

**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:**

Class participation	30%
Group Research and Presentation	30%
Paper	<u>60%</u>
	100%

**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**

\*Alschuler and Deiss, A Brief History of the Criminal Jury in the United States, 61 U. CHICAGO L REV. 867 (1994). Pages 867-901 Only. [Westlaw]

\*Carrington, The Civil Jury and American Democracy, 13 DUKE J. COMP. INT. LAW 77 (2003). [available on course homesite]

### September 3: **How Jurors Think (Video discussion)**

\*Smith: How Jurors Make Decisions, in G.T. Munsterman et al. JURY TRIAL INNOVATIONS (1997)( Pages 7-21).

\*Pennington and Hastie: A Cognitive Theory of Juror Decision Making: The Story Model, 13 CARDOZO LAW REVIEW 519 (1991).

Smith and Studebaker: What Do You Expect? The Influence of People's Prior Knowledge of Crime Categories on Fact Finding, 20 LAW & HUMAN BEHAVIOR 517 (1996).

**[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)

\*Frank: COURTS ON TRIAL, ( 1945), Chapter 8 "The Jury System" (pp108 -125).

\*Landsman: The Civil Jury in America, 62 LAW AND CONTEMPORARY PROBLEMS 285( 1999). [pages 285-90 only].

\*Ostrom et al.: A Step Above Anecdote: A Profile of the Civil Jury in the 1990s, 79 JUDICATURE 233 (1996).

\* Shuman and Champagne, Removing the People from the Legal Process: the Rhetoric and Research on Judicial Selection and Juries 3 PSYCHOLOGY, PUBLIC POLICY AND LAW 242 (1997).

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

Galanter: An Oil Strike in Hell: Contemporary Legends about the Civil Justice System, 40 ARIZONA LAW REVIEW 717 (1998).

### **September 17: Jury Composition Issues**

\*Abramson, WE, THE JURY (1994) Chapter 3, Jury Selection and the Cross-sectional Requirement (pp99-141).

\**Batson v. Kentucky* 476 U.S. 79 (1986).

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

\**J.E.B. v Alabama* 114 S.Ct. 1419 (1994).

\**Williams v. Florida* 399 U.S. 78 (1980).

Saks et al., A Meta-analysis of the Effect of Jury Size, 21 LAW AND HUMAN BEHAVIOR 451 (1997).

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

King and Munsterman: Stratified Juror Selection: Cross-section by Design, 79 JUDICATURE 273 (1996).

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

Postconviction Review of Jury Discrimination: Measuring the Effects of Juror Race on Jury Decisions, 92 U. MICHIGAN L. REV. 74 (1993).

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

Criminal Trials, 49 VANDERBILT L. REV. 123 (1996).

King, Juror Delinquency in Criminal Trials in America:1796-1996, 94 U. MICHIGAN LAW REVIEW 2673 (1994).

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>

\*Jones, Judge vs Attorney Conducted Voir Dire: An Empirical Investigation of Juror Candor, 11 LAW AND HUMAN BEHAVIOR 131 (1987).

\*Diamond, Scientific Jury Selection: What Social Scientists Know and Do Not Know, 73 JUDICATURE 178 (1990).

Mize, On Better Jury Selection: Spotting UFO Jurors Before They Enter the Jury Room, 36 COURT REVIEW 10 (1999).

## **October 8 Jury Competence: General Issues**

\*Kalven and Zeisel, THE AMERICAN JURY (1966): Chapter 5 "The basic pattern of disagreement between jury and judge"( pp55-65); Chapter 8 "Reasons for judge-jury disagreement: a summary view"(pp104-117)and Chapter 11, "The jury follows the evidence and understands the case" (ppp149-167).

\*Lempert: Civil juries and complex cases; Taking stock after twelve years, in R. Litan (ed), VERDICT: ASSESSING THE CIVIL JURY SYSTEM (1993).

\*Honest, Levi and Charman: Juror competence in processing complex information: Implications from a simulation of the Maxwell trial, 1998 CRIMINAL LAW REVIEW 763 (1998).

Bordens and Horowitz: Joinder of criminal offenses: A review of the legal and psychological literature, 9 LAW AND HUMAN BEHAVIOR 339 (1985).

Sperlich: The case for preserving trial by jury in complex litigation, 65

JUDICATURE 394 (1982).

**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)**

Hans, The Illusions and Realities of Jurors' Treatment of Corporate Defendants, 48 DEPAUL LAW REVIEW 327 (1998).

Hannaford-Agor and Hans, Nullification at Work? A Glimpse from the National Center for State Courts Study of Hung Juries ?? CHICAGO-KENT LAW REVIEW?? (2003).

Hans and Jehle, Avoid Bald Men and People with Green Socks? Other Ways to Improve the Voir Dire Process in Jury Selection ?? CHICAGO-KENT LAW REVIEW?? (2003).

Hans and Vadino, Whipped by Whiplash, The Challenges of Jury Communication in Lawsuits Involving Connective Tissue Injury, 50 DEFENSE LAW JOURNAL 589 (2001) or "Whipped by Whiplash... 30 TRIAL LAWYERS QUARTERLY 116 (2001).

Hannaford, Hans, Mott, and Munsterman, The The Timing of Opinion Formation by Jurors in Civil Cases: An Empirical Examination, 67 TENNESSEE LAW REVIEW 627 (2000).

Mott, Hans and Simpson, What's Half a Lung Worth? Civil Jurors' Accounts of Their Award Decision Making 24 Law and Human Behavior 401 (2000).

**October 29: More on Complex Cases and Complex Evidence**

\*Sanders, The jury decision in a complex case: *Havener v. Merrell Dow Pharmaceuticals*, 16 JUSTICE SYSTEM JOURNAL 45 (1993).

\*Vidmar and Diamond, Juries and Expert Evidence, 66 BROOKLYN LAW REVIEW 1121 (2001).

\*Horowitz: Reasonable Doubt Instructions: Commonsense Justice and Standard of Proof, 3 PSYCHOLOGY, PUBLIC POLICY AND LAW 285 (1997).

\*Saks et al.: Reducing Variability in Civil Jury Awards, 21 LAW AND HUMAN BEHAVIOR 243 (1997).

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

\*Bowers: The Capital Jury: Is it Tilted Toward Death? 79 JUDICATURE 220 (1996).

\*Dillehay and Sandys: Life Under *Wainwright v. Witt*: Juror Dispositions and Death Qualification, 20 LAW AND HUMAN BEHAVIOR 147 (1996).

\*Haney, Violence and the Capital Jury: Mechanisms of Moral Disengagement and the Impulse to Condemn to Death, 49 Stanford Law Review 1447 (1997).

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

\*Sundby, The Jury As Critic: An Empirical Look at How Capital Juries Perceive Expert and Lay Testimony, 83 VIRGINIA LAW REVIEW 1109 (1997).

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

\**Free v. Peters* 12 F.3d 700 (7<sup>th</sup> cir. 1993).

\*Eisenberg and Wells, Deadly Confusion: Juror Instructions In Capital Cases, 79 CORNELL LAW REVIEW 1 (1993).

\*Diamond and Levi, Improving Decisions on Death by Revising and Testing Jury Instructions, 79 JUDICATURE 224 (1996).

Luginbuhl and Howe, Discretion in Capital Sentencing Instructions: Guided or Misguided? 70 INDIANA LAW JOURNAL 1161 (1995).

## **November 19: Research Presentations**

Groups 1 and 2

## **November 25: Research Presentations**

Groups 3 and 4