

SYLLABUS

*Jury Trials in America:
Understanding and Practicing Before a Pure Form Democracy*
Georgetown University Law Center, Fall 2014
Tuesdays, 11:10 a.m. to 1:10 p.m. – Room 344
Judge Gregory E. Mize

The seminar will examine:

- The history of the U.S. jury trial system
- Jury selection dynamics
- Factors affecting juror performance during the trial
- Jury management challenges such as increasing juror comprehension in complex litigation and juror privacy
- Current policy debates concerning the jury.

Those aspiring to a career in litigation should find the seminar helpful in readying for future engagements with a jury. For all, the forthcoming weeks should result in learning how this cornerstone of democracy currently works and about dynamic efforts occurring across the country to cause its renovation.

Class Materials

This syllabus lists the topics and reading assignments for each class. A few modifications may occur during the semester. The primary texts for the seminar are:

- D. Graham Burnett, *A Trial by Jury*
- *Principles for Juries & Jury Trials*, American Bar Association (2005)

As shown below, there are supplemental reading assignments for each class. Students will have the option of receiving the texts of those readings either electronically (by way of TWEN) or as hard copies (by way of the Faculty Support Office) during the course of the semester. On occasion, a problem or short writing assignment will be given prior to an upcoming class in order to prime the discussions for that class. I encourage (but do not require) students to subscribe to the free online jury trial newsletter, Jur-E Bulletin, published by the National Center for State Courts. Simply visit <http://www.ncsc.org/Publications-and-Library/Newsletters.aspx> and select “Jur-E Bulletin.”

Weekly Topics

Class 1. Introduction to the American Jury

[September 2]

Jeffrey Abramson, “We the Jury,” Chapter 1

[Professor Andrew Ferguson, “Juror Voices Project”](#)

TAKE-HOME ASSIGNMENT: ADDRESSING DISPARITIES

Class 2. Rounding Up Representative & Willing Jurors [September 9]

Jeffrey Abramson, “We the Jury,” Chapter 3

[*Duren v. Missouri*, 99 S.Ct. 664 \(1979\)](#)

ABA Principles for Juries & Jury Trials, Principles 2 & 10 only [pp. 7-14,51-63]

King & Munsterman, [*Stratified Juries: Cross-Section by Design*](#)

TAKE-HOME ASSIGNMENT: DISCERNING JUROR BIAS

Class 3. Jury Selection – Part One [September 16]

- A. Statutory and rule framework
- B. Selection mechanisms
- C. For-cause strikes
- D. Peremptory strikes & the *Batson* problem

[*Batson v. Kentucky*, 106 S.Ct. 1712 \(1986\)](#)

[*Mize, A Legal Discrimination*, WASHINGTON POST, October 8, 2000.](#)

ABA Principles for Juries & Jury Trials, Principles 5 and 11 only

Class 4. Jury Selection – Part Two [September 23]

- A. Permissible and impermissible selection methods
- B. Strategies and techniques in selecting jurors

Neil Vidmar & Valerie Hans, “Juries: The Verdict,” Chapter 4.

ABA Principles for Juries and Jury Trials, Principle 11 only

Class 5. Jury Selection – Part Three [September 30]

To be held in the Supreme Court Institute Moot Courtroom (Hotung Bldg.)

Burnett, *A Trial By Jury*, pp, 1-76 only

IN-CLASS EXERCISE: SELECTING A JURY

Class 6. Jury Selection Wrap-up; Jury Comprehension and Performance [October 7]

[Dann, "Learning Lessons" and "Speaking Rights": Creating Educated and Democratic Juries, 68 INDIANA L. J. 1229-1256, 1277-1279 \(1993\)](#)

Burnett, A Trial By Jury, pp, 1-76 only

ABA Principles for Juries and Jury Trials, Principles 6, 12 & 13 only

TAKE-HOME ASSIGNMENT: PLAIN ENGLISH JURY INSTRUCTIONS

[October 14 – No Class - Columbus Holiday schedule adjustment]

Class 7. Closing Arguments and Final Instructions – A Vital Link [October 23]

[May, "What Do We Do Now?": Helping Juries Apply The Instructions, 28 Loyola L.A. L. Rev. 869 \(April 1995\)](#)

ABA Principles for Juries and Jury Trials, Principle 14 only

[Tiersma, *Jury Instructions in the New Millenium*, 36 COURT. REV. 28-36 \(Summer 1999\)](#)

