



A Jury Service Project of the  
American Bar Association  
Young Lawyers Division

— *Curriculum Guide* —





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## Special Projects Team

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For more information about the ABA YLD and its projects, at the ABA YLD website at [www.abayld.org](http://www.abayld.org)

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## Introduction



For over two hundred years, Americans have revered the Bill of Rights – and the vital jury process it guarantees. Nowhere is the American concept of justice “of the people, by the people, and for the people” better embodied than in the jury box.

Thomas Jefferson called the jury process the best of all possible safeguards for the person, property and reputation of every citizen. It was, in fact, the verdict of courageous jurors that established the right to a free press in America, as well as countless other rights and privileges that most Americans now take for granted. Jurors keep law in the United States close to the people, preserving a guarantee of freedom and democracy that many in the world are still struggling to achieve.

Many of your students will some day serve on juries. Indeed, voting and jury service are the two principal ways American citizens directly participate in the democratic process. Through the jury process students will, in time, reflect the collective conscience of their communities, contributing to what the late United States Supreme Court Justice Benjamin Cardozo called “the rough and ready tests supplied by their experience of life” to reach decisions that are just and fair. In contrast to other countries, where judges alone often decide issues, America’s jurors help balance the scales of justice.

The right to trial by jury is a fundamental principle of the American legal system, guaranteed and secured first and foremost by the Sixth and Seventh Amendments to the United States and most state Constitutions. It preserves a right rooted deeply in history that allows Americans to have their cases, both civil and criminal, heard not by government officials but by peers within their community. Jurors have an opportunity to provide a great service, but they also have an awesome responsibility. Jurors must cull the facts from diverse testimony and apply the law to them. The more your students understand their role as potential jurors before they are called to jury service, the better they will be able to fulfill their responsibilities when that day arrives.

Federal Judge Jim R. Carrigan of Colorado has described jurors as “a cross-section of people who bring to their task diverse educational, social, economic and professional experiences providing wisdom as fact-finders not available to a single judge.” Most important, he concludes, “is that the jury keeps the ultimate power of society in the hands of the people — the safest place for it.” When citizens serve on the jury, justice is up to them.

*We The Jury* is designed to bring this proud American heritage directly to the classroom.



## Project Curriculum Summary

**Learning Objectives:** The students will:

1. Learn about the evolution of the jury system and how the right to trial by jury was guaranteed to all American citizens in the Bill of Rights to the United States Constitution.
2. Understand and appreciate the role that American citizens play in the judicial system by participating in the jury process.
3. Learn about the *voir dire* process of selecting a jury.
4. Understand the order of a typical trial and the jury's role in the proceedings.
5. View an interactive mock trial video and participate in deliberations in an effort to reach a verdict.
6. Become more willing and better prepared to serve on juries.

**Materials Needed:** Thirteen handouts(contained within this guide), project video, Implementation Guide. (If there are any materials missing, please call the ABA YLD office at (312) 988-5611)

**Video Contents:**

1. Project Introduction: Jury Service in the United States (~8<sup>1/2</sup> minutes)
2. Mock civil trial: *Patty Payne vs. Diane Davis* (~45 minutes)
3. Mock criminal trial: *State vs. David Diaz* (~36 minutes)

## Teaching Strategy:

*Note:* See the Implementation Guide for detailed instructions and step-by-step advice on implementing *We The Jury*. The following is a more general outline of how the program should be implemented.

### Before the program

1. At least one full week before the program is planned, distribute Handouts 1 (“The Jury in the United States”) and 2 (take-home quiz) to your students. Assign the students to complete the quiz and return it on the date of the program. Inform the students that they should read the materials and complete the quiz to prepare them to participate as jurors in an upcoming mock trial. (At your discretion, completed quizzes may be ungraded or counted as extra credit only.)
2. One class day before the program is conducted, distribute a mock subpoena to each student (Handout 6), which you should customize with the student’s name and other personal information called for by the handout. Additionally, assign each student to one of the mock juror profiles (Handout 8). The profiles will give each student a distinct adult identity for the mock voir dire session, so the students should study their profile before the next day’s class session to enhance the interactive experience of the mock voir dire.
3. Select either the criminal or civil mock trial for presentation to the class. **This must be done before the first day of the program because the questions asked during the mock voir dire will depend on your selection.** The civil trial is approximately 44 minutes in length, while the criminal trial is approximately 36 minutes long. Which mock trial you present to your class is left to your discretion and may depend on the amount of time you have available. Moreover, the civil trial is first on the videotape, immediately after the brief (8½-minute) introduction, so if you choose to present the criminal trial, you must fast-forward the videotape past the civil trial after showing the introduction. See the Implementation Guide for ideas on presenting the criminal trial in shorter classes.

### Day One

*Note:* Volunteer attorney(s) may participate in Day One of the program, or, if you choose, you may conduct the entire program without assistance or participation by volunteer attorneys. If you need any assistance in locating a volunteer attorney in your area, please call the ABA YLD Volunteer Program Coordinator, Kendall Butterworth at (404) 249-3388.

1. Collect the completed quizzes at the beginning of the class session.
2. Play the first 8½ minutes of the *We The Jury* program video, which presents a general introduction to the program and recaps some of the information contained in Handout 1. After this portion of the video concludes, stop the video and – together with any volunteer attorney(s) – conduct a brief (no more than 15-minute) lecture regarding the history of the jury in the United States, based on the materials in Handout 1 and the additional information provided in the “Background for Teachers” section titled “The Jury From Medieval Times to

- the 21st Century.” See the Implementation Guide for lecture suggestions.
3. The instructor and/or volunteer attorney(s) will then conduct a mock voir dire, as explained in more detail in pages 21 and 22 below (and in more detail in the Implementation Guide). Before beginning the questioning, direct the students to rise and raise their right hands to take the oath of prospective jurors contained in Handout 3, below. Ask questions of every student to make the session as interactive as possible. This exercise should take approximately 20 minutes. After the question and answer portion of the voir dire, the instructor, any attorney(s) and students should discuss (for the remaining class time) which jurors would, in an actual trial, be struck from the jury pool.
  4. During the final few minutes of the class, announce that all the students will serve on two independent juries of equal size (or on one jury, if there are fewer than twelve students in the class) in a trial to be conducted the next day.
  5. To assist the students in understanding the “proceedings” during the mock trial, distribute Handout 9, “The Steps of the Jury Trial,” before class adjourns. Also distribute Handout 5, “State Uniform Jury Handbook,” as an example of a pamphlet jurors receive when they are called to jury duty.

## Day Two

Note: There is no need for volunteer attorney participation on Day Two of the program.

1. Divide the class into two equal groups, each of which will serve as a jury on the same case. Ask the two juries to go to separate parts of the classroom to observe the trial. Advise the juries that at the conclusion of the trial, they will be expected to deliberate independently from one another. (This is not necessary for classes of 18 or fewer.)
2. Start the program video at the beginning of one of the two mock trial segments. Each trial begins with the “judge” asking the jury to rise for the oath. Students should rise and raise their right hands, and after the judge reads the oath, state: “I will.”
3. Before closing arguments, the “judge” will ask the “bailiff” (the teacher) to hand the jury the written jury instructions, titled “Court’s Charge to the Jury” and found at Handouts 11 (for the civil trial) and 13 (for the criminal trial) in this Guide. Stop the program video after this request (the video will cue you to do so) and distribute a copy of the Charge to each student. You may then read the Charge aloud, if time allows. Otherwise, you should instruct the jurors to read the charge silently before continuing the video. Alternatively, you may present the Charge as a transparency and allow the students to read it silently before continuing.
4. To save on time, you may appoint a presiding juror for each jury rather than allowing the juries to select their own. Inform the juries that they have no more than 15 minutes to reach “legal” verdicts (or to decide that they cannot do so).
5. When both juries have completed their deliberations, call them to order and restart the videotape. Each mock trial will conclude with the “judge” requesting and receiving the two verdicts (see the verdict scripts contained at the end of Handouts 11 and 13 below) and thanking the juries for their work.

6. Use any remaining time for questions and general discussion. Focus attention on the key factors in each jury's decision and whether those factors differed. If the juries reached different verdicts, the class should discuss why that happened. Ask students to explain their votes and the reasons for those votes.
7. Finally, please complete the program evaluation and mail it to the ABA YLD at the address provided on the form.





M a t e r i a l s f o r D a y O n e

## The Jury — From Medieval Times to the 21st Century

The United States jury system derives from English history. Before there were juries, there were three general methods of “trial” in England. The first, the **wager of law**, simply required the accused person to take an oath, swearing to a fact. In those days, a person’s oath carried great weight. In fact, the word “jury” derives from the word “jurare,” which means to swear, that is, to take an oath. Those with good reputations who were accused of a crime had only to swear that they were innocent to be acquitted.

If others swore against the accused, however — in effect challenging the truth of the accused’s oath — a **compurgation** was necessary. The accused had to bring in 11 supporters called **compurgators**, making 12 people in all who would be willing to take an oath on behalf of the accused. The **compurgators** did not swear that what the accused said was true. They served more as character witnesses, swearing that the accused was considered a credible person. If the accused was found guilty, the compurgators might also be punished because they were then implicated in the defendant’s guilt.

An accused who was a repeat offender, or who was unable to find enough compurgators willing to swear to good character, would be subjected to a **trial by ordeal**, some sort of physical test, the results of which were deemed to indicate guilt or innocence. Unfortunately, the trials were usually designed so that, in proving innocence, the physical ordeal often resulted in bodily harm or even death to the accused.

For instance, in a **trial by hot water**, a ring might be suspended by a string in a cauldron of boiling water, either wrist deep or elbow-deep, depending upon the severity of the crime. The accused was first “cleansed” by prayer and fasting and then was instructed to reach into the boiling water to grab the ring. If the accused’s hand and arm were burned, that was considered a sign of guilt. If not burned, the obvious miracle was treated as a sign of innocence.

Other types of trials by ordeal included the **trial by cold water**, later used in the Salem witch trials, in which the accused was bound and placed in a body of water. The accused who sank was adjudged “pure” enough to have been accepted by the previously-sanctified water, whereas those who floated were considered polluted by sin and adjudged guilty. Another cruel trial by ordeal was the **trial by fire**, in which the accused was subjected to hot coals or white-hot iron, and only the failure to be burned would result in a judgment of innocence.

One common aspect of all of the trials by ordeal, of course, was that the outcomes were determined by chance or placed the accused in a situation in which it was impossible ultimately to survive. Most such trials also had a religious context and were conducted by clergymen or other church officials. There were no juries in such trials; in cases in which juries were used, often citizens did not want to be chosen for “jury duty” as compurgators because they faced the possibility of punishment for “incorrect” verdicts. Likewise, when kings controlled the courts, jurors were often punished if they decided a case against the king. Such “incorrect” jurors might have their property seized, face imprisonment, or be separated from their families as punishment for not “properly” fulfilling their duties as jurors.

Only after trial by ordeal was abolished did trial by jury fully develop. Trial by jury was first instituted in civil cases, since trials by ordeal were used primarily to resolve common crimes or offenses against the king, the state or the church. In those early civil juries, corrupt rulers sometimes “planted” witnesses or jurors to manipulate the outcomes of trials. To guard against this, the church began to support the principle that jurors should have no interest in the case at issue. With the church’s influence, courts began to

insist on the impartiality of jurors. The separation of the roles of witness and juror, and the desire for protection against royal manipulation, combined to bring about the system of trial with an impartial and unbiased jury.

Other developments in the conduct of trials further changed the nature of the jury. For instance, when attorneys began to bring in witnesses to corroborate facts in a case, it was no longer necessary for the jurors to know the accused. Witnesses began to testify before both the judge and the jury, not just before the judge. Since both the judge and the jury were to hear the facts, it became more important for all persons to be at the same place, hear the same facts, and base their decision solely upon the information presented in open court, rather than having some persons on the jury who knew more about the case than others. Gradually, juries came to decide only questions of fact, while judges ruled on questions of law.

By the time the colonists settled in America, the right to **trial by jury** was considered essential. Attempts by British rulers to deny the colonists that right met with strong resistance. The importance and value the Founders placed on this right was clearly manifested in the Declaration of Independence, and in the Sixth and Seventh Amendments to the United States Constitution. Today the jury is a mainstay of America's legal system, and an essential ingredient of the freedoms we enjoy.

## **The Jury in the United States**

The extent to which trial by jury is utilized in both civil and criminal cases is unique to America. Other English-speaking countries have jury trials for criminal cases and some civil lawsuits, but the guarantee of jury trial in the U.S. extends to a broader range of cases than in any other nation.

The right to trial by jury was considered so fundamental in America — it was listed as a ground for independence in the Declaration of Independence — that it was included in the U. S. Constitution. The Sixth Amendment guarantees the right to defendants being prosecuted for allegedly committing crimes. The Seventh Amendment preserves the right in civil cases where one person or corporation brings a lawsuit against another and asks the jury to determine whose rights should be enforced.

### **Jury Trial in Criminal Cases United States Constitution, Amendment VI**

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 the witnesses in his favor, and to have the assistance of counsel for his defense.

Although the Sixth Amendment guarantees a defendant the right to a trial by jury in criminal cases, the defendant may opt to be tried before a judge only. The Sixth Amendment further requires that the jury be selected in the state and area in which the crime was committed, but it is sometimes necessary to balance this requirement with the requirement of an impartial jury. If the defendant believes that publicity about his case might have influenced the jury pool, he may ask that the trial be moved to another location where potential jurors will have heard less about the case. This is called a request for a **change of venue**.

## **Jury Trial in Civil Cases United States Constitution, Amendment VII**

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, then according to the rules of the common law.

Juries are also a critical component of civil trials. The Seventh Amendment preserves trial by jury in civil cases, and sets some basic premises to be followed. With some procedural variations, all states provide civil jury trials upon demand by any party to a lawsuit.

While a defendant's right to trial by jury is absolute in criminal trials, civil trials may be conducted without a jury in some cases. The U.S. Supreme Court has held that the right to trial by jury in civil cases is "preserved" in federal courts only in the kinds of cases that were available in 1791. Therefore, a jury does not decide cases in **equity**, in which the court is requested to enter a special order to force the opposing party to act in a certain way or to forbid some action. (For example, the court may be asked to issue a restraining order against the sale of property. Such an action does not take place before a jury.)

Finally, the Seventh Amendment commands respect for the decision a jury makes. This requirement encourages parties to bring disputes to an end. As such, other courts cannot second-guess the jury's interpretation of the facts. A jury verdict can be **reversed** only if there is a significant error of law, such as an improper jury instruction or misinterpretation of a statute, or a procedural error such as improper admission of evidence.

Trial by jury is a critical guarantee. It is also a fundamental part of being a U.S. citizen. Each of us has a strong interest in ensuring that our right to a trial by jury is preserved and protected. To this end, the jury system gives the average citizen an opportunity to participate in the democratic process and to preserve our freedom.

This civic responsibility includes the individual duty to ensure that the process is free from deceit and discrimination in every aspect of the trial in which the jury is involved, from voir dire, to trial, to deliberation, to verdict, and in some states, to sentencing. The system was developed to involve the public actively. Complaints about the integrity of courts reflect upon the public as well. People who ignore their call to jury service, however, should not be heard to complain about the integrity of the courts or about the results of jury trials.

### **Voir Dire — Selecting the Jury**

Potential jurors are **summoned** for jury duty within each county (the process by which lists of potential jurors are compiled varies by state, and may include voter registration lists or licensed drivers). A **jury summons** is a legal document requiring a person to report to the court at a particular time and place. It is an important document that requires careful reading and timely response.

Jurors serve for a specified time frame. While smaller counties may require jurors to report to court every day for one or two weeks, the more common practice is to require jurors to serve only for "**one day or one trial.**" This practice spreads jury service among more persons and lessens the time period and burden for those who are selected to serve on juries.

**Voir dire** — the process of selecting the jury — is critical to the jury's impact on the case. The attor-

neys, the judge, or some combination, question the jurors in open court. The purpose is to determine (to the greatest extent possible within any time limits) impartiality, bias or prejudice, and objectivity.

Of course, the parties each want a jury that would be most likely to decide in their favor. Each tries to identify those individuals who would be beneficial to the *other* party, then tries to remove as many of them as possible by the use of two type of **challenges**, also called **strikes**.

The first is a **challenge for cause**, made when there is a valid reason for excluding someone from serving on a particular jury. The person, for example, may know one of the parties; or may have some experience or belief that makes it impossible, by the juror's own admission, to be fair; or may not have been truthful in answering a question. A prospective juror who lies can be charged with perjury, since voir dire hearings are official proceedings which occur under oath and of which a record is kept.

