

**Law 4122: Judging the Jury**  
**Professor Valerie Hans, Cornell Law School**  
**Fall 2014 Course Syllabus**



Mock Mixed Court of Professional and Citizen Judges, Taiwan, July 2014

**Course Description**

The jury is praised by some as an important symbol of democracy, yet sharply criticized by others as incompetent and biased. This course evaluates claims about the strengths and limitations of the contemporary jury. We will examine the image of the jury in popular culture, then explore the work of lawyers, legal scholars, psychologists, and other social scientists who have studied the jury in depth. Questions we'll address during the course include: Do juries represent all segments of their communities? Can lawyers stack a jury in their favor? Are jurors influenced by the "CSI effect?" How do jurors use trial evidence and legal rules to decide on verdicts, damage awards, or decisions to sentence a defendant to death? What should judges do about googling and tweeting jurors? And is the American jury suitable for transplanting to other countries? By the course's end, students should be able to reach their own informed judgment about this perennially controversial institution.

## Course Objectives

- Students will discover the political, legal, and cultural values served by the jury.
- Students will discover the challenges facing the jury in contemporary society.
- Students will learn about legal rules governing trial by jury, and about social science research findings about the jury system.
- Students will apply social science theory, research, and methodology to address questions about the jury.
- Students will develop a deeper understanding of the factors that contribute to their own views and attitudes toward the jury.
- And finally, more a fond hope than a course objective: Students will be more likely to serve as jurors when they are called.

## Course Activities and Evaluation

Our class sessions, reading assignments, individual and group activities, and the final exam are all designed to meet these course objectives.

Activity	Description	Course objectives	Points	Due date
Images of the jury	Post to Blackboard or otherwise share an image or depiction of the jury; add your paragraph description of what the image suggests about trial by jury	Discovery of the cultural significance, values, and challenges faced by the jury	5	Sept. 2, 2014
Interview a person who has served on a jury	Class will develop core set of questions; you will conduct a short (no more than 1 hour) interview of a juror, write 5 page paper summarizing and reflecting on the interview, and post to Blackboard	Discovery of the political & legal values served by the jury; challenges faced by individual jurors	25	Sept. 23, 2014
Group project on jury selection	Students will work in small groups to research voir dire questions; then they will take turns serving as "prospective jurors" or "lawyers" in a mock jury selection simulation. The group product: a set of questions to ask prospective jurors, and a research-based justification for each question.	Discovery of legal rules and social science research findings; application of social science theory, research, and methodology to address jury selection	15	Annotated question list due Oct. 9, 2014; jury selection exercise in class Oct. 16 & 21
A jury for Taiwan?	Students will research competing proposals advocated in Taiwan for the introduction of different methods of lay citizen participation (advisory jury, classic jury, mixed court). Students will select one approach and write a 5 page paper justifying and supporting with relevant research and analysis their choice of the ideal lay participation system for Taiwan.	Discovery of the political, cultural & legal values served by the jury	25	Nov. 18, 2014, 2:55 pm (class time)
Final exam	Exam questions will allow students to integrate what they've learned about the values and challenges of the jury system	Exam questions will address all course objectives	25	Dec. 10, 2014, 4:30 PM
Class attendance, participation & clicker questions	In addition to class attendance and participation, most classes will include clicker questions related to readings and assignments	All course objectives	5	Throughout semester

## Readings and other Materials for the Course



There is one required book, **Neil Vidmar & Valerie P. Hans, American Juries: The Verdict** (2007). It's available at the Cornell Bookstore and through the publisher and other online vendors. A [Kindle edition](#) is an economical option at \$9.99.

The course syllabus and other assigned readings, including legal opinions, research articles, and book excerpts, will be on our Blackboard course website or directly linked through our syllabus.

We'll be using **IClickers** regularly in class; they are devices that allow you to respond to polling and other questions in class. If you don't already own one, please purchase one from the Cornell Bookstore, and bring it to class each time. Either the older or newer models should work.

Here is information about how to register your IClicker for use in our class this semester.

