

Sociology Graduate Seminar 258
Global Lay Justice Systems
Spring 2011

Instructor:

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Office Hours – Tuesday 2-5 p.m. and/or by appointment

Class:

College Eight 301, Wednesday, 9:00-12:00 p.m.

Course description:

Since late 1980s, we have witnessed the sudden resurgence of global interest in the lay justice system in many nations that have recently moved from the authoritarian to a more open and democratic regime such as Russia, Spain, Armenia, Kazakhstan, Ukraine, Azerbaijan, South Africa, South Korea, Venezuela, Bolivia among others. Adoption of the system of popular participation and its varied forms in those nations then provide ideal opportunities to examine the extent of the role of a jury as a check on state power, as well as its contribution to the ongoing viability of a democratic government and its supporting institutions. We also explore the potential utility of the lay judge system in the context of both national and international criminal adjudication to bring about citizens' movements against environmental devastation, military invasions, genocide, and other forms of egregious crimes committed by governments and state-linked multinational corporations. While juries have been seen as a derivative institution of democratic ideals, this course attempts to challenge this assumption and examine whether or not the domestic and international demand for the lay justice system can be embraced as one of the key strategic judicial mechanisms to hold corporations and governments accountable for their actions, thereby creating legitimate aspirations for democratic transformation of the state and its institutions.

In examining today's declining significance of jury trial in U.S., we focus on the role of corporate media and public relations industries in mounting severe criticism and manufacturing anti-jury public consent that helped severely curtail or even completely eliminate democratic aspects and aspirations of lay adjudication in Canada, England, India, Malaysia, Singapore, Hong Kong, and other former British colonies.

Evaluations:

(1) Weekly In-Class Presentation of Our Reading

Every student is expected to present a detailed synopsis of assigned papers in class (15 min each). The use of power point presentation is encouraged but not required (otherwise you must distribute copies of your synopsis in class).

(2) Research Paper

You must identify a lay justice system of a particular country(s) (or nations, municipalities, provinces or collective non-profit organizational alliance), provide an outline and a bibliography of potential sources. First you must submit a 3 page concept paper to me for a critical review; make a short presentation to the class about your paper topic, and produce a final version of your own paper by the end of the quarter.

For example, students may choose any relevant topic covered in class and develop it into a full paper. Other students may select two countries that incorporated either jury trial or mixed tribunal systems and gives a detail and critical comparison of their lay judge systems. The paper then should include (1) history of lay judge systems, (2) unique characteristics and traits, including qualifications, exemptions, etc., (3) candidates selection procedures, (4) level of its utilization, (5) the extent of oversight function of the government and its supporting agencies, (6) people's attitudes

toward the lay judge system, (7) recent reforms, if any, and (8) comparisons with the U.S. jury system.

The concept paper (3 page max, excluding a cover sheet and a bibliography) is due on **April 27 (5th week)**, and the final paper (15 page max) is due on **Wednesday, 12 p.m., June 8th (final's week)**.

(3) Oral Presentation of Your Research Paper:

The later part of this quarter will be reserved for students to present their findings from their research papers. The presentation evaluation will be based on how well he/she speaks about their research objectives and findings in an effective and engaging fashion. Again, a group project is encouraged for both oral presentation and final paper.

Subscription to the Jur-E Bulletin

You are required to subscribe to an electronic newsletter distributed by the National Center for State Courts (visit <http://www.ncsconline.org/Juries/bulletin.htm> to sign up for your individual subscription). This newsletter will give you up-to-date information on the subject of lay participation in the U.S. and the world.

Textbook:

Vidmar, Neil and Valerie Hans. 2007. American Juries: The Verdict. NY: Prometheus Books. The weekly reading will be posted on eCommons every week.

Other Suggested Readings:

Vidmar, Neil. 2000. World Jury Systems. NY: Oxford University Press.

Butler, Edgar, Hiroshi Fukurai, Jo-Ellan Huebner Dimitrius, and Richard Krooth. 2001. Anatomy of the McMartin Child Sexual Molestation Case. NJ: University Press of America.

Course Contents: Some weeks will show videos to gain deeper understandings of weekly subjects.

Week 1

Introduction and the Overview of the Jury as the Lay Participatory Institution

- Neil Vidmar and Valerie Hans, Introduction, in American Juries (2007), pp15-19.
- Please sign up for the Jur-E bulletin (as described above & below)

National Center for State Courts (information and breaking news)

<http://www.ncsconline.org/Juries/bulletin.htm>

American Judicature Society's National Jury Center Website (American jury info. warehouse)

<http://www.ajs.org/jc/index.asp>

Resurgence of Lay Judge Systems in the World

- John Philip Dawson, A History of Lay Judges, Introduction, pp.1-9
- Neil Vidmar, World Jury Systems (Oxford 2000), Chapter 1, "A Historical and Comparative Perspective on the Common Law Jury," pp. 1-52.
- Richard O. Lempert, The Internationalization of Lay Legal Decision-Making: Jury Resurgence and Jury Research, 40 *Cornell Int'l L.J.* 477 (2997)

Documentary, "Sicko – Michael Moore Cut This Scene (No One Would Believe)" (8 min) – Norway Criminal Justice & Correction Systems

Reference

- Norway's Legal System, available at <http://library.thinkquest.org/18802/norcourt.htm>

