the next, then the political rights of parties and persons outside the government must be constitutionally protected in order for there to be authentic criticism and opposition of those in charge of the government. Thus, the losers in one election can use their political rights to gain public support and win the next election.

In addition to political rights, the constitutions of democracies throughout the world protect the rights of people accused of crimes from arbitrary or abusive treatment by the government. Individuals are guaranteed due process of law in their dealings with the government. Today, constitutional democracies protect the personal and private rights of all individuals under their authority. These rights include

- freedom of conscience or belief
- free exercise of religion
- privacy in one's home or place of work from unwarranted or unreasonable intrusions by the government
- ownership and use of private property for personal benefit
- general freedom of expression by individuals, so long as they do not interfere with or impede unjustly the freedom or well-being of others in the community

A turning point in the history of constitutionally protected rights was the founding of the United States of America in the late 18th century. The United States was born with a Declaration

of Independence that proclaimed as a self-evident truth that every member of the human species was equal in possession of “certain unalienable rights” among which are the rights to “Life, Liberty, and the Pursuit of Happiness.”

The founders declared that the primary reason for establishing a government is “to secure these rights.” And, if governments would act legitimately to protect the rights of individuals, then they must derive “their just Powers from the Consent of the Governed.” Further, if the government established by the people fails to protect their rights and acts abusively against them, then “it is the Right of the People to alter or to abolish it, and to institute new Government” that will succeed in fulfilling its reason for existence—the protection of individual rights

Ideas expressed in the Declaration of Independence about rights and government were derived from the writings of political philosophers of the European Enlightenment, especially those of the Englishman John Locke. Enlightenment philosophers stressed that rights belonged equally and naturally to each person because of their equal membership in the human species. According to Locke, for example, persons should not believe that the government granted their rights, or that they should be grateful to the government for them. Instead, they should expect government to protect these equally possessed rights, which existed prior to the establishment of civil society and government. Thus, the rights of individuals, based on the natural equality of human nature, were called *natural rights*.

This Declaration of Independence, based on this natural rights philosophy, explained to the world that Americans severed their legal relationship with the United Kingdom because the mother country had violated the rights of the people in her North American colonies. As a result, the Americans declared they would independently form their own free government to protect their natural rights. In 1787, the Americans framed a constitution to “secure the Blessings of Liberty” and fulfill the primary purpose of any good government as expressed in the Declaration of Independence, the protection of natural rights, and they ratified this Constitution in 1788.

In 1789, the U.S. Congress proposed constitutional amendments to express explicitly the rights of individuals that the government was bound to secure; in 1791, the requisite number of states ratified 10 of these amendments, which became part of the U.S. Constitution. Thus, the American Bill of Rights was born. Since then, the American Bill of Rights has been an example and inspiration to people throughout the world who wish to enjoy liberty and equality in a constitutional democracy.

Following the tragedies of World War II, which involved gross abuses by some governments and their armies—Nazi Germany and imperial Japan, for example—against millions of individuals and peoples of the world, there was a worldwide movement in favor of the idea of human rights. The United Nations, an organization of the world’s nation-states established after World War II in order to promote international peace and justice, became a leader in the promotion of human rights throughout the world. In 1948, this international body issued the United Nations Universal Declaration of Human Rights, which is a statement of the rights every human being should have in order to achieve a minimally acceptable quality of life.

Its first article says, “All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act toward one another in a spirit of brotherhood.” Article 2 continues, “Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.” The remainder of the document details the human rights that ideally should be enjoyed by each person in the world.

Since 1948, the United Nations has issued several other documents on human rights, such as the International Covenant on Economic, Social, and Cultural Rights and the International Covenant on Civil and Political Rights. The UN documents are statements of ideals about human rights intended to guide the actions of the world’s nation-states, but the United Nations cannot enforce them in the way that a sovereign nation-state can compel

obedience to laws within its territory. Thus, practical protection for human rights is possible today only through the governmental institutions of the world's independent nation-states. The quality of the protection of human rights varies significantly from country to country. It depends upon what the nation's constitution says about rights and the capacity of the government to enforce the rights guaranteed in its constitution.

There is general international agreement that there are two basic categories of human rights. First, there are rights pertaining to what should not be done to any human being. Second, there are rights pertaining to what should be done for every human being. The first category of human rights involves constitutional guarantees that prohibit the government from depriving people of some political or personal rights. For example, the government cannot constitutionally take away someone's right to participate freely and independently in an election or to freely practice a particular religion. The second category of human rights requires positive action by the government to provide someone with a social or economic right that otherwise would not be available to her or him. Thus, the government may be expected to provide opportunities for individuals to go to school or to receive healthcare benefits.

The constitutions of many democracies specify certain social and economic rights that the government is expected to provide. In other democracies, for example the United States, programs that provide social and economic rights or entitlements, such as social security benefits for elderly persons and medical care for indigent persons, are established through legislation that is permitted but not required by the constitution.

SEE ALSO Equality; Justice; Liberalism; Liberty; Social Democracy

## Rule of Law

In a limited government administered according to the rule of law, the rulers use power following established principles and procedures based on a constitution. By contrast, when the rulers wield power capriciously, there is rule by the unbridled will of individuals without regard for established law. The rule of law is an essential characteristic of every constitutional democracy that guarantees rights to liberty. It prevails in the government, civil society, and market economy of every state with a functional constitution.

The rule of law exists when a state's constitution functions as the supreme law of the land, when the statutes enacted and enforced by the government invariably conform to the constitution. For example, the second clause of Article 6 of the U.S. Constitution says,

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the land; and the Judges in every State shall be bound thereby, anything in the Constitution or Laws of any State to the Contrary notwithstanding.

The third clause of Article 6 says, "The Senators and Representatives before mentioned and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation to support this Constitution." These statements about constitutional supremacy have been functional throughout the history of the United States, which is the reason that the rule of law has prevailed from the country's founding era until the present.

The rule of law, however, is not merely rule by law; rather, it demands equal justice for each person under the authority of a constitutional government. So, the rule of law exists in a democracy or any other kind of political system only when the following standards are met:

- laws are enforced equally and impartially
- no one is above the law, and everyone under the authority of the constitution is obligated equally to obey the law
- laws are made and enforced according to established procedures, not the rulers' arbitrary will
- there is a common understanding among the people about the requirements of the law and the consequences of violating the law
- laws are not enacted or enforced retroactively
- laws are reasonable and enforceable

There is a traditional saying about the rule of law in government: "It is a government of laws and not of men and women." When the rule of law prevails in a democracy, there is equal justice and ordered liberty in the lives of the people. In this case, there is an authentic constitutional democracy. When rule of law does not prevail, there is some form of despotism in which power is wielded arbitrarily by a single person or party.

SEE ALSO Constitutionalism; Government, Constitutional and Limited

## Virtue, Civic

Virtue is excellence in the character of a person. It refers to a desirable disposition, which can prompt individuals to be good persons and to do good things in regard to others and the community in general. Civic virtue refers to the dispositions or habits of behavior that direct citizens to subordinate their personal interests when necessary to contribute significantly to the common good of their community.

Since ancient times, political philosophers have stressed the importance of civic virtue in the establishment and maintenance of good government. For example, Aristotle, the great philosopher of ancient Greece, identified four main virtues that a good citizen of a republic should exhibit: temperance (meaning self-restraint); prudence; fortitude; and justice. Political thinkers and actors in modern times have also emphasized the importance of civic virtue in the character of the citizens and the institutions of a constitutional democracy or democratic republic. They have recognized that the practical effectiveness of constitutionalism—limited government and the rule of law—is dependent upon the character of the people. After all, in a democracy—government of, by, and for the people—the quality of constitutionalism can be no better than the character of the people. For example, citizens who possess the civic virtue of temperance are habitually disposed to limit their behavior and respect the rule of law, and to influence others to do the same.

Citizens who have cultivated the virtue of fortitude are likely to oppose persistently and strenuously government officials who behave corruptly or unconstitutionally, and to encourage other citizens to do likewise. Citizens who have learned the virtue of prudence are inclined to deliberation and reflection in making decisions rather than to reckless and destructive action, and they influence other citizens by the excellence of their civic behavior. Citizens with a well-formed sense of justice are habitually disposed to support communitywide standards for the protection of human rights and the promotion of the common good, and to prompt others to behave similarly. The core civic virtues are integrated within the character of the good citizen, who brings them


in concert with other citizens of similar disposition to civic and political participation in a constitutional democracy.

During the founding of the United States of America, James Madison noted the close connection between civic morality and good constitutional government in a republic. In a speech at the Virginia Convention to ratify the U.S. Constitution, Madison said, “Is there no virtue among us? If there be not . . . no theoretical checks, no form of government can render us secure. To suppose that any form of government will secure liberty or happiness without any virtue in the people is a chimerical [unrealistic] idea.”

Later, the French political philosopher Alexis de Tocqueville concurred with Madison in his great book *Democracy in America*. Tocqueville observed how the good character of citizens buttressed the institutions of constitutional government, enabling democracy to succeed in the United States during the 1830s. He recognized that if most citizens in the community have learned certain “habits of the heart” or civic virtues compatible with constitutionalism then there will be good constitutional government in a democracy. If not, however, even the most adroitly designed constitution, institutions of government, and statutes will fail to yield the desired results of liberty, order, and equal justice under law. Democracy is not a self-sufficient system of government. It is a way of political and civic life that can thrive only among people with sufficient virtue to nurture and sustain it.

SEE ALSO Citizenship; Constitutionalism; Justice; Participation

# Sixth Amendment



(1791)

## WHAT IT SAYS

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 defence.

### THE JURY AS A CROSS SECTION OF THE COMMUNITY

In the early 1980s, Daniel Holland went on trial in Illinois for a variety of charges that stemmed from the 1980 kidnapping, rape, and robbery of a stranded motorist. On the appointed day for jury selection, the prosecution and Holland’s counsel were faced with a jury pool made up of twenty-eight whites and just two African Americans. After questioning the potential jurors, the attorneys were permitted to remove, or “strike,” a certain number of jurors. Some were to be struck “for cause,” meaning that they had expressed some bias or other sentiment that cast doubt on their ability to be fair. The attorneys were permitted to strike a smaller number for no stated reason at all, the so-called peremptory challenge. The prosecution used its peremptory challenges to strike both African American jurors. Holland’s counsel objected on the grounds that Holland, who was white, had the Sixth Amendment right to “be tried by a representative cross section of the community”—words the U.S. Supreme Court had used in its ruling in *Taylor v. Louisiana* (1975). Holland’s attorney argued that an all-white jury violated that right. The trial judge rejected the argument, an all-white jury was sworn in, and Holland was convicted of virtually all the charges. He was sentenced to sixty years in prison. Holland appealed the convictions. When the case of *Holland v. Illinois* (1990) reached the U.S. Supreme Court, the justices found no Sixth Amendment violation. The Court explained that the guarantee of a jury drawn from a “representative cross section of the community” referred only to the pool from which the jurors are picked, not the composition of the final jury itself. The guarantee was intended to ensure an impartial jury, not a diverse one.

## WHAT IT MEANS

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The Sixth Amendment further specifies the protections offered to people accused of committing crimes. It allows the accused to have their cases heard by an impartial jury made up of people from the surrounding community who have no connection to the case. In some instances when there has been a significant amount of news coverage of the crime, jury members may be picked from outside the place where the crime took place.

Without the Sixth Amendment’s right to a speedy trial, criminal defendants could be held indefinitely, under a cloud of unproven accusations. A speedy trial is also critical to a fair trial, because if a trial takes too long to occur witnesses may die or leave the area, their memories may fade, and physical evidence may be lost. The public trial guarantee protects defendants from secret proceedings that might encourage abuse of the judicial system. Criminal defendants can voluntarily give up their right to a public proceeding—such a renunciation is called a waiver—and judges may limit public access to trials in certain circumstances, such as to protect witnesses’ privacy or to keep order in the court.

A speedy, public trial heard by an impartial jury would be meaningless if a defendant did not know what crime he or she was being charged with and why. Criminal defendants further have the right to face their accusers, which requires that prosecutors put their witnesses on the stand to testify under oath. The defendant’s counsel may then cross-examine the witnesses, which may reveal their testimony as unreliable.

The Sixth Amendment guarantees a criminal defendant the right to have an attorney. That right does not depend on the defendant’s ability to pay an attorney. If a defendant cannot afford one, the government must provide one. The right to an effective defense does not guarantee a successful defense. A defendant can receive effective legal assistance and still be convicted.

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*“The right of a speedy trial is necessarily relative. It is consistent with delays and depends upon circumstances.”*

—Justice Joseph McKenna,  
majority opinion, *Beavers v. Haubert*  
(1905)

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# Seventh & Eighth Amendments

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(1791)

## WHAT IT SAYS

[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 a jury, shall be otherwise reexamined in any Court of the United States, than according to the rules of the common law.

[Eighth Amendment] Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

### A JURY TRIAL FOR LANDLORDS

In 1969, a social worker in Wisconsin found an apartment for one of her clients, an African American woman named Julie Rogers. However the landlords, Leroy and Mariane Loether and Mrs. Anthony Perez, refused to rent to Rogers. Rogers believed they rejected her because she was African American. She brought a lawsuit under the newly enacted 1968 Fair Housing Act (FHA), a federal statute that makes it illegal to refuse to rent a home to someone because of that person's race, sex, familial status, or national origin.

The landlords asked the federal district court to grant them a jury trial in the case, but the court denied the request. The judge tried the case himself, and ruled that the defendants had violated the FHA and awarded Rogers \$250 in punitive damages. The Court of Appeals for the Seventh Circuit reversed this ruling, and Rogers appealed to the U.S. Supreme Court. Because Rogers had in the meantime married and had taken her husband's last name, Curtis, the case is known as *Curtis v. Loether*. The Supreme Court ruled unanimously that the landlords' request for a jury trial should have been granted. In an opinion written by Justice Thurgood Marshall, the Court reexamined the text of the Seventh Amendment, and considered what "common law" really meant. The justices rejected Mrs. Curtis's argument that the phrase excluded lawsuits brought under statutes. Instead, the Supreme Court found that the FHA's ban on housing discrimination was a rule against inflicting personal injury, which is a "legal" kind of claim, allowable at "common law." The Court additionally found that the monetary damages sought by the plaintiff were also "legal" in nature. Therefore, the Seventh Amendment's protections applied, and either party in an FHA case could demand a jury trial.

## WHAT IT MEANS

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The Seventh and Eighth Amendments add to the Constitution’s protections for individuals in the judicial system. The Seventh Amendment guarantees a jury trial in common law—consisting of centuries of judicial precedents—civil cases such as personal injury cases arising from car accidents, disputes between corporations for breach of contract, or discrimination and employment cases. The parties in a federal civil trial have the right to have their case decided by a jury of their peers. In a civil case a plaintiff (who brings the suit) may obtain money damages or a court order preventing the defendant from engaging in certain conduct, but civil cases cannot send a defendant to jail. The Seventh Amendment has not been extended to the states, which may choose not to employ juries in civil cases.

In addition to defining what kinds of cases require a jury, the Seventh Amendment highlights the jury’s role as “fact finder,” and it imposes limits on the judge’s ability to override the jury’s conclusions. Under the common law, the jury hears the facts and decides the verdict, and the judge sets the penalty based on the jury’s findings.