The second type of challenge is a **peremptory** challenge, used by an attorney to remove a potential juror without a stated reason. Both sides are given a certain number of peremptory challenges, and use them to eliminate persons who may be detrimental to their own cases. In this process of elimination, the goal is to select the most neutral jury possible.

Although attorneys have great latitude in the use of peremptory challenges, there are some strict limitations on their use. Personal characteristics may be a legitimate reason to challenge a potential juror; race, gender or ethnic background, however, are never allowed to play a role in the decision to strike a juror. Such characteristics are never relevant, according to the Supreme Court of the United States, and can never be used as a reason to exercise a peremptory challenge.

The right to serve on a jury is not absolute. All jurors must be "qualified" to serve. (See Handout 5). Persons who are not U.S. citizens, who are under eighteen years of age, who cannot read or write English, or who have been convicted of a felony may not serve as jurors. Other persons may be exempt from jury service, including full-time students and senior citizens over the age of 70. Finally, employers are not required to pay employees while serving on a jury; a person cannot be terminated, however, for fulfilling his duty of jury service.





## The Jury in the United States

### Introduction and Background

The jury system in the United States is a key component of our democracy and our freedom. Juries are composed of average citizens who actively participate in deciding the outcome of legal disputes brought to trial.

Today, people who make up the jury are chosen at random from the community. After hearing evidence presented during the trial, they deliberate in secret and reach their decision, called a verdict, which the jury then presents to the judge and which generally brings an end to the trial and to the underlying dispute. The jurors then return to their regular jobs and daily lives.

As Americans, each of us has the right, guaranteed by the Constitution, to have most of our civil disputes and any criminal charge against us tried by a jury of our fellow citizens. Based on the democratic belief that a community's collective wisdom is the best judge of the actions of others in the community, juries represent the most open kind of democratic government. Only a government that trusts the people's judgment can support an impartial jury system like ours.

### The Evolution of the Jury

"Justice" was not always as fair as it is today. Indeed, early attempts at criminal justice, in particular, were often cruel. As far back as 1000 B.C., ancient societies, and later the church, conducted "trial by ordeal." Hot irons, boiling water and dunking the accused in cold water were used to determine guilt or innocence. Sometimes, simply surviving the ordeal was considered "proof" that the accused was guilty.

Today's jury system actually has its origins in ancient Greece where, in about 400 B.C., governors of Athens asked males over 30 to listen to the arguments of alleged wrongdoers. As Aristotle explained it, these men were counseled to apply their understanding of "general justice," not to interpret the law. Huge juries of hundreds of volunteers would listen to evidence from both sides and reach a verdict. The Greeks believed that jury trials were the best way to ensure that the community's sense of justice — not just the beliefs or leanings of one person — would prevail. In Europe in the Middle Ages, the Greek system was adapted slightly, as juries were composed of neighborhood witnesses who passed judgment on the accused based on what they personally knew about him or her.

In 1215, a handful of English barons threatened to kill King John unless he signed the Magna Carta. This famous document contained one of the first written expressions of the right to a trial by one's peers. Eventually, the earliest English colonists brought the concept of the jury with them to America. British attempts to deny colonists the right to trial by jury provided the Founders with yet another reason for seeking independence. The Declaration of Independence, in fact, condemned King George "[f]or depriving [the American colonists] in many cases, of the benefits of Trial by Jury," and listed that injustice among the Founders' grounds for seeking independence.

After independence was won, the Founders reaffirmed the right to an impartial jury of fellow citizens in the Sixth and Seventh Amendments to the United States Constitution:

- VI. 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 the witnesses in his favor, and to have the assistance of counsel for his defense.
  
- VII. 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, then according to the rules of the common law.

The fact that two of the ten amendments to the Constitution representing the Bill of Rights dealt with the right to a jury demonstrates the importance of the jury to America's democratic system of government.

### **Juries Today**

Juries continue to evolve, even today. In particular, the American jury has become more diverse as the rights of each segment of the population have been recognized. Women were disqualified from serving as jurors by law in every state until 1898. Finally, in 1975 the United States Supreme Court held that systematic exclusion or exemption of women from the jury summoning process was unconstitutional. Likewise, the Civil Rights Movement led to a range of state laws and U. S. Supreme Court decisions protecting the right of all citizens — regardless of race or ethnicity — to serve as jurors. Now, only those with a true inability to serve or with a criminal record are automatically excluded or exempted from jury service.

As the facts behind lawsuits and criminal cases become more complex, it has often been

debated whether typical jurors are still capable of handling their responsibility. Without fail, however, jurors have borne out the principle that the best system of justice is one in which an impartial and attentive jury is allowed to render its verdict.

### **Putting the Jury Together — “Voir Dire”**

Adult U. S. citizens representing all races, religions, occupations and ethnic backgrounds can become jurors, and more than five million Americans are called for jury duty every year. Typically, a list of prospective jurors is compiled from lists of licensed drivers and registered voters. In some states, jurors can volunteer for service. Those selected receive a *summons* — an official demand — to report for jury duty on a specific date.

When they arrive at the courthouse, citizens report to a central location, from which they are divided into smaller “jury panels” and are sent to individual courtrooms where jury trials are scheduled to begin. The jury panel is always larger than the number of persons needed for the final jury. For example, in certain trials, 32 or more potential jurors will be sent to a court, while only twelve are chosen for the jury. After the prospective jurors are led into the courtroom, they are given an oath, requiring each member to tell the truth, and are then questioned by lawyers (and sometimes by the judge). This process is called *voir dire*, a French phrase that means “to speak the truth.”

The voir dire process helps the judge and attorneys to choose jurors who have not prejudged the facts of the case and who are as fair and impartial as possible, to ensure a just trial. It is important that jurors not know the lawyers or each other. It is also important that they not have strong opinions about the issues — or premature views about how a case should be decided. If a juror demonstrates one of these criteria, then one of the lawyers may *challenge the juror for cause*, and the judge will usually allow the juror to be removed (or excused) from service on that jury.

Additionally, each side in a case has the right to challenge a certain number of jurors without giving any reason. These are called *peremptory challenges*. A lawyer may exercise his right to a peremptory challenge if she believes that a prospective juror has had some experience, such as a similar lawsuit, that makes it less likely that the juror could be fair in the case to be tried that day. Or the juror might indicate some racial or class prejudice or some social or business connection that, while not necessarily allowing a challenge for cause, might yet be a good reason for excusing a juror. The United States Supreme Court has held, however, that under no circumstances may the race, gender or ethnic background of a prospective juror play any part in a lawyer’s decision to exercise a peremptory challenge.

For at least 800 years, since the time of England's Henry II, the number of jurors selected to complete a jury has tended to be twelve. In recent years, however, the size of juries has been reduced to six, eight or ten in some states. In many other states, only six people serve on misdemeanor juries. After the final trial jury is selected, prospective jurors who were not selected are either sent to another courtroom, where the *voir dire* process begins again in a different case, or are allowed to return to their homes or jobs with the thanks of the court, the attorneys and the parties.

### **The Trial**

Once the jury is selected, the judge explains the jury process. After that, the lawyers present the case. There are generally two lawyers involved in the trial — one for each side — but in more complex cases, there might be many more lawyers participating. The lawyers bring in witnesses and present evidence — through those witnesses and through documents — so that the jury can determine the facts and what they mean. The judge presides over the trial, ensuring that it proceeds properly and fairly, and sometimes stopping the action to preserve fairness.

After the lawyers have presented their entire case, the judge instructs the jury on its obligations and on the factual issues that the jury is required to decide. The jury then goes to a separate room in the courthouse to *deliberate*, that is, to discuss the issues before them and to reach a decision. After carefully considering the evidence presented during the trial, the jury reaches its verdict.

In most criminal cases, jury verdicts must be unanimous. Unanimous verdicts may not be required in civil cases, however; many states allow verdicts to stand if ten of the twelve jurors agree. If the required number of jurors cannot agree on a verdict, the judge declares a *mistrial*, which means that the case, unless it is withdrawn, must be tried again.

### **Conclusion**

Juries are the “collective conscience” of our communities. The jury system calls upon the sound judgment and character of our neighbors, friends and relatives to decide what is truth and what is fair compensation for those who have been wronged. Juries bring the courts to the people. America's juries truly represent democracy at work.

When you are summoned to jury service, answer the call. It is your civic duty. It is your chance to participate directly in our democracy. It is your chance to serve your country and to preserve our freedom.



## The Jury in the United States

### Quiz

1. What occurs when the required number of jurors cannot agree on a verdict in a case?
2. What is the process called when the jury retires to the jury room to discuss the issues before them and reach a decision?
3. What does a citizen receive notifying them that they are to report for jury duty on a specific date?
4. Which Amendment to the United States Constitution guarantees the right to an impartial jury in criminal cases?
5. What Amendment to the United States Constitution guarantees the right to an impartial jury in civil cases?
6. What famous document contained one of the first written expressions of the right to a trial by one's peers?
7. What is the term for a jury's decision?
8. What is the French phrase that has come to mean "jury selection"?

9. What is the literal translation of that French phrase?
10. Potential jurors may be challenged if they demonstrate that they have strong opinions about the issues or premature views about how a case should be decided. What is this challenge called?
11. Potential jurors may be struck from the jury for any legitimate reason by an attorney during the jury selection process. What is this challenge called?
12. What are three criteria that automatically exclude a potential juror from jury service?
13. Name two valid reasons that people may be exempted from jury service.
14. Name the three unacceptable reasons that a person may be struck from a jury panel.
15. Why is it important to serve on a jury?
16. What is the goal of the jury selection process?

## Quiz Answer Sheet

1. The judge declares a mistrial.
2. Jury deliberation.
3. Summons.
4. Amendment VI.
5. Amendment VII.
6. The Magna Carta.
7. Verdict.
8. Voir Dire.
9. To speak the truth.
10. Challenge for cause.
11. Peremptory challenge.
12. (1) Under the age of 18; (2) a criminal record; (3) not a U.S. citizen.
13. (1) Full time student; (2) over the age of 70.
14. Race, gender or ethnic background.
15. To fulfill a civic duty, to preserve democracy, to participate in the democratic system, to ensure justice, etc.
16. To select an impartial jury.



### **The Mock Voir Dire (Project Activity)**

A mock voir dire will be conducted on the first day of the program. Up to two volunteer attorneys may participate to add to the authenticity of the activity; the teacher, however, may play the role of an attorney, or may appoint two students from the class to play the role of attorneys while the teacher acts as the judge. A local bar association will make every effort to make volunteer attorneys available to every teacher who requests them as the project is implemented.

Before class, cut the mock jury panelist identities found at Handout 8 so that each student in your class can receive a separate fake identity for the mock voir dire. Distribute a different jury panelist identity slip to each student at the end of the class session before the program is to be presented. Explain to your students that they are to pretend that they have the background and demographic characteristics of the person on their identity slip, and that they are to answer voir dire questions – and even analyze the facts from the mock trial – as they imagine the person on their identity slip would answer those questions and see the trial.

When everyone is present, thank the student jurors for participating. Then explain that the students will be questioned by attorney(s) representing the parties to select the jury panel for a particular case.

Ask the students to stand and raise their right hands to take the prospective jurors' oath. Read them the oath contained in Handout 3 for this project. Remind the students that potential jurors are sworn to tell the truth and are subject to possible punishment for perjury if they do not, but that, for purposes of this activity, it is understood that they may have to make up some facts that are not contained in their "fake identity" information.

Tell the student jurors to occupy all the seats along the front row of the classroom and likewise in all subsequent rows, so that the entire front portion of the classroom is filled. If there are not enough jurors to fill the back row, then the students that will sit in that row should be seated beginning on the far left seat. (This is how the jurors would be seated in a courtroom during jury duty.) Assign numbers to the jurors beginning with Juror Number 1 on the far left seat of the front row and increasing in number to the right. When all jurors on the front row are assigned numbers, the next number is assigned to the juror on the far left seat of the second row, and so on.

Next, introduce the attorneys for the plaintiff and the defense. Direct the attorneys to proceed with voir dire questioning. The plaintiff's attorney (or prosecutor in the criminal case) should go first, beginning with a short personal introduction. The attorney will ask a general question and will instruct the jury pool that any person whose answer is "yes" should either stand or raise a hand. Then, identified by their juror numbers, these students will be called on to explain their responses. The plaintiff's attorney/prosecutor should be given 8 to 10 minutes to complete his or her portion of the voir dire, after which the defense attorney will ask questions from the perspective of his or her client for another 8 to 10 minutes.

Remember, the whole idea behind voir dire is to find out which persons would be beneficial or harmful to the attorney's client. Questions should be asked with this purpose in mind. Sample questions for each trial are provided in Handout 4. Each attorney should be allowed a set number of peremptory strikes — perhaps three to five. The attorneys should discuss their strikes with the class immediately following the time allotted for the activity.

Once the questioning is completed, have the attorneys read their list of removed jurors aloud, explaining what type of challenge was used, and giving the reason for each challenge for cause.

After the jury is selected, discuss the process with your students — as students now, not as jurors. First ask them if they were able to determine what the case was about from the questions being asked. How did they know that? What were the clues? You can explain the facts of the case a little further, elaborating on why specific questions were asked and tying those questions to key facts in the case, if you desire. Ask the students whether they would have stricken any student who was not stricken by one of the attorneys, and ask them to give their reasons.

Finally, ask why certain questions were asked, what responses the attorneys were looking for, what strategies each attorney used and why, and whether the students think this is a fair way to select a jury.



O a t h f o r  
P r o s p e c t i v e J u r o r s

The court clerk asks citizens who have been summoned to raise their right hands. The clerk then reads the following:

**Do each of you solemnly swear and affirm that you will truthfully answer all questions asked of you by the Court and counsel relating to your being competent to try the issues in this case?**

All prospective jurors should answer "Yes."  
Prospective jurors should then be invited to be seated.





## Sample Voir Dire Questions

Note: These are provided to assist volunteer attorneys or instructors in preparing for the mock voir dire and to give them general ideas for questions to ask during that exercise. The participating attorneys or instructors should feel free to expand on the topics introduced by the sample questions or to inquire on areas not covered below. The volunteer attorneys or instructor who will conduct the mock voir dire in *We The Jury* should review the following questions before the date of the program.

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### Civil Problem

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*Background facts: Earlier this year, Patty Payne was involved in a car accident with Dianne Davis. Ms. Payne claims that she was stopped at a red light at an intersection when her car was struck from behind by Ms. Davis' car. Ms. Davis — who was talking on her mobile telephone at the time of the accident — states that she came to a stop behind Ms. Payne, that the light turned green, and that both cars began to pull forward, but that then Ms. Payne stopped suddenly, leaving Ms. Davis no time to stop. An eyewitness claims to have observed that the light was green when the accident occurred, but there are problems with his testimony. Ms. Payne claims that she suffered injuries to her neck and spine, and that her car required repairs. Ms. Davis denies that the accident caused Ms. Payne's injuries or damage to her car.*

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### Plaintiff

I represent the plaintiff, Patty Payne, who lives here in town and who has brought this lawsuit because she claims that the defendant, Diane Davis, injured her and damaged her car when she rear-ended her at an intersection earlier this year.

Has anyone, including your family or friends, ever filed a lawsuit for injuries? Been involved in any litigation? If so, what kind of litigation? How was it resolved?

Should someone sue if they are injured in an accident?

Would you feel uncomfortable awarding money damages to a plaintiff if she proved her case?

Burden of proof is preponderance of the evidence — That means that Ms. Payne, as the plaintiff, needs to only tip the scale in her own favor in order to win. That is, if all of the evidence you consider has weight, and you put each piece of evidence on a scale, one side for the Plaintiff and one side for the Defense, if the scale tips the slightest amount for my client, my client must prevail. Does anyone here think that they would not be able to do this?

Is there any reason why you would not be able to render a fair decision based upon the evidence and instruction of the court — a verdict without sympathy, passion or prejudice for or against any party?

Have you ever talked on the telephone while driving? How easy is it to concentrate on your driving when you do that?

Have you ever been rear-ended? If so, were you injured as result?

Do you disagree with the law that provides for awarding monetary damages to people injured as the result of someone else's negligence?

Does anyone think that just because somebody claims to be an eyewitness to an event, that we should automatically believe them? Can you think of any factors that might make it difficult for an eyewitness to a car accident to notice everything that happened in that accident?

Do you think that there are too many lawsuits right now? Ever heard of the term "lawsuit abuse"? What do you know/think about that term?

## **Defendant**

I represent the defendant, Diane Davis, in this case. You'll hear more about the facts of the case when we start the trial, but at this point it's enough to tell you that Ms. Davis denies that the accident with Ms. Payne was her fault, or that it caused the injuries that Ms. Payne claims. Let me ask you a few questions now.

Does anyone feel that because a person sues in court, she automatically deserves compensation?

