Law 7162: Contemporary American Jury

Professor Valerie Hans, Cornell Law School

Spring 2011

Course Syllabus

Course Description

The jury plays a central but controversial role in the American legal system. It's praised by many as a bulwark of freedom and democracy. In the recent past, a number of other countries have adopted the American tradition of citizen participation in legal decision making. Yet others criticize the use of laypersons in the form of the jury as ill-conceived. Critics charge the jury with being incompetent, unpredictable, and biased; they believe that significant legal decisions are best made by legal experts. The claims have taken a new twist in the last few years, with news stories about jurors googling their way to prejudicial information, even posting and twittering their prejudgments.

This course examines and evaluates these claims about the institution of the jury, drawing on the work of legal scholars and social scientists. This course begins with a discussion of contemporary debates over the jury's role and abilities in both the civil and criminal justice systems. Topics to be explored include: jury selection; the use of jury consultants; juror perceptions of attorneys, evidence, and experts; individual and group decision making processes; jury instructions; jury deliberations; damage awards; juries in death penalty cases; and jury reform. By studying legal and empirical scholarship about the jury, seminar participants should develop insights into jury trial functioning and policy debates over the jury’s role.

We’ll begin the course by exploring the contemporary controversies over the jury's role and abilities. To place the modern American jury in perspective, we will review historical developments in the institution of the jury in early England and in the United States, and examine the mechanisms other countries employ to inject lay voices into the justice system.

The jury is only as strong as the individuals who make it up, so the selection of jurors is a critically important topic, and one in which lawyers are able to play a significant role. We will look at the process of obtaining jury pools from the general population, and at the courtroom procedures designed to select fair and impartial juries. We’ll assess the growing use and effectiveness of jury trial consultants.

We will then turn to an evaluation of how individual jurors arrive at their judgments, and how the collective views of six or twelve jurors are combined into group decisions about criminal responsibility and civil liability as well as damage awards and criminal punishment. We will examine assumptions about jury decision making implicit or explicit in judicial opinions about jury trial procedures. We’ll also explore the use and impact of jury trial reforms.
By the end of the course, you should have sufficient background and knowledge about the jury to reach your own verdict about this perennially controversial institution.

**Readings for the Course**

There is one required book, *Neil Vidmar & Valerie P. Hans, American Juries: The Verdict* (2007). I also recommend (but don’t require) *Nancy S. Marder, The Jury Process* (2005) for supplementary reading. The course syllabus, other assigned readings, and course discussions are on a Blackboard website. These readings include legal opinions, research articles, and book excerpts. Legal opinions are available to you online through Lexis or Westlaw; the other readings are posted on the Blackboard course website or directly linked through our syllabus. In addition, please subscribe during this semester to the weekly Jur-E Bulletin, an electronic newsletter distributed by the National Center for State Courts (visit [http://www.ncsconline.org/Newsletters/jur-e/index.asp#subscribe](http://www.ncsconline.org/Newsletters/jur-e/index.asp#subscribe) to sign up for your individual subscription).

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**Class Activities and Method of Evaluation**

The class sessions will be in a seminar format. You'll be expected to read assigned material prior to class and to participate actively, even vigorously, in class discussions. Beginning with the second class session, **before each class, no later than 12 noon of the day of class, please post one or more questions or comments about the readings to the Discussion Board on the Blackboard course website.** Your comments may also be based on stories or issues covered in the weekly Jur-E Bulletin. Classes will include some individual and group activities and presentations. Your postings (10%), class participation in discussion (10%), and classroom activities (5%) will collectively constitute 25% of your course grade.

This course fulfills the writing requirement, and includes a substantial paper of approximately 25 pages on a topic relating to the jury or lay participation more broadly. You’ll be expected to identify a topic; provide an outline and a bibliography of potential sources; write a complete first draft; submit your draft to me for a critical review; make a short presentation to the class about your paper topic; and produce a final revision of your own paper by the end of the semester. The preliminary and intermediate steps (outline, bibliography, first draft, presentation, etc.) will contribute 25% to the final course grade. The bulk of the course grade -- 50% -- will be based on the final version of your paper. Deadlines for these steps are provided in the syllabus. I will distribute a handout with more details about the research paper shortly.

I intend to grade in accordance with the current grading policy set by the faculty, such that the target for the average grade for J.D. students in the course is 3.35.
Schedule of Class Topics and Readings

Listed below is a schedule of class topics and readings.

Part I: Introduction and Historical Overview

January 27. First class meeting. Discussion of the contemporary debate over the institution of the jury. We’ll discuss the legal, political, and empirical questions that interest you most about the jury, and why.

Reading and other resources to get you started in the class (please note, these are not required to be completed prior to our first class):

- Read Vidmar & Hans, Introduction.
- Sign up for JUR-E Bulletin, the weekly electronic newsletter from the National Center for State Courts that is packed with information and breaking news about juries (http://www.ncsconline.org/Juries/bulletin.htm). It is distributed on Fridays.
- Recommended: Marder, pp. 1-6 (Chapter 1: An Introduction: The Jury Paradox)

February 3. History and functions of lay participation in legal decision making. Why should lay citizens decide important criminal and civil cases anyway? Why not leave it to legal experts? During this class, we will reflect on the history and development of the American jury trial, and consider what a historical perspective tells us about the multiple functions of the jury trial as an institution.

