

POLS 3124: The Criminal Justice System and the American Jury

Professor Law (not a typo)

Spring 2020

Office Hours: M and W at James Hall 3417, 2:15-3:45pm and by appointment
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Course Description

In this course, we assess the role of the American jury in the criminal justice system. Although juries also serve in civil cases, the focus in this course is their participation in criminal trials. Supporters of the jury see the jury as the ultimate expression of democracy and freedom, a system whereby 12 regular members of society who are your peers judge you. Critics of the jury see it as deeply ineffective and biased system. They see it as 12 unlearned people and their prejudices, easily manipulated by lawyers and jury consultants, being asked to decide the fate of defendants in sometimes highly complex civil and criminal proceedings. We will assess both these claims.

The course begins with the contemporary debate about juries, arguments for and against the system. Then we move on to the history and origins of the system. Only by understanding the history and origins of the jury can we place the contemporary jury system in its proper context as we assess how far the system has come and how far it has yet to go.

Obviously, a jury is only as good as the people who comprise it. We spend some time on the history exclusion of certain citizens for jury participation based on race and sex. The issue of jury selection is an important one and a veritable cottage industry of jury consultants who claim to help lawyers pick the "right" jurors has sprouted up. We explore the effect of these consultants on voir dire and the use of preemptory challenges.

We then turn to how juries actually make decisions. Does the law guide jurors or are they guided by a more abstract sense of justice? We assess the phenomena of jury nullification.

The final section of the course looks at the role of juries in capital cases and the racial disparities in every stage of the criminal justice process, culminating in the racial disparities in capital cases. We then take a step back and reflect on the wisdom of continuing with the jury system in the United States.

Texts and Readings

There are two required text available at the bookstore: Jeffery Abramson's *We the Jury*; and D. Graham Burnett's *A Trial By Jury*. In addition, there are additional required readings posted on Blackboard. Those readings are preceded by *** on the syllabus below.

Your final grade will be calculated as follows: You cannot pass this class without turning in all major assignments.

Midterm exam	3/30	20%
Outline	4/7	15%
Paper	4/27	25%
Final Exam	5/20, In class, 1-3pm	25%
Participation		15%

Grading criteria

100-94	A
93-90	A-
89-87	B+
86-83	B
82-80	B-
79-77	C+
76-73	C
72-70	C-
69-67	D+
66-63	D
62-60	D-
59 and below	F

Administrative Policies

1) You are allowed two absences on days where there is no exam and no assignment is due. Past the 2 absences, you lose 30% of your participation grade for each additional absence. Although you don't need to speak in every class, you must ask a question or contribute to discussion at least twice during the semester.

2) The faculty and administration of Brooklyn College support an environment free from cheating and plagiarism. Each student is responsible for being aware of what constitutes cheating and plagiarism and for avoiding both. The complete text of the CUNY Academic Integrity Policy and the Brooklyn College procedure for implementing that policy can be found at this site:

<http://www.brooklyn.cuny.edu/bc/policies>.

If a faculty member suspects a violation of academic integrity and, upon investigation, confirms that violation, or if the student admits the violation, the faculty member MUST report the violation.

3) If you are having difficulty in the class, come see me at my office hours at the earliest sign of difficulty, not toward the end of the semester. If you are not pleased with your performance on an assignment or unclear about the readings, come see me as soon as possible so that we can talk about some study skills and test taking strategies. I can't do much to help you if you come see me only at the end of the term before the final exam.

4)) In order to receive disability-related academic accommodations students must first be registered with the Center for Student Disability Services. Students who have a documented disability or suspect they may have a disability are invited to set up an appointment with the Director of the Center for Student Disability Services, Ms. Valerie Stewart-Lovell at 718-951-5538. If you have already registered with the Center for Student Disability Services please provide your professor with the course.

5) If you've read this far carefully, thank you. Please email me a picture of a cat by the next class.