Does anyone here disagree with the rule that requires the Plaintiff to prove her case by showing the evidence favors them more than it favors the Defendant?

If the Plaintiff fails to prove her case according to court instruction, are you willing to award nothing, even though there may be a serious injury involved in the case?

Would a feeling of sympathy prevent you from being loyal and faithful to your oath and from returning a verdict based solely upon the evidence?

If the court instructs you that the Plaintiff must prove her case by preponderance of the evidence and if at the close of evidence it is equal on both sides, would anyone vote for the Plaintiff for sympathetic reasons?

Burden of proof — Ms. Payne has to carry her burden of proof as to the cause of the accident and the negligence of my client. My client doesn't have to do anything. Do I have a solemn promise from each one of you that you will make the plaintiff meet her burden?

Have you ever had any injuries to your back?

Has anyone ever stopped suddenly in front of you as you were driving down the street?

Have you ever had any problems with driving and talking on the telephone? Driving with one hand? Is it easier to talk on a mobile phone in your car when your car has an automatic transmission — no stick shift?

As you are aware, there is no law against talking on the phone while driving. You will hear that Ms. Davis was talking on the phone when the accident occurred. Are any of you going to automatically assume that she caused the accident simply because she was talking on the phone?

Does anyone believe that accidents are just accidents; that sometimes no one is "at fault" or negligent — that is was just an accident?

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## Criminal Problem

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**Background Facts:** *David Diaz graduated last year, with honors, from the local high school, with an athletic scholarship to college. A couple of weeks before graduation, however, Mr. Diaz was arrested after police found a significant quantity of marijuana in a gym bag in the trunk of his car. Earlier that evening, Mr. Diaz had attended a party for high school seniors. He claims that at that party, an acquaintance gave him the gym bag and asked him to hold it for a few minutes. According to Mr. Diaz, the acquaintance never returned, so he placed the gym bag in the trunk of his car — without ever examining the contents of the bag. Another young man at the party, Ricky Rat, will testify that he saw Mr. Diaz exchange money for the contents of the gym bag, and that it appeared to him that Mr. Diaz knew that drugs were in the gym bag. Mr. Rat — who is on probation for a drug conviction — then called the police to tell them that Mr. Diaz had drugs in his car. Responding to the tip, police went to Mr. Diaz’s home after the party, found the drugs, and arrested him. The sole issue to be tried is whether Mr. Diaz “knowingly and intentionally” possessed the marijuana that was found in the trunk of his car.*

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## State (Prosecution)

I am here representing the State — this case is called the State v. David Diaz. I also represent you, as citizens and as members of this jury panel are “the State.” You are called upon to do your duty and follow the laws of this state in deciding the guilt of this Defendant.

Have any of you or any members of your family ever been charged with an offense involving drugs? One that carries with it the possibility of jail time?

The Defendant is charged with possession of marijuana — you’ll hear that the elements of that crime are as follows:

- a. Intentional and knowing
- b. Possession
- c. Of a useable quantity of marijuana
- d. Of more than 4 ounces and less than 5 pounds.

Possession of marijuana is against the law. Some people may disagree with that and think that marijuana ought to be legal, but it is still against the law. If you are on this jury, you will be called upon to uphold the law, whether you agree with it or not. Does anyone think that he or she could not or would have a hard time following the law for any personal reasons?

I am going to ask you folks to make me a promise — a promise that is essential to the jury process — I would like for you to each promise me that, regardless of your feelings about the legalization of marijuana or your feelings for the defendant, you will follow the law as given by the judge in the charge. Can you all make that promise?

Burden of Proof — Beyond a Reasonable Doubt — Defense will try to get you to believe my burden is beyond any doubt — my burden is really beyond a reasonable doubt. Let's talk about what reasonable doubt really is. "Reasonable" doubt is not "no" doubt — not 100% certainty — but rather whether a reasonable person would believe it.

The defendant in this case is a high school student who got caught with a gym bag full of marijuana in his car. He doesn't have a record, he was doing well in school, and was a popular student. Does anyone believe that someone with good grades and who is a good athlete can never violate the law?

Does everyone agree that even if someone breaks the law once, he should face the consequences? If not, do you think that your opinion on that would make you unable to be fair in this case, even if the State is able to demonstrate the charge against the Defendant beyond a reasonable doubt?

Do you think it's possible for someone who used to be a good student to fall in with the wrong crowd and start getting in trouble?

Is it also possible that such a student might try to put on a false front for his old friends or family, so that they don't think less of him?

## **Defendant**

I represent David Diaz in this case. We'll explain what we think happened when the trial starts, but in short, let me tell you that Mr. Diaz denies that he knew there was marijuana in that gym bag that the police found in his car. That's the big issue the jury is going to have to decide at trial: did he know, or didn't he know? Before we get to that, though, let me ask you all a few questions.

Does anyone have police officers in their family? Heard stories about rampant crimes in our society? Does that prevent anyone from evaluating this case by the evidence presented here today and only the evidence presented here?

Has anyone here ever been falsely accused of something, whether criminally or in your day-to-day life? How did it make you feel?

The law has two basic/common standards of proof — in civil cases, facts must be proven by the preponderance of the evidence. In criminal cases, facts must be proven beyond a reasonable doubt.

If you think of justice as a scale, in civil cases, the scale has to tip a little beyond dead even to meet the standard known as "the preponderance of the evidence." In criminal cases, however, the scale has to tilt all the way down in order for a fact to be proven "beyond a reasonable doubt." The standard you will be asked to apply is the "beyond a reasonable doubt standard" — the highest standard in our legal system because of the very important rights we are protecting here. In my mind, I am here to protect the most important right guaranteed to all of us under our constitution: The liberty of a young man, with his whole, promising life in front of him. The state should have to meet that burden — the beyond a reasonable doubt burden.

Additionally, each and every element of the crime my client is charged with has to be proven to this standard — the prosecution has gone over the elements of the crime my client is charged with.

Now the prosecution asked you to make him a promise, and I'm going to ask you to make me one. I want you each to promise me that you will follow the court's charge and if you find that any element of the crime charged has reasonable doubt, I want you to promise me that you will follow the law and acquit, even if the prospect is distasteful to you. Do I have that promise from each of you?

Have you ever heard of the Fifth Amendment to the US Constitution? That amendment says that a defendant charged with a crime has the right not to testify, because no one can be required to testify against himself. Instead, the STATE has the burden to prove that my client committed this crime. My client doesn't have to prove anything here today. But, Mr. Diaz will testify during the trial because he wants you all to hear, in his own words, what happened to lead up to this false accusation against him. Does the fact that Mr. Diaz will be testifying lead any of you to have an opinion about the way this case should be decided?

Do any of you think that a person is automatically guilty when they are charged with an offense? That is, if the police said you did it, then you did it. Anyone of that mind set?

Now, I've already told you that Mr. Diaz admits that the gym bag was in his trunk, and that he put it there, but he says that he didn't know what was in it at the time. Would you automatically assume he was lying, just because the State tells you he is?



## U n i f o r m J u r y H a n d b o o k \*

### **Why Is Jury Service Important?**

The United States Constitution and most state constitutions guarantee all people, regardless of race, religion, sex, national origin, or economic status, the right to trial by an impartial jury. Justice ultimately depends to a large measure upon the quality of the jurors who serve in our courts.

### **What Is My Duty As A Juror?**

As a juror, you must be fair and impartial. Your actions and decisions must be free of any bias or prejudice. Your actions and decisions are the foundation of our judicial system.

### **How Was I Selected?**

You were selected at random from a list of voter registrations and a list of driver registrations from the county in which you live.

### **Am I Eligible?**

#### **Jurors must:**

- Be a citizen of the United States and of this State.
- Be at least 18 years of age.
- Reside in the county of jury service.
- Be able to read and write.
- Be of sound mind.

#### **You cannot serve on a jury if:**

- You have been convicted of a felony or of any type of theft (unless rights have been restored);
- You are now on probation or deferred adjudication for a felony or for any type of theft; or
- You are now under indictment for a felony or are now under criminal charges for any type of theft.

If you are in doubt, or think you may not be qualified to serve on a jury for one of the above or any other reasons, please notify the Judge.

### **Who Can Be Excused From Jury Service?**

#### **You are entitled to be excused as a juror if you:**

- Are over 70 years of age;
- Have legal custody of a child under 10 years of age and jury service would leave the child unsupervised;

- Are a student in class;
- Are the caretaker of a person who is unable to care for himself or herself (an invalid); or
- Can show a physical or mental impairment or an inability to comprehend or to communicate in English.

### **What Are The Different Types Of Cases?**

There are two basic types of cases, criminal and civil (including family cases).

#### **Criminal Cases:**

A criminal case results when a person is accused of committing a crime. You, as a juror, must decide whether the person charged is guilty or not guilty. The accused person is presumed innocent, and the State, represented by the District or County Attorney, must prove guilt "beyond a reasonable doubt."

#### **Civil Cases:**

A civil case results from a disagreement or dispute between two or more parties. In a civil case, you, as a juror, must answer questions of disputed fact based upon the testimony and evidence admitted by the Judge. The answers to these questions are called the verdict.

### **Will I Be Paid For Being A Juror?**

Yes. Most states pay a minimum fee for each day you actually serve on the jury.

### **Must My Employer Pay Me While I Am On Jury Duty?**

Your employer is not required to pay you while on jury duty; however, employers are prohibited by law from firing an employee for serving as a juror.

### **Who Can Have A Jury Trial?**

Any person charged with a criminal offense or any party to a civil case has a right to a jury trial. All parties are equal before the law and each is entitled to the same fair treatment.

### **Are There Rules About Jury Conduct?**

Yes. Many states have rules to assist you in your conduct as a juror, which will be given to you by the Judge.

\* While these requirements apply to most states, they do not necessarily apply to all states.

### **How Is A Juror Selected For A Particular Case?**

Cases will usually be heard by juries of 6 or 12 jurors. A larger group, called a panel, will be sent to the trial court (courtroom) where the jurors will be questioned under the supervision of the Judge. A juror may be excused from the panel if it is shown that the juror cannot act impartially concerning the case to be heard. In addition, each side is allowed to remove a given number of jurors from the panel without having to show any reason. The trial jury will be the first 6 or 12 of the remaining jurors on the panel.

### **What Is Voir Dire Or Questioning Of The Jury Panel?**

It is a way for the parties to select a fair and impartial jury. Under the justice system, you may be questioned by each of the lawyers before they decide to remove a certain number of jurors from the jury panel. For example, the lawyer may ask you questions to see if you are connected to the trial or if you have any prejudice or bias toward anyone in the trial. These questions are not intended to embarrass you, but rather to help the lawyers in the jury selection process. You may ask the Judge to allow you to answer some questions away from the other jurors.

### **What If I Have a Special Need or Emergency?**

After you have been selected as a juror on a trial panel, if you have a special need or any emergency, tell the bailiff.

### **Order Of Events Of The Trial**

#### **Opening Statements:**

The lawyers for each side may explain the case, the evidence they will present, and the issues for you to decide.

#### **Presentation Of Evidence:**

The evidence consists of the testimony of witnesses and exhibits allowed by the Judge. Exhibits admitted into evidence will be available to the jury for examination during deliberations. You have the right to ask for them. You will be asked to make decisions regarding disputed facts; therefore, your attention at all times is critically important. Juror note taking or the use of any notes will be determined by the Judge.

#### **Rulings By The Judge:**

The Judge may be asked to decide questions of law during the trial. Occasionally, the Judge may ask jurors to leave the courtroom while the lawyers make their legal arguments. The jurors should understand that such inter-

ruptions are needed to make sure that their verdict is based upon proper evidence, as determined by the Judge under the Rules of Evidence. You may give the evidence whatever weight you consider appropriate.

#### **Instructions To The Jury:**

At the close of all evidence, the Judge may submit to the jury the Charge of the Court. This will include legal instructions on this particular case and the questions that the jury is to answer from the evidence admitted.

#### **Closing Arguments:**

After the Charge of the Court, the lawyers have the opportunity to summarize the evidence in their closing arguments and to try to persuade the jury to accept their client's view of the case.

#### **Deliberations And Verdict Of The Jury:**

Following closing arguments, the jury is sent to deliberate. When the jury has answered the questions asked of them they shall return their verdict. The verdict must be based solely on the evidence presented by the parties, the Charge of the Court, and the rules of law provided by the Judge.

#### **When In Doubt, Ask The Judge:**

You have the right to communicate with the Judge regarding any matters affecting your deliberations, including but not limited to: 1) physical comfort; 2) special needs; 3) any questions regarding evidence; or 4) the Charge of the Court. During deliberation, if it becomes necessary to communicate with the Judge, the bailiff or the officer of the court will deliver jurors' notes to the Judge. The information in this handbook is not intended to take the place of the instructions given by the Judge in any case. In the event of conflict, the Judge's instructions will prevail.

*Note: Not all of these rules apply in Justice or Municipal Courts.*

S u b p o e n a



NUMBER: 361-619-117  
JUDGE I.M. INCHARGE  
\_\_\_\_DISTRICT COURT  
COUNTY COURTHOUSE  
123 E FIRST STREET  
COUNTYSEAT, STATE 77321-0123

RETURN SERVICE REQUESTED

GREETINGS: \_\_\_\_\_  
YOU ARE HEREBY SUMMONED TO APPEAR AS A JUROR IN  
THE COURTS OF ANY COUNTY AT:

08:25 AM ON \_\_\_\_\_, \_\_\_\_ ROOM 309,  
ON 3RD FLOOR, COUNTY COURTHOUSE

EXEMPTIONS FROM JURY SERVICE ARE LISTED BELOW.  
TO CLAIM ONE OF THE EXEMPTIONS, CIRCLE IT, DATE  
AND SIGN IN THE SPACE PROVIDED AND MAIL OR  
DELIVER TO THE DISTRICT CLERK, OR APPEAR IN PERSON  
AT THE TIME AND PLACE SHOWN ABOVE.

THE EXEMPTION FORM IS FOR LEGAL EXEMPTIONS ONLY.  
IT MUST NOT BE USED FOR PERSONAL EXCUSES, SUCH AS  
ILLNESS OR OTHER HARDSHIP. IF YOU ARE ILL OR  
DISABLED AND CANNOT PERSONALLY APPEAR, MAIL OR  
DELIVER A PHYSICIAN'S STATEMENT AND THIS ENTIRE  
SUMMONS TO JOE SMITH, DISTRICT CLERK PRIOR TO THE  
DATE OF SERVICE.

IF YOU NEED FURTHER INFORMATION CALL 555-5115

IMPORTANT: PLEASE CALL: 555-5116 AFTER 6:00 P.M. THE  
NIGHT BEFORE YOU ARE SUMMONED TO APPEAR

PLEASE OPEN AND READ BOTH SIDES.

DISOBEDIENCE OF THIS SUMMONS IS PUNISHABLE BY A  
FINE OF NOT LESS THAN \$100.00 NOR MORE THAN \$1000.00

----- DETACH BEFORE MAILING -----

00161593 V

NO. 361 - 619 - 117  
CERTIFICATE OF EXEMPTION

TO CLAIM AN EXEMPTION COMPLETE, MAIL OR DELIVER THIS FORM TO THE DISTRICT CLERK OR APPEAR IN PERSON AT THE  
TIME AND PLACE SHOWN ABOVE

THE FOLLOWING PERSONS ARE EXEMPT FROM JURY SERVICES PROVIDED THEY CLAIM AN EXEMPTION

1. PERSON OVER 70 YEARS OF AGE
2. PERSON WHO HAS LEGAL CUSTODY OF A CHILD OR CHILDREN UNDER THE AGE OF 10 YEARS, IF JURY SERVICE  
WOULD LEAVE CHILDREN WITHOUT ADEQUATE SUPERVISION.
3. STUDENT OF PUBLIC OR PRIVATE HIGH SCHOOLS.
4. PERSON ENROLLED AND IN ACTUAL ATTENDANCE OF AN INSTITUTION OF HIGHER EDUCATION.
5. OFFICER OR EMPLOYEE OF THE SENATE, THE HOUSE OF REPRESENTATIVES, OR ANY DEPARTMENT, COMMISSION,  
BOARD, OFFICE OR OTHER AGENCY IN THE LEGISLATIVE BRANCH OF STATE GOVERNMENT.
6. THE PRIMARY CARETAKER OF A PERSON WHO IS AN INVALID UNABLE TO CARE FOR HIMSELF

NOTE: BUSINESS REASONS ARE NOT LAWFUL EXCUSES.

I CERTIFY THAT I AM EXEMPT BECAUSE OF THE REASON CIRCLED ABOVE.