* By noon today, please post one or more comments about the readings to the Discussion Board on the Blackboard course website.*

Reading:

- US Const. amend VI, VII (constitutional rights to a criminal and a civil jury)
- Visit The Jury and Democracy Project website and look around; read the Background page.
- Recommended: Marder, pp 7-49 (Chapter 2: An Overview of the Roles of the Jury; Chapter 3: A Brief History of the Jury; Chapter 4: Right to a Trial by Jury).
February 10. Research challenge: How do we study an institution that operates behind locked doors, under a veil of secrecy, and that need not provide reasons for its verdict? Note: No posting of comments on the readings is required this week. We will examine the strengths and weaknesses of different methods of studying the jury, including analyses of jury decisions, judge-jury agreement studies, interviews, and mock jury experiments. Seminar participants will form groups in advance for this class. Each group will work with one research article (listed below) illustrating a specific jury research method, and will make a collective presentation of the strengths and limitations of the research method to the class.


February 17. Law librarian Amy Emerson from Cornell Law Library will lead the class, discussing and demonstrating library research strategies and tools that are sure to be extremely helpful to you as you research and write your paper. She is knowledgeable about both legal and social science resources. If you send her your topic in advance (aae25@cornell.edu) she may be able to use class topics to demonstrate some of the resources available to us.

*Paper topics must be submitted to Professor Hans no later than today.*

Reading:
- Recommended: Marder pp. 50-67 (Chapter 5: Jury Selection)

March 3. Jury selection; peremptory challenges; voir dire; jury consultants.

Reading:
- Recommended: Marder pp. 67-104 (Chapter 5: Jury Selection)
Part III: Jury Decision Making

March 10. How jurors make decisions.

Reading:
- Recommended: Marder, pp. 105-114 (Chapter 6: Jury Trial Issues)

*March 11. Tufts psychology professor Samuel R. Sommers will be on campus and giving a public lecture on Friday afternoon, March 11, time and room TBD. His work examines race and juries. His public lecture will present findings on how the racial diversity of small groups affects the group’s functioning and decision making. If you are interested in race issues, I highly recommend this lecture. For more on Sam Sommers’s work on juries and race, see Samuel R. Sommers & Michael I. Norton, *Race and Jury Selection: Psychological Perspectives on the Peremptory Challenge Debate*, 63 Amer. Psychol. 527 (2008) (recommended, not required).*

March 17. How juries make decisions. Discussion and analysis of group decision making models that describe how individual jurors combine their perspectives into a group verdict.

**Please submit your research paper outline and a current bibliography of sources you have identified thus far to Professor Hans, ideally by today. If you need more time, please let me know.**

(Scene from the movie *Twelve Angry Men*, showing jurors played by Henry Fonda and Lee Cobb deliberating about the defendant’s guilt. Image from [www.moderntimes.com](http://www.moderntimes.com).)

Reading:
• Recommended: Marder, pp. 147-178 (Chapter 8: Jury Deliberations).

March 24. No class, Cornell Law School spring recess.

March 31. The civil jury; damage awards.

Reading:
• Vidmar & Hans, Chapter 13 (Civil Liability: Plaintiff vs. Defendant in the Eyes of the Jury); Chapter 14 (Deciding Compensatory Damages: Million-Dollar Questions); Chapter 15 (Punitive Damages: Coffee Spills and Marlboro Cigarettes); Chapter 16 (Medical Malpractice: Antidrugs, Incompetent, and Irresponsible?)

April 7. *Paper first drafts due today.* The criminal jury; jury nullification; death penalty. Jury decisions in criminal cases; the jury's ability to ignore or bend the law to comport with its own sense of justice; the ultimate penalty. Before class, review the Web site of the Fully Informed Jury Association, a group that promotes the selective use of jury nullification.

Reading:
• Vidmar & Hans, Chapter 9 (Judging Criminal Responsibility: Erroneous Convictions, the CSI Effect, and the Victim’s Role); Chapter 11 (Jury Nullification: The War with the Law); Chapter 12 (Death is Different: Juries and Capital Punishment)
• Recommended: Marder pp. 178-201 (Chapter 8, Jury Deliberations) and pp. 202-231 (Chapter 9: Postverdict Issues)

Part VI: The Future of the Jury

April 14 Reforming the jury.

Reading:
• Vidmar & Hans, Chapter 17 (Concluding: The Verdict on Juries)
• Recommended: Marder, pp. 258-267 (Chapter 11: Conclusion).

April 21 & April 28. Presentation of seminar participants’ papers, and review and assessment of the institution of the jury and its future.

Monday, May 2. *Final drafts of papers due no later than today.*