Login to Blackboard at <http://blackboard.cornell.edu>

- Under your list of "My Courses," click on the name of our course.
- Click on the "Tools" button in your Course Menu.
- Click on "IClicker Remote Registration".
- Type in the IClicker Remote ID on the back of your clicker.
- Click Submit.

NOTE: Registering your clicker for one Blackboard course will automatically register your clicker for ALL Blackboard courses each semester.

If you have problems, such as being unable to read your IClicker ID, please check this website: <http://www.it.cornell.edu/services/polling/howto-students.cfm>.

## Contact Information for Professor, TA and Administrative Assistant

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## Academic Integrity

As in all classes at Cornell, your work in this class should adhere to the principles of academic integrity as outlined in Cornell University's [Code of Academic Integrity](#). Submission of work for academic credit comes with the expectation that the work is your own; any outside assistance must be explicitly indicated. If you have any questions about whether your work conforms to the guidelines, please consult the professor and the TA before submitting the work.

## Schedule of Class Topics, Readings, Activities, and Assignments

**August 26. First class meeting and discussion. Our world and legal system are increasingly complex; why are lay citizens still deciding cases? Shouldn't we leave it to the professionals?** We'll discuss the legal, political, and empirical questions that interest you most about the jury, and why.

Reading:

- Vidmar & Hans, Introduction.
- Stephanie Clifford, [TV Habits? Medical History? Tests for Jury Duty Get Personal](#), New York Times, Aug. 20, 2014. Take the quiz!

**August 28. History and functions of lay participation in legal decision making.**

What do historical and comparative perspectives tell us about the multiple functions of the jury trial as an institution?

Reading:

- Neil Vidmar and Valerie P. Hans, Chapters 1 (The English Origins of the Modern Jury: From Trial by Ordeal to the Decline of the "Little Parliament"); Chapter 2 (Criminal and Civil Juries in America from Colonial Times to the Present Day: Evolution, Heroic Role, and Controversy)
- Trial by jury was introduced in several of Argentina's provinces in 2013 and 2014. See website of the pro-jury organization (translation from Spanish available on the website): <http://www.juicioporjurados.org/>.

**September 2. Images of the jury.** We'll talk about images of the jury in historical accounts, literature, social science, film, news stories, the blogs, cartoons, jokes, and more.

**\*\*Before class today, post to our course Blackboard site, and bring a copy to class if possible, an example of a depiction of a jury.** Any jury! Any depiction! It could be a story about a recent (or ancient) legal case decided by a jury, a favorite movie or TV episode that features the jury, a Youtube video, a blog post rant about juror stupidity, a heartfelt account of a person's experience on jury duty, a research study on jury decision making. Accompanying the image or depiction, please write and attach a paragraph about what you think the image says about trial by jury. In class, we'll discuss the depictions, and reflect on what the set of images reveal about the cultural significance of the jury system.

**September 4. A legal perspective on the jury: The types of juries and their roles. Lecture by TA David Coriell.** Legal rules and precedents define who has a right to trial by jury, and under what circumstances. Today's class will examine the three different types of juries (grand juries, civil juries, and criminal juries). The roles and functioning of each of these types of juries in adjudication will be examined.

Reading:

US Constitution, [Art. III Section 2](#)

US Constitution, [5th Amendment](#)

US Constitution, [6th Amendment](#)

US Constitution, [7th Amendment](#)

[Duncan v. Louisiana](#), 391 U.S. 145 (1968) (right to jury trial in criminal cases; excerpt will be posted to Blackboard)

**September 9. Legal debates about the jury. Lecture by TA David Coriell.** This class will examine three major constitutional issues involving the jury: (1) who is entitled to serve on a jury; (2) the size of the jury; and (3) whether verdicts must be unanimous. There are different answers for civil and criminal cases, and for state and federal criminal cases.