The Eighth Amendment deals with bail, the money that defendants pay in exchange for their release from jail before trial. This money is returned to the defendants when they appear at trial, but the government keeps the money if a defendant does not appear. Bail is an incentive for a defendant to remain in the area and participate in the trial. Bail also promotes the ideal of being “innocent until proven guilty,” in that defendants are not punished with jail time prior to conviction and sentencing. The Eighth Amendment ensures that bail cannot be excessive, set so high that only the richest defendants can afford it. However, the Supreme Court has identified certain circumstances in which courts can refuse bail entirely, such as when a defendant shows a significant risk of fleeing or poses a danger to the community.

The better-known component of the Eighth Amendment is its prohibition against “cruel and unusual” punishment. The phrase was originally intended to outlaw gruesome methods of punishment, such as torture or burning at the stake, but the courts have broadened it over the years to protect against punishments that are deemed too harsh for the particular crime. Eighth Amendment challenges to the death penalty have often focused on whether certain offenders, such as juveniles or the mentally retarded, should be subject to a sentence of death, and whether death sentences have been decided fairly or have been tainted by racial bias. The “cruel and unusual” provision has also been used to challenge grossly unsanitary or otherwise deficient prison conditions.

# Fourteenth Amendment

(1868)

## EQUAL PROTECTION OF THE LAW

As Congress contended with President Andrew Johnson over the post-Civil War Reconstruction of the South, it created a Joint Committee on Reconstruction to consider legislation that would protect the “freedmen,” as newly freed African Americans were called. Members of the joint committee considered various options, among them stripping political rights from former Confederate leaders and giving southern blacks the right to vote. They felt they needed to act promptly as the abolition of slavery had voided the Constitution’s “three-fifths compromise” and would increase the South’s representation in the House and its weight in the Electoral College. Some northerners feared that the South would rally to elect Robert E. Lee as President.

The joint committee considered a constitutional amendment that would have excluded anyone denied the right to vote because of race from being counted for purposes of congressional representation. But they soon realized that states could get around this formula by instituting literacy tests, poll taxes, and other discriminatory devices that could be presented as “race neutral.” Representative John A. Bingham, a member of the joint committee, then drafted another proposal to extend the “equal protection of life, liberty, and property” to all citizens. This was the seed of the Fourteenth Amendment, which was expanded, debated, and revised until passed by the House and Senate.

Woman suffrage advocates were upset with the Fourteenth Amendment’s reference to “male inhabitants,” marking the first time that the distinction “male” appeared in the Constitution. They believed that gender equality was being sacrificed for racial equality. But, others perceived that the amendment had broader implications than its obvious intention of protecting the freedmen. They believed that the amendment’s equal protection clause would apply to women as well as to men, to Indians, and to immigrants. They also believed that the amendment would at last apply the guarantees of the Bill of Rights to the states as well as to the federal government. They left the ultimate interpretation to the federal courts, however, and it would take another century before the courts embraced such an expansive view of the Fourteenth Amendment.

## WHAT IT SAYS

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 the laws.

Section 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice-President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Section 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Section 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

## WHAT IT MEANS

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Although it was created primarily to deal with the civil rights issues that followed the abolition of slavery, the Fourteenth Amendment has affected a broad range of American life, from business regulation to civil liberties to the rights of criminal defendants. Over time, the Supreme Court has interpreted the amendment to apply most of the guarantees of the Bill of Rights to the states as well as the federal government. The amendment contained three new limitations on state power: states shall not violate citizen's privileges or immunities or deprive anyone of life, liberty, or property without due process of law, and must guarantee all persons equal protections by the law. These limitations on state power dramatically expanded the reach of the U.S. Constitution.

Fulfilling its original purpose, the Fourteenth Amendment made it clear that everyone born in the United States, including a former slave, was a citizen. This voided the Supreme Court's ruling in *Dred Scott v. Sandford* (1857), which had asserted that African Americans were not citizens, and therefore were not entitled to constitutional rights. Yet, for a century after the ratification of the Fourteenth Amendment, the Supreme Court believed that racial segregation did not violate the "equal protection of the laws" provision in the amendment as long as equal facilities were provided for all races. This attitude changed dramatically in 1954 when the justices concluded that the intent of the Fourteenth Amendment made racially segregated schools unconstitutional. The Court has gradually adopted a much broader interpretation of the amendment that extends greater protection to women, minorities, and noncitizens.

The Fourteenth Amendment also specified that all adults must be counted for purposes of apportioning the House of Representatives, thereby voiding the "three-fifths" clause of the original Constitution. Ironically, this provision increased the number of representatives for the former Confederate states when they reentered the Union. By the twentieth century, this provision also justified the Supreme Court's insistence that state legislative bodies and the U.S. House of Representatives be apportioned equally. The amendment also addressed concerns about the number of Confederates seeking to serve in Congress after the Civil War. Former Confederate federal and state officials and military personnel were required to take an oath of loyalty to the United States. The former Confederate states were also prohibited from repaying the Confederate debts or compensating former slave owners for the property they lost with the abolition of slavery.

Finally, the last section of the amendment gave Congress the power to enforce all the provisions within the whole amendment. Under this provision, Congress passed the Civil Rights Act of 1964, the Voting Rights Act of 1965, sections of other civil rights legislation that protect women's rights, and the Americans with Disabilities Act, affording equal treatment for disabled people.

Over time, the Supreme Court has interpreted the Fourteenth Amendment's due process clause to incorporate (or apply) many of the guarantees of the Bill of Rights to the states, as well as to the federal government. The concept of incorporation has dealt mostly with such "fundamental" rights as freedom of speech, press, religion, assembly, and petition. Because the Court has not held the states subject to some of the other provisions of the Bill of Rights, such as the right to bear arms or the right to a trial by jury in civil cases, its approach has been called "partial incorporation."

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*Due process has not been reduced to any formula; its content cannot be determined by reference to any code. The best that can be said is that through the course of this Court's decisions it has represented the balance which our Nation built upon postulates of respect for the liberty of the individual, has struck between that liberty and the demands of organized society."*

—Justice John Marshall Harlan,  
dissenting opinion,  
*Poe v. Ullman* (1961)

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## **Jury Selection: Edmonson v. Leesville Concrete Company**

- 00:00:26 **Thaddeus Edmonson was a construction worker, not a lawyer.**
- 00:00:31 **THADDEUS EDMONSON:** THAT'S RIGHT. // I WAS JUST A PLAIN LAYPERSON.
- 00:00:34 **So when he went to work on the morning of July 7th, 1987, the last thing on his mind was that he was about to start a journey that would take him to the Supreme Court of the United States...**
- 00:00:45 **THADDEUS EDMONSON:** I DIDN'T HAVE THE MONEY TO BUY GROCERIES, BUT // THEY'RE GONNA LISTEN // TO THIS CASE.
- 00:00:49 **Where his case would help to preserve a fundamental right for all of us: fairness in the selection of juries.**
- 00:00:55 **THADDEUS EDMONSON:** THE LITTLE MAN CAN REALLY WIN, BUT YOU HAVE TO FIGHT.
- 00:01:00 **KERMIT ROOSEVELT:** IT'S ONE OF THE STRANGE THINGS ABOUT THE AMERICAN LEGAL SYSTEM THAT THE CASES THAT BECOME THE VEHICLES FOR ANNOUNCING THESE CONSTITUTIONAL PRINCIPLES OFTEN DON'T START THAT WAY. // SOMETIMES IT'S SORT OF AN ACCIDENT.
- 00:01: 11 **Thaddeus Edmonson was in charge of inspecting concrete. He made sure that when the cement was poured from the hopper, it was poured straight and smooth.**
- 00:01:20 **THADDEUS EDMONSON:** STRAIGHT AND SMOOTH.
- 00:01:22 **THADDEUS EDMONSON:** THE CONCRETE HAD TO BE STRAIGHT! THAT MORNING WE WERE POURING CONCRETE ON THE INCLINE OF A HILL.
- 00:01:28 **They were literally making sidewalks, curbs and gutters, when the cement started coming out...well...lumpy.**
- 00:01:35 **THADDEUS EDMONSON:** THE CONCRETE IS NOT COMING OUT PROPERLY.
- 00:01:38 **You can't have a lumpy curb, so Thaddeus walked between the two trucks to look into the hopper to see what was wrong.**
- 00:01:45 **THADDEUS EDMONSON:** I'M BENDING OVER LOOKING INSIDE OF THIS HOPPER AND // FELT THIS CRUSHING FEELING COMING BACK ON ME. AND I'M HOLLERING LIKE, "STOP! STOP! STOP!"
- 00:01:57 **His leg and lower back had been caught between two tons of steel. He spent weeks in the hospital, had multiple surgeries, and missed months of work. At first, the company took care of the bills.**

## **Jury Selection: Edmonson v. Leesville Concrete Company**

- 00:02:09      **THADDEUS EDMONSON:** AND THEN THE PAYCHECKS STOPPED.
- 00:02:12      **Thaddeus couldn't work. His wife was a schoolteacher. They had two small children and a lot of bills piling up.**
- Thaddeus hired Jim Doyle to represent him in a personal injury suit against the Leesville Concrete Company.**
- 00:02:27      **JAMES DOYLE:** I'VE ALWAYS BEEN A TRIAL LAWYER. I'VE ALWAYS HANDLED COURTROOM CASES.
- 00:02:31      **James Doyle had handled everything from civil rights litigation to maritime law cases about the law and the sea. Thaddeus didn't know it at the time, but hiring Jim Doyle turned out to be the best thing he could've done.**
- 00:02:43      **THADDEUS EDMONSON:** THIS IS THE GUY I WANT TO HIRE FOR MY CASE. THIS IS THE PERSON I WANT RIGHT HERE.
- 00:02:49      **Now, a couple of things you should know. They didn't sue Leesville Concrete for millions of dollars. They sued for \$400,000 to cover medical bills and lost work. And you should also know that, while the jury came back and acknowledged that Leesville Concrete was a little responsible, they only awarded Thaddeus Edmonson \$18,000 -a small fraction of Edmonson's medical bills.**
- 00:03:11      **THADDEUS EDMONSON:** WE HAD THIS LONG DISCUSSION IN JIM'S OFFICE AND I SAID // "NO, I CAN'T // ACCEPT THAT. // AND HE SAYS, "WELL, WE'RE GONNA APPEAL THIS."
- 00:03:20      **JAMES DOYLE:** THE POINT OF THE EDMONSON APPEAL WAS NEVER ABOUT REALLY JUST REVERSING THE JURY VERDICT. IT WAS ABOUT GETTING HIM A NEW TRIAL BECAUSE HE'D NOT HAD A FAIR TRIAL TO BEGIN WITH.
- 00:03:32      **The right to a fair or impartial trial by jury is written in the Constitution. The Framers understood that justice had to involve the voice of average citizens.**
- 00:03:43      **KERMIT ROOSEVELT:** WE HAVE CONSTITUTIONAL GUARANTEES OF THE RIGHT TO JURY TRIALS IN THE 6TH AMENDMENT FOR CRIMINAL CASES AND THE 7TH AMENDMENT FOR CIVIL CASES AND ALSO IN ARTICLE 3, WHICH CREATES THE JUDICIAL BRANCH OF THE FEDERAL GOVERNMENT.
- 00:03:56      **BRYAN STEVENSON:** THE WHOLE NOTION OF CREATING A JURY SYSTEM WAS CREATED TO PREVENT TYRANNY -ABUSIVE POWER BY THE GOVERNMENT.

## **Jury Selection: Edmonson v. Leesville Concrete Company**

- 00:04:06 **KERMIT ROOSEVELT:** IMAGINE YOU LIVE IN A COUNTRY WITH ONE ALL POWERFUL RULER. NOW, THAT PERSON CAN DO WHATEVER HE WANTS TO YOU. SO YOUR LIBERTY, YOUR LIFE, YOUR PROPERTY, ALL OF THAT HANGS ON THE GOODWILL OF ONE MAN.
- 00:04:19 **BRYAN STEVENSON:** ONLY THE CROWN GOT TO MAKE THOSE DECISIONS ABOUT GUILT OR INNOCENCE.
- 00:04:23 **KERMIT ROOSEVELT:** AND THE FOUNDERS SAID, WE DON'T LIKE THAT. // SO WE'RE GONNA SEPARATE POWER.
- 00:04:27 **So before you lose your liberty or worse, all three branches of government have to participate. The legislature passes a law that determines what's criminal, prosecutors come from the executive branch to enforce the law, and the judicial branch presides over a trial.**
- 00:04:43 **KERMIT ROOSEVELT:** AND THEN THE JURY COMES IN. BECAUSE IF // WE'RE GOING TO DO SOMETHING SO SERIOUS AS TAKE AWAY YOUR LIBERTY, MAYBE YOUR PROPERTY, MAYBE EVEN YOUR LIFE, YOU DON'T JUST HAVE THE THREE BRANCHES OF GOVERNMENT, YOU ALSO HAVE THE VOICE OF THE PEOPLE, AND THAT'S WHAT THE JURY IS. // IT PROTECTS YOUR LIBERTY AGAINST THE GOVERNMENT. IT GIVES THE VOICE OF THE PEOPLE A CHECK ON THE GOVERNMENT.
- 00:05:02 **Which is why serving on a jury is not just an obligation -it's actually a right. And because it's a right, according to the Fourteenth Amendment, everyone's right has to be protected equally. But I'm jumping ahead. Jim Doyle was preparing to appeal the Edmonson case because of something that happened during Jury Selection. It's commonly called the jury pool, or sometimes by the old fashioned name...**
- 00:05:25 **BRYAN STEVENSON:** VENEER [variant pronunciation for venire]. OR IF YOU'RE WHERE I'M FROM, IT CAN ALSO BE KNOWN AS THE VENIREE [variant pronunciation for venire].
- 00:05:30 **JAMES DOYLE:** I'VE BEEN KNOWN TO SAY VENEER [variant pronunciation for venire], BUT MOST OF THE TIME I SAY VENIRE.
- 00:05:34 **KERMIT ROOSEVELT:** THERE ARE TWO STAGES IN JURY SELECTION. FIRST YOU HAVE THE VENIRE WHERE YOU ASSEMBLE A POOL OF POTENTIAL JURORS.
- 00:05:40 **CHRISTINA SWARNS:** YOU HAVE TO START WITH A VERY LARGE POOL OF PROSPECTIVE JURORS IN ANY GIVEN CASE...
- 00:05:44 **BRYAN STEVENSON:** IT'S A LARGER NUMBER THAN THE ACTUAL 12 OR SIX PEOPLE THAT WILL SERVE ON THE JURY.

