

Government 271
The American Jury System
Spring Semester 2007
Clark University

Jonas Clark 204
Monday and Thursday, 1:25-2:40
Professor Robert Boatright
JEF 313A; (508) 793-7632
Office Hours: Thursday 12-1; Friday 12-3
rboatright@clarku.edu

Description

The role of the jury is a crucial part of the American Constitution, and the jury plays a major role in many theories of democracy. It is the only remnant in contemporary democratic politics of what was known to the Greeks as “representation by lot,” of randomly selecting citizens to serve a role within government. The jury also serves as a microcosm of contemporary debates about the role of women, racial minorities, and ethnic minorities within our political system. Many arguments about public opinion and political participation are mirrored in the procedures of jury selection and in the decisionmaking process of juries.

Despite these characteristics, juries are rarely studied by political scientists. This is so in part because the process by which juries make decisions is largely shielded from public view; it is also so because we tend to recoil from viewing juries as being at all political. Yet, despite the fact that the number of jury trials has steadily declined over the past two decades, juries continue to play a role in many of the most highly publicized legal cases, and jury decisions play a major role in clarifying how we think about issues of race and gender, of the prerogatives and responsibilities of American businesses, of the rights of consumers, and of civil liberties in the United States.

This course examines the evolution of the concept of a “jury of one’s peers” over the course of American history, with particular emphasis on changes in the jury system in the past three decades. It explores how one of the most antiquated features of our legal system has slowly adapted to reflect changes in American society. We will draw upon many disciplines in our consideration of the jury. Topics will include efforts to ensure the representation of racial minorities and women on juries, the ways in which juries are selected, psychological literature on jury deliberation and decisionmaking, and recent efforts to reform jury selection and jury service to increase the representativeness of jurors, the satisfaction of jurors with their service, and the ability of jurors to arrive at fair verdicts. We will also spend some time considering how juries are presented in the media, and (hopefully) the course will include a visit to the Worcester district court to observe jury selection.

There are no prerequisites for this course, but it would be beneficial if you have had the introductory American politics course.

Readings

The following books are required for the course and are available at the college bookstore:

Abramson, Jeffrey. 2000. *We the Jury: The Jury System and the Ideal of Democracy*. Cambridge, MA: Harvard University Press.

Burnett, D. Graham. 2002. *A Trial by Jury*. Vintage.

Hans, Valerie, and Neil Vidmar. 2001. *Judging the Jury*. Perseus Books.

Marder, Nancy. 2005. *Jury Process*. Foundation Press.

Sunstein, Cass, et al. 2003. *Punitive Damages: How Juries Decide*. Chicago: University of Chicago Press.

There will also be a relatively large, and essential, course packet sold through the Government Department office (3rd Floor of Jefferson Academic Center). All readings listed below that are not part of the above five books will be in the course packet. Some, but not all, of the books for the course and the readings from the course packet will also be on reserve at the library.

Requirements and Grading

Attendance and Participation: The most important requirement for this class is your attendance and participation. In order to succeed in this course, you must attend class and you must come prepared to discuss the readings. This is shaping up to be a relatively small class; that means that everyone's attendance is vital. It is disrespectful to me and to your fellow students not to attend! Attendance and participation comprise 15% of your grade. Ten percent of this will be at my discretion, based on my observation of your engagement in the class and command of the material. The other five percent will account for your attendance.

Essays: You will write four short (three to five page) papers applying research on juries to historical or contemporary cases we will be looking at. Each of these papers will be worth 15 percent of your grade. These papers will be based primarily upon the readings for the course. In these papers, you must adhere to standard social science procedures regarding citations. You will be expected to discuss your papers in class; depending on the assignment, I may also request that you post papers on the course's blackboard site.

Research Paper: You will write a research paper for this course of between ten and fifteen pages on one of two themes. You may (1) select a particular trial in the past twenty or so years in which jury issues played a major role, and discuss these issues in light of the research we consider in this course; or (2) select a particular municipality and discuss how issues related to the jury have changed over the past two to three decades in that area. Both of these will require you to sift through news coverage from the past several years; the second topic may also require some original research on your part. The term paper will be worth 25 percent of your grade.

Class Activities: There will be several class activities which will be folded into your participation grade. At this point, I expect that you will be required to present the class with a brief summary of your research paper subject. In addition, we may do some small group projects on jury selection or jury deliberations over the course of the semester.

Summary: Class Requirements and Percent Contribution to Final Grade:

Requirement	Percent Contribution to Grade	Objective
Class participation and attendance	15%	Interest and engagement with course material
Short Essays (4)	15% each, for a total of 60%	Ability to understand and think critically about jury issues
Research Paper	25%	Ability to apply course material

A Note on Web Resources

There are a lot of good sources on the web about juries. Many of these will help you to clarify technical issues in the reading or keep track of trials that you might find of interest. I may use these in class or ask you to refer to them for your papers. This is by no means a comprehensive list; if you find any other good sources, please do let me know.