\_\_\_\_\_  
DATE

\_\_\_\_\_  
YOUR SIGNATURE

ANY PERSON WHO FILES A FALSE CLAIM OF EXEMPTION CAN BE PUNISHED BY A FINE OF  
NOT LESS THAN \$10.00 NOR MORE THAN \$100.00

**IMPORTANT**

PLEASE CALL AFTER 6:00 P.M. THE  
NIGHT BEFORE YOU ARE SUMMONED TO APPEAR.

PLEASE BRING THIS CARD AND A BALL POINT PEN WITH YOU.

**Courthouse Parking Lots**

Directly across First Street from the courthouse;  
Corner of First Street and Travis Street;  
Corner of Travis Street and City Street;  
Corner of State Avenue and City Street.

FROM:

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DISTRICT CLERK OF ANY COUNTY  
ANY COUNTY COURTHOUSE, SUITE 216  
COUNTYSEAT, STATE 77321-0123



## J u r o r I n f o r m a t i o n F o r m

PLEASE PRINT — PRESS DOWN HARD —  
CHECK LAST PART FOR LEGIBILITY  
**ANY COUNTY**

•NAME		
•STREET ADDRESS		
•CITY	ZIP CODE	•HOME PHONE
		•BUSINESS PHONE
•PREVIOUS PLACE OF RESIDENCE:		
•YOUR PLACE OF BIRTH	•AGE	•HOW LONG HAVE YOU LIVED IN ANY COUNTY?
•CURRENT STATUS: MARRIED <input type="checkbox"/> SINGLE <input type="checkbox"/> DIVORCED <input type="checkbox"/> WIDOWED <input type="checkbox"/>	•NAME OF SPOUSE •NO. & AGE OF CHILDREN (MALE) •NO.&AGE OF CHILDREN (FEMALE)	
•WHAT IS YOUR OCCUPATION?	•YOUR EMPLOYER	
•HOW LONG HAVE YOU WORKED THERE?	•SPOUSE'S OCCUPATION	
•SPOUSE'S EMPLOYER	•HOW LONG HAS HE/SHE WORKED THERE?	
•YOUR RELIGIOUS PREFERENCE	•HAVE YOU EVER BEEN PARTY TO A LAW SUIT? <input type="checkbox"/> YES <input type="checkbox"/> NO	
• HAVE YOU EVER SERVED ON A COURT'S MARTIAL? <input type="checkbox"/> YES <input type="checkbox"/> NO HAVE YOU EVER SERVED ON A CIVIL JURY? <input type="checkbox"/> YES <input type="checkbox"/> NO HAVE YOU EVER SERVED ON A CRIMINAL JURY OR GRAND JURY? <input type="checkbox"/> YES <input type="checkbox"/> NO DID THE JURY REACH A VERDICT? <input type="checkbox"/> YES <input type="checkbox"/> NO	•HAVE YOU OR ANY OF YOUR RELATIVES EVER BEEN A PEACE OFFICER? <input type="checkbox"/> YES <input type="checkbox"/> NO	
•ANY SERIOUS BODILY INJURY EVER SUSTAINED REQUIRING MEDICAL ATTENTION? BY YOU? <input type="checkbox"/> YES <input type="checkbox"/> NO BY YOUR FAMILY? <input type="checkbox"/> YES <input type="checkbox"/> NO		
•IF SO, TYPE OF INJURY BY YOU		
•IF SO, TYPE OF INJURY BY YOUR FAMILY		
•HAVE YOU EVER BEEN AN ACCUSED COMPLAINANT, VICTIM, OR WITNESS IN A CRIMINAL CASE? <input type="checkbox"/> YES <input type="checkbox"/> NO		
•WHAT ARE YOUR HOBBIES?		
•LIST ANY LAWYERS WHO HAVE EVER DONE WORK FOR YOU OR YOUYOUR IMMEDIATE FAMILY		





## J u r y P a n e l i s t s

### M a l e J u r y P a n e l i s t s

(M) 71 year old, widower, white; retired civil service; 3 children (2 males, 1 female); World War II veteran shot in the line of duty; conservative Methodist with no tolerance for drug use; plaintiff's attorney (prosecutor) prepared will; military police in WWII

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(M) 62 year old, widower, Hispanic; high school mathematics teacher; defendant's attorney's law partner represented wife's estate in will proceedings (probate); 2 children (1 male, 1 female); son was involved in car accident

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(M) 46 year old, divorced, African-American; 3 children (1 male, 2 female); disabled due to on-the-job back injury (construction work); made civil claim against employer for worker's compensation; receives disability from Social Security Administration; reliant on pain medication for injury; sued by ex-wife for late child support

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(M) 48 year old, married, white; 1 child (male); self-employed as private investigator; spouse is dental assistant; nephew killed in car accident; former police officer with little tolerance for law breakers; rodeo bull rider in younger years (gored by bull at age 18)

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(M) 28 year old, divorced, white; 1 child (male); salesman for X-Rays R Us; recovering drug abuser; attends Narcotics Anonymous meetings; ex-wife was involved in car accident

---

(M) 56 year old, married, Asian; no children; self-employed as chef/caterer; spouse is nutritionist for nursing home; injured in car accident; once sued a client for balance of catering fees for wedding reception

---

(M) 55 year old, widower, white; 1 child (male); self-employed as farmer; partially disabled due to tractor accident; wife died only recently; quit school to work farm at age of 14; now works farm with son; enjoys watching wrestling on television

---

(M) 50 year old, single, African-American; no children; Baptist postal worker; enjoys watching television; very patriotic; retired Marine

(M) 52 year old, divorced, white; 3 children (1 male, 2 female); self-employed as attorney; conservative Democrat; atheist; daughter involved in car accident

---

(M) 36 year old, widower, white; attorney in law firm; wife died of cancer; 1 child (male); Jewish

---

(M) 40 year old, single, African-American; no children; emergency room doctor; liberal Baptist

---

(M) 19 year old, single, white; freshman college student; has DWI charge pending (accident involved); relative is peace officer

---

(M) 22 year old, single, white; employed as roughneck by Shell Oil (on oil rig); relative is peace officer; had accident en route to work once; high school diploma; Lutheran

---

(M) 44 year old, married, white; police officer for school district; 2 children (1 male, 1 female); spouse is teacher for same school district; was shot in the line of duty; witness to a murder; Lutheran

---

(M) 24 year old, married, Hispanic; no children; graduate student; spouse is cashier at Texaco station; belongs to Church of Christ; once broke arm due to fall from horse

---

(M) 37 year old, married, Asian-American; Episcopal; no children; technician for GTE; wife was involved in car accident; conservative; brother is peace officer; spouse is attorney; knee injured playing football; also injured in auto accident

---

(M) 39 year old, single, Hispanic; no children; Catholic priest; witness to a suicide; compassionate

---

(M) 36 year old, married, African-American; captain in US Army; conservative Catholic; patriotic; intends to retire from military service; 4 children (2 male, 2 female); relative is sheriff's deputy

---

(M) 32 year old, married, African-American; 1 child (male); employed as painter by Sherwin Williams; Democrat; Methodist

---

(M) 30 year old, single, Asian; no children; hair stylist; once beaten by white supremacists; testified against his attackers (they were convicted); uncle was police officer in Vietnam

## F e m a l e J u r y P a n e l i s t s

(F) 58 year old, married, white; 3 children (all male); unemployed wife of attorney; breast cancer patient; smokes marijuana for medicinal purposes (to relieve nausea caused by chemotherapy)

---

(F) 64 year old, widow, African-American; no children; employed as waitress for last 3 years; Baptist; brother is police officer; husband died leaving many medical bills and no insurance money

---

(F) 59 year old, divorced, white; 2 children (1 male, 1 female); x-ray technician at Memorial Hospital; defendant's attorney's law partner represented her in her divorce; son is a police officer; deeply religious member of Church of Christ; recently returned to school

---

(F) 35 year old, married, Hispanic; 1 child (female); husband is police officer; brother was involved in car accident; Episcopal; prosecuting attorney with District Attorney's office; was falsely accused and prosecuted (later acquitted) on charges of driving while intoxicated

---

(F) 49 year old, married, African-American; 2 children (1 male, 1 female); secretary at a local college; liberal Baptist whose son was injured on the job (oil field); husband employed with Southwestern Bell as lineman

---

(F) 53 year old, divorced, Asian; 1 child (female); computer programmer for Dell Computers; college degree in computer science

---

(F) 51 year old, widow, Hispanic; 6 children (3 male, 3 female); Catholic; employed as waitress at Ninfa's; son was perpetrator in gang shooting

---

(F) 49 year old, married, Arab; 2 children (both female); works in family-owned jewelry store; liberal Hindu

---

(F) 27 year old, married, white; self-employed as actress/model; converted to Judaism; 1 child (female); fairly famous

---

(F) 46 year old, divorced, white; 3 children (all male); Executive Director of Nutrition for local school district; had back surgery; son injured knee playing football; Methodist

---

(F) 41 year old, single, white; 1 child (female); employed as nurse at Central Hospital; raped while in nursing school (was witness against rapist, who was convicted); sued roofer for failing to work after being paid (small claims court); Catholic; brother is peace officer

(F) 24 year old, single, Asian; 1 child (female); junior college student; works part-time cleaning houses; brother was shot in drive-by shooting

---

(F) 39 year old, divorced, white; Lutheran; 2 children (both male); self-employed as caterer; ex-husband was abusive to children

---

(F) 38 year old, married, African American; 2 children (both female); legal assistant; husband is county commissioner; mother died of cancer; relative is peace officer

---

(F) 28 year old, single, Iranian; self-employed as dentist; relative is peace officer; well-off professional; Muslim

---

(F) 57 year old, married, white; 4 children (3 male, 1 female); homemaker; husband is investment advisor with Merrill Lynch; son was arrested for possession of marijuana many years ago; once rear-ended by college student — sore, but no major injuries; non-practicing Catholic; father was police officer (killed in line of duty)

---

(F) 33 year old, widow, African American; 1 child (male); employed as Emergency Room nurse; husband was killed in car accident involving drunk driver — she and son were injured; Baptist

---

(F) 31 year old, married, white; 3 children (1 male, 2 female); homemaker; husband is architect; injured neck in auto accident; DWI/possession of marijuana at age 24; now an upright Methodist; son in prison for drug possession

---

(F) 28 year old, single, white; no children; employed as bartender; raped at age 20; hostile towards men

---

(F) 18 year old, single, Hispanic; community college student; works part-time as checker at Wal-Mart; two older sisters; devout Baptist; father is college professor; mother died in car accident two years ago.



M a t e r i a l s   f o r   D a y   T w o

## The Trial: Theory and Practice

The information provided below should help the instructor to answer basic questions that may arise in connection with the mock trial provided on the videotape accompanying the program.

### Questions of Fact vs. Questions of Law

The role of the judge is to determine the law that applies to a particular case. The judge, in the **jury instructions**, states the law and defines the aspects of it that pertain to the case at trial. The jury's role is to determine the facts and to apply them to the law. The jury will be asked to answer **jury questions** that are specifically tailored to the particular facts of the case.

The jury instructions and questions relating to the two mock trials contained in the video are provided in Handouts 11 (civil) and 13 (criminal).

### Steps of a Jury Trial

The steps of a jury trial are described in Handout 9, below. Note that the opening statements and closing arguments are **not** evidence. Only testimony from sworn witnesses and documents admitted by the judge may be considered by the jury in determining the outcome of a case. The attorneys merely present evidence that they want the jury to consider from the witnesses, documents and other exhibits brought out during witness examinations.

### Burden of Proof

In general, the party bringing the claim, or charging someone with a crime, has the burden of proof, which is the obligation to prove the facts on which the lawsuit or criminal prosecution is based.

In a civil case (exemplified by *Patty Payne v. Diane Davis* in the accompanying program video), the burden of proof is usually the **preponderance of the evidence**. "Preponderance" means the greater part, or at least slightly more than half. In other words, to find for the plaintiff, the jury must believe that the facts are more in favor of the plaintiff than the defendant. If the jury cannot decide whom the facts favor (i.e., the facts favor each side equally), or if the jury finds that the facts favor the defendant, the defendant must win.

In a criminal case (*State v. David Diaz* in the program video), the prosecution must prove its case **beyond a reasonable doubt**. This does not mean that the jury must be 100 percent certain that the defendant is guilty, but that any doubts that jurors have about guilt must be unreasonable. For teaching purposes, an unreasonable doubt may be defined as a doubt for which one cannot give a reason.



## The Steps of The Jury Trial

The following summarizes the steps in both civil and criminal trials:

1. **Opening Statement by Plaintiff or Prosecutor:** Plaintiff's attorney (in civil cases) or prosecutor (in criminal cases) outline their case by describing the evidence to be presented as proof of the **allegations** — unproven statements — in the **complaint** or **indictment**. This often involves a summary or chronological overview of the important facts and a brief statement of what witnesses or documents will show to prove or to disprove disputed facts.
2. **Opening Statement by Defense:** Defendant's attorney similarly outlines its case by explaining the evidence to be presented to deny the allegations made by the plaintiff or prosecutor.
3. **Direct Examination by Plaintiff or Prosecutor:** Each witness for the plaintiff or prosecution is questioned. Other evidence, such as documents or physical evidence supporting the plaintiff or prosecution, is presented. Skilled attorneys let the witness be the focus of attention while they remain in the background.
4. **Cross-Examination by Defense:** The defense next may question each plaintiff or prosecution witness. Because cross-examination is an attempt to break down the story or to discredit the witness in the eyes of the jury, its results can be quite dramatic.
5. **Motions:** If the prosecution's or plaintiff's basic case has not been established from the evidence introduced, the judge can end the case by granting the defendant's motion to dismiss in civil cases or by entering a directed verdict of acquittal in criminal cases. These motions are always presented outside the presence of the jury, after the completion of the prosecution's or plaintiff's case. If the judge denies such a motion, the jury reconvenes and hears the defense's case.
6. **Direct Examination by Defense:** Each defense witness is questioned by lawyers for the defense, similar to number 3 above.
7. **Cross-Examination by Plaintiff:** Each defense witness is cross-examined by the plaintiff's attorney or prosecutor, similar to number 4 above.

8. **Jury Instructions:** The judge explains rules of law to consider in weighing the evidence. The prosecution, or the plaintiff in a civil case, must meet the burden of proof to prevail. In a criminal case, this burden is very high. The prosecution must set out such a convincing case against the defendant that the jurors believe *beyond a reasonable doubt* that the defendant is guilty. In a civil case, the plaintiff must prove the case by a *preponderance*, or greater part, of the evidence. In some courts, including State courts, all or part of the jury instructions are given before the lawyers give their closing arguments, so that the members of the jury will know the law they must apply to the facts and arguments made by counsel. In other courts, the instructions are given just before jury deliberations begin.
9. **Closing Argument by Plaintiff/Prosecutor:** The prosecutor or plaintiff's attorney reviews all the evidence presented, notes uncontradicted facts, states how the evidence has satisfied the elements of the charge, and attempts to persuade the jury to find the defendant guilty (in criminal cases) or to render a verdict for the plaintiff (in civil cases).
10. **Closing Argument by Defense:** Same as closing argument by prosecution or plaintiff. The defense asks for a finding of "not guilty" (in criminal cases) or a verdict for the defendant (in civil cases).
11. **Rebuttal Argument:** Prosecutor or plaintiff can usually reserve part of the time allowed for the closing argument to make additional remarks to counteract the closing argument by the defense. The plaintiff or prosecutor gets the last word because the burden of proof is theirs.
12. **Verdict:** The jury selects a foreperson, reviews the court's **instructions** and **charge** and begins deliberations. Jurors may not discuss the case during the trial. Discussions or deliberations may begin only after the jury receives the charge and retires to the jury room to deliberate. In most states (including State), the jury's decision must be unanimous in criminal cases, although the U.S. Supreme Court allows 9-3 verdicts in some cases in which the death penalty cannot be given. Not all states require unanimous verdicts in cases involving **misdeemeanors**, actions punishable by less than one year in prison. At least 75 percent of the jurors are usually expected to agree in civil cases.

The jury may ask the bailiff for exhibits introduced during the trial. The jury may ask the judge to answer questions that members of the jury have about the instructions or about the process. Such questions must be in writing and delivered to the bailiff. After the jury reaches a verdict, the presiding juror signs the charge and hands it to the bailiff, who in turn delivers it to the judge. The judge then summons the parties, the attorneys and the jury to the courtroom and asks the presiding juror to announce the verdict.

Understanding that a unanimous decision is often required of the jury will help students understand why jury deliberations are sometimes lengthy. If the jury is required to reach a unanimous decision but cannot do so, it is said to be a **hung jury**, and the case is declared a **mistrial**, which may require a new trial.