## **Jury Selection: Edmonson v. Leesville Concrete Company**

- 00:05:49      **In order to get a fair trial, each side wants a jury that it believes will be impartial. So the number of prospective jurors in the jury pool is winnowed down by questioning prospective jurors. That process is called the voir dire and, like the word venire, it, too comes from Latin.**
- 00:06:06      **BRYAN STEVENSON:** VOIR DIRE OR VOIR DIRAY [variant pronunciation of voir dire].
- 00:06:08      **JAMES DOYLE:** IT DEPENDS WHERE YOU'RE FROM
- 00:06:10      **It's a funny phrase but very serious business.**
- 00:06:13      **CHRISTINA SWARNS:** EVERY TIME A JURY IS SELECTED THERE ARE A SERIES OF QUESTIONS ASKED BY THE JUDGE AND ATTORNEYS TO CONFIRM THAT PROSPECTIVE JURORS ARE ABLE TO FOLLOW THE LAW THAT WILL BE APPLIED IN THE CASE BEFORE THE COURT.
- 00:06: 24      **Prospective jurors may be excluded from service because they've read too much in the papers and might be biased. Or they might know somebody in the courtroom.**
- 00:06:33      **BRYAN STEVENSON:** OH WAIT, IT'S MY NEIGHBOR WHO'S ON TRIAL. I KNOW THE DEFENDANT, OR I KNOW THE PROSECUTOR.
- 00:06:38      **KERMIT ROOSEVELT:** IT WOULD BE REASONABLE TO THINK YOU'RE NOT GONNA BE ABLE TO VIEW THESE FACTS IMPARTIALLY WITH AN OPEN MIND/IF THOSE REASONS ARE PRESENT, THEN WE EXCUSE THESE PEOPLE FOR CAUSE.
- 00:06:47      **Typically, challenges for cause won't narrow the jury pool...all the way down to the sitting jury. In fact, there are two ways a prospective juror can be excused. One is to be challenged for cause, and the other is a peremptory challenge -a practice that goes back centuries to English common law.**
- 00:07:06      **KERMIT ROOSEVELT:** A PEREMPTORY CHALLENGE ALLOWS LAWYERS FOR EITHER SIDE TO REMOVE SOMEONE FROM THE JURY WITHOUT GIVING A REASON.
- 00:07:14      **CHRISTINA SWARNS:** SO, FOR EXAMPLE, I JUST GET A BAD VIBE FROM A PERSON. I CAN SAY, YOU KNOW WHAT, I DON'T THINK I WANT THIS PERSON SERVING ON MY JURY.
- 00:07:20      **JAMES DOYLE:** IF I HAVE A BAD VIBE I'M GONNA LISTEN TO MY VIBES BECAUSE I'VE LEARNED OVER THE YEARS THEY'RE GENERALLY CORRECT. YOU KNOW, WE COMMUNICATE IN ALL KINDS OF NON-VERBAL WAYS.
- 00:07:29      **KERMIT ROOSEVELT:** THE IDEA IS PEREMPTORY CHALLENGES ARE SORT OF FOR HUNCHES, OR FOR REASONS THAT YOU CAN'T FULLY EXPLAIN, YOU THINK THIS JUROR IS NOT GOING TO BE SYMPATHETIC TO YOUR SIDE.

## **Jury Selection: Edmonson v. Leesville Concrete Company**

- 00:07:42      **The number of peremptory challenges each side gets is limited by state law if you're in state court, or as few as three if you're in federal court. And while they are very popular with lawyers, they have a troubled history. For decades, Peremptory Challenges were used to exclude people based on race.**
- 00:08:01      **KERMIT ROOSEVELT: THERE'S A LONG HISTORY OF RACE-BASED EXCLUSION FROM JURIES.**
- 00:08:06      **Until the second half of the 20th Century, juries were pretty much exclusively all white men -especially in southern states, and often with disastrous consequences. Conviction rates of minorities by all-white juries were much higher and, in some very famous cases, white defendants on trial for murdering black victims were often acquitted despite overwhelming evidence of their guilt.**
- 00:08:29      **BRYAN STEVENSON: IN ORDER FOR JURY VERDICTS TO HAVE ANY CREDIBILITY//YOU HAVE TO HAVE REPRESENTATIVE JURIES.**
- 00:08:35      **JAMES DOYLE: WE MAKE A POINT IN THIS COUNTRY OF SAYING THAT IT'S OUR GOAL TO TREAT EVERYONE EQUALLY, AND THAT MEANS EVERYBODY.**
- 00:08:40      **In fact, peremptory challenges are only a fairly recent tool used to exclude blacks and women from juries. First, states passed laws that simply said only white men could sit on a jury, but the Supreme Court said those laws violated the 14th Amendment. So...**
- 00:08:56      **KERMIT ROOSEVELT: OTHER METHODS OF EXCLUDING PEOPLE FROM JURIES BASED ON RACE CONTINUED.**
- 00:09:00      **Minorities and women were excluded from jury pools. In most states, the names of citizens eligible to serve on juries largely come from registered voters. But women didn't get the vote until 1920 (the Court didn't establish their right to sit on a jury until 1975 -some of your parents still have clothes from back then.) And many states denied African-Americans and other minorities the right to vote well into the 1960s.**
- 00:09:27      **BRYAN STEVENSON: THERE WAS NO DISCRIMINATORY USE OF PEREMPTORY STRIKES IN THE 1940S AND '50S BECAUSE THERE WERE NO PEOPLE OF COLOR TO STRIKE. AND IT'S ONLY WHEN WE DIVERSIFIED THE POOL FROM WHICH JURORS ARE BEING SELECTED, THAT THE PRESSURE SHIFTED FROM THE LEGAL EXCLUSION OF PEOPLE IN THE RIGHT TO VOTE, TO THE RIGHT TO BE IN THE POOL, TO THE RIGHT // TO NOT BE STRUCK. AND THAT'S WHY PEREMPTORY STRIKES BECOME THE LATEST AND MOST CRITICAL PART OF THIS STORY.**
- 00:09:53      **KERMIT ROOSEVELT: BY THE TIME YOU GET TO THE MID-20TH CENTURY // THE PRACTICE HAS ACTUALLY BEEN ENSHRINED IN PROSECUTORS' MANUALS IN SOME**

## **Jury Selection: Edmonson v. Leesville Concrete Company**

CASES. SO THERE'S A DALLAS, TEXAS PROSCUTOR'S MANUAL THAT SAYS EXPLICITLY, "IF YOU'RE PROSECUTING A MEMBER OF A RACIAL MINORITY, STRIKE OTHER MEMBERS OF THAT MINORITY FROM THE JURY."

00:10:13 **The Supreme Court declared that practice unconstitutional in 1986, with its decision in Batson v. Kentucky.**

00:10:20 **KERMIT ROOSEVELT:** BATSON'S A VERY SIGNIFICANT DECISION. WHAT BATSON SAYS IS YOU CAN'T USE A PEREMPTORY CHALLENGE BASED ON RACE.

00:10:29 **The Court held that a prosecutor using a peremptory challenge to remove a prospective juror because of race was a violation of the 14th Amendment's equal protection clause. The prosecutor is a government official, and the 14th Amendment says that the government must treat everyone equally.**

00:10:45 **KERMIT ROOSEVELT:** BATSON BASICALLY SAYS, "IF THE PROSECUTOR IS STRIKING MINORITY JURORS YOU CAN SAY, 'LOOKS LIKE YOU'RE DOING THIS BASED ON RACE,' GIVE ANOTHER EXPLANATION." SO YOU WOULD MAKE THE PROSECUTOR COME UP WITH THE NEUTRAL EXPLANATION -YOU KNOW, IT'S NOT RACE, I'M DOING IT BASED ON EDUCATION OR WEALTH OR SOMETHING ELSE. AND IF THE PROSECUTOR CAN'T DO THAT THEN//THE PEREMPTORY CAN'T BE USED THAT WAY.

00:11:11 **Batson is such a well known case, that to this day, when a lawyer charges another lawyer with trying to use a peremptory strike to remove a prospective juror because of race, that's known as a "Batson Challenge."**

00:11:24 **CHRISTINA SWARNS:** IT WAS A VERY BIG SEA CHANGE IN THE WAY THAT COURTS AND TRIALS WERE HANDLED. THERE WAS AN ENORMOUS AMOUNT OF RESISTANCE TO IT.

00:11:33 **The Court was aware of how disruptive this could have been to peremptory challenges in general --a practice that was older than the nation itself --so it took a very limited stance in Batson. Batson applied only to situations where the prospective juror who was challenged was the same race as the defendant. And it applied only to the prosecution -meaning the government --in criminal trials.**

00:12:04 **KERMIT ROOSEVELT:** THE GENERAL PRINCIPLE IN THE BACKGROUND HERE IS THAT THE CONSTITUTION SAYS, THE GOVERNMENT CAN'T DISCRIMINATE AGAINST YOU ON THE GROUNDS OF RACE, GENERALLY. IT DOESN'T SAY THAT I CAN'T. SO IF I'M HAVING A DINNER PARTY, I CAN INVITE PEOPLE BASED ON RACE IF THAT'S WHAT I WANT TO DO. THE CONSTITUTION DOESN'T HAVE ANYTHING TO SAY ABOUT THAT.

00:12:30 **Comparing Batson to Edmonson, criminal trials to civil trials, was like comparing apples to oranges. So back in that federal courthouse in Louisiana when Leesville Concrete's**

## **Jury Selection: Edmonson v. Leesville Concrete Company**

lawyers used their peremptory challenges to strike two black men from the jury in a civil trial, Jim Doyle wasn't sure if Batson even applied to his case.

**But Edmonson versus Leesville was a civil trial -one private party acting against another private party to recover damages.**

00:12:50 **JAMES DOYLE:** BATSON HAD JUST BEEN DECIDED. OF COURSE, IT WAS A CRIMINAL CASE AND THIS WAS NOT A CRIMINAL CASE THAT I HAD.

00:12:57 **So when Doyle made a Batson Challenge and asked the Judge to make Leesville explain why they had just struck the two black jurors, the judge had something to say.**

00:13:06 **JAMES DOYLE:** THE JUDGE, UH, WAS QUITE UPSET WITH ME, I'LL PUT IT THAT WAY. // HE TOOK ME BACK INTO HIS CHAMBERS AND SAID, "I CAN'T BELIEVE YOU'RE GONNA MAKE THIS ARGUMENT."

00:13:14 **CHRISTINA SWARNS:** I THINK YOU COULD FAIRLY SAY THAT MR. DOYLE WAS PUSHING THE ENVELOPE-AS HE SHOULD HAVE BEEN. // BATSON WAS A CRIMINAL CASE // IT WAS DECIDED MERELY A YEAR BEFORE //SO IT WAS NOT SURPRISING THAT THAT TRIAL JUDGE SAID, "HOLD ON, WHAT ARE YOU TALKING ABOUT?"

00:13:33 **JAMES DOYLE:** I KNEW THEY COULDN'T GIVE A RACE-NEUTRAL REASON, AND HE WOULDN'T DO THAT.

00:13:37 **So because the judge let Leesville strike the two black jurors...**

00:13:41 **THADDEUS EDMONSON:** I CAN'T // ACCEPT THAT

00:13:43 **Doyle and Edmonson appealed the Leesville peremptory challenges. This case wasn't just a personal injury suit anymore.**

00:13:50 **KERMIT ROOSEVELT:** ALONG THE WAY IT CHANGES. IT TURNS OUT THAT THERE'S THIS BIG CONSTITUTIONAL PRINCIPLE SORT OF HIDING IN THE BACKGROUND. AND IT COMES // INTO PLAY IN THIS CASE AND ALL OF A SUDDEN IT BECOMES NOT ABOUT PERSONAL INJURY, BUT ABOUT EQUAL JUSTICE UNDER THE LAW.

00: 14:06 **The appeals process took three years. They eventually lost their appeal because theirs was a civil trial, and the appeals court ruled that while the Fourteenth Amendment guarantees equal protection, it applies only to the government, not a private party in a civil suit. Thaddeus Edmonson had reached rock bottom.**

00:14:25 **THADDEUS EDMONSON:** I HAD NO MONEY. // I LOST MY HOME

## **Jury Selection: Edmonson v. Leesville Concrete Company**

- 00:14:28 **THADDEUS EDMONSON:** I'M SAYING, LIKE, JIM, I UNDERSTAND THE CONSTITUTION. THAT'S WELL AND FINE. BUT I'VE GOT TO EAT. HE SAID, BUT IF YOU GIVE UP NOW // YOU HAVEN'T ACHIEVED ANYTHING.
- 00: 14:40 **Doyle convinced Edmonson to keep going. They were fighting for a principle now.**
- 00:14:46 **JAMES DOYLE:** IF WE DON'T // HAVE A FAIR, OPEN, HONEST, COLOR BLIND JUSTICE SYSTEM FOR EVERYBODY THEN WE DON'T HAVE IT FOR ANYBODY.
- 00:14:53 **THADDEUS EDMONSON:** JIM DID A LOT OF STUFF PRO BONO. HE DIDN'T GET PAID.
- 00:14:57 **CHRISTINA SWARNS:** IT DEMONSTRATES A REMARKABLE LEVEL OF COMMITMENT TO HIS CLIENT. // IT IS NOT THE NORM TO SEE A TRIAL LAWYER ARGUE IN THE SUPREME COURT
- 00:15:07 **Nothing about Jim Doyle was normal. In fact, this wasn't Doyle's first trip to the Supreme Court. Just a month before his argument for Edmonson, Doyle argued a maritime case there -and, to put it nicely, he could have done better.**
- 00:15:22 **JAMES DOYLE:** [LAUGHS] YEAH. LOST NINE TO NOTHING AND//IT WAS NOT AS CLOSE AS THE SCORE INDICATED.
- 00:15:28 **THADDEUS EDMONSON:** HO, MY GOODNESS ...
- 00:15:30 **This was news to Thaddeus Edmonson.**
- 00:15:33 **THADDEUS EDMONSON:** HE NEVER TOLD ME THAT. HE NEVER TOLD ME... AND BEFORE THE SUPREME COURT? OH, MAN.
- 00:15:41 **On January 15, 1991, Jim Doyle was at the Supreme Court again, this time arguing the Edmonson case. This is the actual audio recording from that day.**
- 00:15:52 **JAMES DOYLE (FROM ORAL ARGUMENTS):** MAY IT PLEASE THE COURT, THE ISSUE IN THIS CASE IS WHETHER BATSON V KENTUCKY APPLIES IN CIVIL CASES IN THE UNITED STATES DISTRICT COURTS.
- 00:16:00 **KERMIT ROOSEVELT:** DOYLE HAS TO CONVINCe THE COURT THAT THE CONSTITUTION APPLIES TO LEESVILLE, WHICH IS NOT THE GOVERNMENT, BUT A PRIVATE COMPANY.
- 00:16:07 **CHRISTINA SWARNS:** HE ARGUED THAT THIS ISN'T A PRIVATE ACTION. THE EXCLUSION OF AMERICAN CITIZENS FROM JURY SERVICE CANNOT BE VIEWED AS A PRIVATE ACTION.
- 00:16: 19 **Leesville's argument was simple -the 14th Amendment doesn't apply to us.**