Jur-E Bulletin: The weekly email newsletter on jury news sent by the National Center for State Courts. It is archived at <http://www.ncsconline.org/Juries/bulletin.htm>. I will try very, very hard to remember to forward each week's bulletin to all of you every Friday. You can also sign up to receive this directly.

American Bar Association, American Jury Initiative, <http://www.abanet.org/jury/home.html>: This site includes the ABA's guidelines for jury practices and gives you a good understanding of what the ABA thinks about jury trials.

National Center for State Courts, Center for Jury Studies, <http://www.ncsconline.org/Juries/home.htm>: NCSC is the research arm of the state courts; they have the largest jury research operation and post most of their research materials here, along with regular columns and opinion pieces.

American Judicature Society Jury Center, <http://www.ajs.org/jc/index.asp>: AJS is a court reform group headquartered in Des Moines, Iowa. Their website includes a substantial amount of social science research on juries (Disclosure: Much of the work I have done on juries has been funded by AJS).

California Jury web site, <http://www.courtinfo.ca.gov/jury/index.htm>: One of the better ongoing state projects on jury reform.

Citizens' Jury Project (New York), <http://www.juryproject.org/>: Advocacy group that works with the New York Courts.

Council for Court Excellence (Washington, DC), <http://www.courtexcellence.org/>: Advocacy group that works with the District of Columbia Courts.

Jury Blog (maintained by Valerie Hans): <http://juryblog.blogspot.com/>: Run by the author of one of our texts, this site is updated fairly regularly and contains all sorts of interesting tidbits about juries.

Language and Law ("Plain English" website, maintained by Peter Tiersma), www.languageandlaw.org: Contains all sorts of information on jury instructions.

Pennsylvanians for Modern Courts, Jury Project, <http://www.pmconline.org/indexjuryprog.htm>: Advocacy group based in Philadelphia that works with the Pennsylvania Courts.

Fully Informed Jury Association (FIJA), <http://www.fija.org/>: Group that seeks to educate the public and jurors about jury nullification; tends to work closely with the National Rifle Association, Drug Legalization groups, others that have a tendency to run afoul of the law.

There are also many good state court web sites that discuss jury duty. You'll get a sense of these as the semester progresses.

Academic Honesty

Finally, as you should be aware by now, the work you do in this course must be entirely your own. To be sure we all have the same understanding of academic integrity as it pertains to this course, here is what the Academic Advising *Blue Book* (p. 22) has to say on the subject:

Academic integrity is highly valued at Clark. Research, scholarship and teaching are possible only in an environment characterized by honesty and mutual trust. Academic integrity requires that your work be your own. Because of the damage that violations of academic integrity do to the intellectual climate of the University, they must be treated with the utmost seriousness and appropriate sanctions must be imposed. The maintenance of high standards of academic integrity is the concern of every member of the University community.

Plagiarism refers to the presentation of someone else's work as one's own, without proper citation of references and sources, whether or not the work has been previously published. Submitting work obtained from a professional term paper writer or company is plagiarism. Claims of ignorance about the rules of attribution, or of unintentional error are not a defense against a finding of plagiarism.

Suspected plagiarism cases will be referred to the Dean's office. If you are in doubt about whether you have provided adequate citation or used others' work properly (particularly if you are using web sources), please talk with me before handing your paper in!

Schedule

January 18: Introduction to the Course

January 22 and 25: *The Ideal of the Jury*

Burnett, D. Graham. 2002. *A Trial by Jury*. Vintage.

January 29: *The Constitutional status of the jury*

Marder, Nancy. 2005. *Jury Process*. New York: Foundation Press, ch. 1-4 (pp. 1-49).

Abramson, Jeffrey. 2000. *We the Jury: The Jury System and the Ideal of Democracy*. Cambridge, MA: Harvard University Press, ch. 1-2 (pp. 1-96).

February 1: *The development of the jury through American history*

Hans, Valerie, and Neil Vidmar. 2001. *Judging the Jury*. Perseus Books. Ch. 1-3 (pp. 13-44).

King, Nancy. 2003. "The Origins of Felony Jury Sentencing in the United States." *Chicago-Kent Law Review* 78: 937-996.

February 5 and 8: Jury Summoning

Abramson, ch. 3-4 (pp. 99-178).

Boatright, Robert G. 1999. "Why Citizens Don't Respond to Jury Summonses, and What Courts can do About it." *Judicature* 82/4: 156-65.

King, Nancy, and G. Thomas Munsterman. 1996. "Stratified Juror Selection: Cross Section by Design." *Judicature* 79 (5): 273-79.

