

POLS 3124: The Criminal Justice System and the American Jury  
Professor Law

Fall 2014 12:25-2:05

Office Hours: M and W at James Hall 3407, 2:15-4:15pm and by appointment  
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Course Description

In this course, we assess the role of the American petit 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. Given the tragic cases of Michael Brown, Eric Garner, and Freddie Gray, we also examine grand juries and how they differ from garden-variety petit juries.

The final section of the course looks at the nettlesome problems of racial disparity in the criminal justice system and the role of juries in perpetuating it. 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.

Please consult the last page of the syllabus for important dates on the Brooklyn College academic calendar.

Your final grade will be calculated as follows:

First Midterm exam	10/14	25%
Outline of paper	11/16	20%
First paper due	12/9	25%
Final Research Paper	12/16	30%

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) A word about basic classroom decorum. Please turn off cell phones and pagers and refrain from texting FOR THE DURATION OF THE CLASS. Yes, I can see you when you are texting in the middle of class and it is distracting to me and to the people around you.

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) I do not accept late assignments without verifiable documentation. If there is even the slightest possibility that you may have a computer crash, public transportation delays, be coming into contact with poison ivy, your dog eating your homework, being the victim of identity theft, zombie apocalypse, war, famine, pestilence, earthquake, good lovin' gone bad, problems with your Toyota brakes, trauma from seeing your BFF on COPS, having to make an appearance on the Jerry Springer show, food poisoning, being hit by a meteor or space junk, printer running out of toner, getting arrested for public urination, an attack of ennui, a flesh eating virus and/or any other calamity-- start your assignments EARLY.

### 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* and complete the book in time for discussion of it by week 8.

**Week two: No Class M, 9/7 but class is in session September 10, Thursday.** 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.  
Is the United States the only country to use juries? Why not just trust the government to try your case with no citizen input? Why were the colonists so enthusiastic about juries?

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 does "fair cross-section" of the community mean and how do we achieve it?

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? Why might it be useful to have persons of diverse races on juries? Do *Batson* challenges actually work? Why or why not?

Read: \*\* *Taylor v Louisiana* (1975) and *Batson v KY* (1986).

**Week six:** Jury selection and sex and sexual orientation.

What about sex and sexual orientation? Does it matter that we have women and LGBT persons on juries? Do these persons bring some kind of special perspective to crimes? Why or why not? What characteristics are legitimate or illegitimate to exclude from a jury? (sexual orientation, economic class, educational level, for example?)

Read: \*\* *Hoyt v Florida* (1961) and *J.E.B. v Alabama ex rel T.B/* (1994)

**Week seven: No Class M, 10/12** 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 on 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 the end of the week, check out the websites of some jury consulting operations:

- National Jury Project (<http://www.njp.com>)
- DecisionQuest (<http://www.decisionquest.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, and remainder of *A Trial by Jury*.

**Week eight:** How juries make decisions

Do juries make decisions in systematic ways or are the jurors just emotionally reacting to attorney’s theatrical performances? How do we even study an institution/entity like the jury that makes their decisions behind closed doors? What were some of the conclusions of the classic study *The American Jury* by Kalven and Zeisel? Are the findings now out of date or not?

Readings: Abramson, Chapter 5; and Discussion of Trial Jury, and \*\*Hans and Vidmar, “The American Jury at Twenty-Five Years”

**Week nine:** Jury nullification.

What is jury nullification? Why do juries nullify? How do we even know when a jury has actually nullified? Are there instances where jury nullification is justified? When is it unacceptable?

Readings: Review Abramson Chapter 2, \*\*Paul Butler “Racially Based Jury Nullification: Black Power in the Criminal Justice System”

**Week ten:** Grand Juries and revisiting the question of racial bias

What are grand juries and how do they differ in function from petit juries? Why were the Michael Brown and Eric Garner juries verdicts very typical while the Freddie Gray verdict

was atypical? What are some of the problems with the statistics on “justifiable homicides” and police shootings? What were some problems in the Michel Brown case?

Readings: \*\*Rani Molla, “Why Statistics on Justifiable Homicide Just Won’t Do” WSJ, Reuben Fischer-Baum, “Allegations of Police Misconduct Rarely Result in Charges” FiveThirtyEight, Laura Santhanam and Vanessa Dennis, “What do the newly released witness statements tell us about the Michael Brown shooting” PBS Newshour, and Abramson, Conclusion.

**Week eleven:** The nettlesome question of racial disparity across the criminal justice system. In a democracy, why it is a problem that there are racial disparities in the criminal justice system? What are some of the causes and consequences of these disparities?

Readings: \*\* David Cole, *No Equal Justice*, Introduction, Chapter 1 and 3.

**Week Twelve:** Catch up.

### Fall 2015, Brooklyn College, Important Dates

Thursday August 27- First day of classes

Wednesday September 2- Last day to add a class

Monday September 7- College closed, Labor Day

Thursday September 10- Conversion day- classes follow a Monday schedule

Sunday-Tuesday September 13-15- no classes

Thursday September 17- Course withdrawal period begins. A grade of "W" is assigned to students who officially withdraw from a class

Tuesday-Wednesday September 22-23- no classes

Friday September 25- conversion day- classes follow a Tuesday schedule

Monday October 12- college closed- Columbus day

**Monday November 9- Course Withdrawal period ends; Last day to withdraw from a course with the grade of 'W'**

Thursday-Friday November 26-27- college closed –Thanksgiving Recess

Saturday-Sunday November 28-29- no classes

Saturday December 12- no classes

Monday December 14- last day of undergraduate classes

Tuesday December 15- reading day

Wednesday-Wednesday December 16-23- undergraduate final exams/ graduate final exam/classes

Saturday-Sunday December 19-20- weekend final exams

Wednesday December 23- last day of the term

Thursday-Friday December 24-25- college closed

Thursday-Friday December 31-January 1 2016- college closed