## **Jury Selection: Edmonson v. Leesville Concrete Company**

- 00:16:24 **KERMIT ROOSEVELT:** IF WE WANT TO USE PEREMPTORY CHALLENGES ON RACIAL GROUNDS, THAT'S OKAY.
- 00: 16:29 **Doyle ended his argument pleading with the Court to remember not only the rights of Mr. Edmonson, but of the two black jurors who were excluded from the jury because of peremptory challenges.**
- 00:16:40 **JAMES DOYLE:** AND IN GENERAL, THE CLOSING WENT SOMETHING LIKE THIS...THIS CASE IS NOT JUST...
- 00:16:44 **JAMES DOYLE (FROM ORAL ARGUMENT):** JUST ABOUT THE RIGHT OF MY CLIENT, MR. EDMONSON, OR ABOUT // LEESVILLE CONCRETE COMPANY. THIS APPEAL ALSO CONCERNS TWO MEN WHO ARE NOT REPRESENTED BY COUNSEL AND ARE NOT HERE TODAY, WILLIE COMBS AND WILTON SIMMONS. THEY ARE THE TWO BLACK JURORS WHO WERE EXCUSED FROM JURY SERVICE // WE DON'T KNOW MUCH ABOUT THEM BECAUSE // TRIAL COUNSEL SAW NO NEED TO ASK ANY QUESTIONS BEFORE HE CHALLENGED THEM AS JURORS. // MR COMBS' PARENTS AND HIS GRANDPARENTS COULD NOT HAVE SERVED ON THE JURY IN LOUISIANA, NOT BECAUSE THEY WEREN'T FIT OR QUALIFIED OR COMPETENT TO DO IT, BUT BECAUSE THEY WOULD NOT BE ALLOWED TO DO SO BECAUSE OF THE COLOR OF THEIR SKIN. ON THAT JULY DAY IN 1987, WILLIE COMBS AND WILTON SIMMONS ENTERED THE FEDERAL COURTHOUSE IN LAKE CHARLES, LOUISIANA, BELIEVING THAT TIMES HAD CHANGED. THEY WERE CONFIDENT THAT JUSTICE IN A FEDERAL COURTROOM WOULD BE GUIDED BY THE PROMISE // THAT THEY WOULD BE JUDGED NOT BY THE COLOR OF THEIR SKIN, BUT BY THE CONTENT OF THEIR CHARACTER.
- 00:17:38 **JAMES DOYLE:** AND WHEN I SAID THAT YOU COULD'VE HEARD A PIN DROP// THE THINGS I REMEMBER THE MOST ABOUT IT WERE JUSTICE KENNEDY WHO WAS UP ON HIS ELBOW JUST BORING INTO ME WHEN I WAS MAKING THIS STATEMENT. AND I REMEMBER WHEN I SAT DOWN, JUSTICE THURGOOD MARSHALL LOOKED AT ME AND WINKED.
- 00:17:53 **The Court handed down a 6-3 opinion in favor of Thaddeus Edmonson. Justice Kennedy wrote for the majority.**
- 00:18:01 **KERMIT ROOSEVELT:** THE MAJORITY SAYS THE CONSTITUTION DOES APPLY TO LEESVILLE, EVEN THOUGH IT'S A PRIVATE COMPANY BECAUSE IT'S ACTING IN A CONTEXT THAT'S CREATED BY THE GOVERNMENT. // OBVIOUSLY,  
  
TWO PRIVATE PARTIES CAN'T HAVE A TRIAL BY THEMSELVES. YOU NEED THE GOVERNMENT TO CREATE THE COURT SYSTEM.

## **Jury Selection: Edmonson v. Leesville Concrete Company**

- 00:18:18 **Justice Kennedy wrote that "the jury exercises the power of the court and of the government...If a government confers on a private body the power to choose the government's employees or officials (such as a juror), the private body will be bound by the constitutional mandate of race-neutrality." Leesville was in violation of the equal protection rights of the two black jurors, as well as Thaddeus Edmonson because peremptory challenges are a function of government, even in a civil court, so they cannot be based on race.**
- 00:18:49 **BRYAN STEVENSON: IF YOU USE OUR COURT SYSTEM, EVEN IF IT'S A CIVIL CASE, YOU'VE GOT TO ABIDE BY OUR RULES. AND ONE OF OUR RULES IS YOU DON'T GET TO EXCLUDE PEOPLE IN A BIASED, DISCRIMINATORY MANNER.**
- 00:19:01 **Justices O'Connor, Scalia and Rehnquist dissented. Justice O'Connor, who had voted with the majority in Batson, dissented in Edmonson arguing that a peremptory challenge by a private party in a civil suit was not a function of government.**
- Justice Kennedy ended his opinion by explaining why this case was so important.**
- 00:19:20 **CHRISTINA SWARNS: JUSTICE KENNEDY TALKS A LOT//ABOUT WHAT EFFECT THERE WOULD BE ON THE PERCEPTION OF JUSTICE IF WE HAD A PROCESS THAT PERMITTED QUALIFIED AMERICAN CITIZENS TO BE EXCLUDED FROM SERVICE FOR NO OTHER REASON THAN THE COLOR OF THEIR SKIN.**
- 00:19:40 **Justice Kennedy concludes by saying "that the injury caused by the discrimination is made more severe because the government permits it to occur within the courthouse itself.. .Racial bias mars the integrity of the judicial system and prevents the idea of democratic government from becoming a reality."**
- 00:19:58 **CHRISTINA SWARNS: HE RECOGNIZED THAT EVERYONE HAS TO BELIEVE THAT THEY HAVE A FAIR OPPORTUNITY TO HAVE THEIR CASE, THEIR CONTROVERSY, HEARD.**
- 00:20:06 **JAMES DOYLE: EVERYBODY IN THIS COUNTRY HAS A VESTED INTEREST IN A COURT SYSTEM THAT IS TRANSPARENTLY FAIR.! WE CAN'T HAVE A JUDGE SITTING IN A ROBE IN A FEDERAL COURTROOM IN FRONT OF A UNITED STATES FLAG AND GIVING RISE TO A RACIALLY BASED PEREMPTORY CHALLENGE, // IT'S JUST NOT RIGHT.**
- 00:20:22 **THADDEUS EDMONSON: WE WON, WE WON, WE WON.**
- 00:20:25 **THADDEUS EDMONSON: I SAID, "I'M HAPPY FOR YOU, JIM. BECAUSE YOU, MAN, I OWE YOU. I OWE YOU A LOT FOR WHAT YOU'VE DONE.**

## **Jury Selection: Edmonson v. Leesville Concrete Company**

- 00:20:31      **The irony is that, after going all the way to the Supreme Court to ensure that he got a representative jury and a fair trial, Thaddeus Edmonson settled his case with Leesville Concrete out of court -and not in front of a jury.**
- 00:20:45      **THADDEUS EDMONSON: THEY MADE AN OFFER THAT I SAID, UH, WE CAN LIVE WITH IT.**
- 00:20:48      **For years after Batson, in case after hard-fought case brought by average citizens like Thaddeus Edmonson, the Court expanded protections for jurors against peremptory challenges based on race and gender. In the end, Edmonson closed the circle -what was unconstitutional in a criminal jury was unconstitutional in all juries.**
- 00:21:11      **CHRISTINA SWARNS: THE IMPORTANCE OF A JURY OF ONE'S PEERS IS ITS BUILD FAITH IN THE JUDICIAL SYSTEM. IT IS A GROUP OF PEOPLE WHO ARE JUST LIKE ME, THEY ARE JUST LIKE YOU, LOOKING OBJECTIVELY AT FACTS AND DECIDING WHAT IS RIGHT AND WHAT IS NOT RIGHT IN A GIVEN CASE AND THAT WE CAN PUT OUR TRUST IN**
- 00:21:29      **KERMIT ROOSEVELT: JURORS EXERCISE THE POWER OF GOVERNMENT, THEY STAND IN JUDGMENT OF THEIR FELLOW CITIZENS, AND THEY STAND THERE IN ORDER TO MAKE SURE THAT GOVERNMENT PLAYS FAIR! IN OUR SOCIETY POSITIONS LIKE THAT OF JUROR // ARE OPEN TO EVERYONE, WITHOUT REGARD TO RACE.**
- 00:21:44      **CHRISTINA SWARNS: IT IS THE RIGHT OF EVERY AMERICAN CITIZEN TO SERVE ON A JURY**
- 00:21:50      **BRYAN STEVENSON: YOU SHOULD WANT TO BE ON A JURY. PEOPLE HAVE FOUGHT FOR // THE RIGHT TO SERVE ON JURIES, IT'S // ABOUT THE CHARACTER OF JUSTICE IN OUR SOCIETY. AND IF WE DENY RIGHTS TO HAVE PEOPLE SERVE ON JURIES, WE ARE DENYING JUSTICE.**

## Student Materials

- Class-Prep Assignment
- Research Activity: “Jury Selection Step by Step”
- “Student’s Video Guide: Jury Selection: Edmonson v. Leesville Concrete Company”
- Graphic Organizer: “Chart the Plot of the Story”
- Activity: “Profile the Legal Case: *Edmonson v. Leesville Concrete Co.* (1991)”
- Character Analysis: “Going the Distance: What It Takes for Democracy to Work”
- “Take-Home Review”

# Class-Prep Assignment Sheet

Lesson: Jury Selection on Trial

The following assignment provides important background knowledge and context for the video *Jury Selection: Edmonson v. Leesville Concrete Company* and related class work.

## **Instructions**

Read, review, and become familiar with the following resources, then answer the questions. **Bring this sheet and the completed questions with you to class.**

### **1. Readings and resources to review.**

(Copies are available from the teacher or the readings may be viewed at the links provided.)

- “Introduction: Supreme Court as a Mirror of America” from *The Pursuit of Justice: Supreme Court Decisions that Shaped America* by Kermit L. Hall and John J. Patrick.  
Sunnylands Classroom: <http://www.sunnylandsclassroom.org/Asset.aspx?id=1257>
- *Understanding Democracy: A Hip Pocket Guide*  
Topics: Citizenship; Justice; Rights; Rule of Law; Civic Virtue  
Sunnylands Classroom: <http://sunnylandsclassroom.org/Asset.aspx?id=1116>
- U.S. Constitution
  - Sixth Amendment
  - Seventh Amendment
  - Fourteenth AmendmentJustice Learning’s Guide to the Constitution: <http://www.justicelearning.org/>.
- Background Story for *Edmonson v. Leesville Concrete Company* (1991)
- Glossary of Jury-and Court-Related Terms

### **2. Questions to answer.**

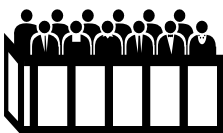
- a) Cite the Constitutional guarantees for jury trial.
- b) Explain the concept of equal justice under law.
- c) What criteria does the Supreme Court use to decide which cases it will hear?
- d) Who is Thaddeus Edmonson and why did he go to court in the first place?
- e) What happened in Edmonson’s trial that might be a concern for the Supreme Court?

## Jury Selection Step by Step

**Instructions:** Synthesize information from multiple sources to diagram the steps in the jury selection process for federal courts and identify criteria used for selecting people during each phase. Attach a KEY with commentary to describe what happens at each step.



We the People



We the Jury

THE PROCESS	THE CRITERIA
<p><b>Phase I:</b> Process the court uses to select people and get them to the courthouse:</p>	<p><b>Legal Requirements</b></p>
<p><b>Phase II:</b> Process followed at the courthouse for selecting jurors:</p>	<p><b>Qualifications for Selection</b></p>

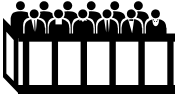
## Jury Selection Step by Step

### Resources to review:

- Supreme Court Opinion for *Edmonson v. Leesville Concrete Company* (1991)  
See Paragraphs 17, 18, 19  
A copy is available from the teacher or it may be accessed from the following site:  
United States Reports  
<http://ftp.resource.org/courts.gov/c/US/500/500.US.614.89-7743.html>
- Inside the Federal Courts  
Who does What? Jury  
<http://www.fjc.gov/federal/courts.nsf/autoframe?OpenForm&nav=menu5a&page=/federal/courts.nsf/page/306?opendocument>  
  
Who Does What: Jury Qs & As  
<http://www.fjc.gov/federal/courts.nsf/autoframe?OpenForm&nav=menu5a&page=/federal/courts.nsf/page/307?opendocument>
- The American Jury: Bulwark of Democracy  
<http://www.crfc.org/americanjury/>
- U.S. Courts  
Information for Jurors  
<http://www.uscourts.gov/Audience/Jurors.aspx>  
  
*Handbook for Trial Jurors Serving in the United States District Courts*  
<http://www.uscourts.gov/Viewer.aspx?doc=/uscourts/FederalCourts/Jury/trialhandbook.pdf>

### Words to include:

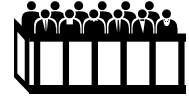
- |                        |                          |
|------------------------|--------------------------|
| 1. challenge for cause | 12. jury selection       |
| 2. citizen             | 13. lawyers              |
| 3. clerk of court      | 14. master jury wheel    |
| 4. district court      | 15. peremptory challenge |
| 5. judge               | 16. prospective juror    |
| 6. juror               | 17. qualified jury wheel |
| 7. juror questionnaire | 18. random selection     |
| 8. jury                | 19. summons              |
| 9. jury administrator  | 20. venire               |
| 10. jury panel         | 21. voir dire            |
| 11. jury pool          | 22. voter                |



## Student's Video Guide

### *Jury Selection: Edmonson v. Leesville Concrete Company*

(Time 23:19)



#### **Introduction**

*Jury Selection: Edmonson v. Leesville Concrete Company* tells a true story about the relentless pursuit of justice under law by one ordinary citizen and his attorney. Because of their persistence, all citizens who report for jury service are protected against race-based discriminatory practices during the selection process.

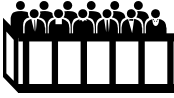
In the course of the storytelling, you will have the unique opportunity to see and hear from Thaddeus Edmonson, the petitioner, and James Doyle, Edmonson's counsel, who argued the case before the Supreme Court in 1991. You will also listen to audio from the actual Supreme Court proceeding.

#### **Vocabulary**

appeal	juror	prospective juror
Batson challenge	jury	right
civil case	jury selection	strike a juror
counsel	justice	sue
criminal case	layperson	suit
discrimination	litigant	trial by jury
facts	party	tyranny
fair	peremptory challenge	U.S. Constitution
impartial	private action	venire
judge	pro bono	voir dire

#### **Follow-Up Discussion Questions**

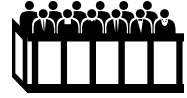
1. Who was Thaddeus Edmonson and why did he go to court?
2. What happened in Thaddeus Edmonson's trial that became the focus of a Supreme Court case?
3. Which constitutional guarantees apply to jury trials?
4. In order to determine a person's guilt or innocence in a criminal trial, all three branches of government are involved. Explain the role of each:
5. Why was the jury system created?
6. Which parts of the jury selection process were described in the video?
7. What is the purpose of having lawyers question prospective jurors before a trial starts?
8. Identify the two ways used by lawyers to excuse prospective jurors.
9. Historically, how did voter lists facilitate racial discrimination in a court of law?



## Student's Video Guide

### Jury Selection: *Edmonson v. Leesville Concrete Company*

(Time 23:19)



10. Define "Batson challenge" and explain its significance in *Edmonson*.
11. What constitutional principle became the primary concern in *Edmonson*?
12. Justice Kennedy wrote the Court's opinion in *Edmonson*. Explain the significance of Kennedy's reasoning when he said that "the jury exercises the power of the court and of the government . . . If a government confers on a private body the power to choose the government's employees or officials (such as a juror), the private body will be bound by the constitutional mandate of race-neutrality."
13. Whose rights were violated in *Edmonson*? Explain.
14. Identify the similarities and differences between *Edmonson* and *Batson*. (You can compare apples and oranges.)

	Batson	Edmonson
similarities		
differences		

15. Read the following explanations from the video about the opinion and dissents in *Edmonson*. They represent two different points of view regarding the function of government and the application of the law. There were six Justices who agreed and three who dissented.

"Justice Kennedy wrote [in the Court's opinion] that "the jury exercises the power of the court and of the government...If a government confers on a private body the power to choose the government's employees or officials (such as a juror), the private body will be bound by the constitutional mandate of race-neutrality." Leesville was in violation of the equal protection rights of the two black jurors, as well as Thaddeus Edmonson because peremptory challenges *are* a function of government, even in a civil court, so they cannot be based on race."

