

## **Donald Trump trial: why it took so long to select a jury and how the process is different to the UK**

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Twelve jurors have now been selected and sworn in for Donald Trump's high profile trial in New York, the first criminal trial of a former president.

Initially 500 jurors were evaluated, with 96 being invited to the courtroom. From this, more than half were dismissed after they claimed they could not be impartial. On day three, one of the selected jurors asked to stand down after she became concerned about her name becoming public. The judge has ordered that jury names and identifying material are not to be published by the media, but jurors are clearly worried about the consequences of their participation.

Well before being called to attend the court, these potential jurors would have been asked to fill in a qualification questionnaire (to check they fulfil requirements such as being a US citizen) as part of the selection. After this, prospective jurors who were summoned to attend court had to answer other questions. The questions in court can range from which radio stations or podcasts they listen to, to their marital status and what they do for a living.

Potential jurors in this trial were also asked about their views on Trump. Lawyers for both the prosecution and defence will also ask additional questions of the prospective jurors. This is all done to deselect biased jurors. In some cases, Trump's lawyers had even looked through old social media posts as grounds to exclude a juror.

In this extremely high-profile trial of an internationally known figure, jury selection went particularly slowly before the 12 jurors were in place, because of the difficulty of finding an impartial jury. Trump, who is currently running for president, is accused of falsifying business records to disguise a "hush-money" payment made to Stormy Daniels, a former adult film star, not long before the 2016 election.

## **How are jurors selected?**

The US takes a different approach to juror selection, or deselection, compared to the UK, for instance. In the US, they use the process of voir dire. Voir dire comes from the French "to speak the truth". Jurors are deselected through voir dire, through questioning. With each being replaced with a prospective juror.

There are normally about 35 to 40 prospective jurors. This process repeats until a group of about 14 (12 jurors and two alternative jurors) are selected. This can deviate, six alternates are going to be chosen for the Trump trial.



Jury selection is different in the US to Scotland, England and Wales. Here a jury is sworn in for a case in Portland, Oregon. David R. Frazier Photolibrary, Inc. /Alamy

Prospective jurors are initially sourced from state voter lists to trials in their own state. Other lists such as those of licensed drivers can also be used to ensure a representative sample. Individuals selected from these lists will be sent (either through mail or online) a qualification questionnaire.

Prospective jurors who have been summoned to the court are either questioned by the judge or by the prosecution and defence lawyers. The whole point of juror deselection is to remove jurors who may be biased against or towards the prosecution and defence. The process of removing biased jurors may be justified. Professors Kurt Carlson and Edward Russo, who specialise in research on jury behaviour, found in a mock juror study that jurors start with a preference for either the prosecution or the defence, and that this shapes how they evaluate the rest of the evidence. With jurors who favour guilty verdicts seeing prosecution evidence favourably and either distorting or ignoring the defence evidence – jurors who favour not guilty verdicts show the opposite pattern of results.

During the jury selection process, lawyers may ask general questions such as “do you know the defendant?” or more specific ones such as “have you ever been involved in a protest?”. This is done to assess if the prospective jurors can put aside their biases.

A discussion of voir dire.

Based on the answers to these and similar questions, lawyers may challenge prospective jurors and dismiss (or remove) them for cause. Lawyers will dismiss jurors for cause if they have evidence that the juror is likely to be biased. Even more interestingly, however, is that lawyers also have a limited number of peremptory challenges. This allows them to deselect a juror without giving a reason. Thus they do not have to provide evidence of bias.

However, there are a number of issues with voir dire. First, it has been proposed by some academics that lawyers are motivated to win rather than impartiality – making many sceptical of the fairness of the process.

Second, many of the peremptory challenges are based on hunches rather than modern scientific instruments developed by psychologists. Meaning that rather than making the process of jury selection systematic, the decisions made during voir dire may be based on the biases of the legal professionals involved.

Likewise, psychologists have known for a while that members of the public often answer questions in socially desirable ways, despite not having beliefs or behaviours consistent with said answers. Therefore, some jurors will not be dismissed for cause despite being biased because they know how to answer in an acceptable way.

## **Scotland and England and Wales**

In comparison, jurors in England and Wales and Scotland are selected to be summoned randomly from the electoral register. The court clerk (England and Wales) or clerk of court (Scotland) will then empanel (or select) the jury by randomly selecting names from a ballot.

There are some circumstances by which the prosecution and defence can challenge the empanelment of a juror. However, this is rare and would only be done where it was seen as essential.

In terms of jury selection, the fevered atmosphere and numerous challenges seen around the Trump trial have highlighted some of the weaknesses of a system under the media spotlight, its potential to be manipulated, and how it could be offputting to those who are called to jury service.