	No. 99-01048-ABA YLD	
PATTY PAYNE,	§	IN THE DISTRICT COURT
	§	
Plaintiff,	§	
	§	
v.	§	ANY COUNTY, STATE
	§	
DIANE DAVIS,	§	
	§	
Defendant.	§	350th JUDICIAL DISTRICT

**Statement of Facts**

Prepared by:  
Shirley Baker Career Institute  
Certified Court Reporter  
State of Any

THE BAILIFF: All rise. The local Court of State is now in session. Honorable Judge Lawrence Law presiding.

THE COURT: Thank you. Please be seated. Will the jurors remain standing. We're here today for the case of Patty Payne versus Diane Davis. I'd like to begin by first saying thanks to each juror for fulfilling your civic duty by serving on this jury. It is your service here today that makes the American legal system the best in the world.

I will now swear you in. Will each member of the jury please raise your right hand. Do you swear or affirm that you will render a true verdict according to the law as given you by this Court and the evidence submitted according to the rulings of the Court so help you God.

THE JURY: I do.

THE COURT: Please be seated. We will now begin with opening statements. Plaintiff's counsel may proceed.

PLAINTIFF'S COUNSEL: Thank you, Your Honor.

Members of the jury: This case is about distractions. Diane Davis became distracted while she was driving one day in June of last year. And as a result of her distraction, Patty Payne suffered harm.

I represent Mrs. Payne. And we're here today to make things right for her. Now, as in every case, the plaintiff -- that is the person who brings the lawsuit -- has the burden of proof.

We must prove to you the facts as we see them by a preponderance of the evidence. Now, all that fancy legal term means is that we must prove to you that it is more likely than not that Mrs. Davis was negligent. That is, she failed to exercise reasonable care. And that as a result of that negligence, my client, Mrs. Payne, suffered damages.

Now, let's talk about the facts. One Sunday morning in June of last year, Mrs. Payne was driving to work. And she came to the intersection right out here at Main Street and Avenue A. And she came to a red light and she stopped. And while she was waiting for the light to change, Mrs. Davis slammed her car into the rear of Mrs. Payne's car.

That impact was so forceful that it knocked Mrs. Payne's car all the way into the middle of that intersection. Now, you're going to hear today that Mrs. Davis was rushing to get to work because she was late. And you're also going to hear that she was on her cellular phone when the accident happened.

In short, Mrs. Davis was distracted and this accident, the reason why we are all here today, is her fault. Now, immediately upon the crash, Mrs. Payne felt a horrible pain to the back of her neck. Thinking perhaps it's just soreness and bruising, she decided to tough it out.

She endured that pain for five whole days before she couldn't take it any longer; and she finally went to go see her family doctor. It's that doctor who referred her to an orthopedic surgeon whose name is Dr. Sara Femur.

You're going to meet Dr. Femur today. And Dr. Femur is going to testify that Mrs. Payne suffered severe and permanent injuries as a result of that accident. And Dr. Femur is also going to testify that Mrs. Payne requires surgery. And that even after this surgery, Mrs. Payne will continue to suffer from permanent effects of that injury.

Additionally, Mrs. Payne's automobile was damaged. Now, she has estimates that will establish the cost to repair that automobile. You, the jury, will have the opportunity to decide what is fair and just compensation for Mrs. Payne's damages.

And we believe that after you hear all the evidence today, you are going to agree with us that Mrs. Davis should compensate Mrs. Payne for her damages, because Mrs. Davis was at fault for that accident. Thank you.

THE COURT: Defense counsel.

DEFENDANT'S COUNSEL: Thank you, Your Honor. May it please the court, ladies and gentlemen of the jury: This case is really about who you believe; Patty Payne, or my client, Diane Davis.

It is true that my client was on her way to work that day; she was a little late; she was on her phone. However, she wasn't distracted. She remembers everything that happened.

She came to the same intersection as Mrs. Payne; however, when she got to the intersection, she stopped behind Mrs. Payne's car at the red light. She didn't move until the light turned green. However, when the light turned green, Mrs. Payne started to move; but then for no apparent reason, she stopped.

My client, Mrs. Davis, slammed on her brakes in an attempt to avoid the accident, but it was too late; she was too close, and her car collided with Mrs. Payne's.

You will hear from an eyewitness today, Mr. John Smith. Mr. Smith was coming out of the donutshop which is at the corner of the two streets where the accident occurred. Mr. Smith will tell you he saw the accident, and that the light was green when the accident occurred. Just as Mrs. Davis remembers.

So, yes, there was an accident. However, the accident was Mrs. Payne's fault, not Mrs. Davis'. The plaintiff, Mrs. Payne, gets to go first today. Mrs. Davis simply asks that you wait to hear all the evidence before coming to a decision.

We believe once you hear all the evidence, common sense will dictate that the accident was Mrs. Payne's fault; and Mrs. Davis doesn't owe her a dime. Thank you.

THE COURT: The plaintiff may call her first witness.

PLAINTIFF'S COUNSEL: Thank you, Your Honor. We call Patty Payne.

(Patty Payne was sworn in by the Court).

PATTY PAYNE, having been first duly sworn by the Court, testified as follows:

DIRECT EXAMINATION

BY PLAINTIFF'S COUNSEL:

Q. Ma'am, will you please introduce yourself to the jury.

A. Yes. My name is Patty Payne. I live here in town. I'm married to Paul Payne; we have three kids. I'm a waitress at Ray's Cafe down the street.

Q. Mrs. Payne, were you involved in an automobile accident on June 27th of last year?

A. Yes, I was.

Q. Would you be kind enough to explain to the jury how that accident occurred?

A. Well, it was a Sunday morning at about 9:30 and I was driving to work on Main Street and I had stopped at the red light at the intersection of Avenue A. And all of a sudden somebody

slammed into my car from behind, and it turned out to be Mrs. Davis. She hit me so hard that she knocked my car out into the middle of the intersection.

Q. Mrs. Payne, were you hurt in the accident?

A. Yes, I was. When she hit me, my head whipped back; and I heard this loud pop in my neck. I felt this shooting pain at the base of my head down into my neck.

Q. And what did you do after Mrs. Davis ran into you?

A. Well, I was stunned. All I could think about was the burning pain in my neck. I started crying, and I guess I put my car into park and turned the car off.

Q. And then did you get out of the car?

A. At first I couldn't. After a while, though, I was able to calm down a little and get out of my car.

Q. Did you talk to Diane Davis at the scene of the accident?

A. Yes, I did. After I was able to get out of my car when she came up to my door.

Q. What did Mrs. Davis tell you?

DEFENDANT'S COUNSEL: Objection, Your Honor. Calls for hearsay.

PLAINTIFF'S COUNSEL: Your Honor, it is an admission by the defendant.

THE COURT: Objection overruled. I'll allow it. Go ahead, Mrs. Payne.

THE WITNESS: She said she was sorry, and that she just wasn't paying attention.

Q. (By the Prosecution) Now, did anyone call the police at that point in time?

A. No. No. We exchanged information, but then we both just left. I didn't call the police because Mrs. Davis said that it was her fault, and she would cover all the property damages and any medical bill I had.

DEFENDANT'S COUNSEL: Objection, Your Honor. I move to strike. That last bit was argumentative, non-responsive, and prejudicial. Not to mention hearsay. Counsel only asked her if she called the police.

PLAINTIFF'S COUNSEL: Your Honor --

THE COURT: Counsel's right. The jury will disregard Mrs. Payne's last statement, except as to the fact that she didn't call the police.

Q. (By the Prosecution) Mrs. Payne, was your automobile damaged because of this accident?

A. Oh, yes it was. The rear bumper was severely damaged.

Q. And have you gotten your car repaired?

A. Oh, no. Not yet. I can't afford it, the repair shop told me it would cost \$1800 to repair.

PLAINTIFF'S COUNSEL: Your Honor, I believe that the defense stipulates that the estimated cost of repairs to Mrs. Payne's automobile is \$1,800.

DEFENDANT'S COUNSEL: Yes, Your Honor, we stipulate to that.

THE COURT: The Court will deem the matter stipulated. The jury will take as a fact that it will cost \$1800 for Mrs. Payne to repair the damage to her car.

Q. (By the Prosecution) Mrs. Payne, I am now going to show you what has been pre-marked as Plaintiff's Exhibit No. 1.

PLAINTIFF'S COUNSEL: Your Honor, the defense has stipulated as to the admissibility of this exhibit.

THE COURT: It's admitted.

PLAINTIFF'S COUNSEL: May I approach, Your Honor?

THE COURT: Yes.

PLAINTIFF'S COUNSEL: Thank you.

Q. (By the Prosecution) Now, Mrs. Payne, would you please describe Exhibit No. 1 to the jury?

A. It's a picture of my car that I took on the afternoon of the accident. You can see how the rear end of my car is just destroyed.

Q. And what kind of car is that, ma'am?

A. It's a Peugeot.

Q. Now, Patty, did you get medical help for your injuries?

A. Yes, I did. I saw my family doctor who referred me to a specialist, Dr. Sara Femur. And I saw her within a couple weeks of the accident.

Q. Do you have any idea how much your medical bills are?

A. Yes, sir, I do. My medical bills are \$15,000 so far, and I understand that could go as high as \$50,000 if I have surgery.

Q. Do you still feel any pain today from the injuries you received in the accident with Mrs. Davis?

A. Yes, sir, I do. I've still got this sharp pain in my neck.

Q. And how else have the injuries affected your life?

A. I can't do many of the things I used to do. I can't sleep, it hurts to work, I'm in a bad mood all the time. I'm worried that I'll never get to feeling better, and it just changed me completely.

Q. Thank you, Mrs. Payne.

PLAINTIFF'S COUNSEL: Your Honor, I have no further questions at this time. I pass the witness.

THE COURT: You may cross-examine the witness.

DEFENDANT'S COUNSEL: Thank you, Your Honor.

CROSS-EXAMINATION

BY DEFENDANT'S COUNSEL:

Q. Mrs. Payne, when did you say you started to feel pain?

A. Right when the wreck happened.

Q. Ma'am, you had a mobile phone with you at the time of the accident, didn't you?

A. Yes, I did.

Q. And even though you were in the severe, constant pain that you testified about, you didn't call the ambulance on your phone, did you?

A. No.

Q. In fact, you didn't call anybody at the time of the accident, did you?

A. I was too shocked to do anything. I did call my husband as soon as I got to work.

Q. You went straight to work, though, right?

A. Yes, I had to be there at 10:00 for the breakfast shift. It's usually pretty busy.

Q. You didn't stop by the emergency room on the way, did you?

A. No, I didn't.

Q. And you didn't go to your family doctor the next day?  
A. No. Not for a few days. I kept hoping that I would feel better.  
Q. In fact, you saw your family doctor for the first time five days later?  
A. Right. My neck just kept getting worse and worse.  
Q. You said you did go immediately to work after the accident. Did you tell anyone that you had been hurt in an accident?  
A. No. They don't need to hear my problems.  
Q. As a waitress, Mrs. Payne, isn't it true that you lift heavy trays over your head?  
A. Yeah, I suppose so.  
Q. Do you do that many times a day?  
A. It's part of the job, I guess.  
Q. And you lift full pitchers of water and tea?  
A. Yes, ma'am. Those too.  
Q. And that makes you pretty sore by the end of the day, doesn't it?  
A. Sometimes.  
Q. In fact, you're sore most of the time, aren't you?  
A. Yes. But I never hurt as much as I did after your client hit me.  
THE COURT: Mrs. Payne, just try to answer the questions she asks.  
THE WITNESS: Yes, Judge, I'm sorry.  
Q. (By the Defense) And how long have you been a waitress, ma'am?  
A. About six years, I think.  
Q. When you saw Dr. Femur, did you tell her about the heavy lifting you do on your job?  
A. No. I wasn't there about my job, I was there about the car wreck. I put down that I'm a waitress on the form that I filled out in the lobby of Dr. Femur's office.  
Q. I guess my question is, ma'am, did you talk about anything other than the car accident when you went to see Dr. Femur?  
A. No. I don't think so.  
Q. Ma'am, you didn't see Mrs. Davis coming up behind you before the accident, did you?  
A. No, I guess I was just looking straight ahead.  
Q. So you wouldn't know if she was stopped right behind you before the accident, would you?  
A. I didn't see her before I felt the impact, no.  
DEFENDANT'S COUNSEL: No further questions, Your Honor.  
THE COURT: Plaintiff may call her next witness.  
PLAINTIFF'S COUNSEL: Thank you, Your Honor. We call Dr. Sara Femur.  
(Sara Femur was sworn in by the Court)  
SARA FEMUR, having been first duly sworn by the Court, testified as follows:  
BY PLAINTIFF'S COUNSEL:  
Q. Doctor, I will remind you that you're under oath?  
A. Yes, sir.

Q. Now, would you, please, introduce yourself to the jury?

A. I'm Dr. Sara Femur; I'm a licensed orthopedic surgeon here in town. I treat injuries and diseases to the muscles, the tendons, and the joints. Most of the patients I see have had some sort of traumatic injury or incident. In this case, I've been called on to help Mrs. Payne with a problem within her neck area.

Q. Now, doctor, please tell the jury about your first meeting with Patty Payne.

A. Well, she was referred to me by her family physician, whom she had seen a few days after the accident. I saw Mrs. Payne in my office on July 12th, which was a couple weeks after the accident.

Now, when I asked her about her history of her injury, she explained to me that she had been rear-ended while stopped at a red light at the intersection of Main and Avenue A.

Q. And what is your diagnosis of Mrs. Payne's current medical condition?

A. Mrs. Payne has a herniated disc in her neck that is causing a nerve impingement with degenerative changes throughout the neck.

In English that means that because of the pain, she's not using her neck muscles like she used to. So she is slowly losing her strength there. And she's also suffering a general weakening of her bones and in the spinal column at the neck. It's a condition that requires surgery.

Q. Are you familiar with the reasonable and necessary medical expenses in this county for the surgery that Mrs. Payne needs, and for the therapy and treatment that will be needed afterward?

A. Yes, I am. In my experience such a surgery-involved treatment would cost about \$35,000.

Q. Do you believe that Mrs. Payne will have any permanent impairment after the surgery?

A. Yes, I do. It may be more difficult for her to do certain things that she's used to doing. I understand that she's a waitress, and I believe that the surgery will leave her with limitations in that job: Such as in her ability to lift heavy trays and so on. And she'll also be limited somewhat in her ability to move her neck.

Q. Thank you, Doctor.

PLAINTIFF'S COUNSEL: Your Honor, I have no further questions at this time. And I pass the witness.

THE COURT: Cross-examination.

DEFENDANT'S COUNSEL: Thank you, Your Honor.

CROSS-EXAMINATION

BY DEFENDANT'S COUNSEL:

Q. Dr. Femur, you previously mentioned that you took Mrs. Payne's history regarding the accident when she first visited you, right?

A. Yes. That's part of the standard procedure when I see a new patient. Basically when a patient gives you a history, she informs a doctor how she was injured and about what kind of pain and what kind of problems she's experiencing on the day of the visit. The history is significant for the doctor to use in diagnosing the cause of a patient's problem.

Q. And when a patient tells you what happened to her, you pretty much have take her word for it, don't you?

A. Yes. I suppose so. I presume that the patient has a good grasp on what's caused her pain.

Q. And when Mrs. Payne told you what she did for a living -- what she did in her daily life -- you took her word for that too, didn't you?

A. Well, we mostly talked about the accident, but I have a general idea about what a waitress does.

Q. Doctor, you testified that there have been many degenerative changes in Mrs. Payne's neck, a weakening of the muscles; isn't that right?

A. Yes. That's what the X-rays and MRI suggest, yes. Now, actually, degenerative changes are best explained as an aging of the bone structure in the neck and in the spinal column in a person's body.

Q. Would you agree with me that the degenerative changes are significant?

A. Yes, that's fair.

Q. Now, is it your testimony, Doctor, that Mrs. Payne's degenerative condition was caused by the accident in June.

A. No. I don't believe I've testified as to the cause of that condition. But I have seen the photographs of the accident, and I would say it's a possibility that the collision caused Mrs. Payne's injuries.

Q. You mentioned, though, that as a waitress, Mrs. Payne is required to lift heavy trays of food and drink; isn't the right?

A. Well, I'd say that's pretty typical for a waitress.

Q. And isn't it also typical for a waitress to do that type of lifting many times a workday?

A. Yes, that's true.

Q. Then, Dr. Femur, isn't it possible that Mrs. Payne could have herniated the disc in her neck due to the repetitive nature of the heavy lifting, and that the herniated disc could have caused the degenerative condition of her neck?

A. Well, I suppose anything is possible. But I didn't get any sense from Mrs. Payne that she had been experiencing such severe pain before the accident.

Q. So, Dr. Femur, what you're simply telling the jury is that you relied entirely on what Mrs. Payne chose to tell you regarding the history of her injuries when you determined her medical condition?