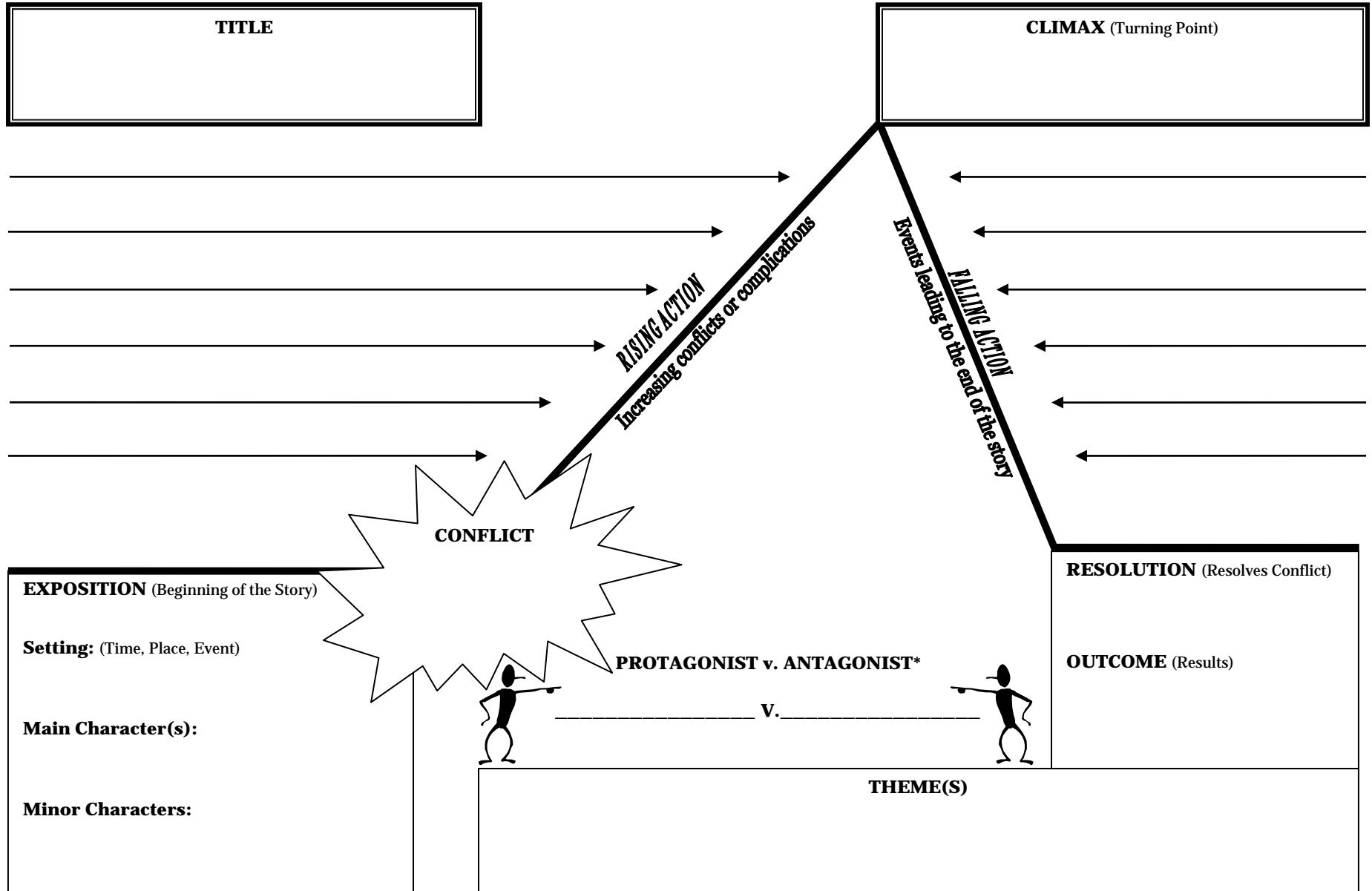
"Justices O'Connor, Scalia and Rehnquist dissented. Justice O'Connor, who had voted with the majority in *Batson*, dissented in *Edmonson* arguing that a peremptory challenge by a private party in a civil suit was not a function of government."

Discuss the difference between the two points of view.

16. From a legal standpoint, why is it important to distinguish between government action and private action?
17. Reflect on the closing statement in the video:
 

"You should want to be on a jury. People have fought for the right to serve on juries. It's all about the character of justice in our society, and if we deny rights to have people serve on juries, we are denying justice."
18. What is the significance of the Supreme Court decision in *Edmonson* for students?

# Chart the Plot of the Story



**\*Protagonist:** the central character that tries to accomplish something in the story and keeps the action moving forward; the protagonist may or may not be a person  
**Antagonist:** whatever opposing force or major obstacle that the protagonist struggles against; the antagonist may or may not be a person

## Profile the Legal Case: *Edmonson v. Leesville Concrete Co. (1991)*

**Instructions:** Use the information in the video *Jury Selection: Edmonson v. Leesville Concrete Company*, to develop a 1-page case profile, then refer to the Supreme Court opinion to fill in other details as needed.

**Note:** A full text pdf of *Edmonson v. Leesville* is available from the teacher. It can also be accessed at these links for research purposes:

- FindLaw  
<http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=us&vol=500&invol=614>
- Cornell University Law School  
<http://www.law.cornell.edu/supct/html/89-7743.ZS.html>

<b>Case name</b> (complete title)	
<b>Case citation</b> (reference information)	
<b>Type of case</b> (civil / criminal)	
<b>Background story</b> (summary of the facts)	
<b>Nature of the lawsuit</b>	
<b>Court in which case was filed</b>	
<b>Petitioner</b>	
<b>Respondent (Defendant)</b>	
<b>Goal of the lawsuit</b>	
<b>Attorney for the plaintiff</b>	
<b>Constitutional issue(s) used for appeal</b> (constitutional violation)	
<b>Reason Supreme Court decided to hear the case</b>	
<b>What problem is the Court being asked to solve?</b> (problem stated in the form of a <u>question</u> that can be answered by YES or NO.)	
<b>Holding of the Court</b> (how the Court answered the question.)	
<b>Vote of the Court</b>	
<b>Action of the Court</b> (what the court required be done as the result of its decision)	
<b>Justice delivering the Court's opinion</b>	
<b>Justices who concurred</b>	
<b>Reasoning behind opinion of the Court</b>	
<b>Justices who dissented</b>	
<b>Justices who filed dissents</b>	
<b>Reasoning behind each filed dissent</b>	

– Character Analysis –  
**Going the Distance: What It Takes for Democracy to Work**

Video: *Jury Selection: Edmonson v. Leesville Construction Company*

**Instructions:** In our democratic system of shared powers, both the government and the citizens are responsible for protecting the rights of the individual and promoting the common good. After viewing the video, reflect on the words and actions of the characters named in the chart below then check all descriptors that you believe apply and note your reasons.

CHARACTERS							DESCRIPTORS
Edmonson	Doyle	Leesville	Supreme Court	Combs	Jury	<b>1. Role in the Story</b> Distinguishing between private and public roles in a constitutional democracy is critical to invoking the authority of the Constitution, but not always easy. “With a few exceptions, such as the provisions of the Thirteenth Amendment, constitutional guarantees of individual liberty and equal protection do not apply to the actions of private entities.” ( <i>Edmonson</i> )	
						private	
						government/state (public)	
Edmonson	Doyle	Leesville	Supreme Court	Combs	Jury	<b>2. Civic Dispositions</b> These civic dispositions or traits of private and public character are important to the preservation and improvement of American constitutional democracy.	
						civility	
						respect for the rights of other individuals	
						respect for law	
						honesty	
						open mindedness	
						critical mindedness	
						negotiation and compromise	
						persistence	
						civic mindedness	
						compassion	
						patriotism	
						courage	
						tolerance of ambiguity	
Edmonson	Doyle	Leesville	Supreme Court	Combs	Jury	<b>3. Civic Responsibilities</b> The exercise of these responsibilities by citizens supports the values and principles of American democracy and provides the means for citizens to monitor and influence government.	
						obeying the law	
						being informed and attentive to public issues	
						monitoring the adherence of those in government to constitutional principles and taking appropriate action if that adherence is lacking	
						assuming leadership when appropriate	
						paying taxes	
						registering to vote and voting	
						serving as a juror	
						serving in the armed forces	
						performing public service	

- Character Analysis -  
**Going the Distance: What It Takes for Democracy to Work**  
 Video: *Jury Selection: Edmonson v. Leesville Construction Company*

CHARACTERS						DESCRIPTORS
Edmonson	Doyle	Leesville	Supreme Court	Combs	Jury	<b>4. Personal Responsibilities</b> The exercise of certain personal responsibilities by citizens benefits both the individual and society.
						taking care of one's self
						supporting one's family and caring for, nurturing, and educating one's children
						accepting responsibility for the consequences of one's actions
						adhering to moral principles
						considering the rights and interests of others
						behaving in a civil manner
Edmonson	Doyle	Leesville	Supreme Court	Combs	Jury	<b>5. Constitutional Values and Principles</b> Both government officials and citizens share the responsibility for upholding fundamental values and principles important for a constitutional democracy.
						popular sovereignty-- ultimate political authority rests with the people
						constitutional authority
						rule of law
						representative institutions
						separated and shared powers
						checks and balances
						limited government
						equal protection under the law
						individual rights
						separation of church and state
						federalism
						civilian control of the military
Edmonson	Doyle	Leesville	Supreme Court	Combs	Jury	<b>6. American Values and Principles</b> The following values and principles are fundamental to American civic life. Civic life is the public life of the citizen concerned with the affairs of the community and nation as contrasted with private or personal life, which is devoted to the pursuit of private and personal interests.
						individual rights
						the public or common good
						self government
						justice
						equality
						diversity
						openness and free inquiry
						truth
						patriotism

– Character Analysis –  
**Going the Distance: What It Takes for Democracy to Work**

Video: *Jury Selection: Edmonson v. Leesville Construction Company*

**Civic Dispositions Defined:**

- **civility**--treating other persons respectfully, regardless of whether or not one agrees with their viewpoints; being willing to listen to other points of view; avoiding hostile, abusive, emotional, and illogical argument
- **respect for the rights of other individuals**--having respect for others' right to an equal voice in government, to be equal in the eyes of the law, to hold and advocate diverse ideas, and to join in associations to advance their views
- **respect for law**--willingness to abide by laws, even though one may not be in complete agreement with every law; willingness to work through peaceful, legal means to change laws which one thinks to be unwise or unjust
- **honesty**--willingness to seek and express the truth
- **open mindedness**--considering others' points of view
- **critical mindedness**--having the inclination to question the validity of various positions, including one's own
- **negotiation and compromise**--making an effort to come to agreement with those with whom one may differ, when it is reasonable and morally justifiable to do so
- **persistence**--being willing to attempt again and again to accomplish worthwhile goals
- **civic mindedness**--paying attention to and having concern for public affairs
- **compassion**--having concern for the well-being of others, especially for the less fortunate
- **patriotism**--being loyal to the values and principles underlying American constitutional democracy, as distinguished from jingoism and chauvinism
- **courage**--the strength to stand up for one's convictions, when conscience demands
- **tolerance of ambiguity**--the ability to accept uncertainties that arise, e.g., from insufficient knowledge or understanding of complex issues or from tension among fundamental values and principles

Note: Based on the National Civics and Government Standards for Grades 5-8 and 9-12.

## Take-Home Review

### Lesson: Jury Selection on Trial

**Instructions:** Use words from the list at the end to fill in the blanks. Some words may be used multiple times; some words may not be used at all; some may be more appropriate than others.

1. People seek \_\_\_\_\_ in a court of \_\_\_\_\_.
2. The \_\_\_\_\_ Amendment of the \_\_\_\_\_ provides for a jury trial in \_\_\_\_\_ cases.
3. The \_\_\_\_\_ Amendment of the \_\_\_\_\_ provides for a jury trial in criminal cases.
4. The courts are part of the \_\_\_\_\_ branch of government.
5. The three branches of government are \_\_\_\_\_, \_\_\_\_\_, and \_\_\_\_\_.
6. The jury system was created to prevent abusive power by the \_\_\_\_\_.
7. The \_\_\_\_\_ was written to establish the \_\_\_\_\_ and define what it can and cannot do.
8. It is unconstitutional for the \_\_\_\_\_ to violate the \_\_\_\_\_ of those under its authority.
9. Juries are composed of \_\_\_\_\_ only.
10. If a case is lost in one court, it may be taken to a higher \_\_\_\_\_ on \_\_\_\_\_.
11. The highest appellate court is the \_\_\_\_\_.
12. The jury is the voice of the \_\_\_\_\_ in the \_\_\_\_\_.
13. The group of prospective jurors who report to the court for jury service form the \_\_\_\_\_, known commonly as the \_\_\_\_\_.
14. During voir dire, lawyers may use a \_\_\_\_\_ to excuse a juror without stating a reason.
15. When a person is charged with drunk driving, the case will be heard in a \_\_\_\_\_ court.
16. The goal of \_\_\_\_\_ is to reduce the number of prospective jurors and select an \_\_\_\_\_ jury.
17. Prospective jurors have \_\_\_\_\_.

## Take-Home Review

### Lesson: Jury Selection on Trial

18. Prosecutors are lawyers in \_\_\_\_\_ courts.
19. The government is one of the parties in a \_\_\_\_\_ trial.
20. A civil court settles disputes between \_\_\_\_\_ parties.
21. When a person sues another person for breaking a contract, the case may be heard in a \_\_\_\_\_ court.
22. As an officer of the court, a \_\_\_\_\_ is part of the government.
23. A jury is made up of individuals from the \_\_\_\_\_.
24. The \_\_\_\_\_ decides a person's innocence or guilt in a \_\_\_\_\_ trial.
25. If accused, we all have the right to a \_\_\_\_\_ trial.
26. As triers of the facts in a courtroom, the \_\_\_\_\_ serves a governmental function.
27. The \_\_\_\_\_ restrains the \_\_\_\_\_ from denying the \_\_\_\_\_ of the people.
28. \_\_\_\_\_ in any court procedures jeopardizes the fairness of the proceedings.
29. The \_\_\_\_\_ guarantees all of us the right to \_\_\_\_\_ under the law.
30. It is unconstitutional for the \_\_\_\_\_ to discriminate against \_\_\_\_\_ on the grounds of race.
31. It is not unconstitutional for \_\_\_\_\_ to act in discriminatory ways.
32. Civil trials take place in a setting operated by the \_\_\_\_\_.
33. Decisions made by the Supreme Court have the force of \_\_\_\_\_.

