Fall 2003

Seminar on the Contemporary American Jury
(522.01) (2 hrs)
Professor: Neil Vidmar

The jury plays a central part in American civil and criminal law. How it functions is a critical issue, not only with the extent to which justice is obtained in individual cases decided by the jury, but because it sets the standards around which cases are settled. It is an institution that has been surrounded by controversy throughout its history, and today is no exception. The jury has been praised as a “palladium of liberty” and condemned as incompetent, irresponsible and biased. This seminar will examine the functions and performance of the contemporary civil and criminal jury system. A strong emphasis will be placed on empirical research assessing how the jury carries out its legally defined role but its contemporary and historical legal position will be examined as well. It is expected that by studying about jury behavior students will also gain insight into how to communicate with juries and how to address policy issues that arise with respect to the role of the jury in the criminal and civil justice systems.

Student responsibilities:

1. Read assigned material before (!) class.
2. Participate in class. Be prepared to discuss the readings
3. Do research and make assigned group presentation to the class.
4. Write a paper on some aspect of the jury system.

Student evaluation:

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<tr>
<th>Section</th>
<th>Percentage</th>
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<tr>
<td>Class participation</td>
<td>30%</td>
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<td>Group Research and Presentation</td>
<td>30%</td>
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<td>Paper</td>
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Course material:

There is no text. Course readings are on reserve and on class web site or can be downloaded from Westlaw.
Calendar

August 27: Historical Introduction to the Jury


September 3: How Jurors Think (Video discussion)


[Note: Video and discussion may be continued into next class]

September 10: Modern Images of the American Jury (and some Data)

A Little Historical Note:

"The consequent uncertainties as to the facts have given to the jury in those [automobile accident] cases where it determines the questions of fault an almost unrestricted power to choose between litigants at the bar. And the notorious tendency of that body to prefer the plaintiff, especially as against the defendant suspected of carrying insurance, has made 'taking the case away from the jury' one of the prime objectives of defense counsel."

Richard M. Nixon (Duke ’37), Changing the Rules of Liability in Automobile Accident Litigation. 3 LAW AND CONTEMPORARY PROBLEMS 476 (1936)


Vidmar, Beale et al.: Should We Rush to Reform the Criminal Jury: Consider Conviction Rate Data, 80 JUDICATURE 286 (1997).


September 17: Jury Composition Issues


* Rose, The Peremptory Challenge Accused of Race or Gender Discrimination? Some Data from One County, 23 LAW AND HUMAN BEHAVIOR 695 (1999).


September 24: Multiple Topics: A Conversation with Nancy King, Lee S. and Charles A. Speir Professor of Law, Vanderbilt Law School.


King, Batson for the Bench? Regulating the Peremptory Challenge of Judges, 73 CHI-KENT L REV. 509.


King, Nameless Justice: The Case for the Routine Use of Anonymous Juries in


King, Silencing Nullification Advocacy Inside the Courtroom and Outside the Courtroom, 65 U CHICAGO LAW REVIEW 433 (1998).

October 1  Jury Bias and Judicial Remedies

*Vidmar, Case Studies of Pre-and Midtrial Prejudice in Criminal and Civil Litigation, 26 LAW AND HUMAN BEHAVIOR 73 (2002).
http://www.law.duke.edu/pub/vidmar/pretrialPublicity.pdf


October 8  Jury Competence: General Issues


Sperlich: The case for preserving trial by jury in complex litigation, 65
October 15  FALL BREAK

October 22  A Conversation with Valerie Hans, Professor of Sociology and Criminal Justice, University of Delaware. Author of BUSINESS ON TRIAL: THE CIVIL JURY AND CORPORATE RESPONSIBILITY (2000)


October 29: More on Complex Cases and Complex Evidence


November 5: Deciding Death, Part 1: The Guilt Phase


*Eisenberg et al., The Deadly Paradox of Capital Jurors 74 SOUTHERN CALIFORNIA LAW REVIEW 371 (2001).


November 12: Deciding Death, Part 2: Deciding Life or Death


November 19: Research Presentations

Groups 1 and 2

November 25: Research Presentations

Groups 3 and 4