A. Every doctor has to rely upon the patient's candor and honesty with respect to the history in determining the cause of an injury. It's the nature of our profession.

Q. Thank you doctor.

DEFENDANT'S COUNSEL: That's all I have, Your Honor.

THE COURT: Plaintiff may call your next witness.

PLAINTIFF'S COUNSEL: Your Honor, the plaintiff rests her case.

THE COURT: The defendant may call her first witness.

DEFENDANT'S COUNSEL: We call Diane Davis to the stand, Your Honor.

(Diane Davis was sworn by the Court)

DIANE DAVIS,

BY DEFENDANT'S COUNSEL:

Q. Diane, would you, please, introduce yourself to the jury.

A. My name is Diane Davis. I've lived here all my life. And I'm married and have two daughters.

Q. Where do you work?

A. I'm a checker down at the All-Mart. I've been there for 10 years.

Q. Ma'am, where were you going at the time of the accident with Mrs. Payne on June 27 of last year?

A. I was going to work.

Q. And how did the accident happen?

A. Well, I pulled up and stopped at the red light at the intersection of Main and Avenue A. I was behind the car, but I didn't notice anything about the car until the accident. When the light turned green, I saw the car in front of me start to move, so I put my foot on the gas.

Before I knew what was happening, the car in front of me just pulled up and stopped abruptly. I tried to put my foot on the brakes; but I couldn't stop fast enough, so I bumped into the back of the car.

Q. What do you mean by the word "bumped?"

A. Well, the collision was just like a tap -- like I barely touched it.

Q. Mrs. Davis, were you talking on your mobile phone at the time of the accident?

A. Yes, I was.

Q. And how did that affect your concentration?

A. Well, I was still paying attention. My car is an automatic, so I only needed one hand on the wheel. It's just that Mrs. Payne stopped so quickly, I hardly had any time to react.

Q. After you bumped the car in front of you, what happened?

A. Well, I hung up the phone, I got out of my car and checked to see if there was any damage to my car. There was a small scratch on the front bumper, but not much of one.

Q. And what kind of car were you driving at the time of the accident, Mrs. Davis?

A. It was a Mercury Cougar.

Q. Let me ask you to look at what's been pre-marked Defendant's Exhibit 1.

DEFENDANT'S COUNSEL: Your Honor, I believe the plaintiff has already stipulated to the admissibility of this exhibit.

PLAINTIFF'S COUNSEL: We have, Your Honor.

THE COURT: It's admitted.

DEFENDANT'S COUNSEL: May I approach the witness, Your Honor?

THE COURT: You may.

Q. (By the Defense) Mrs. Davis, would you, please, describe to the jury Defendant's Exhibit No. 1?

A. It's a photograph taken of the front bumper of my car shortly after the accident. As you can see, there wasn't very much damage done to the front of my car.

Q. How would you describe the force of the impact?

A. It wasn't too hard. When I saw Mrs. Payne's brake light come on, I started to brake. So, I guess I was slowing down when I hit her, so that helped to reduce the impact. I don't know why her car got so much damage even though mine wasn't.

Q. What happened next?

A. The person in the car that I ran into -- who I now know is Patty Payne -- was sitting in her car screaming that her neck hurt. I went to the driver's side of the car and asked her if she was okay. Eventually, she got out of her car.

Q. Did you talk to Mrs. Payne at that time?

A. Yes. I told her that I was sorry that I bumped into her, but I just didn't think she was going to move that quickly. And I asked her if she was okay. That's all I said.

Q. And what did she say?

A. She said that she was hurt, but she was able to move around and talk to me.

Q. Did anyone call the police or an ambulance?

A. No. I was in a hurry to get to work, and I was fine. And I didn't feel like we needed to call them. Mrs. Payne didn't say anything about it either, so we just gave each other our numbers and left.

Q. When was the next time you saw Mrs. Payne?

A. When I found out about this lawsuit.

Q. Thanks, Mrs. Davis.

DEFENDANT'S COUNSEL: I pass the witness, Your Honor.

THE COURT: Cross-examination?

PLAINTIFF'S COUNSEL: Yes, Your Honor.

CROSS-EXAMINATION

BY PLAINTIFF'S COUNSEL:

Q. Mrs. Davis, you testified earlier that you were in a hurry; isn't that true?

A. Yes, I was trying to get to work.

Q. In fact, you were late, weren't you?

A. A little bit, but I wasn't that far from work.

Q. At the time of the accident, you were talking on your cell phone, weren't you?

A. Yes, just to let my supervisor know that I was a little bit late.

Q. And didn't your shift start around 9:30 a.m.?

A. Yes, it did.

Q. And isn't that the same time that this accident happened?

A. Yes, sir.

Q. And your cell phone is the kind that you have to hold in your hand; isn't this correct?

A. Yes, that's true. But--

Q. And even though you were talking on the phone and driving with one hand, you want this jury to believe that you were able to notice that the light was green, and that my client started to go and then suddenly stopped?

A. Yes. That's how it happened, sir.

PLAINTIFF'S COUNSEL: I have no further questions, Your Honor. I pass this witness.

THE COURT: You may step down. Call your next witness.

DEFENDANT'S COUNSEL: The defense calls John Smith, Your Honor.

(John Smith was sworn in by the Court)

JOHN SMITH

BY DEFENDANT'S COUNSEL:

Q: Mr. Smith, would you, please, introduce yourself to the jury?

A. My name is John Smith. I'm a computer programmer from right here in town.

Q. And where were you at 9:30 a.m. on June 27th of last year?

A. I went to pick up some donuts for my family at the Tasty Cream Donut Shop there on the corner of Avenue A and Main Street.

Q. And what did you observe when you were leaving the shop?

A. Well, as I was grabbing my bag, I heard a screeching of tires, so I looked outside and I saw this Mercury Cougar run right into the back of this smaller black car.

Q. Where were the cars when the impact happened?

A. Well, they were just right outside of the intersection. And then after the wreck, they were a little further out.

Q. Did you happen to see what color the light was at the time?

A. Well, after the cars stopped, I looked up and noticed that the light was green for both cars.

Q. Thank you Mr. Smith.

DEFENDANT'S COUNSEL: I'll pass the witness, Your Honor.

THE COURT: Cross-examination?

PLAINTIFF'S COUNSEL: Yes, Your Honor.

CROSS-EXAMINATION

BY PLAINTIFF'S COUNSEL:

Q. Mr. Smith, you were up late the night before the accident, weren't you?

A. Yes. I had a program due that Monday morning, so I guess I was up till -- I don't know -- 3:00, 3:30 a.m.

Q. And you were at the donut shop at 9:30 in the morning, weren't you?

A. My grandchildren were visiting me at the time. And when they're there, there is no way to sleep in. No matter how late I stay up.

Q. So that means you were very tired that morning, doesn't it?

A. Well I -- I guess so.

Q. And, sir, don't you wear glasses?

A. Sometimes.

Q. Well, do you wear them to drive?

A. Yes.

Q. What about read?

A. No. Not to read.

Q. So you're nearsighted, aren't you?

A. I suppose that's right.

Q. So that means you can't see things from a distance as well without your glasses, doesn't it?

A. Probably true.

Q. Sir, do you realize that it's 150 feet from the door of the Tasty Cream Donut Shop to the middle of the intersection where the accident occurred?

A. Well, that's what I heard since this accident happened.

Q. And you weren't wearing your glasses in the donut shop, were you, sir?

A. No. But let me tell you my eyes aren't that bad just yet. And I can see everything that I've testified here perfectly clear.

Q. Okay. But you've also testified that you looked at the light after the cars had come to a stop; isn't that right?

A. After they came to a stop, I saw the light was green.

Q. Isn't it possible, Mr. Smith, that the light turned green after the impact, but before you looked up at it?

A. Well, I guess. I guess that's possible, yes, sir.

PLAINTIFF'S COUNSEL: No further questions. I pass the witness.

THE COURT: Call your next witness.

DEFENDANT'S COUNSEL: Your Honor, at this time the defendant rests her case.

PLAINTIFF'S COUNSEL: Your Honor, plaintiff closes.

DEFENDANT'S COUNSEL: Defendant closes, Your Honor.

THE COURT: Ladies and gentlemen of the jury, this concludes the evidentiary portion of this case. It is now appropriate for me at this time to give you additional instructions, after these instructions are given along with what is called the Charge of the Court. It will be time for the closing arguments.

THE COURT: Plaintiff's counsel may begin closing arguments.

PLAINTIFF'S COUNSEL: Thank you, Your Honor. May it please the Court, ladies and gentlemen of the jury, counsel: When this trial began, I told you that this case was about distractions. Now, you've heard here today about how a distracted Mrs. Davis slammed her car into Mrs. Payne's car. I also told you that the plaintiff has the burden to prove her case by a preponderance of the evidence.

We've done that. Now Mrs. Davis does not deny that she was rushing to get to work because she was late. She also doesn't deny that she was on a cellular phone when the accident occurred. In short, Mrs. Davis was not paying attention while she was driving. And this resulted, and Mrs. Davis does not dispute this, it resulted in \$50,000 in medical bills and \$1800 in damage to Mrs. Payne's car.

Now, you've also heard Dr. Femur testify that Mrs. Payne may never be the same again. And what about the defendant's witness this -- John Smith. Well, he was up half the night before the accident. And he could have gotten only several hours of sleep, at most.

Now, we all know what happens to us when we don't get enough sleep, we're simply not as sharp as we usually are. But, what's the kicker? Mr. Smith claims that without the aid of his glasses, a man who is nearsighted, that he could see a light 150 feet away.

Now, even assuming that he could see the light, Mr. Smith also testified -- you heard him say -- that he first looked at the wreck and then looked at the light. So he has no idea whether that light changed before he was able to look at it.

Now, Mr. Smith may be a nice guy, I'll grant the defense that, but he's certainly of no use to Mrs. Davis as an eyewitness. The only witness to that accident that wasn't tired, distracted, or even half blind, is Mrs. Payne.

And, you've heard her sworn testimony about how the accident occurred. That she was sitting at the light, and Mrs. Davis slammed her car into Mrs. Payne's car from behind. And that's the best and the clearest testimony you've heard here today, ladies and gentlemen of the jury. And more importantly, it's the truth.

In a short while the Court's going to give you some instructions. And you're going to be asked to answer 2 questions. The first question asks whether Mrs. Davis' negligence proximately caused the accident by a preponderance of the evidence that you've heard here today. The answer to that question is clearly yes.

The second question that you are going to be asked to answer is about how much money Mrs. Davis should have to pay Mrs. Payne for her damages.

You've heard a number of times now that the medical bills are \$50,000, and the car damage is \$1800. Now, you, as the jury, are the only hope for Mrs. Payne. And we trust that you'll make the right decision. Thank you.

THE COURT: Defendant.

DEFENDANT'S COUNSEL: Thank you, Your Honor. May it please the Court, counsel, ladies and gentlemen of the jury: The evidence here today has demonstrated two things. First, the accident didn't happen the way Mrs. Payne said it did. Second, we can't even be sure that the accident caused Mrs. Payne's injuries.

The evidence and common sense tells us that the accident wasn't Mrs. Davis' fault. And she doesn't owe Mrs. Payne anything. First, Mrs. Payne didn't even look in her rear-view mirror. And she has no idea whether Mrs. Davis was stopped behind her before the accident.

However, Mrs. Davis under oath told you that it was only after the light turned green and Mrs. Payne started and then suddenly stopped that the two cars collided. And, yes, Mrs. Davis was on the phone, but she wasn't distracted. And she remembers everything that happened.

And here's another thing; she has a witness: Mr. Smith. Mr. Smith corroborated Diane Davis' testimony. He said that he saw the accident. He saw that the cars were in the middle of the intersection upon impact. And what color was the light? Green.

Now, Mrs. Payne says he was tired, and he didn't have his glasses on so he couldn't see. But Mr. Smith testified without hesitation that he saw the accident. And the light was green. And Mr. Smith has no reason to lie to you.

So you've heard two explanations today; Mrs. Payne's, and Mrs. Davis'. Mrs. Davis has a witness to back up her explanation; Mrs. Payne doesn't. So the preponderance of the evidence of this issue is on Mrs. Davis' side.

How about this one. It took Mrs. Payne five -- count them -- five days to go to the doctor after the accident. She sat here and told you it was a really bad wreck, and she was really

hurt. However, she didn't go to the emergency room; she didn't go to the hospital the next day; or the doctor the day after that, or the day after that.

And when she went to the doctor, she failed to tell Dr. Femur that she was waitress and that she lifted heavy trays over her head time after time after time. And that there were many times she went home from her job with a sore back and neck. Dr. Femur even told you that it's possible that the injuries to Mrs. Payne were caused by her job, not the accident.

So who do you believe, ladies and gentlemen? Mrs. Davis isn't trying to distract you from anything here today. She is trying to get you to focus on common sense. Common sense says a really hurt person goes to the emergency room or a hospital. Common sense says two cars that collide with any amount of force are both badly damaged.

If Mrs. Davis' car had slammed into Mrs. Payne's car as Mrs. Payne testified, there would be damage -- more damage -- to Mrs. Davis' car. Look at the photo. You'd think there would be some damage that you could see on this picture, but there isn't.

Ladies and gentlemen, remember common sense when you look at the Court's charge. Did Mrs. Davis' negligence proximately cause this accident? Common sense says no. Did this bump cause \$50,000 in medical bills, and \$1800 in damage to Mrs. Payne's car? Again, common sense says no.

Ladies and gentlemen, did the accident happen the way Mrs. Payne said it did? Did such a little bump cause all that damage to her body and her car? The answer to both of these questions is clearly, no. Why? Simple common sense. Thank you.

THE COURT: Any rebuttal from plaintiff's counsel?

PLAINTIFF'S COUNSEL: Yes, Your Honor. Thank you. Members of the jury: The defense makes a big deal out of the fact that my client wasn't looking in the rear-view mirror when Mrs. Davis slammed into her. But why would someone stopped at a red light be looking in the rear-view mirror?

. . . Ask yourselves that. You'll see it doesn't make any sense. Now, the other thing that the defense makes a big deal about is the fact that they have two people telling their story, whereas we only have one. However, just because they have more people telling their story doesn't mean that their story is true or mean that they have better evidence.

I've already told you why you should believe my client and not their witnesses. You have heard Mrs. Payne tell you how the accident happened, and it's the truth. We trust that you will answer the questions accordingly. Thank you.

THE COURT: Ladies and Gentlemen of the jury: You have heard all the evidence and you've received the Court's charge and you've heard final arguments from both parties. It is now time in the trial for us to turn the case over to you for deliberation and for you to return a verdict. You may now retire to the jury room and begin your deliberations.

THE COURT: Has the jury reach a verdict?

PRESIDING JUROR: We have, Your Honor.

THE COURT: What say you?

----- [PAUSE] -----

THE COURT: The Court thanks the jury for its time and attention in this case. I remind you that our justice system could not survive unless citizens recognize their responsibility to participate in the jury service. This jury is hereby discharged and court is adjourned.



No. 99-01048-ABA YLD

PATTY PAYNE,	§	IN THE DISTRICT COURT
	§	
Plaintiff,	§	
	§	
v.	§	ANY COUNTY, STATE
	§	
DIANE DAVIS,	§	
	§	
Defendant.	§	350th JUDICIAL DISTRICT

**Court’s Charge to the Jury**

**Members of the Jury:**

This case is submitted to you by asking questions about the facts, which you must decide from the evidence you have heard. You are the sole judges of the credibility of the witnesses and the weight to be given their testimony, but in matters of law, you must be governed by the instructions in this Charge. I shall now give you additional instructions which you should carefully follow during your deliberations.

1. Do not let bias, prejudice, or sympathy play any part in your decisions.
2. In arriving at your answers, consider only the evidence introduced here under oath. That is, what you have seen and heard in this courtroom only, together with the law as given you by the Court. In your deliberations, you shall not consider or discuss anything not in the evidence.
3. You must not decide who you think should win, and then try to answer the questions accordingly. Simply answer the questions, and do not concern yourselves with the effect of your answers.
4. You may render your verdict upon the vote of ten or more members of the jury. The same ten or more must agree upon all the answers made and to the entire verdict. You shall not enter into an agreement to be bound any number less than ten jurors. If the verdict and all of the answers are reached by unanimous agreement, the presiding juror shall sign the verdict for the entire jury. If any juror disagrees as to any answer made by the verdict, only those jurors who agree to all findings shall each sign the verdict.

If it should be found that you have disregarded any of these instructions, it will be jury misconduct and it may require another trial by another jury.

When words are used in this Charge in a sense that varies from the commonly understood meaning, you are given a proper legal definition, which you are bound to accept in place of any other meaning.