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appeal	Fourteenth	people
challenge for cause	government	peremptory challenge
citizens	impartial	president
civil	judge	private
Constitution	judicial	rights
court	jury	Senate
criminal	jury pool	Seventh
Declaration of Independence	justice	Sixth
discrimination	law	Supreme Court
equal protection	lawyer	venire
executive	legislative	voir dire

## Teacher Materials

- Research: “Jury Selection Step by Step” (KEY)
- “Teacher’s Video Guide: Jury Selection: Edmonson v. Leesville Concrete Company” (includes suggested answers)
- Graphic Organizer: “Chart the Plot of the Story” (KEY)
- Activity: “Profile the Legal Case: *Edmonson v. Leesville Concrete Co.* (1991)” (KEY)
- “Take-Home Review” (KEY)

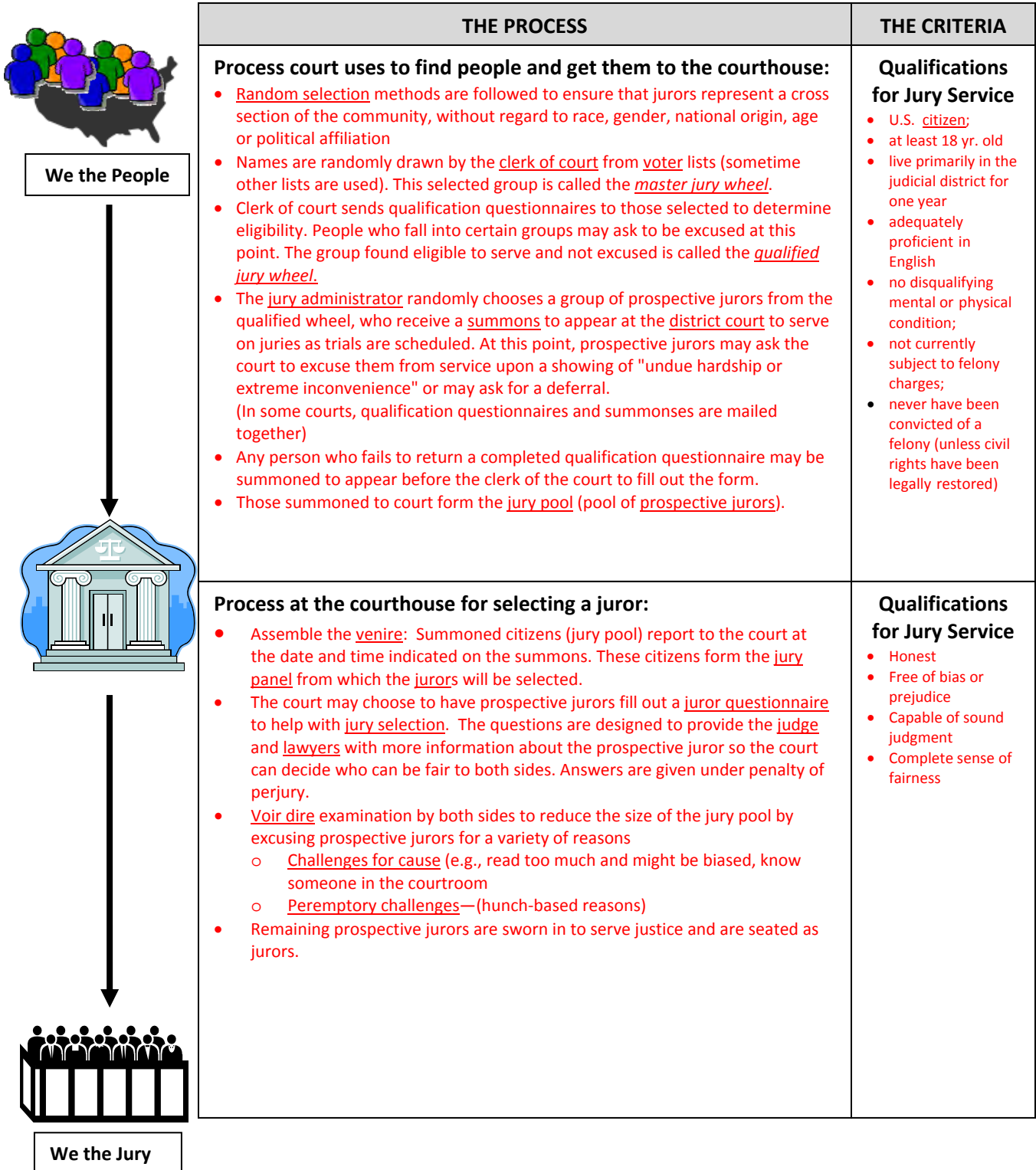
KEY

Research Activity

# Jury Selection Step by Step

**Instructions:** Synthesize information from multiple sources to diagram the steps in the jury selection process for federal courts and identify criteria used for selecting people during each phase. Attach a KEY to describe what happens at each step.

(Suggested answers)



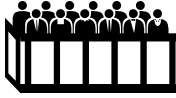
## Jury Selection Step by Step

### Resources to review:

- Inside the Federal Courts  
Who does What? Jury  
<http://www.fjc.gov/federal/courts.nsf/autoframe?OpenForm&nav=menu5a&page=/federal/courts.nsf/page/306?opendocument>  
  
Who Does What: Jury Qs & As  
<http://www.fjc.gov/federal/courts.nsf/autoframe?OpenForm&nav=menu5a&page=/federal/courts.nsf/page/307?opendocument>
- The American Jury: Bulwark of Democracy  
<http://www.crfc.org/americanjury/>
- U.S. Courts  
Information for Jurors  
<http://www.uscourts.gov/Audience/Jurors.aspx>
- *Handbook for Trial Jurors Serving in the United States District Courts*  
<http://www.uscourts.gov/Viewer.aspx?doc=/uscourts/FederalCourts/Jury/trialhandbook.pdf>

### Words to include:

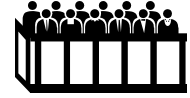
1. challenge for cause
2. citizen
3. clerk of court
4. district court
5. judge
6. juror
7. juror questionnaire
8. jury
9. jury administrator
10. jury panel
11. jury pool
12. jury selection
13. lawyers
14. master jury wheel
15. peremptory challenge
16. prospective juror
17. qualified jury wheel
18. random selection
19. summons
20. venire
21. voir dire
22. voter



# Teacher's Video Guide

## *Jury Selection: Edmonson v. Leesville Concrete Company*

(Time 23:19)



### **Introduction**

*Jury Selection: Edmonson v. Leesville Concrete Company* tells a true story about the relentless pursuit of justice under law by one ordinary citizen and his attorney. Because of their persistence, all citizens who report for jury service are protected against race-based discriminatory practices during the selection process.

In the course of the storytelling, students have the unique opportunity to see and hear from Thaddeus Edmonson, the petitioner, and James Doyle, Edmonson's counsel, who argued the case before the Supreme Court in 1991. They also listen to audio from the actual Supreme Court proceeding.

### **Background Knowledge**

In order for students to gain the most from this video, they should have advance knowledge about the following:

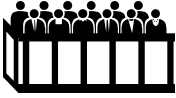
- Constitutional basis for juries
- Similarities and differences between civil and criminal trials
- Appeal process in the federal court system
- Process and procedures used by the court for selecting and seating juries
- Responsibilities and limitations of the government
- Rights of private individuals
- Background story for *Edmonson v. Leesville Concrete Co.* (1991)

### **Vocabulary**

appeal	juror	prospective juror
Batson challenge	jury	right
civil case	jury selection	strike a juror
counsel	justice	sue
criminal case	layperson	suit
discrimination	litigant	trial by jury
facts	party	tyranny
fair	peremptory challenge	U.S. Constitution
impartial	private action	venire
judge	pro bono	voir dire

### **Prepare for Viewing**

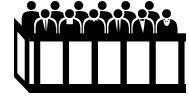
1. Briefly review and discuss the process for jury selection and outline the steps on the board.
2. Reflect on the role of government in jury selection and the constitutional obligations that the government has in the process.
3. Identify the constitutional protections that the people have from the actions of the government.



## Teacher's Video Guide

### Jury Selection: *Edmonson v. Leesville Concrete Company*

(Time 23:19)



Key point: Under the Constitution, the government is charged with protecting the rights of private individuals. A governmental action is deemed unconstitutional if it denies the rights of the people.

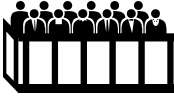
### Introduce the Video

“How would you feel if you, a qualified citizen, reported to the court as instructed in the summons, filled out the questionnaire for jury service, and ended up being peremptorily excused by a lawyer during voir dire without having a chance to answer any questions? In the interest of seating an impartial jury, some reasons have always been acceptable for excusing prospective jurors (reasons of bias or prejudice) and some are no longer allowed (race-based reasons). The video you are about to see tells the story that prompted the change. As you watch, pay close attention to the reasoning of the Court because it hinges on the role and responsibilities of the government in the jury selection process.”

### Follow-Up Discussion Questions

*(Suggested answers are in italics.)*

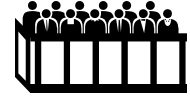
1. Who was Thaddeus Edmonson and why did he go to court?  
*Thaddeus was a concrete worker who was injured on the job. He went to court to recover damages from his employer.*
2. What happened in Thaddeus Edmonson's trial that became the focus of a Supreme Court case?  
*A race-based peremptory challenge was used to excuse a prospective juror during voir dire.*
3. Which constitutional guarantees apply to jury trials?  
*6<sup>th</sup> amendment: criminal cases*  
*7<sup>th</sup> amendment: civil cases*  
*14<sup>th</sup> amendment: equal protection*
4. In order to determine a person's guilt or innocence in a criminal trial, all three branches of government are involved. Explain the role of each:  
*The legislature passes a law that determines what's criminal, prosecutors come from the executive branch to enforce the law, and the judicial branch presides over a trial.*
5. Why was the jury system created?  
*To prevent tyranny—abusive power by the government*  
*The voice of the people through the jury serves as a check on the government.*
6. Which parts of the jury selection process were described in the video?  
*venire; voir dire*
7. What is the purpose of having lawyers question prospective jurors before a trial starts?  
*To reduce the size of the jury pool and seat an impartial jury.*
8. Identify the two ways used by lawyers to excuse prospective jurors.



## Teacher's Video Guide

### Jury Selection: *Edmonson v. Leesville Concrete Company*

(Time 23:19)



- Challenge for cause: reasons are stated such as obvious bias
- Peremptory challenge: allows lawyers for either side to remove a prospective juror without giving a reason

9. Historically, how did voter lists facilitate racial discrimination in a court of law?

*Voter lists were used to get names for jury pools. Blacks and women were not allowed to vote so their names never would appear on voter lists for jury selection. Women didn't get the right to sit on juries until 1975.*

10. Define "Batson challenge" and explain its significance in *Edmonson*.

*A race-based peremptory challenge became known as a Batson challenge...an unconstitutional maneuver. The use of race-based peremptory challenges in a civil trial had gone unchallenged until Edmonson.*

11. What constitutional principle became the primary concern in *Edmonson*?

*Equal protection under law—Fourteenth Amendment*

12. Justice Kennedy wrote the Court's opinion in *Edmonson*. Explain the significance of Kennedy's reasoning when he said that "the jury exercises the power of the court and of the government . . . If a government confers on a private body the power to choose the government's employees or officials (such as a juror), the private body will be bound by the constitutional mandate of race-neutrality."

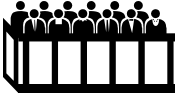
*The Constitution prevents the government from acting in a discriminatory way, not private parties. However, when a private party acts with governmental authority, Constitutional mandates can be applied.*

13. Whose rights were violated in *Edmonson*? Explain.

*Thaddeus Edmonson: fairness of his trial was jeopardized because the jury selection process was unfair; Willie Combs and Wilton Simmons: Prospective jurors who were excused unfairly because of race.*

14. Identify the similarities and differences between *Edmonson* and *Batson*. (You can compare apples and oranges.)

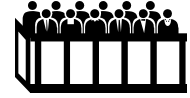
	Batson	Edmonson
similarities	<ul style="list-style-type: none"> <li>• Jury trial</li> <li>• Jury selection process</li> <li>• Venire</li> <li>• Voir dire</li> <li>• Use of peremptory challenges</li> <li>• Use of challenges for cause</li> </ul>	<ul style="list-style-type: none"> <li>• Jury trial</li> <li>• Jury selection process</li> <li>• Venire</li> <li>• Voir dire</li> <li>• Use of peremptory challenges</li> <li>• Use of challenges for cause</li> </ul>
differences	<ul style="list-style-type: none"> <li>• criminal case</li> <li>• the government is one of the parties</li> <li>• unconstitutional to use race-based peremptory challenges</li> </ul>	<ul style="list-style-type: none"> <li>• civil case</li> <li>• only private parties are involved</li> <li>• unconstitutional to use race-based peremptory challenges</li> </ul>



## Teacher's Video Guide

### Jury Selection: *Edmonson v. Leesville Concrete Company*

(Time 23:19)



15. Read the following explanations from the video about the opinion and dissents in *Edmonson*. They represent two different points of view regarding the function of government and the application of the law. There were six Justices who agreed and three who dissented.

“Justice Kennedy wrote [in the Court’s opinion] that “the jury exercises the power of the court and of the government...If a government confers on a private body the power to choose the government's employees or officials (such as a juror), the private body will be bound by the constitutional mandate of race-neutrality.” Leesville was in violation of the equal protection rights of the two black jurors, as well as Thaddeus Edmonson because peremptory challenges *are* a function of government, even in a civil court, so they cannot be based on race.”

“Justices O'Connor, Scalia and Rehnquist dissented. Justice O'Connor, who had voted with the majority in *Batson*, dissented in *Edmonson* arguing that a peremptory challenge by a private party in a civil suit was not a function of government.”

Discuss the difference between the two points of view.