➤ *Essay #1 Due February 8 in class*

February 12 and 15: *Jury selection*

Hans and Vidmar, ch. 4-6 (pp. 47-94); Marder, ch five (fifty to 104)

Fukurai, Hiroshi, and Richard Krooth. 2003. *Race in the Jury Box: Affirmative Action in Jury Selection*. Albany, NY: State University of New York Press, ch. 1 (pp. 1-19).

Hans, Valerie P, and Alayna Jehle. 2003. "Avoid Bald Men and People With Green Socks? Other Ways to Improve the Voir Dire Process in Jury Selection." *Chicago-Kent Law Review* 78: 1779-1201.

Rose, Mary R. 1999. "The Peremptory Challenge Accused of Race or Gender Discrimination? Some Data from One County." *Law and Human Behavior* 23 (6): 695-702.

Visit to Worcester courts?

February 19 and 22: *Courtroom Procedures and Jury Instructions*

Marder, ch. 6-7 (pp. 105-146).

Heuer, Larry, and Steven Penrod. 1996. "Increasing Juror Participation in Trial through Note-taking and Question-asking." *Judicature* 79 (5): 256-63.

Tiersma, Peter H. 1993. "Reforming the Language of Jury Instructions." *Hofstra Law Review* 22: 37-75.

February 26 and March 1: *Jury deliberations*

Hans and Vidmar, ch. 7-11 (pp. 97-177).

Marder, ch. 8-9 (pp. 147-231).

In-class Movie: *Twelve Angry Men*

➤ *Essay #2 Due March 1 in class*

Monday, March 5 and Thursday, March 8: No Class – Spring Break

March 12 and 15: Verdicts

Kalven, Harry, and Hans Zeisel. 1966. *The American Jury*. Boston: Little and Brown, ch. 4-8 (pp. 45-117).

McCord, David. 2005. "Juries Should not be Required to have 12 Members or to Render Unanimous Verdicts." *Judicature* 88 (6): 301-5.

Landsman, Stephan. 2005. "In Defense of the Jury of 123 and the Unanimous Decision Rule." *Judicature* 88 (6): 301-3.

March 19 and 22: *Civil vs. Criminal trials*

Marder, ch. 10 (pp. 232-257).

Landsman, Stephan. 1993. "The History and Objectives of the Civil jury System." In *Verdict: Assessing the Civil Jury System*, ed. Robert E. Litan. Washington, DC: Brookings Institution, pp. 22-60.

Sunstein, Cass, et al. 20003. *Punitive Damages: How Juries Decide*. Chicago: University of Chicago Press, ch. 2-4 (pp. 31-74), ch. 7-12 (pp. 112-210).

March 26 and 29; April 2 and 5: *Death penalty and high-profile trials*

Hans and Vidmar, ch. 12-14 (pp. 179-242).

Vidmar, Neil. 2003. "When All of Us are Victims: Juror Prejudice and 'Terrorist' Trials." *Chicago-Kent Law Review* 78: 1143-78.

Abramson, ch. 5-6 (pp. 179-250).

Hiller Zobel (Boston Nanny Case) remarks from New York Jury Summit

Shari Diamond remarks from New York Jury Summit

➤ Essay #3 Due April 5 in class

April 9 and 12: *Depictions of juries in the media*

Brill, Steven. 1989. "Inside the DeLorean Jury Room" and "A Burnt-Out Case." In Steven Brill, *Trial by Jury*. New York: Simon and Schuster, pp. 229-286.

Bergman, Paul, and Michael Asimow. 1996. *Reel Justice: The Courtroom Goes to the Movies*. Andrews McMeel, pp. 239-241, 244-251, and 261-269.

Movie excerpts:

A Trial by Jury

The Devil and Daniel Webster

Suspect

Runaway Jury

April 16 and 19: *The jury reform movement*

Dann, B. Michael, and George Logan III. 1996. "Jury Reform: The Arizona Experience." *Judicature* 79 (5): 280-86.

Dann, B. Michael. 1993. "Learning Lessons and Speaking Rights: Creating Educated and Democratic Juries." *Indiana Law Journal* 68: 1229-79.

Myers, Robert D., and Gordon M. Griller. 1997. "Educating Jurors Means Better Trials: Jury Reform in Arizona." *Judges' Journal* 36 (4): 13-17.

Boatright, Robert G. Forthcoming (2006). "The Politics of Jury Reform." In *Rethinking U.S. Judicial Politics*, edited by Mark C. Miller. Los Angeles, CA: Roxbury Press.

➤ Essay #4 Due April 19 in class

April 23 and 26: *Other Nations' Jury Systems*

Lempert or Vidmar excerpts

April 30:

Course Wrap-up

Marder, ch. 11 (pp. 258-268).

Hans and Vidmar, ch. 15 (pp. 245-251).

May x:

Research Papers Due.