After you retire to the jury room, you will select your own presiding juror. The first thing the presiding juror will do is to have this complete Charge read aloud and then you will deliberate upon your answers to the questions asked.

It is the duty of the presiding juror —

1. to preside during your deliberations,
2. to see that your deliberations are conducted in an orderly manner and in accordance with the instructions in this Charge,
3. to write out and hand to the bailiff any communication concerning the case which you desire to have delivered to the Judge,
4. to vote on the questions,
5. to write your answers to the questions in the spaces provided, and
6. to certify to your verdict in the space provided for the presiding juror's signature or to obtain the signatures of all the jurors who agree with the verdict if your verdict is less than unanimous.

When you have answered all of the questions you are required to answer under the instructions of the Judge and your presiding juror has placed your answers in the spaces provided and signed the verdict as presiding juror or obtained the signatures, you will inform the bailiff that you have reached a verdict, and then you will return into court with your verdict.

---

Judge Presiding

## Questions to be Answered by the Jury

Answer "Yes" or "No" to all questions unless otherwise instructed. A "Yes" answer must be based on a preponderance of the evidence. If you do not find that a preponderance of the evidence supports a "Yes" answer, then answer "No." The term "preponderance of the evidence" means the greater weight of credible evidence admitted in this case. Whenever a question requires other than a "Yes" or "No" answer, your answer must be based on a preponderance of the evidence.

### **Question No. 1:**

Did the negligence, if any, of Diane Davis proximately cause the occurrence in question?

"Proximate Cause" means that cause which, in a natural continual sequence, produces an event, and without such cause the event would not have occurred. In order to be a proximate cause, the act (or failure to act) complained of must be such that a person using ordinary care would have foreseen that the event, or some similar event, might reasonably result therefrom. An event may have more than one proximate cause.

**Answer: Yes** \_\_\_\_\_ **No** \_\_\_\_\_

### **Question No. 2:**

If, in answer to Question No. 1, you have answered "yes" then answer the following question. Otherwise, do not answer the following question.

What sum of money, if paid now in cash, would fairly and reasonably compensate Patty Payne for her damages, if any, that resulted from the occurrence in question?

Consider the elements of damages listed below and none other. Consider each element separately. Do not include damages for one element in any other element.

- a. medical care
- b. property damage

Answer in dollar and cents for damages, if any, that were sustained in the past or that in reasonable probability will be sustained in the future:

**Answer: \$**  
\_\_\_\_\_

**Verdict**

We, the jury, have answered the above and foregoing questions as herein indicated, and herewith return same into court as our verdict.

On the first question, we answer \_\_\_\_\_ (yes/no).

On the second question, we answer \$ \_\_\_\_\_.

(To be signed by the presiding juror if unanimous.)

\_\_\_\_\_  
Presiding Juror

(To be signed by those rendering the verdict if not unanimous.)

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____



No. 99-01048-ABA YLD

STATE	§	IN THE DISTRICT COURT
	§	
v.	§	ANY COUNTY, STATE
	§	
DAVID DIAZ	§	360th JUDICIAL DISTRICT

**Statement of Facts**

Prepared by:  
Shirley Baker Career Institute  
Certified Court Reporter  
State of Any

## **The Proceedings:**

THE BAILIFF: All rise. Local County Court of State is now in session. The Honorable Judy Justice presiding.

THE COURT: Thank you. Would the jurors remain standing? I'd like to begin by first saying thank you to each juror for fulfilling your civic duty by serving on this jury. It is your service here today that makes the American legal system the very best in the world. I will now swear you in. Will each member of the jury please raise your right hand?

Do you swear or affirm that you will, a true verdict, render according to the laws as given to you by this Court and the evidence submitted according to the rulings of this Court, so help you God?

(The jury was sworn.)

THE COURT: You may be seated. We will now take opening statements. Prosecution will go first.

THE PROSECUTION: Thank you, Your Honor. May it please the Court, counsel, ladies and gentlemen of the jury.

On May 15th, the defendant, David Diaz, was arrested for possessing two pounds of marijuana; that's a felony in State. And we're going to ask you to find him guilty of that offense.

Now as the prosecutor on behalf of the State, I have what's called the burden of proof in this case. I have to prove to you that Mr. Diaz committed and is guilty of the crime charged beyond a reasonable doubt. When you hear all the evidence, I think you'll agree I've done that.

On May 15th, Lieutenant John Lee of our local police department received a telephone call from a confidential informant that told him that the defendant was in possession of an unknown quantity of marijuana. Lieutenant Lee drove to the defendant's house and sure enough after Mr. Diaz gave him permission to search his car, Lieutenant Lee found a bag containing two pounds of marijuana right in the defendant's trunk.

You'll find out that the defendant intentionally and knowingly possessed that marijuana; that's a crime in any state. And at the close of evidence, I'll come back and talk to you about the consequences of that crime.

Thank you.

THE COURT: Does the defense wish to offer an opening statement at this time?

THE DEFENSE: Yes, Your Honor. May it please the Court, counsel, and ladies and gentlemen of the jury.

It is my distinct privilege to represent David Diaz. David just graduated from Monroe High School with honors. He was a member of the National Honor Society. He was active in student government. And he was and is an exceptional athlete. In fact, David has a scholarship to play basketball at State Christian University.

This case is not about drug-dealing thug as the State would have you believe. This case is about a fine young man who happened to be at the wrong place at the wrong time. And he did a favor for the wrong guy, and maybe he was framed by a so-called friend.

Now you heard about the fateful night from the prosecutor, but you haven't heard the whole story. During the course of this trial, you will learn that there was a party on May 14th for graduating seniors. And that David, like most of his friends, went to the party. At the party, this so-called friend asked David to hold on to a gym bag. And after several minutes when the friend did not return, David walked to his car, placed the gym bag in his trunk for safekeeping. David then walked back to the party, danced, had a good time, and eventually went home and went to sleep.

A few hours later, David was awakened by his father because the police were at the door. The police wanted to search his car. Knowing he had absolutely nothing to hide, David readily agreed and consented to the search. The police then wanted to look in the gym bag. Again, David agreed. And at that time, to David's horror, he learned for the first time that there was marijuana in that gym bag.

Now the United States Constitution says that David is presumed to be innocent, and you are to find David innocent unless the State is able to prove beyond any reasonable doubt that David intentionally and knowingly possessed the marijuana.

Now, did the gym bag contain marijuana? Yes, it did. We concede that point.

But did David intentionally and knowingly possess that marijuana? Absolutely not.

And I am confident that after you hear all the evidence, you will agree with me and return a verdict of not guilty.

Thank you.

THE COURT: State, you may call your first witness.

THE PROSECUTION: The State calls Lieutenant John Lee.

(Lieutenant John Lee was sworn by the Court.)

Lieutenant John Lee, having been first duly sworn by the Court, testified as follows:

DIRECT EXAMINATION

BY THE PROSECUTION:

Q. Lieutenant, please introduce yourself to the members of the jury.

A. My name is Lieutenant John Lee. I have been on the police force for the past 12 years.

Q. Have you ever met David Diaz?

A. Yes, I have. Early on May 15th at his home.

Q. Why were you at his home?

A. I was acting upon a tip from a confidential informant, Mr. Ricky Rat. Mr. Rat told me —

THE DEFENSE: your Honor, I object. It calls for hearsay.

THE PROSECUTION: Your Honor, that goes directly to the Lieutenant's state of mind in conducting the search.

The Court: Objection overruled. I'll allow it. You may continue, Lieutenant Lee.

A. Well, Mr. Rat told me that the suspect may be in possession of an undisclosed quantity of marijuana.

Q. (By the Prosecution) What did you do in response to that tip?

A. I drove to the suspect's home, arriving at approximately 1:50 a.m. My partner and I then went to the front door and rang the doorbell. The defendant's father answered. We informed

him of why we were there. He invited us in and proceeded to wake up his son. Mr. Diaz then returned to the living room.

Q. Is Mr. Diaz in the courtroom today?

A. Yes, he's the gentleman sitting behind the defendant's desk. He's wearing the blue blazer, the tan shirt, and the blue and yellow tie.

Q. What happened once Mr. Diaz came into the living room?

A. I informed him that we suspected that he may be in possession of an undisclosed quantity of marijuana.

Q. What was his response?

A. He first looked at his father and then he looked at me. And then he said he didn't know what we were talking about.

Q. What happened next?

A. I asked the defendant if I could have permission to examine his car. He agreed. My partner and I then accompanied him to where his new Camaro was parked. I asked the defendant if he could unlock the car and open the trunk. He did.

Upon inspection of the trunk, I noticed a small gym bag. I asked the defendant if he would open the gym bag. He did. Upon inspection, I noticed there were five individually wrapped baggies of marijuana.

I then placed the defendant under arrest and advised him of his Constitutional rights.

Q. What, if anything, did the defendant say?

A. I don't recall specifically but he did start to cry. We then placed the defendant in the car and drove him downtown where he was placed in a holding cell.

Q. Did you ever determine how much marijuana was in the defendant's trunk?

A. Yes, Two pounds.

Q. Lieutenant Lee, did you ever attempt to interview the defendant again after he was arrested?

A. Yes. But he told us he wouldn't discuss the matter any further unless he spoke to an attorney.

THE PROSECUTION: I pass the witness.

THE COURT: You may cross-examine the witness.

CROSS-EXAMINATION

BY THE DEFENSE:

Q. Lieutenant Lee, have you ever known my client to be in trouble with the law?

A. No.

Q. Does the police department have a task force on gangs?

A. Yes, we do.

Q. And isn't the purpose of that task force to identify gang members and monitor their activities?

A. Yes, among other things.

Q. Has the task force ever identified David Diaz as a gang member or even as a person who is known to associate with gang members?

A. No, it hasn't. Not to my knowledge, no.

Q. Let me turn your attention to the night of May 15th. You arrived at David's house at 1:50 a.m., didn't you?

A. That's correct.

Q. And was my client cooperative with you the entire time?

A. Yes, he was.

Q. And did you notice whether or not he was under the influence of any kind of drugs or alcohol?

A. No.

Q. Thank you, Lieutenant.

THE DEFENSE: Your Honor, I pass the witness.

THE COURT: Prosecution may call its next witness.

THE PROSECUTION: The State calls Ricky Rat to the stand.

(Ricky Rat was sworn by the Court.)

Ricky Rat, having been first duly sworn by the Court, testified as follows:

BY THE PROSECUTION:

Q. Please tell the jury your name.

A. My name's Ricky Rat.

Q. How old are you?

A. I just turned 20 years old.

Q. Do you know the defendant, David Diaz?

A. Yeah, went to school with him. Also know him from around town.

Q. Did you see the defendant on the night of May 14?

A. Yeah. I saw him at a party outside of town.

Q. Who was at this party?

A. It was a party for a bunch of high school seniors, but there were others there who were like me who wasn't seniors.

Q. Did you see any drugs at this party, sir?

A. Yeah. There were a lot of drugs there, but they weren't really out in the open.

Q. Did you see Tommy Jones?

A. Yeah. Tommy is a member of a gang that I used to run with.

Q. And is Mr. Diaz involved in that gang?

A. Yeah. He's a member of the gang, too.

Q. Are you currently a member of that gang?

A. No, ma'am. I got in some trouble with the law; so as a condition of my probation, I'm not allowed to have anything to do with gang members. So I haven't seen Tommy or David in quite awhile.

Q. Did you talk with Tommy Jones and David Diaz at the party?

A. As a matter fact I did. I was talking to David when Tommy walked up.

Q. What happened while the three of you were standing there?

A. Well, David said to Tommy —

THE DEFENSE: Objection, Your Honor. He's about to give hearsay testimony.

THE PROSECUTION: Your Honor, may we approach?

THE COURT: Come on up.

(Discussion off the record.)

THE COURT: Objection overruled. Go on, Mr. Rat.

A. Well, as I was saying. David said to Tommy, "Hey, man, where's the stuff?" Tommy said, "Not to worry about it. I'll get it."

Q. (By the Prosecution) What happened then?

A. Tommy disappeared for about five minutes and showed back up with a blue gym bag. He gave it to David. David looked inside of it, zipped it up, and threw it over his shoulder.

Q. Did you look in the bag?

A. Yeah, I looked in the bag, I saw about five baggies of weed.

Q. Then what happened?

A. David gave Tommy some money and said, "Thanks, man. I've been waiting on this." I didn't see how much money.

Q. What happened next?

A. I was scared of violating my probation, so I left.

Q. Did you talk to David or Tommy Jones again that night?

A. No.

Q. What did you do after you left the party?

A. Well, called the cops; told them David had the marijuana.

THE PROSECUTION: I pass the witness.

CROSS-EXAMINATION

BY THE DEFENSE:

Q. Ricky Rat, are you what the police call a "confidential informant"?

A. I don't know. I know I gave them some information about David.

Q. Yes. And in exchange for that information, you got a reduction in the terms of your probation, right?

A. They said they might be able to work something out.

Q. The more information you gave them, the more they shortened your probation; isn't that right?

A. I guess so, yeah.

Q. You know a great deal about drugs, don't you Mr. Rat?

THE PROSECUTION: Objection, argumentative.

THE COURT: Sustained. Watch it, counsel.

THE DEFENSE: Thank you, Your Honor.

Q. (By the Defendant) Mr. Rat, weren't you convicted of possessing crack cocaine?

A. Yeah.

Q. In fact, that's why you're on probation today, isn't it?

A. Yeah.

Q. In fact, you spent a short amount of time in prison as a result, didn't you?

A. Yes, I did.

Q. You don't want to go back to jail, do you?

A. No, of course not.

Q. You'd like for your probation to be over as quick as you can?

A. Yeah.

Q. By the way, Mr. Rat, didn't you know David Diaz back in high school?

A. Yeah, I knew him.

Q. But you never graduated from high school, did you?

A. No.

Q. In fact, before you were kicked out of high school you played basketball, didn't you?

A. Yeah.

Q. But isn't it true that David Diaz replaced you in the starting line up?

A. No, that's not how it happened.

Q. Well, you'll at least admit that you were a starter only until David Diaz became a starter?

A. That doesn't mean anything.

Q. And you're still angry about that, aren't you?

A. No.

THE DEFENSE: No further questions, Your Honor.

THE PROSECUTION: Your Honor, the State rests.

THE COURT: Does the Defendant wish to call any witnesses?

THE DEFENSE: We do, Your Honor. The Defense calls David Diaz.

(David Diaz was sworn by the Court)

David Diaz, having been first duly sworn by the Court, testified as follows:

BY THE DEFENSE:

Q. David, please introduce yourself to the jury.

A. My name is David Diaz. I live here in town with my parents and two little sisters, Mary and Lisa.

Q. The jury has already heard that you were a senior when you were arrested. Did you graduate, David?

A. Yes, sir. I got my diploma. I didn't get to attend the graduation ceremony because of all this.

Q. How did you do in school?

A. Pretty well, sir. I was an honor graduate and a member of the National Honor Society.

Q. Besides basketball, what other activities were you involved in at Monroe High School?

A. I was vice president of the Senior Class. I was officer in the Fellowship of Christian Athletes, and I participated in football and ran track. And I was fortunate enough to receive a full scholarship to play basketball at TCU.

Q. What are your plans for a major?

A. I've always wanted to be a teacher. My dad was a teacher and now he's a principal at a junior high. My mother is also a teacher. I guess I've always kind of followed their footsteps, and I always wanted to help young people after I got out of college.

Q. David, I take it that you recall the night of May 14th?

A. Yes, sir. I'll never forget it.

Q. How did that evening begin?

A. Well, I went to a party at a barn outside of town; and there were a lot of people there, maybe 2 or 300.

Q. Did you see any drugs or alcohol at the party?

A. I didn't see any drugs. I did see some people drinking alcohol.

Q. David, did you drink any alcohol that night?

A. No. I don't do drugs or drink alcohol

Q. Do you know this "Ricky the Rat"?

A. Yes, sir. I know Ricky Rat.

Q. Did you speak to him at the party?

A. No, I didn't speak to him at the party. In fact, I haven't seen him since he got kicked out of school.

Q. What about this Tommy Jones? Do you know him?

A. Yes, I know Tommy. He graduated a year ahead of me and was on the basketball team with me. I haven't seen him since he graduated from school last year. I seen him a couple of times around the holidays. He was at the party. I talked to him.

Q. What did you-all talk about?

A. Well, you know, like, Hi. How are you doing? That kind of stuff. Just talked for a few minutes.

Q. Did you see Tommy later at the party?

A. Yes, sir. About an hour and a half after the first time.

Q. What happened next?

A. Well, I was standing around inside the barn where the music was loud. And Tommy came up to me and he was carrying his blue gym bag and he said, "Hey, man, can you hold on to this for a few minutes?" I did for 15 or 20 minutes, and he never came back.