Schedule of Topics and Readings

Week one: Introduction. Discuss course requirements and overview of course themes. Contemporary debates over the jury system.

**John Nockleby, "What are Juries Good For?" Start reading *A Trial by Jury* (Part I)

Week two: History of the American Jury System/Jury Procedure
Why don't we just let judges or other legal experts decide cases? What's the rationale for involving lay people in legal decision making?

Readings: *A Trial by Jury* (Part I: The Open Court), **Valerie Hans, "Lay participation in legal decision making"

Week three: Purpose of the jury system. Lay voices in other countries.
Is the United States the only country to use juries? Why not just trust the government to try your case with no citizen input?

Reading: Abramson, Introduction, and ***Duncan v Louisiana*.

Week four: Jury selection—representativeness and preemptory challenges.
What is *voir dire*? What is a preemptory challenge? What is the ideal composition of a jury? What is a "cross-section" of the community?

Read: Abramson, Chapters 1-3,

Week five: Jury selection and the question of race.

What does it matter what race the jurors are? What is the rationale of excluding African Americans or any other persons based on race?

Read: ***Batson v Kentucky* and ***Taylor v Louisiana* (1975) and remainder of *A Trial by Jury*. (We will discuss Part II of *A Trial by Jury* in week 8; please have entire book read by then.)

Week six: Jury selection and the question of sex.

Does it matter that we have women on juries? Do they bring some kind of special perspective to crimes? Do women jurors bring special knowledge that male jurors may not bring? What are the consequences of excluding females from the jury?

Read: ***Hoyt v Florida* and *JEB ex rel v Alabama* (1994)

Week seven: The “Science” of jury selection.

To what extent can we correctly predict how a person will “vote” on a jury based on his/her background characteristics? If you were a participant in a trial, would you pay good money to hire a jury consultant? Is the jury consulting business a legitimate business or just smoke and mirrors?

By Friday of this week, check out the websites of some jury consulting operations:

- National Jury Project (<http://www.njp.com>)
- DecisionQuest (<http://www.decisonquest.com/index.html>)
- American Society of Trial Consultants Homepage (with directory and links to member organizations)

Readings: ** Shari Diamond, “Scientific Jury Selection: What Social Scientists Know and Don’t Know”; Abramson, Chapter 4

Week eight: How juries make decisions

Do juries make decisions in systematic ways or are the jurors just emotionally reacting? How do we study an institution like the jury that makes their decisions behind closed doors?

Readings: Abramson, Chapter 5; and ** Discussion of Trial By Jury Part II, and **Kalven and Zeisel, “The Jury Follows the Evidence and Understands the Case”

Week nine: Jury nullification.

What is jury nullification? Why do juries nullify? Are there instances where jury nullification is justified? When is it unacceptable?

Readings: Review Abramson Chapter 2, Start reading **Paul Butler, *the Washington Post*, “Jurors should take the law into their own hands” and German Lopez, *Vox*, “Jury nullification: how jurors can stop unfair and racist laws in the courtroom.”

Week ten: The criminal justice system and racial bias

What are the causes of racial disparity in the criminal justice system? At what levels of the system do these problems originate and operate? What role did race, if any, play in the Trayvon Martin murder?

Readings: ** Jelani Cobb, *The New Yorker*, “What the George Zimmerman Trial was About” and Bryan Stevenson, *New York Times*, “Why Prisons Owed their Cruelty to Slavery”

Week eleven. Juries and capital cases.

Should juries be allowed to decide capital cases in which the stakes are so high? What sorts of biases are alleged in the capital system? Should judges take into account the social science studies documenting the racial bias in the capital system?

Readings: Abramson, Chapter 6, ** *McCleskey v Kemp*

Week twelve: The future of the jury system.

At the conclusion of this course, are you in favor of retaining the jury system as we know it today? What improvements or reforms might you suggest to make the system better? What alternative do we have if we get rid of juries?

Readings: Abramson, Conclusion