The Jury

Professor Thaddeus Hoffmeister

Summer 2019

Room 120

Wed and Th 2:10-3:30

**Course Description**

This course will examine the role of the jury in both the civil and criminal justice systems.  Topics to be covered include the history of the jury, jury selection, juror decision-making, juror misconduct, jury size, juror eligibility, death penalty jurors and voir dire.

**Purpose of the Course**

The goal of the course is twofold:  (1) to provide students with an understanding of the black letter law on the jury; and (2) to provide students with a broad understanding of the policy issues facing the modern jury.

**Attendance**

You can miss 2 classes for any reason. Every missed class thereafter results in a reduction of 5 points. After 6 absences and the deduction of 20 points, you are unlikely to pass this course. You can never miss a day where you are designated to lead the class.

**CREDITS**: 2 Credits (Credit Type A)

**PREREQUISITES**: None

**GRADING**: Option A

**10% Class Participation**: Students will have assigned days on which they will be responsible for leading the class discussion.

**30% Jury Selection**: Students must select hypothetical jurors and complete a jury questionnaire.

**60% Final Paper**: Each student is required to complete a 15+ page paper on a jury-related topic. The paper should be of publishable quality.

**Topics Due**

May 15th

**Outline Due**

June 1st

**Rough Draft Due**

July 1st

**Final**

July 15th (Physically hand in the paper and upload a version of the paper to Isidore)

**COURSE MATERIALS**:

The course will be taught using administrative rules, ethics opinions, cases, statutes and law review articles. You will be responsible for acquiring these materials.

This course is divided into five parts.

Part I: Background

Part II: Sitting on a jury

Part III: Jury decision making

Part IV: Practical Exercise

Part V: Future of the jury

**PART I: BACKGROUND**

**Module 1: How Should Problems Be Resolved?**

Shuman and Champagne, *Removing the People from the Legal Process*, 3 PSYPPL 242 (1997)

Ramirez, *A Brief Historical Overview of the Use of the Mixed Jury,* 31 Am. Crim. L. Rev. 1213 (1994)

Drahozal, *A Behavioral Analysis of Private Judging,* 67-SPG Law & Contemp. Probs. 105 (2004)

University of Dayton Law School Honor Council

**Module 2: The Early Jury in America**

Alschuler & Deiss, *A Brief History of the Criminal Jury in the United States,* 61 U. Chi. L. Rev. 867 (1994)

Federalist Papers #83

*Batson v. Kentucky*, 476 U.S. 79 (1986) (Dissent by Chief Justice Burger)

**Module 3: Grand Jury**

Thaddeus Hoffmeister, *Resurrecting the Grand Jury’s Shield, Grand Jury Legal Advisor, 98 Journal of Criminal Law and Criminology* 1171 (2008)

Andrew Leipold, *Why Grand Juries Do Not and Cannot Protect the Accused*, 80 Cornell L. Rev. 260 (1995)

**PART II: SITTING ON A JURY**

**Module 4: Right to a jury**

**Criminal**

*Duncan v. Louisiana*, 391 U.S. 145, 147-162 (1968)

*Blanton v. City of North Las Vegas*, 489 U.S. 538 (1989)

Federal Rule of Criminal Procedure 23(a)

*Singer v. U.S.,* 380 U.S. 24 (1965)

*McKeiver v. Pennsylvania*, 403 U.S. 528 (1971)

*Patton v. U.S.,* 281 U.S. 276, 287-313 (1930)

**Civil**

*Markman v. Westview Instruments, Inc*. 517 U.S. 370 (1996)

*Local 391 v. Terry,* 494 U.S. 558 (1990)

**Module 5: Jury Size and the Venire**

*Strauder v. West Virginia*, 100 U.S. 303, 304-312 (1880)

*Taylor v. Louisiana*, 419 U.S. 522 (1975)

Andrew Guthrie Ferguson, *Why Restrict Jury Duty to Citizens*?, THE ATLANTIC (May 9, 2013)

*Burch v. Louisiana,* 441 U.S. 130 (1979)

Jury Selection and Service Act 28 USC §§ 1861, et seq., (Jury Act)

David Kairys et al., *Jury Representativeness: A Mandate for Multiple Source Lists,* 65 CAL. L. REV. 776 (1977)

N.M. Stat. Ann. §§ 38-5-1

*Duren v. Missouri*, 479 U.S. 357 (1979)

Nina W. Chernoff and Joseph B. Kadane, *The 16 Things Every Defense Attorney Should Know About Fair Cross-Section Challenges,* THE CHAMPION (Dec. 2013)

**Module 6: Death Penalty**

*Ring v. Arizona*, 536 U.S. 584 (2002)

*Lockhart v. Mcree,* 476 U.S. 162 (1986)

Matthew Rubenstein*, Overview of the Colorado Method of Voir Dire*, THE CHAMPION (Nov. 2010)

**Module 7: Voir Dire**

28 USC 1861

*Press Enterprise v. Superior Court II*, 464 U.S. 501

*Presley v. Georgia*, 130 S.Ct. 721 (2010)

Reid Hastie, *Is Attorney Conducted Voir Dire an Effective Procedure for the Selection of Impartial Juries,* 40 AM. U. L. REV. 703 (1991)

Thaddeus Hoffmeister, *Investigating Jurors in the Digital Age: One Click at a Time*, 60 University of Kansas Law Review 611 (2012).