Class 8. Jury Deliberations [October 28]

Burnett, A Trial by Jury, pp, 79-183

ABA Principles for juries and Jury Trials, Principles 4, 14 to 16 only

IN-CLASS: CBS Special Report: Into the Jury Room (April 1997)

Class 9. The Civil Jury – Vanishing? Complexity Exception? [November 4]

[Developments in the Law: The Civil Jury, 110 Harv. L. Rev. 1411-1414, 1466-1503 \(1997\)](#)

ABA Principles for Juries and Jury Trials, Principle 3 only

Class 10. The Civil Jury – Punitive Damages [November 11]

[Developments in the Law: The Civil Jury, 110 Harv. L. Rev. 1513-1536 \(1997\)](#)

Class 11. The Criminal Jury – Nullification [November 18]

Neil Vidmar & Valerie Hans, "Juries: The Verdict," Chapter 11

[Butler, *Racially Based Jury Nullification: Black Power in the Criminal Justice System*, 105 YALE L. J. 677, 705-725 \(1995\)](#)

Class 12. The Criminal Jury – Grave Responsibilities

[November 25]

- A. Hung Juries
- B. Jury Sentencing
- C. Capital Cases

Neil Vidmar & Valerie Hans, “Juries: The Verdict,” Chapter 12
[Apprendi v New Jersey, 530 U.S. 466-467 \(2000\)](#)

Class 13. Management Challenges

[December 2]

- A. Juror Privacy
- B. Juror Misconduct
- C. The Future

ABA Principles for Juries and Jury Trials, Principles 7, 18 & 19
[Hannaford, *Safeguarding juror privacy: a new framework for court policies and procedures*, 85 JUDICATURE 18-25 \(July-Aug. 2001\)](#)
[Sweeney, *Worlds Collide: The Digital Native Enters the Jury Box*, REYNOLDS COURTS & MEDIA L. J. 121-146 \(Spring 2011\)](#)

Grading Criteria

Final grades will be based on: (1) class participation [10%], (2) pre-class written assignments [10%], (3) jury trial observation and report [40%], (4) the final exam [40%].

Pre-class Assignments

Pre-class assignments consist of short exercises that are intended to provide an opportunity to apply analytical skills to problems regularly encountered in jury trials. Grading for these assignments will be based on how well the student connects the class reading assignment to the question[s] raised in the class preparation assignment. While content is most important, grammar and organization can impact grading.

All take-home assignments are due at the beginning of the class (11:10 a.m.) following the date the assignment was distributed. Details about these assignments will be provided at the time of distribution. Lateness will affect grading. Students are expected to work independently on these assignments.

Jury Trial Observation and Report

Students are required to observe a jury trial and submit a thoughtful report prior to commencement of the last regularly scheduled class. The jury trial can be either civil or criminal. I will facilitate opportunities in Washington, D.C. and neighboring suburban courthouses. However, the observed jury trial can be held in any state or federal court

within the United States. To receive credit, a student must observe at least three hours of initial trial proceedings. This should comprise a combination of: the jury selection, opening statements, and direct and cross-examination of at least one trial witnesses. Conversely, a student can earn this credit by observing at least three hours of the ending portion of a trial. This should comprise a combination of: direct and cross of at least one witness, closing arguments, and jury instructions. The observation report should identify the case name, where the trial was held (court name and location), the type of case (e.g., assault & battery, medical malpractice, auto tort), and the trial outcome. The report should also convey the student's insights and reactions to various aspects of the trial (e.g., scope and adequacy of questions during jury selection, effectiveness of attorney actions, clarity of jury instructions, general treatment of jurors by the judge and attorneys, etc.). Most importantly, the student should explicitly connect their observations to the material covered during the semester. Again, the observation reports must be submitted in hard copy no later than the beginning of our last class -- 11:10 a.m. on December 2.

Class Participation

The class participation portion of the grade will be based on consistent attendance, preparation for class and active contribution to class discussions. One's contribution to class discussion is an important part of seminar learning, and our success this semester depends on you as much as it does on me. Mere physical presence in the classroom is a necessity, but not a sufficient condition to earn the highest credit for participation. I will accommodate one excused absence during the semester.

Office Hours

I am pleased to meet with students at the Law Center outside of class time. Please call or e-mail to work out logistics.

Contact information:

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