Reading:

[Fed. R. Crim. P. 31](#) (requiring unanimous verdicts in federal criminal cases)

[Fed. R. Crim. P. 23\(b\)](#) (requiring 12 person juries in federal criminal cases, but allowing for exceptions)

[Fed. R. Civ. P. 48](#) (allowing federal civil juries of 6 to 12 jurors)

Williams v. Florida, 399 U.S. 78 (1970) (jury size case; excerpt will be posted to Blackboard)

Ballew v. Georgia, 435 U.S. 223 (1978) (jury size case; excerpt will be posted to Blackboard)

Apodaca v. Oregon, 406 U.S. 404 (1972) (jury unanimity case; excerpt will be posted to Blackboard)

Johnson v. Louisiana, 406 U.S. 356 (1972) (jury unanimity case; excerpt will be posted to Blackboard)

**September 11, 16. The job of the juror.** How do people react when they're called for jury duty? What are the effects on individuals of serving as jurors? We'll consider what the research suggests, then work in class to develop questions for students' juror interviews.

Reading:

- Frida Ghitis, [Why I helped send a man to jail for life](#), CNN Opinion, Nov. 29, 2011.
- Jonathan Miller, Jury Duty [on Blackboard]
- Visit [The Jury and Democracy Project](#) website and look around; read [Chapter 1](#) of *The Jury and Democracy*, made available to you online by the authors.



(Image of all-woman jury, Los Angeles 1911, from Library of Congress)

**September 18, 23. Assembling a representative jury.**

Reading:

- Vidmar & Hans, Chapter 3. A Jury of Peers: Democratic Goals
- David Coriell, The (Un)Fair Cross Section Guarantee, Cornell Law Review (in press).
- [Berghuis v. Smith](#), 559 U. S. \_\_\_\_ (2010).
- Paula L. Hannaford-Agor, Jury News: The Fair Cross-section Requirement in the Wake of *Berghuis v. Smith*, 25 The Court Manager 66 (2010).

- Valerie P. Hans, [Jury Representativeness: It's No Joke in the State of New York](#), Cornell Journal of Law & Public Policy Blog, Jan. 20, 2012.

**September 25. Classroom discussion of juror interviews. \*Post your 5 page summary of your juror interview to Blackboard by midnight September 23\*** so that we can consider the collected interviews in our class today.

**September 30. Jury selection in the courtroom: An overview.**

- Vidmar & Hans, Chapters 4 (Jury Selection: Jury Bias, Juror Challenges, and Trial Consultants) & 5 (Problem Cases: Pretrial Publicity).

**October 2, 7. Voir dire: How to question prospective jurors.**

We'll discuss the psychology behind the questioning of prospective jurors. The lecture and related readings are relevant to the group jury selection project. Class time will be set aside for groups to meet to work on their question lists.

Reading:

- Valerie P. Hans & Alayna Jehle, Avoid Bald Men and People with Green Socks? Other Ways to Improve the Voir Dire Process in Jury Selection, 78 Chicago-Kent Law Review 1179 (2003).
- Look at this general [jury selection advice](#) from Cathy E. Bennett & Associates, Inc., Jury and Trial Consultants
- Review more advice on voir dire questioning from trial consultant Jeffrey Frederick, [Effective Voir Dire](#)
- Review these recommendations from Laurie Kuslansky, [5 Questions to Ask in Voir Dire ... Always](#)

**October 9. Peremptory challenges: Race and gender.**

**\*Due date: Groups must submit their annotated question lists to Professor Hans and TA David Coriell (via Blackboard) by October 9.**

Reading:

- [J.E.B. v. Alabama ex rel. T.B.](#), 511 U.S. 127 (1994).
- Catherine M. Grosso & Barbara O'Brien, A Stubborn Legacy: The Overwhelming Importance of Race in Jury Selection in 173 Post-Batson North Carolina Capital Trials, 97 Iowa L. Rev. 1531 (2012).

**October 14. Fall break, Cornell University.**

**October 16, 21. Jury selection exercise.**

The jury selection exercise will take place in class on October 16 & 21. More details will follow on the group jury selection project.

**October 23. How jurors make decisions.** Individual decision making.

Reading:

- Vidmar & Hans, Chapter 6 (The Task of the Jury: Evidence Evaluation and Jury Decision-Making Processes); Chapter 8 (Trials in a Scientific Age: Juries Judging Experts); Chapter 9

(Judging Criminal Responsibility: Erroneous Convictions, the CSI Effect, and the Victim's Role).

