The Jury

Professor Thaddeus Hoffmeister

Spring 2014

Room 115

Wed and Th 1:30-2:20

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

**PREREQUISITES**: None

**GRADING**: Option A

**10% Class Participation and Journals**: Students will have assigned days on which they will be responsible for leading the class discussion. Students are also responsible for watching jury selection for 1-2 trials and writing a journal entry about what they observed.

**10% Weekly Blog Posts**: Each week students are required to make one blog post on a jury-related issue. In addition, each student must respond to a blog post made by another student.

**20% Jury Selection**: Students must select hypothetical jurors and complete a jury questionnaire.

**60% Final Paper**: Each student is required to complete a 15-20 page paper on a jury-related topic. The paper should be carefully researched, organized, concise, and thoroughly proofread. Citations to the research should be in footnotes and in Bluebook format.

**CLASS DISCUSSION:** We will spend the first 5-10 minutes of each class talking about jury related news.

**COURSE MATERIALS**:

At present, 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 four parts.

Part I: History of the jury

Part II: Sitting on a jury

Part III: Jury decision making

Part IV: Future of the jury

**PART I: HISTORY OF THE JURY**

**Week 1: Introduction**

Adriaan Lanni, *Verdict Most Just: The Modes of Classical Athenian Justice,* 16 Yale J.L. Human. 277 (2004)

*Bushell’s Case*, 6 Howell’s State Trials 999 (1670)

*Rex v. Zenger*, 17 St. Trials (Howell) 675 (1735)

**Week 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)

*U.S. v. Burr*, 25 F. Cas. 187 (C.C.D. 1807)

Federalist Papers #83

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

7th Amendment U.S. Constitution

6th Amendment U.S. Constitution

**PART II: SITTING ON A JURY**

**Week 3: Right to a jury**

*Duncan v. Louisiana*, 391 U.S. 145 (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)

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

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

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

**Week 4: Jury Size, Fair Cross Section and Death Penalty Jurors**

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

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

*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)

*U.S. v. Johnson*, No. CR. 01-3046 MWB (March 31, 2005)

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

*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)

**Week 5: Selection and Anonymity**

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

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

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

Thaddeus Hoffmeister, *Jury De Medietate Linguae*, Juries Blog (January 2, 2008)

*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)

**Week 6: Voir Dire**

28 USC 1861

*Press Enterprise v. Superior Court II*, 478 U.S. 1 (1986)

*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)

*Ham v. South Carolina*, 409 U.S. 524 (1973)

*Turner v. Murray,*  476 U.S. 28 (1986)

*Ristaino v. Ross*, 424 U.S. 589 (1976)

*McDonough v. Greenwood,* 464 U.S. 548 (1984)

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

**Week 7: Removing Jurors**

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

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

*J.E.B. v. Alabama*, 511 U.S. 127 (1994)

*Purkett v. Elem*, 514 U.S. 765 (1995)

*Hernandez v. New York*, 500 U.S. 352 (1991)

*Miller-El v. Dretke*, 545 U.S. 231 (2005)

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

**PART III: JUROR DECISIONMAKING**

**Week 8: Biased Jurors**

*Skilling v. U.S*. 561 U.S. \_\_\_ (2010)

*Irvin v. Dowd*, 366 U.S. 717 (1961)

*Murphy v. Florida*, 421 U.S. 794 (1975)

*U.S. v. Burr*, 25 F. Cas. 187 (C.C.D. 1807)

**Week 9: Unanimity, Nullification and Jury Instructions**

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

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

*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)

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

**Week 10: Misconduct and Inconsistency**

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

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)

**Week 11: Jury Selection**

**Week 12: Jury Selection**

**PART IV: FUTURE OF THE JURY**

**Week 13: The Future of the Jury and International Juries**

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

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).

Stephan Landsman and Jing Zhang, *A Tale of Two Juries: Lay Participation Comes to Japanese and Chinese Courts,* 25 UCLA PAC. BASIN L.J. 179 (2008)