



**Fall 2016**

## **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 tweeting their prejudgments. How can lawyers prepare for trial with today's jurors?

This course examines and evaluates these claims about the institution of the jury, drawing on the work of legal scholars and social scientists. After reviewing contemporary debates over the jury's role and abilities in both the civil and criminal justice systems, we'll explore a range of topics, including: 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; jury nullification; and jury reform. By examining legal and empirical scholarship about the jury, seminar participants should develop insights that will prepare them to be effective jury advocates.

We'll begin the course by exploring the contemporary controversies over the jury's role and abilities. 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.

Then, we'll consider what jurors think about participating in this unique and important role in the legal system. To do that, we'll review research and personal accounts by jurors about their experiences. In addition, each member of the class will interview a person who has served as a juror, and will share the results of the interview with the rest of the class.

We will examine the approaches that individual jurors take to evaluate evidence and make 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.

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 and other Materials for the Course

There is one required book, **NEIL VIDMAR & VALERIE P. HANS, AMERICAN JURIES: THE VERDICT** (2007). It's on reserve at Cornell Law Library, and available at the Cornell Bookstore and through the publisher and other online vendors. A [Kindle edition](#) is the most economical option at \$12.99.

The Blackboard course website includes the course syllabus, assignments, additional readings, and a Discussion Board. Assigned readings may be found on the course website or through direct links on our syllabus. Legal opinions are available to you through Lexis, Westlaw, the [Legal Information Institute](#) (housed at Cornell Law School), and other online sources.

In addition to these assigned readings, I encourage you to keep up with news about the jury during this semester. One good source is the [Juries blog](#) by University of Dayton law professor Thaddeus Hoffmeister. He regularly updates it with breaking jury trial information and links to recently published jury articles. The American Society of Trial Consultants puts out a regular online publication, [The Jury Expert](#). You may also find it helpful to view online or subscribe to the weekly [Jur-E Bulletin](#), an electronic newsletter distributed weekly by the National Center for State Courts. The American Bar Association's [Commission on the American Jury](#) posts resources on its website.

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## Class Activities and Method of Evaluation

The course is a writing seminar, and I have structured it to allow you to perform different kinds of writing, including relatively informal reactions to course materials, a summary of findings from an interview with a juror, and a research paper.

The class sessions will be in a seminar format. You'll be expected to read assigned material prior to class and to participate actively in class discussions. Classes will include some individual and group activities and presentations. Beginning with the second class session, **before each class, no later than 10 a.m. 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. To encourage debate among class members, I ask each of you to make sure that, over the course of the semester, **at least one of your comments is a response to the posting of another seminar participant**. Your comments may also be based on stories or issues covered in the weekly Jur-E Bulletin, Juries blog, The Jury Expert, or other sources. If you encounter a jury news story or another development that you think would be of general interest to the class, feel free to use the Discussion Board

to bring it to the attention of the class. I anticipate that this type of writing will be more colloquial than your research paper, and perhaps quite informal, but well-written.

The course requires a research substantial paper of approximately 20-25 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 paper by the end of the semester. The preliminary and intermediate steps (outline, bibliography, first draft, presentation, etc.) will contribute 30% to the final course grade. You will want to put substantial effort into these preliminary stages. The final version of your paper will contribute 45% to the final course grade. Many of the final papers are excellent, as students take advantage of the feedback on previous submissions. So, it's especially important to do the best job you can on both the first draft and final draft of your paper. Deadlines for these steps are provided in the table below, and repeated elsewhere in the syllabus. There is a separate handout with more details about the research paper. Please note, I must have your paper topic, outline, draft, etc. NO LATER than the dates below. However, you are encouraged to get a jump start and submit the material earlier, if you are able to do so.

Your postings (10%), juror interview summary (5%), and class participation in discussions and activities (10%) will collectively constitute 25% of your course grade.

<b>Task</b>	<b>Description</b>	<b>Due Date</b>
Post to Discussion Board	Write weekly posts to the Discussion Board on Blackboard on the readings or other jury-related news	10 a.m. on Mondays, except for Emerson library research session; October 17; November 14, 21, 28
Submit paper topic	Submit a paragraph description of your proposed paper topic	September 14
Submit outline and bibliography	Submit your research paper outline and current bibliography of sources	October 7
Conduct and summarize juror interview; discuss in class	Interview juror; write short (2 page) summary of what you learned from the interview; post to Blackboard; participate in class discussion about the interviews	Post interview summary to Blackboard by 10 a.m. October 17
Submit first draft of paper	Submit FULL and COMPLETE first draft of paper	November 7
Make presentation of your paper to the class	Short presentation of major ideas, conclusions of your research paper	November 21 or November 28
Final draft	Submit final draft of paper	December 5

I intend to grade in accordance with the current grading policy set by the faculty, such that the target range for the average grade for J.D. students in the course is 3.35 to 3.50.

### **Schedule of Class Topics and Readings**

## Part I: Introduction

**August 29. First class meeting. Discussion of the contemporary debate over the institution of the jury.** 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 legal development of the American jury trial and the expansion of citizen participation in the legal systems of other countries. We'll discuss the legal, political, and empirical questions that interest you most about the jury, and why.