**October 28. How juries make decisions.** Discussion and analysis of group decision making models that describe how individual jurors combine their perspectives into a group verdict.

Reading:

- Vidmar & Hans, Chapter 7 (Judging the Jury: Evidence Evaluation and Jury Decision-Making Processes).

(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).)



**October 30, November 4. Alternatives to the American jury.**

These lectures and related readings will provide background for student essays recommending the ideal lay participation system for Taiwan.

Reading:

- Valerie P. Hans, Hiroshi Fukurai, Sanja Kutnjak Ivković, & Jaihyun Park, Global Juries: A Plan for Research, *in* The Psychology of Juries: Current Knowledge and a Research Agenda for the Future (Margaret Bull Kovera, ed., forthcoming).
- Sangjoon Kim, Jaihyun Park, Kwangbai Park, and Jin-Sup Eom, Judge-jury Agreement in Criminal Cases: The First Three Years of the Korean Jury system, *10 Journal of Empirical Legal Studies* 35 (2013).
- Judicial Yuan, Taiwan, Proposal for Advisory Lay Assessors (2014).

**November 6, 11, 13. Back to the USA: The civil jury.**

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).
- Valerie P. Hans & Valerie R. Reyna, To Dollars from Sense: Qualitative to Quantitative Translation in Jury Damage Awards, *8 Journal of Empirical Legal Studies* 120 (2011).

**November 18. "A Jury for Taiwan?" essay due in class. Class discussion: A Jury for Taiwan?**

Students will share their recommendations about the lay participation system they see as ideal for Taiwan.

**November 20. Juror misconduct. Lecture by David Coriell.**

Reading:

- Sam Hemingway, How a rogue juror turned Fell case upside down, Burlington Free Press, Aug. 3, 2014, <http://bfpne.ws/1nfMVLc>.

- Walter Pavlo, Fmr BP Engineer Kurt Mix Granted New Trial, Thanks To Juror #1. Forbes, Aug. 8, 2014, <http://onforb.es/1oYaEUQ>.
- Thaddeus Hoffmeister, Google, Gadgets and Guilt: Juror Misconduct in the Digital Age, 83 University of Colorado Law Review 409 (2012).

**November 25. Jury nullification.** One of the most fascinating issues in the study of the jury is jury “nullification,” that is, the jury's ability to ignore or bend the law to comport with its own sense of justice. Before class, review the Web site of the [Fully Informed Jury Association](#), a group that promotes the selective use of jury nullification. Do you agree with Professor Paul Butler?

Reading:

- Vidmar & Hans, Chapter 11 (Jury Nullification: The War with the Law)
- Read about the [case of Julian Heicklen](#), charged with jury tampering because he distributed jury nullification materials around the US District Court in Manhattan.
- Paul Butler, [Jurors Need to Know That They Can Say No](#), New York Times, Dec. 28, 2011.

**November 27. No class, Thanksgiving recess.**

**December 2. Juries and the death penalty.**

Reading:

- Vidmar & Hans, Chapter 12 (Death is Different: Juries and Capital Punishment)
- Valerie P. Hans, John Blume, Theodore Eisenberg, Amelia Hritz, Sheri Lynn Johnson, Caisa Elizabeth Royer & Martin T. Wells et al., The Death Penalty: Should the Judge or Jury Decide who Dies? *Forthcoming*.

**Part VI: The Future of the Jury**

**December 4. Review, reflections, and predictions: Will the jury survive?**

Reading:

- Vidmar & Hans, Chapter 17 (Concluding: The Verdict on Juries)
- Caren Myers Morrison, Jury 2.0, 62 Hastings Law Journal 1579 (2011) (Read excerpt: Part IV: Facing the Future, pp. 1622-32).

**FINAL EXAM will consist of multiple choice questions and an essay. The essay will be distributed in advance and due on our final exam date. The exam has been provisionally scheduled for December 10, 2014 at 4:30 pm (25 points).**