**Module 8: Removing Jurors**

**Challenge for Cause**

*State* *v. Speer*, 124 Ohio St. 3d 564 (2010)

*U.S. v. Salmone*, 800 F.2d 1216 (1986)

**Peremptory Challenges**

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

Hoffman, *Peremptory Challenges Should Be Abolished: A Trial Judge’s Perspective,* 64 U. Chi. L. Rev. 809 (1997)

**PART III: JUROR DECISIONMAKING**

**Module 9: Biased Jurors**

*Skilling v. U.S*. 561 U.S. \_\_\_ 1-34 and Dissent by Justice Sotomayor (2010)

Leslie Garfield Tenzer, *Social Media, Venue and the Right to a Fair Trial*

Thaddeus Hoffmeister, *The Judge Should Rethink His Decision to Try Tsarnaev in Boston,* NY Times (Jan. 7, 2015)

**Module 10: Unanimity, Nullification and Jury Instructions**

**Unanimity**

*Apodaca v. Oregon*, 406 U.S. 404 (1972)

*Johnson v. Louisiana*, 406 U.S. 356 (1972)

**Nullification**

*U.S. v. Thomas*, 116 F. 3d 606 (1997)

*U.S. v. Spock*, 416 F. 2d 165 (1969) (Part III)

Andrew Leipold, *The Dangers of Race-Based Jury Nullification: A Response to Professor Butler,* 44 UCLA L. REV. 109 (1996)

The “Juror’s Handbook” [www.fija.org](http://www.fija.org)

**Instructions**

*Allen v. U.S*., 164 U.S. 492 (1896)

**Module 11: Misconduct and Inconsistency**

*Tanner v. U.S*., 483 U.S. 107 (1987)

Pena Rodriguez v. Colorado, 580 U.S.\_\_\_\_\_\_2017

Federal Rules of Evidence 606(b)

Thaddeus Hoffmeister, *Google, Gadgets, and Guilt: Juror Misconduct in the Digital Age,* 83 University of Colorado Law Review 409 (2012)

Muller, *The Hobgoblin of Little Minds? Our Foolish Law of Inconsistent Verdicts*, 111 Harv. L. Rev. 771 (1998)

*Brandborg v. Lucas*, 891 F. Supp. 352 (1995)

**PART IV: Practical Exercise**

**Module 12: Jury Selection**

Students will voir dire hypothetical jurors (classmates) and submit a juror questionnaire

**PART V: FUTURE OF THE JURY**

**Module 13: Reform and the Future of the Jury Around the World**

**Anonymity**

*U.S. v. Barnes*, 604 F.2d 121 (1979)

Nancy King, *Nameless Justice: The Case for Routine Use of Anonymous Juries in Criminal Trials*, 49 VAND. L. REV. 123 (1996)

**Reform**

Nancy Marder, *Jury Reform: The Impossible Dream,* 5:2 Tennessee Journal of Law and Policy 103 (2009)

Akhil Reed Amar, *Reinventing Juries: Ten Suggested Reforms,* 28 U.C. Davis L. Rev. 1169 (1995).

**International**

Valerie Hans, *Jury Systems Around the World,* 4ANREVLSS 275 (2008)

**University Policies**

All students are subject to UD’s policies on academic honesty and computing ethics. Students are also reminded that as future attorneys their actions or omissions may be reported to the State Bar.

Disabilities: “Law students wishing to request a disability related accommodation must submit the request in writing to Brenda Cooper, Program Coordinator: Disability Services for the University's Learning Enhancement & Academic Development (LEAD) Office in the Ryan C. Harris Learning Teaching Center (937.229.2066) and provide a copy of the request to Shannon Penn, Assistant Dean for Student Affairs. If you have already secured a current Self-Identification Form indicating a disability which requires academic accommodations, please present the form to me so I can provide the appropriate accommodations needed in this class."

**Law Student Conduct Affecting Admission to the Bar**

*Friedman v. Connecticut Bar Examining Commission*, 824 A.2d 866 (Conn. App. 2003)

State Bar Admissions Committee denied application for admission and court affirmed.  Applicant had been charged with academic dishonesty in law school for cheating on a final exam. The Law Student Discipline Committee found conduct code violation, Dean reversed for committee’s delay to notify student and to bring charges, but noted that he was obligated to annotate charges in student’s record and transmit them to appropriate bar admission board.

*Doe v. Connecticut Bar Examining Committee,* 818 A.2d 14 (Conn. 2003)

Applicant deemed to lack good moral character based, in part, on evidence that he committed plagiarism with respect to a research paper that he submitted to a professor during law school.

*In the Matter of the Application of Otion Gjini to the Bar of Maryland*, Misc. No. 32, Sept. Term, 2015 (oral arguments available [here](https://associatesmind.com/2016/07/22/could-your-social-media-posts-prevent-you-from-becoming-a-lawyer/))

Applicant was denied admission to the bar primarily because of his frequent DUIs and lack of candor to the Board. However, the Maryland Character Committee (MCC) also made note of his online posts which were offensive and vulgar.

* *“This guy is a dipshit.”*
* *“Yo, shut the f#@k up so we can watch the video.”*
* *“They both fight like hoes.”*
* *“The bully kid was a pussie.”*
* *“That girl is hot as f#@k.”*
* *“Who is the faggot that made this video?”*
* *“Just keep games like they are with a PS3 controller. None of this gay shit.”*
* *“Straight NUTT in that b@#$h.”*

Don’t be that law student!

Yes, I am somewhat familiar with the First Amendment. However, your constitutional arguments regarding free speech will be much more persuasive after you have been admitted to the bar.

For more information about the role of social media in bar admission see the following: Jessica Belle, *Social Media Policies for Character and Fitness Evaluations,* 8 Wash J.L. Tech. & Arts 107 (2012).