Q. David, I want you to look at the jury and tell them whether or not you knew what was in that gym bag?

A. I did not know what was in that bag.

Q. Well, David, didn't you look in the gym bag?

A. No, I did not.

Q. Why not?

A. Well, I don't know. Probably because it wasn't my bag.

Q. What did you do after you put the gym bag in the trunk of your car?

A. I went back to the party, and later on I went home and went to bed. A few moments later, my dad came and woke me up and told me that the police were there.

Q. What happened then?

A. The police said they had a report I had some marijuana.

Q. How did that make you feel?

A. I thought it was a big joke or something like a high school prank; and when I saw the officer's face, I got real scared.

Q. And what happened then?

A. They told me to unlock the trunk of my car and they unzipped the bag and placed me under arrest.

Q. David, you heard Officer Lee testify that you started crying when you were arrested. Is that true?

A. Yes.

Q. Why is that?

A. Like I said, I was scared. My dad was standing right there in front of me, and he was so proud of me. I didn't understand why somebody would give me drugs. And I started to worry about whether I could still get into college. I guess — I guess my whole life was crumbling down. I couldn't help it.

Q. Thank you, David.

THE DEFENSE: Your Honor, I pass the witness.

CROSS-EXAMINATION

BY THE PROSECUTION:

Q. Mr. Diaz, you did receive a gym bag from Tommy Jones, didn't you?

A. Yes.

Q. And that gym bag had marijuana in it, didn't it?

A. That's what the police said. I didn't know that I got the bag from Tommy.

Q. My question is: That gym bag had marijuana in it, didn't it?

A. Yes.

Q. You say you never looked in the bag?

A. That's correct.

Q. Yet you held on to it for 15 or 20 minutes?

A. Yes.

Q. And that's when you decided to put it in your car?

A. Yes.

Q. Did you have your windows up or down that night?

A. They were down.

Q. So wouldn't it have been easier to just place the bag in the seat of your car?

A. Well, I didn't want it to get stolen. I didn't know what was in it.

Q. So instead, you walked to the back of your car; you unlock your trunk, put the bag in the trunk and then closed it?

A. Yes.

Q. Sir, this car of yours is a brand-new Camaro; is that correct?

A. Yes.

Q. When did you get this car?

A. I got the car for my birthday last year.

Q. When is your birthday?

A. April 15th.

Q. Does it have a stereo in it?

A. Yes, a Pioneer radio/CD player.

Q. Did you have any CD's in your car?

A. Yes.

Q. Did you have anything else in the car?

A. My senior ring and also my watch.

Q. You testified that you put the bag in the trunk because you didn't want it to get stolen; is that correct?

A. That's true.

Q. And the windows were down in your car; but you weren't concerned about your stereo, your class ring, your watch or any of your CD's?

A. No.

Q. But you were, instead, concerned about a gym bag that you didn't know anything about the contents?

A. Well, it wasn't mine. I wanted to make sure it was safe.

Q. Sir, on the night of this party, you knew that Tommy Jones was a member of a gang, didn't you?

A. I'm not sure. I mean, I had heard he was at one time.

THE PROSECUTION: I pass the witness.

THE COURT: Defense may call its next witness.

THE DEFENSE: Thank you, Your Honor. The Defense calls Skylar Jackson.

(Skylar Jackson was sworn by the Court.)

Skylar Jackson, having been first duly sworn by the Court, testified as follows:

BY THE DEFENSE:

Q. Mr. Jackson, please introduce yourself to the jury.

A. Yes, sir. My name is Skylar Jackson.

Q. Do you know David Diaz?

A. Yes, sir. David and I have been friends since I moved to town. We used to play sports together and we hung out together quite a bit.

Q. Do you consider David to be a good friend?

A. Yes, sir. He's my best friend.

Q. Where were you on the night of the senior party?

A. David and I went to that party, sir.

Q. Did you and David leave the party together?

A. No, sir. I left it with another friend of ours. I was tired and wanted to go home, and I knew David wasn't quite ready to leave yet.

Q. Mr. Jackson, do you know a man by the name of Tommy Jones?

A. Yes, sir. David and I used to play basketball with him.

Q. Did you see Tommy at the party?

A. No, sir.

Q. Do you know this guy by the name of Ricky Rat?

A. No, sir. I don't believe I met anybody by that name.

Q. To your knowledge, is David Diaz a member of any gang?

A. No, sir.

Q. Have you ever known David to drink alcohol or do any kind of drugs?

A. No, sir. David was very adamant about not drinking or doing drugs. He put a lot of pressure on the other athletes to train hard and to not drink or abuse their bodies.

Q. There's been some testimony, Mr. Jackson, that David left the windows down in his car when you-all went to the party. Do you remember that?

A. Yes, sir.

Q. Was that unusual for David?

A. No, sir. David was very trusting of others. He always left his car unlocked. Many times, left the keys even in it.

Q. Mr. Jackson, do you believe that David has done what he is accused of doing?

A. No, sir. I know that he didn't.

Q. How do you know that?

A. Because I know David. He's not that kind of person. He wouldn't do something like that in a million years.

THE DEFENSE: Pass the witness, Your Honor.

THE COURT: Cross-examination.

#### CROSS-EXAMINATION

#### BY THE PROSECUTION:

Q. Mr. Jackson, you don't want to see Mr. Diaz get in trouble, do you?

A. No, ma'am, I don't.

Q. You don't want to see him go to jail, right?

A. No.

Q. But you weren't there when Tommy Jones handed him that gym bag, were you?

A. No, ma'am, I wasn't.

Q. So you don't know whether or not he knew what was in the bag, do you?

A. No, ma'am.

Q. And obviously, sir, you can't know what Mr. Diaz was thinking when he put that bag of marijuana in the trunk of his car?

A. No.

Q. Let's talk a little bit about your relationship with David Diaz. Mr. Diaz didn't run track during the spring of your senior year, did he?

A. No, he didn't but I did.

Q. And as a result of that, you didn't spend as much time together during the spring of that year, did you?

A. Not as much as we had before.

Q. What did David do during the spring of that year instead of running track?

A. He was working on his basketball, getting ready for TCU.

Q. But you didn't actually see him ever working out, did you?

A. No, ma'am, because I was running track.

Q. So you can't say with certainty what he was doing in his spare time, can you?

A. No.

Q. Isn't it true that during your senior year, Mr. Diaz started wearing more flashy clothes?

A. He seemed to have some new clothes, yes.

Q. Do you know who he was hanging out with?

A. No, ma'am, I don't. I saw him drive around town one time with some people I didn't know.

THE PROSECUTION: That's all I have.

THE COURT: Defendant will call his next witness.

THE DEFENSE: Your Honor, the Defense rests.

THE PROSECUTION: The State closes, Your Honor.

THE DEFENSE: Defense closes.

THE COURT: Ladies and gentlemen of the jury, this concludes the evidentiary portion of this case. It is now appropriate for me at this time to give you additional instructions. After the instructions are given along with what is called the charge of the Court, it will be time for closing arguments.

THE COURT: The State may begin closing arguments.

THE PROSECUTION: Thank you, Your Honor. Ladies and gentlemen, this is a very simple case. The defendant, David Diaz, had two pounds of marijuana in the trunk of his car. He knew that he had it in his car; and when he got caught, he knew he was guilty.

Now, Mr. Diaz doesn't dispute that the drugs were in his car. His only defense is that he didn't know what was in the gym bag. Now you have to decide whether he intentionally and knowingly possessed that marijuana. When we began this morning, I told you that the State has the burden of proof in this case. We had to show you beyond a reasonable doubt that the defendant, Mr. Diaz, intentionally and knowingly possessed marijuana.

We have met our burden. You heard Ricky Rat say that he saw David Diaz and Tommy Jones at the party. He saw Mr. Jones give David Diaz the bag. He saw Mr. Diaz look in the bag, give Tommy Jones some money, and then close the bag. You even heard him tell you that he saw what was in the bag.

Is there any doubt that the defendant knew what was in that bag? Absolutely not. There's no doubt that Mr. Diaz went to that party looking for a bag full of dope, that he knew what was in it when he got it, and that he paid Mr. Jones for it.

This is a difficult case because Mr. Diaz is not what he appears to be. I'll submit to you that he's living a lie. Even his best friend testified that during the spring of his senior year he changed a bit. He got a new car, he started hanging out with new friends, he started dressing more hip. He was living a secret life but that life was not secret to him.

Mr. Diaz intentionally and knowingly possessed that bag of marijuana. When you deliberate, ladies and gentlemen, there is only one verdict you can reach. He's guilty of the offense charged. It's your duty, it's your obligation, and there's no doubt about it. Thank you. Thank you.

THE COURT: Does the defendant have a closing statement?

THE DEFENSE: Yes, Your Honor. Ladies and gentlemen of the jury, David Diaz is the kind of guy many parents would be proud of. He's an honor student, a Christian, a leader of his peers, a college athlete. The State would have you believe that he's some kind of drug dealer, guilty of intentionally and knowingly possessing marijuana.

In my view, David is guilty but of being naive and gullible for agreeing to hold on to this gym bag from his so-called friend. Turned out to be a bad decision, poor judgment on his part but not a crime.

Now, the State has acknowledged the heavy burden it has to overcome David's strong presumption of innocence. The reason why the State has such a heavy burden is because David's freedom and his future hang in the balance.

Did David possess the marijuana that was found in the gym bag? Yes, he did.

But did the State prove to you beyond any reasonable doubt that David knew what was in the bag and that he intentionally possessed the marijuana? Not even close.

Consider the State's evidence. The State's entire case falls upon the shoulders of a convicted felon who has at least two reasons to lie to you here today. A man who was convicted of possessing crack cocaine; a man who was kicked out of high school and lost his place as a starter on the basketball team to David; a man who could even the score with David and reduce his probation time simply by making up the story that he told you here today. Think about it. The only evidence that the State had to offer in an attempt to prove that David knew what was in the bag was the testimony of "Ricky the Rat." And I submit to you that Ricky Rat is not a credible person. I submit to you that the freedom of this young man should be compromised based on that kind of testimony and that of a case.

And now the future of David Diaz is in your hands. Think very carefully about the devastating impact a wrong decision will have on this boy's life. A conviction will surely destroy his future and shatter his dreams.

But when you return a verdict of not guilty, you will remove this cloud over his head; and you will restore him the promise that David Diaz has shown all his life.

Thank you.

Thank you, Your Honor.

THE COURT: Does the State wish to offer a rebuttal?

THE PROSECUTION: Yes, Your Honor. Very briefly.

Defense counsel used two words, "naive and gullible." They want you to believe that he was duped into taking that gym bag.

Ladies and gentlemen, don't you be duped by this act of innocence. Mr. Diaz intentionally and knowingly possessed that marijuana. He knew what he got and he got what he paid for. Your only verdict can be guilty.

Thank you.

THE COURT: Ladies and gentlemen of the jury, you have now heard all the evidence, you have received the Court's Charge; and you have heard final arguments from both parties. It is now the time in the trial when we hand the case over to you for deliberation and for you to return a verdict. You may now retire to the jury room for your deliberations.

THE COURT: Has the jury reached a verdict in this case?

PRESIDING JUROR: We have, Your Honor.

THE COURT: What say you?

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[PAUSE]

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THE COURT: The Court thanks the jury for its time and attention in connection with this trial.

I remind you that our justice system could not survive unless citizens recognize their responsibility to participate in jury service. The jury is hereby discharged and court is dismissed.



No. 99-01048-ABA YLD

STATE	§	IN THE DISTRICT COURT
	§	
v.	§	ANY COUNTY, STATE
	§	
DAVID DIAZ	§	360TH JUDICIAL DISTRICT

### **Court's Charge to the Jury**

#### **Members of the Jury:**

The Defendant, David Diaz, is charged with the offense of possession of a useable quantity of marijuana on or about May 15, in Any County, Any State. The Defendant has pleaded not guilty.

1. Our law provides that a person commits an offense if he knowingly or intentionally possesses a useable quantity of marijuana. The term "possession" means the actual care, custody, control, or management of the marijuana. Possession is a voluntary act if the possessor knowingly obtains or receives the item possessed or is aware of his control of the item for a sufficient time to permit him to terminate his control.
2. A person acts intentionally with respect to the nature of his conduct when it is his conscious desire to engage in the conduct. A person acts knowingly with respect to the nature of his conduct when he is aware of the nature of his conduct.
3. Now, if you find from the evidence beyond a reasonable doubt that on or about May 15, in Any County, State, the Defendant, David Diaz, did intentionally or knowingly possess a useable quantity of marijuana, and that such useable quantity consisted of five pounds or less but more than four ounces of marijuana, then you will find the Defendant guilty of possession of a useable quantity of marijuana in an amount of five pounds or less but more than four ounces, as he has been charged.

If you have a reasonable doubt, you will find the Defendant not guilty.

4. All persons are presumed to be innocent and no person may be convicted of an offense unless each element of the offense is proved **beyond a reasonable doubt**. The fact that a person has been arrested or indicted for, or charged with the offense does not give rise to an inference of guilt at his trial. The law does not require a Defendant to prove his innocence or produce any evidence at all. The presumption of innocence alone is sufficient to acquit the Defendant, unless the jurors are satisfied beyond a reasonable doubt of the Defendant's guilt after careful and impartial consideration of all of the evidence.

The prosecution has the burden of proving the Defendant guilty, and it must do so by proving each and every element of the offense charged beyond a reasonable doubt, and if it fails to do so, you must find the Defendant not guilty.

It is not required that the prosecution prove guilt beyond all possible doubt; it is required that the prosecution's proof excludes all "**reasonable doubt**" concerning the Defendant's guilt.

A "**reasonable doubt**" is a doubt based on reason and common sense after a careful and impartial consideration of all the evidence in the case. It is the kind of doubt that would make a reasonable person hesitate to act in the most important of his own affairs. Proof beyond a reasonable doubt, then, must be proof of such a convincing character that you would be willing to rely and act upon it without hesitation in the most important of your own affairs.

In the event you have a reasonable doubt as to the Defendant's guilt after considering all the evidence before you, and these instructions, you will acquit him and say by your verdict "Not Guilty."

5. You are the exclusive judges of the facts proved, of the credibility of the witnesses, and the weight to be given their testimony. You must, however, be governed by the law you shall receive in these written instructions.
6. After you retire to the jury room, you should select one of your members as your Presiding Juror. It is his or her duty to preside at your deliberations, vote with you, and, when you have unanimously agreed upon a verdict, to certify to your verdict by using the appropriate form and signing the same as Foreperson. **Your verdict must be unanimous.**
7. During your deliberations in this case, you must not consider or discuss any matters not in evidence before you. You should not consider nor mention any personal knowledge or information you may have about any aspect of this case which is not shown by the evidence.
8. Your sole duty at this time is to determine the guilt or innocence of the Defendant in this case and restrict your deliberations solely to the issue of guilt or innocence of the Defendant.

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Judge Presiding

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**Verdict**

We, the jury, on the charge of possession of a useable quantity of marijuana, find the defendant, David Diaz, \_\_\_\_\_ (guilty/not guilty).

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Program  
Evaluation Form

(To be completed by teacher)

Date(s) of Program: \_\_\_\_\_

School Address (Street, City, Zip): \_\_\_\_\_

School Phone: \_\_\_\_\_

Teacher: \_\_\_\_\_

Grade Level Taught: \_\_\_\_\_

Number of Students Participating in Program: \_\_\_\_\_

Volunteer Attorney(s): \_\_\_\_\_

Which mock trial did you present to your class?

Civil \_\_\_\_\_ Criminal \_\_\_\_\_

What verdict(s) did your class reach?

	Jury One	Jury Two
Civil Trial:		
Question 1 (Yes/No)	_____	_____
Question 2 (Damages)	\$ _____	\$ _____
Criminal Trial:		
Guilty/Not Guilty	_____	_____

How many class days did you take to present the program? \_\_\_\_\_

Rate the following on a scale of 1 to 5, using 5 as the highest rating:

- 1. The objectives of the program were met. \_\_\_\_\_
- 2. The material used in the session were helpful. \_\_\_\_\_
- 3. My students found the program interesting and educational. \_\_\_\_\_
- 4. The written materials are easy to use. \_\_\_\_\_
- 5. The introductory video is interesting and informative. \_\_\_\_\_
- 6. The mock trial video is well-produced. \_\_\_\_\_
- 7. The program made my students more interested in jury service. \_\_\_\_\_
- 8. The volunteer attorney(s) was/were adequately prepared. \_\_\_\_\_
- 9. I will implement this program next year. \_\_\_\_\_

Additional Comments:

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Please mail completed form to: American Bar Association YLD  
321 North Clark  
Chicago, IL 60610  
Or fax to: (312) 988-6231  
For questions call: (312) 988-5611