*The basis of the disagreement was a legal one having to do with the function of government in a civil trial. The dissenters believe that lawyers representing private parties in a civil court do not function as part of the government simply because they represent the interests of private parties in a courtroom. Batson was a criminal trial in which, by definition, the government is one of the parties.*

16. From a legal standpoint, why is it important to distinguish between government action and private action?

*The Constitution restricts the actions of the government, not the actions of private people. The government cannot discriminate, but it doesn't prevent private people from doing so.*

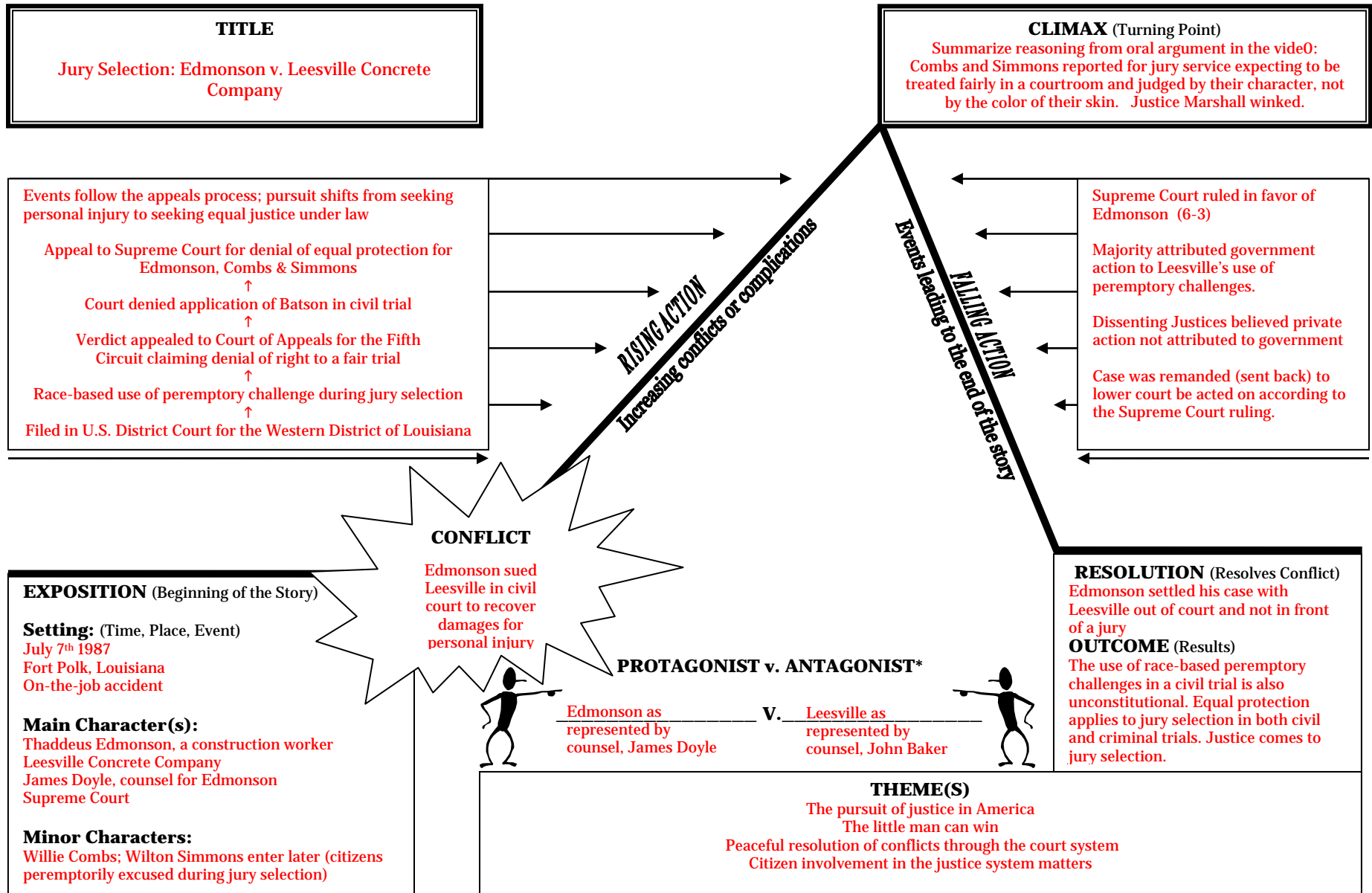
17. Reflect on the closing statement in the video:

*“You should want to be on a jury. People have fought for the right to serve on juries. It’s all about the character of justice in our society, and if we deny rights to have people serve on juries, we are denying justice.”*

18. What is the significance of the Supreme Court decision in *Edmonson* for students?

*Students will be eligible for jury service when they turn 18 and could be called to be part of a jury pool and questioned by lawyers. Because of *Edmonson*, they are protected against race-based discrimination during the questioning.*

# Chart the Plot of the Story



\***Protagonist:** the central character that tries to accomplish something in the story and keeps the action moving forward; the protagonist may or may not be a person  
**Antagonist:** whatever opposing force or major obstacle that the protagonist struggles against; the antagonist may or may not be a person

**KEY**  
Activity

## Profile the Legal Case: *Edmonson v. Leesville Concrete Co. (1991)*

**Instructions:** Use the information in the video, *Jury Selection: Edmonson v. Leesville Concrete Company*, to develop a 1-page case profile, then refer to the Supreme Court opinion to fill in other details as needed.

**Note:** A full text pdf of *Edmonson v. Leesville* is available from the teacher. It can also be accessed at these links for research purposes:

- FindLaw  
<http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=us&vol=500&invol=614>
- Cornell University Law School  
<http://www.law.cornell.edu/supct/html/89-7743.ZS.html>

(Suggested answers)

<b>Case name</b> (complete title)	<b>Edmonson v. Leesville Concrete Co., Inc.</b>
<b>Case citation</b> (reference information)	500 U.S. 614 (1991) Official citation used to indicate the place where the case was published. There are 4 parts and the order has meaning: 1 <sup>st</sup> : volume = 500 2 <sup>nd</sup> : Abbreviation for the publisher (U.S. = United States Reports) 3 <sup>rd</sup> : page on which the case is found = 614 4 <sup>th</sup> : Year case was decided in parentheses = (1991)
<b>Type of case</b> (civil / criminal)	civil
<b>Background story</b> (summary of the facts)	Edmonson, a black construction worker, sued his employer, Leesville Concrete Co., for injuries resulting from the alleged negligence of one of Leesville's employees. During voir dire, Leesville used two of its three statutory peremptory challenges to remove blacks from the jury, resulting in a jury with eleven white members and one black member. The court denied Edmonson's request that Leesville provide a race-neutral explanation for its challenges. The jury returned a verdict for Edmonson, but determined that he had been 80% at fault and his actual award was reduced to \$18,000. Edmonson appealed, arguing that race-based peremptory challenges were unconstitutional. The court of appeals affirmed, holding that the bar to race-based peremptory challenges applied only to criminal prosecutors and not to civil litigants. The U.S. Supreme Court granted certiorari
<b>Nature of the lawsuit</b>	Personal injury
<b>Court in which case was filed</b>	United States District Court for the Western District of Louisiana
<b>Petitioner</b>	Thaddeus Edmonson
<b>Respondent (Defendant)</b>	Leesville Concrete Co.
<b>Goal of the lawsuit</b>	Recover damages—lost wages due to injury on the job
<b>Attorney for the plaintiff</b>	James Doyle
<b>Constitutional issue(s) used for appeal.</b> (constitutional violation)	Right to equal protection was denied the prospective jurors when race-based peremptory challenges were used to exclude them
<b>Reason Supreme Court decided to hear the case</b>	It dealt with the constitutional right of equal protection.
<b>What problem is the Court being asked to solve?</b> (problem stated in the form of a <u>question</u> that can be answered by YES or NO.)	May civil litigants use race-based peremptory challenges to excuse jurors?
<b>Holding of the Court</b> (how the Court answered the question.)	No, a private litigant in a civil case may not use peremptory challenges to exclude jurors on account of race.
<b>Vote of the Court</b>	6-3 in favor of Edmonson
<b>Action of the Court</b> (what the court required be done as the result of its decision)	Case was sent back to the lower court for resolution consistent with the Supreme Court's ruling.
<b>Justice delivering the Court's opinion</b>	Justice Kennedy
<b>Justices who concurred</b>	Justices White, Marshall, Blackmun, Stevens, Souter

**KEY**

Activity

**Profile the Legal Case: *Edmonson v. Leesville Concrete Co. (1991)***

<b>Reasoning behind opinion of the Court</b>	<p>The Constitutional guarantees of equal protection apply only to State actions. Racial discrimination only violates the Constitution when it is attributable to State action.</p> <p>When private litigants participate in jury selection, they serve a government function and act with the substantial assistance of the judge, who ultimately must exclude the jurors. State action is present when private parties make extensive use of state procedures assisted by state officials. Therefore, State action permeates the entire process of jury selection even if the trial is a civil action.</p>
<b>Justices who dissented</b>	Justice O'Connor, Justice Scalia, Chief Justice Rehnquist
<b>Justices who filed dissents</b>	Justice O'Connor, Justice Scalia
<b>Reasoning behind each filed dissent</b>	<p>O'Connor: A peremptory challenge by a private litigant is a private matter, therefore, no state action is involved</p> <p>Justice Scalia: Minority litigants will no longer be able to use race-based peremptory challenges to obtain racially diverse juries. This decision puts an unjustified, heavy burden on trial courts to determine if race is a factor in peremptory challenges.</p>

## Take-Home Review

Lesson: Jury Selection on Trial

**Instructions:** Use words from the list at the end to fill in the blanks. Some words may be used multiple times; some words may not be used at all; some may be more appropriate than others.

1. People seek (justice) in a court of (law).
2. The (7<sup>th</sup>) Amendment of the (Constitution) provides for a jury trial in (civil) cases.
3. The (6<sup>th</sup>) Amendment of the (Constitution) provides for a jury trial in criminal cases.
4. The courts are part of the (judicial) branch of government.
5. The three branches of government are (legislative), (executive), and (judicial).
6. The jury system was created to prevent abusive power by the (government).
7. The (Constitution) was written to establish the (government) and define what it can and cannot do.
8. It is unconstitutional for the (government) to violate the (rights) of those under its authority.
9. Juries are composed of (citizens) only.
10. If a case is lost in one court, it may be taken to a higher (court) on (appeal).
11. The highest appellate court is the (Supreme Court).
12. The jury is the voice of the (people) in the (government).
13. The group of prospective jurors who report to the court for jury service form the (venire), known commonly as the (jury pool).
14. During voir dire, lawyers may use a (peremptory challenge) to excuse a juror without stating a reason.
15. When a person is charged with drunk driving, the case will be heard in a (criminal) court.
16. The goal of (voir dire) is to reduce the number of prospective jurors and select an (impartial) jury.
17. Prospective jurors have (rights).
18. Prosecutors are lawyers in (criminal) courts.
19. The government is one of the parties in a (criminal) trial.
20. A civil court settles disputes between (private) parties.
21. When a person sues another person for breaking a contract, the case may be heard in a (civil) court.

KEY

## Take-Home Review

Lesson: Jury Selection on Trial

22. As an officer of the court, a (judge) is part of the government.
23. A jury is made up of individuals from the (jury pool).
24. The (jury) decides a person's innocence or guilt in a (criminal) trial
25. If accused, we all have the right to a (jury) trial.
26. As triers of the facts in a courtroom, the (jury) serves a governmental function.
27. The (Constitution) restrains the (government) from denying the (rights) of the people.
28. (Discrimination) in any court procedures jeopardizes the fairness of the proceedings.
29. The (Constitution) guarantees all of us the right to (equal protection) under the law.
30. It is unconstitutional for the (government) to discriminate against (people) on the grounds of race.
31. It is not unconstitutional for (people) to act in discriminatory ways.
32. Civil trials take place in a setting operated by the (government).
33. Decisions made by the Supreme Court have the force of (law).

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appeal  
challenge for cause  
citizens  
civil  
Constitution  
court  
criminal  
Declaration of Independence  
discrimination  
equal protection  
executive

Fourteenth  
government  
impartial  
judge  
judicial  
jury  
jury pool  
justice  
law  
lawyer  
legislative

people  
peremptory challenge  
president  
private  
rights  
Senate  
Seventh  
Sixth  
Supreme Court  
venire  
voir dire

# National Civics and Government Standards

Source Document:

*National Standards for Civics and Government* (1994) Center for Civic Education  
<http://www.civiced.org/index.php?page=stds>

- Grades 5-8
- Grades 9-12

## National Standards for Civics and Government

### Lesson: Jury Selection on Trial

Source: *National Standards for Civics and Government* (1994) Center for Civic Education  
<http://www.civiced.org/index.php?page=stds>

#### Grades 5-8 Content Standards Alignment

The following chart shows a more granular alignment at the standards level.

National Standards for Civics and Government Gr. 5-8	Lesson: Jury Selection on Trial
Specific Content Standards	Understandings Reinforced by the Lesson
<b>I.A.1. Defining civic life, politics, and government.</b> Students should be able to explain the meaning of the terms civic life, politics, and government.	Serving on juries is a very important way that ordinary citizens participate in civic life. By serving on juries, citizens help resolve disputes in the community and punish those who break the law.
<b>I.A.2. Necessity and purposes of government.</b> Students should be able to evaluate, take, and defend positions on why government is necessary and the purposes government should serve.	The federal courts, which make up the judicial branch of the federal government, are responsible for interpreting the law, evaluating the constitutionality of federal laws, and the peaceful resolution of legal disputes.
<b>I.B.1. Limited and unlimited governments.</b> Students should be able to describe the essential characteristics of limited and unlimited governments.	The Constitution defines the limits of power for the judicial branch of government
<b>I.B.2. The rule of law.</b> Students should be able to explain the importance of the rule of law for the protection of individual rights and the common good.	Adherence to the rule of law by all parties makes it possible to resolve legal disputes peacefully through the judicial process.  Court decisions help ensure that the law is interpreted consistently and applied fairly for the protection of individual rights and the common good.
<b>I.C.2. Purposes and uses of constitutions.</b> Students should be able to explain the various purposes constitutions serve.	It is the Constitution that defines the judicial branch of government and gives it the power to interpret the laws and resolve disputes.  As the supreme law of the land, the U.S. Constitution protects individual rights and promotes the common good.
<b>1.C.3. Conditions under which constitutional government flourishes.</b> Students should be able to explain those conditions that are essential for the flourishing of constitutional government.	Participation in the judicial process helps reinforce, refine, and define constitutional principles that are essential for the survival of a constitutional democracy. When citizens participate on juries, they are an important part of the judicial process.
<b>I.D.1. Shared powers and parliamentary systems.</b> Students should be able to describe the major characteristics of systems of shared powers and of parliamentary systems.	Judges and juries also share power in order to resolve disputes in trial courts. Judges interpret the law; juries decide matters of fact.

## National Standards for Civics and Government

### Lesson: Jury Selection on Trial

National Standards for Civics and Government Gr. 5-8	Lesson: Jury Selection on Trial
Specific Content Standards	Understandings Reinforced by the Lesson
<p><b>II.A.1. The American idea of constitutional government.</b> Students should be able to explain the essential ideas of American constitutional government.</p>	<p>The People are the ultimate source of the power in American constitutional government.</p> <p>When jurors are sworn in to serve, they become a temporary part of the justice system. In that role they help fulfill the purposes of government as stated in the Preamble to the Constitution</p> <ul style="list-style-type: none"> <li>• establish justice</li> <li>• insure domestic tranquility</li> <li>• promote the general welfare</li> </ul>
<p><b>II.C.1. American identity.</b> Students should be able to explain the importance of shared political values and principles to American society.</p>	<p>The U.S. Constitution identifies basic values and principles that are American distinctives. These include respect for individual rights and justice under the law.</p> <p>When Americans get involved in the judicial process they act on these shared values and principles in ways that reinforce and strengthen them.</p>
<p><b>II.D.1. Fundamental values and principles.</b> Students should be able to explain the meaning and importance of the fundamental values and principles of American constitutional democracy.</p>	<p>Fundamental values and principles expressed in the U.S. Constitution include</p> <ul style="list-style-type: none"> <li>• individual rights (majority and minority rights)</li> <li>• the common or public good</li> <li>• justice</li> <li>• equal opportunity (no gender discrimination)</li> <li>• diversity</li> <li>• openness and free inquiry</li> <li>• truth</li> <li>• patriotism</li> </ul> <p>Principles of American constitutional democracy include</p> <ul style="list-style-type: none"> <li>• popular sovereignty</li> <li>• representative institutions</li> <li>• rule of law</li> <li>• shared powers</li> <li>• checks and balances</li> <li>• individual rights</li> <li>• federalism</li> <li>• separation of church and state</li> </ul>
<p><b>III.A. Distributing, sharing, and limiting powers of the national government.</b> Students should be able to explain how the powers of the national government are distributed, shared, and limited.</p>	<p>The legislature makes the laws that determine what is criminal. The executive branch provides prosecutors to enforce the law. The judicial branch oversees the trial. It can overrule decisions made by lower courts and declare actions of the government to be unconstitutional.</p>