Reading:

- There is renewed debate over the merits of the civil jury. Who has the better argument? Read: <http://www.thejuryexpert.com/2015/08/collapse-of-civil-jury-trial-and-what-to-do-about-it/>
- <http://www.thejuryexpert.com/2016/05/citizen-juror-justice-sotomayor-and-steve-susman-discuss-why-jury-duty-matters/>

## PART II: Jury Selection

**September 5. Assembling a representative jury.**

**\* By 10 a.m. today, please post your comments about the readings to the Discussion Board on the Blackboard course website.\***

Reading:

- NANCY GERTNER & JUDITH H. MIZNER, THE LAW OF JURIES (5<sup>th</sup> ed. (2011), Chapter 1: The Right to a Jury Trial (pp. 1-25) (providing background on the scope of federal and state rights to a jury trial).
- SUJA THOMAS, THE MISSING AMERICAN JURY 90-96 (2016) (excerpt discusses a new theory about the fall of juries).
- VIDMAR & HANS, Chapter 3 (A Jury of Peers: Democratic Goals).
- [Berghuis v. Smith](#), 559 U. S. 314 (2010).

**September 12. Jury selection; voir dire and peremptory challenges.**

Reading:

- VIDMAR & HANS, Chapter 4 (Jury Selection: Jury Bias, Juror Challenges, and Trial Consultants); Chapter 5 (Problem Cases: Pretrial Publicity).
- [Foster v. Chatham](#), 578 U. S. \_\_\_\_ (2016). Read Chief Justice Roberts's majority opinion, Sections I and III (skip section II, on standing).
- The phenomenon of "blackstriking" is described graphically here: <http://www.blackstrikes.com/>.
- Stephanie Clifford, [TV Habits? Medical History? Tests for Jury Duty Get Personal](#), New York Times, Aug. 20, 2014. Take the quiz! What do you think of the voir dire questions in the NY Times quiz?
- American Bar Association's [Formal Opinion 466](#) (Apr. 24, 2014), on Lawyers Reviewing Jurors' Internet Presence.

**\*Wednesday, September 14. Submit paper topic via email to Professor Hans no later than today.\***

**September 19. No class** (tentative; Professor Hans out of town). Makeup class is provisionally scheduled for Friday, September 30.

### **Part III. The Juror's Perspective**

**September 26. The experience of being a juror.** What do jurors think about being a juror? About the arguments, the evidence, and especially about the lawyers who are trying their cases? This may be one of your only chances to find out directly! In addition to learning about jury experiences from the assigned reading, each student in the class will interview a juror about his or her experiences deciding a case. During class, we'll come up with core questions to ask during our juror interviews.

Reading:

- Debbie Slevin, [\*The Day I Failed at Jury Duty\*](#), Huffington Post, July 2, 2016.
- Max Heerman, [\*Role Reversal: A Lawyer's Jury Service\*](#), BENCH AND BAR OF MINNESOTA (July 12, 2011).
- JOHN GASTIL ET AL., THE JURY AND DEMOCRACY: HOW JURY DELIBERATION PROMOTES CIVIC ENGAGEMENT AND POLITICAL PARTICIPATION (2011), [Chapter 1](#) (available online).

**Friday September 30 (makeup class).** 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. Before class, send her your paper topic ([aae25@cornell.edu](mailto:aae25@cornell.edu)); she'd like to use class topics to demonstrate resources.

**October 3. How jurors evaluate evidence and decide on verdicts.**

Reading:

- VIDMAR & HANS, Introduction and Chapter 6 (The Tasks of the Jury: Evidence Evaluation and Jury Decision-Making Processes)
- KEVIN M. CLERMONT, STANDARDS OF DECISION IN LAW: PSYCHOLOGICAL AND LOGICAL BASES FOR THE STANDARD OF PROOF, HERE AND ABROAD 103-15 (2013).

**October 7 (Friday before fall break).**

**\*Please submit your research paper outline and a current bibliography of sources you have identified thus far to Professor Hans via email by this date.\***

**October 10. No class, Fall break.**

**October 17. Presentation and discussion of student interviews with jurors.** We'll discuss as a class the insights gained from interviewing jurors about their experiences and perceptions.

**\*Post your 2-page summary of your juror interview to our Blackboard course web site by 10 a.m. today.\***

### **Part IV: Jury Decision Making**

**October 24. The jury as a group decision maker.** Legal rules guiding jury deliberation; 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: Evaluating Jurors' Comprehension of Evidence and Law); Chapter 8 (Trials in a Scientific Age: Juries Judging Experts).
- [FED. R. CRIM. P. 24 \(Trial Jurors\)](#)
- [FED. R. CIV. P. 48 \(Number of Jurors; Verdict; Polling\)](#)
- [FED. R. EVID. 606 \(Juror's Competency as a Witness\)](#)
- AM. BAR ASS'N, PRINCIPLES FOR JURIES & JURY TRIALS (2005): Principle 3: Juries Should Have Twelve Members (pp. 15-19); Principle 4: Jury Decisions Should be Unanimous (pp. 21-24).
- [Ballew v. Georgia](#), 435 U.S. 223 (1978).

**October 31. The jury in civil trials; damage awards.** We'll discuss the implications of the decline of the civil jury, and what might be done about it. Reading:

- The Civil Jury Project is described here: <http://civiljuryproject.law.nyu.edu/>.
- 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).

**November 7. Jury nullification.**

Reading:

- VIDMAR & HANS, Chapter 11 (Jury Nullification: The War with the Law).
- \*Paper first drafts due today.\***

**November 14. Reforming the jury in criminal trials.**

Reading:

- Alex Kozinski, *Criminal Law 2.0*, 44 GEO. L.J. ANN. REV. CRIM. PROC. (2015).
- VIDMAR & HANS, Chapter 9 (Judging Criminal Responsibility: Erroneous Convictions, the *CSI* Effect, and the Victim's Role).

**November 21 & November 28. \*Presentation of seminar participants' papers.\***

**December 5. \*Final drafts of papers due no later than today.\***