

A man was charged with first-degree murder. Two lawyers were appointed to represent him because the prosecution planned to seek the death penalty. On the first day of trial, the air-conditioning malfunctioned in the courtroom, so the judge directed that the selection of the jurors take place in his chambers. Because of the large number of potential jurors, the judge directed that only one lawyer for the prosecution and one for the defense participate in the jury selection process. The defendant remained in the courtroom during the questioning of the jurors. Once the jury was selected, the trial was postponed until the next day, when the air-conditioning was again working.

Did the court's jury selection process violate the defendant's federal constitutional rights?

- A. No, because a defendant's confrontation rights are limited to witnesses rather than jurors.
- B. No, because there was good cause to conduct jury selection outside the defendant's presence.
- C. Yes, because excluding the defendant undercut the presumption of innocence.
- D. Yes, because jury selection is a critical stage at which a defendant is entitled to be present.

## Explanation:

The **Sixth Amendment right to confrontation** guarantees a criminal defendant's right to be **present at all critical stages of trial**—ie, any event in a criminal proceeding that holds significant consequences for the defendant. **Jury selection** is a critical stage since the defendant's absence would deprive him/her of the opportunity to evaluate potential jurors in person and help decide whom to challenge. Therefore, a defendant has the right to be present during jury selection unless he/she:

**waives** this right by voluntarily leaving the proceedings *or* is **excluded for good cause** (ie, misconduct) after receiving a warning from the court. Here, jury selection occurred in the judge's chambers due to a malfunctioning air-conditioning system. Due to the limited space in the judge's chambers, the defendant had to remain in the courtroom. But since the defendant did not voluntarily leave or engage in misconduct, there was no good cause for his exclusion from the jury selection process **(Choice B)**. Therefore, that exclusion violated his right to confrontation.

**(Choice A)** The confrontation clause gives criminal defendants the right to be personally present during *all* critical stages of trial—including jury selection—not just to confront witnesses.

**(Choice C)** Criminal defendants are presumed innocent until the prosecution proves their guilt **beyond a reasonable doubt**. Therefore, excluding the defendant did not undercut this presumption since it had no effect on the prosecution's burden of proof.

## Educational objective:

The Sixth Amendment confrontation clause guarantees a criminal defendant the right to be present during all critical stages of trial—including jury selection. A defendant can only lose this right if he/she leaves voluntarily or is removed for good cause after receiving a warning from the court.

## References

U.S. Const. amend. VI (confrontation clause).

Lewis v. United States, 146 U.S. 370, 372–73 (1892) (recognizing that the confrontation clause guarantees a criminal defendant's right to be personally present during every critical stage of trial).

Illinois v. Allen, 397 U.S. 337, 338 (1970) (holding that a defendant's right to be present at every stage of trial is lost when the defendant engages in disruptive behavior).

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## **Sixth Amendment right to be present at trial**