## National Standards for Civics and Government

### Lesson: Jury Selection on Trial

National Standards for Civics and Government Gr. 5-8	Lesson: Jury Selection on Trial
Specific Content Standards	Understandings Reinforced by the Lesson
<p><b>III.E.1. The place of law in American society.</b> Students should be able to explain the importance of law in the American constitutional system.</p>	<p>The courts make decisions based on the rule of law. These decisions are made to protect individual rights and promote the common good.</p>
<p><b>III.E.3. Judicial protection of the rights of individuals.</b> Students should be able to evaluate, take, and defend positions on current issues regarding judicial protection of individual rights.</p>	<p>The right to trial by jury is a right guaranteed by the U.S. Constitution to ensure judicial fairness and the protection of individual rights.</p>
<p><b>V.A.1. The meaning of citizenship.</b> Students should be able to explain the meaning of American citizenship.</p>	<p>All citizens have equal rights under the law which gives them access to the judicial process to resolve legal disputes. Only citizens can serve on juries.</p>
<p><b>V.B.1. Personal rights.</b> Students should be able to evaluate, take, and defend positions on issues involving personal rights.</p>	<p>The U.S. Constitution protects personal rights such as the right to due process of law and equal protection under the law.</p>
<p><b>V.B.2. Political rights.</b> Students should be able to evaluate, take, and defend positions on issues involving political rights.</p>	<p>Right to a fair trial is a political right guaranteed by the U.S. Constitution.</p>
<p><b>V.C.1. Personal responsibilities.</b> Students should be able to evaluate, take, and defend positions on the importance of personal responsibilities to the individual and to society.</p>	<p>Everyone involved in the judicial process has personal responsibilities as a citizen to respect the rights and interests of others.</p> <p>Important personal responsibilities include:</p> <ul style="list-style-type: none"> <li>• taking care of one's self</li> <li>• accepting responsibility for the consequences of one's actions</li> <li>• adhering to moral principles</li> <li>• considering the rights and interests of others</li> <li>• behaving in a civil manner</li> </ul> <p>The success of the judicial process depends on those involved carrying out their personal responsibilities.</p>

## National Standards for Civics and Government

### Lesson: Jury Selection on Trial

National Standards for Civics and Government Gr. 5-8	Lesson: Jury Selection on Trial
Specific Content Standards	Understandings Reinforced by the Lesson
<p><b>V.C.2. Civic responsibilities.</b> Students should be able to evaluate, take, and defend positions on the importance of civic responsibilities to the individual and society.</p>	<p>There are civic responsibilities associated with being an American citizen involved in the judicial system. These include:</p> <ul style="list-style-type: none"> <li>• obeying the law</li> <li>• respecting the rights of others</li> <li>• being informed and attentive to public issues</li> <li>• performing public service</li> <li>• serving as a juror</li> </ul> <p>The success of the judicial process depends on those involved upholding their civic responsibilities.</p>
<p><b>V.D.1. Dispositions that enhance citizen effectiveness and promote the healthy functioning of American constitutional democracy.</b> Students should be able to evaluate, take, and defend positions on the importance of certain dispositions or traits of character to themselves and American constitutional democracy.</p>	<p>Courts may help with problem-solving in a constitutional democracy, but the extent of their success depends on all participants exercising certain dispositions or traits of character:</p> <ul style="list-style-type: none"> <li>• Individual responsibility</li> <li>• Self discipline/self governance</li> <li>• civility</li> <li>• courage</li> <li>• respect for the rights of other individuals</li> <li>• honesty</li> <li>• open mindedness</li> <li>• critical mindedness</li> <li>• negotiation and compromise</li> <li>• persistence</li> <li>• civic mindedness</li> <li>• compassion</li> <li>• patriotism</li> </ul>
<p><b>V.E.1. Participation in civic and political life and the attainment of individual and public goals.</b> Students should be able to explain the relationship between participating in civic and political life and the attainment of individual and public goals.</p>	<p>Participation in the judicial process is not only a way to resolve current disputes, but a way to affect the way of life for others in the future.</p>
<p><b>V.E.4. Political leadership and public service.</b> Students should be able to explain the importance of political leadership and public service in a constitutional democracy.</p>	<p>Serving on a jury is a form of public service.</p>
<p><b>V.E.5. Knowledge and participation.</b> Students should be able to explain the importance of knowledge to competent and responsible participation in American democracy.</p>	<p>A constitutional democracy requires the participation of an attentive, knowledgeable, and competent citizenry</p>

## National Standards for Civics and Government

### Lesson: Jury Selection on Trial

Source: *National Standards for Civics and Government* (1994) Center for Civic Education  
<http://www.civiced.org/index.php?page=stds>

### Grades 9-12 Content Standards Alignment

The following chart shows a more granular alignment at the standards level.

National Standards for Civics and Government Gr. 9-12	Lesson: Jury Selection on Trial
Specific Content Standards	Understandings Reinforced by the Lesson
<b>I.A.1. Defining civic life, politics, and government.</b> Students should be able to explain the meaning of the terms civic life, politics, and government.	Interpreting laws and resolving legal disputes are the responsibilities of the judicial branch of government.
<b>I.A.2. Necessity of politics and government.</b> Students should be able to explain the major arguments advanced for the necessity of politics and government.	The form and function of the government in the U.S. as defined by the U.S. Constitution helps people work collectively to accomplish goals and solve problems they cannot achieve on their own. Serving on a jury is one way people join together to achieve justice.
<b>I.B. 1. Limited and unlimited governments.</b> Students should be able to explain the essential characteristics of limited and unlimited governments.	In the U.S, power and authority ultimately comes from the people, not a single person or small group.
<b>I.B.2. The rule of law.</b> Students should be able to evaluate, take, and defend positions on the importance of the rule of law and on the sources, purposes, and functions of law.	Adherence to the rule of law by all parties makes it possible to resolve legal disputes peacefully through the judicial process.  In trial courts, judges interpret the law and instruct the jury on the applicable laws. Jurors decide the facts. Both judge and jury are guided by the law.
<b>I.B.3. Civil society and government.</b> Students should be able to explain and evaluate the argument that civil society is a prerequisite of limited government.	By participating on juries, private citizens are able to provide a check on the government.
<b>I.C.1. Concepts of "constitution."</b> Students should be able to explain different uses of the term "constitution" and to distinguish between governments with a constitution and a constitutional government.	The Constitution as the supreme law of the land defines the judicial branch of government and sets the limits of its powers.
<b>I.C.2. Purposes and uses of constitutions.</b> Students should be able to explain the various purposes served by constitutions.	Core values, principles, and rights are established in the Constitution. Among them is the right to trial by jury.
<b>I.D.1. Shared powers and parliamentary systems.</b> Students should be able to describe the major characteristics of systems of shared powers and of parliamentary systems.	Judges and juries also share power in order to resolve disputes in trial courts. Judges interpret the law; juries decide matters of fact.

## National Standards for Civics and Government

### Lesson: Jury Selection on Trial

National Standards for Civics and Government Gr. 9-12	Lesson: Jury Selection on Trial
Specific Content Standards	Understandings Reinforced by the Lesson
<p><b>II.A.1. The American idea of constitutional government.</b> Students should be able to explain the central ideas of American constitutional government and their history.</p>	<p>When jurors are sworn in to serve, they become a temporary part of the justice system. In that role they help fulfill the purposes of government as stated in the Preamble to the Constitution</p> <ul style="list-style-type: none"> <li>• establish justice</li> <li>• insure domestic tranquility</li> <li>• promote the general welfare</li> </ul>
<p><b>II.A.2. How American constitutional government has shaped the character of American society.</b> Students should be able to explain the extent to which Americans have internalized the values and principles of the Constitution and attempted to make its ideals realities.</p>	<p>When Americans get involved in the judicial process they act on shared values and principles in ways that end up shaping society. These shared values include respect for individual rights and justice under the law.</p>
<p><b>II.C.1. American national identity and political culture.</b> Students should be able to explain the importance of shared political and civic beliefs and values to the maintenance of constitutional democracy in an increasingly diverse American society.</p>	<p>The U.S. Constitution identifies basic values and principles that are American distinctives. These include respect for the law, protection of individual rights, and justice under the law.</p>
<p><b>II.D.3. Fundamental values and principles.</b> Students should be able to evaluate, take, and defend positions on what the fundamental values and principles of American political life are and their importance to the maintenance of constitutional democracy.</p>	<p>The following values and principles are important for the judicial process to work effectively:</p> <ul style="list-style-type: none"> <li>• individual rights (majority and minority rights)</li> <li>• the common or public good</li> <li>• justice</li> <li>• equality</li> <li>• diversity</li> <li>• openness and free inquiry</li> <li>• truth</li> <li>• patriotism</li> </ul> <p>Principles fundamental to American constitutional democracy include</p> <ul style="list-style-type: none"> <li>• Ultimate authority rests with the people</li> <li>• Representative institutions</li> <li>• Separated and shared powers</li> <li>• Checks and balances</li> <li>• Individual rights</li> <li>• Rule of law</li> <li>• Separation of church and state</li> <li>• Federalism</li> </ul>

## National Standards for Civics and Government

### Lesson: Jury Selection on Trial

National Standards for Civics and Government Gr. 9-12	Lesson: Jury Selection on Trial
Specific Content Standards	Understandings Reinforced by the Lesson
<p><b>III.B.1. The institutions of the national government.</b> Students should be able to evaluate, take, and defend positions on issues regarding the purposes, organization, and functions of the institutions of the national government.</p>	<p>The court system is part of the judicial branch of government.</p>
<p><b>III.D.1. The place of law in American society.</b> Students should be able to evaluate, take, and defend positions on the role and importance of law in the American political system.</p>	<p>The trial courts make decisions based on the rule of law in order to protect the rights of citizens and promote the common good.</p> <p>An individual's rights to life, liberty, and property are protected by the right to a jury trial.</p>
<p><b>III.D.1. Judicial protection of the rights of individuals.</b> Students should be able to evaluate, take, and defend positions on current issues regarding the judicial protection of individual rights.</p>	<p>The right to trial by jury is a right guaranteed by the U.S. Constitution to ensure judicial fairness and protection of individual rights.</p>
<p><b>V.A.1. The meaning of citizenship in the United States.</b> Students should be able to explain the meaning of citizenship in the United States.</p>	<p>Citizenship is legally recognized membership in a self-governing community. There are certain rights of citizenship that are not afforded non-citizens such as serving on juries. Americans are citizens of both their state and the U.S.</p>
<p><b>V.B.1. Personal rights.</b> Students should be able to evaluate, take, and defend positions on issues regarding personal rights.</p>	<p>Adherence to the rule of law helps secure personal rights in American constitutional democracy.</p> <p>Personal rights include</p> <ul style="list-style-type: none"> <li>• freedom of thought and conscience</li> <li>• privacy and personal autonomy</li> <li>• freedom of expression and association</li> <li>• freedom of movement and residence</li> <li>• right to due process of law and equal protection of the law</li> </ul> <p>A vigilant citizenry helps protect and secure these right for others by serving on juries.</p>

## National Standards for Civics and Government

### Lesson: Jury Selection on Trial

National Standards for Civics and Government Gr. 9-12	Lesson: Jury Selection on Trial
Specific Content Standards	Understandings Reinforced by the Lesson
<p><b>V.C.1. Personal responsibilities.</b> Students should be able to evaluate, take, and defend positions on issues regarding the personal responsibilities of citizens in American constitutional democracy.</p>	<p>Everyone involved in the judicial process has personal responsibilities as a citizen to respect the rights and interests of others.</p> <p>Important personal responsibilities include:</p> <ul style="list-style-type: none"> <li>• taking care of one's self</li> <li>• accepting responsibility for the consequences of one's actions</li> <li>• adhering to moral principles</li> <li>• considering the rights and interests of others</li> <li>• behaving in a civil manner</li> </ul> <p>The success of the judicial process depends on those involved carrying out their personal responsibilities, including citizen jurors.</p>
<p><b>V.C.2. Civic responsibilities.</b> Students should be able to evaluate, take, and defend positions on the importance of civic responsibilities to the individual and society.</p>	<p>There are civic responsibilities associated with being an American citizen involved in the judicial system. These include:</p> <ul style="list-style-type: none"> <li>• obeying the law</li> <li>• respecting the rights of others</li> <li>• being informed and attentive to public issues</li> <li>• performing public service</li> <li>• assuming leadership when appropriate</li> <li>• serving as a juror</li> </ul> <p>The success of the judicial process depends on those involved upholding their civic responsibilities.</p> <p>Jurors are required to render a fair and impartial verdict according to the law. In some cases, this may require them to set aside personal desires and interests.</p>
<p><b>V.D.1. Dispositions that lead the citizen to be an independent member of society.</b> Students should be able to evaluate, take, and defend positions on the importance to American constitutional democracy of dispositions that lead individuals to become independent members of society.</p>	<p>All American citizens are legally obligated to serve on a jury. It is each person's individual responsibility and duty.</p>
<p><b>V.D.2. Dispositions that foster respect for individual worth and human dignity.</b> Students should be able to evaluate, take, and defend positions on the importance to American constitutional democracy of dispositions that foster respect for individual worth and human dignity.</p>	<p>Those with respect for individual worth and human dignity tend to have these dispositions:</p> <ul style="list-style-type: none"> <li>• Respect for the rights and choices of individuals—holding and advocating differing ideas</li> <li>• Compassion—concern for the well-being of others</li> </ul>

## National Standards for Civics and Government

### Lesson: Jury Selection on Trial

National Standards for Civics and Government Gr. 9-12	Lesson: Jury Selection on Trial
Specific Content Standards	Understandings Reinforced by the Lesson
<p><b>V.D.3. Dispositions that incline the citizen to public affairs.</b> Students should be able to evaluate, take, and defend positions on the importance to American constitutional democracy of dispositions that incline citizens to public affairs.</p>	<p>Citizens inclined to public affairs, such as public servants, tend to have these dispositions:</p> <ul style="list-style-type: none"> <li>• Civic mindedness—what the Founders called civic virtue—or attentiveness to and concern for public affairs</li> <li>• Patriotism—loyalty to the values and principles underlying American constitutional democracy</li> </ul> <p>Jury duty is a form of public service.</p>
<p><b>V.D.4. Dispositions that facilitate thoughtful and effective participation in public affairs.</b> Students should be able to evaluate, take, and defend positions on the importance to American constitutional democracy of dispositions that facilitate thoughtful and effective participation in public affairs.</p>	<p>Traits that facilitate thoughtful and effective participation in public affairs include</p> <ul style="list-style-type: none"> <li>• civility</li> <li>• respect for the rights of other individuals</li> <li>• respect for law</li> <li>• honesty</li> <li>• open mindedness</li> <li>• critical mindedness</li> <li>• negotiation and compromise</li> <li>• persistence</li> <li>• civic mindedness</li> <li>• compassion</li> <li>• patriotism</li> <li>• courage</li> <li>• tolerance of ambiguity</li> </ul>
<p><b>V.E.1. The relationship between politics and the attainment of individual and public goals.</b> Students should be able to evaluate, take and defend positions on the relationship between politics and the attainment of individual and public goals.</p>	<p>Participation in the judicial process is not only a way to resolve current disputes, but a way to affect the way of life for others in the future.</p>
<p><b>V.E.3. Forms of political participation.</b> Students should be able to evaluate, take, and defend positions about the means that citizens should use to monitor and influence the formation and implementation of public policy.</p>	<p>Students who are knowledgeable citizens can seek to promote individual rights by participating in the judicial process.</p>
<p><b>V.E.5. Knowledge and participation.</b> Students should be able to explain the importance of knowledge to competent and responsible participation in American democracy.</p>	<p>A constitutional democracy requires the participation of an attentive, knowledgeable, and competent citizenry.</p>