Week 2

Governments v. Citizens -- Terrorist Jury Trials in the World

- Hiroshi Fukurai, "Transcommunal Projects to Establish the System of Civic Oversight of the Government: People's Legal Participation and Power to Check the Government and Its Authority," available at http://www.transcommunality.org/documents/2nd_edition/fukurai.pdf
- Neil Vidmar, "Trial by Jury Involving Persons Accused of Terrorism," (unpublished manuscript on file)

Russia & Spain (Russian Jury Trials)

- Stephen Thaman, Europe's New Jury Systems: The Cases of Spain and Russia, 62 *Law & Contemp. Prob.* 233 (1999)

Al Arian Terrorism Trial:

Documentary, CAIR Calls for Resolution in Al-Arian Case (4 min)

Holy Land Foundation Terrorism Trial:

Documentary, Holy Land Foundation Trial (7 min) & **A Victory for Justice** (6 min).

Supplemental Materials

- Holy Land Foundation Trial information, available at <http://www.h4jusa.com/>
- New trial for Cuban Five, available at <http://www.workers.org/2005/us/cuban5-0818/>

Supplemental Reading:

- Azaria Chamberlain, available at http://www.articleworld.org/index.php/Azaria_Chamberlain

Week 3

Athenian Jury (Direct Democracy) & Roman Jury

- C.L.R. James, "Every cook can govern," available at <http://www.marxists.org/archive/james-clr/works/1956/06/every-cook.htm>
- John Philip Dawson, A History of Lay Judges, Chapter 1, pp.10-34.
- Adriaan Lanni, Verdict Most Just: The Modes of Classical Athenian Justice, 16 *Yale J.L. & Human.* 277 (2004)

Supplement Reading:

- Democratic deficit, http://en.wikipedia.org/wiki/Democratic_deficit

Direct Democracy and Random Selection in Politics – Athens to Today's Democracy

- Lyn Carson & Brian Martin, Chapters 3 thru 7 in Random Selection in Politics (1999).
- John Gastil, Chapter 2, "Exist and Public Voice in Representative Democracy," and Chapter 9, "Electoral Experimentation," By Popular Demand (2000)

Week 4

History of Jury Trials: The U.S. as a Starting Point

- Albert W. Alschuler and Andrew G. Deiss, a Brief History of the Criminal Jury in the United States, *U.Chi. L. Rev.* 867 (1994)
- Neil Vidmar & Valerie Hans, Chapter 2: Criminal and Civil Juries in America from Colonial Times to the Present Day in American Juries (Oxford 2007), pp. 41-64.
- *Duncan v. Louisiana*, 391 U.S. 145 (1968), available at <http://caselaw.lp.findlaw.com/scripts/getcase.pl?navby=CASE&court=US&vol=391&age=145>

Pre-20th Century European Jury Systems

Jury Trial

- Neil Vidmar & Valerie Hans, Chapter 1: The English Origins of the Modern Jury in American Juries (Oxford 2007), pp. 21-39.

Mixed Tribunals (or Mixed Courts)

- John Philip Dawson, A History of Lay Judges, Chapter 2: Popular Courts and Their

- Displacement in France and Germany, pp.35-115.
- Sanja Kutnjak Ivkovic, Exploring Lay Participation in Legal Decision-Making: Lessons from Mixed Tribunals, 40 *Cornell Int'l L.J.* 429 (2007)

Week 5

Contemporary Debate of Jury Nullification in the U.S.

- Darryl K. Brown, Jury Nullification Within the Rule of Law, 81 *Minn. L. Rev.* 1149 (1997)
- Paul Butler, The Evil of American Criminal Justice: A Reply, 44 *UCLA L.Rev.* 143 (1996)
- Neil Vidmar & Valerie Hans, Chapter 11: Jury Nullification: The War with the Law in *American Juries* (Oxford 2007), pp.221-240.
- 2007 Jury Acquittal of the Washington Seven (Anti-War Protesters from the National Campaign for Nonviolent Resistance), available at <http://www.iraqpledge.org/>

Supplemental Readings or Relevant Issues:

- Seriously Pissed Off Grannies – acquitted by jury, <http://www.paxamericana.net/2007/12/seriously-pisse.html>
- CODEPINK, http://pinkchimp.blogspot.com/2005_09_01_archive.html
- St Patricks' Four, <http://www.stpatricksfour.org/>
- Wrongful Acquittal (UC Santa Cruz Wrongful Acquittal Project, brief presentation in class)

Professional Judges v. Jurors: State Control, Propaganda, and Jury Trial (Pre-trial Publicity)

- Neil Vidmar & Valerie Hans, Chapter7: Judging the Jury, in *American Juries* (Oxford 2007).
- Boaz Sangero, Miranda is Not Enough: A New Justification for Demanding Strong Corroboration to a Confession, 28 *Cardozo L.Rev* 2791 (2007)
- Neil Vidmar & Valerie Hans, Chapter 5: Pretrial Publicity in *American Juries* (Oxford 2007).

Japan (Confession as the Queen of Evidence and Legal Remedies for Justice):

- Hiroshi Fukurai, The Rebirth of Japan's Petit Quasi-Jury and Grand Jury Systems: A Cross-National Analysis of Legal Consciousness and the Lay Participatory Experience in Japan and the U.S., 40 *Cornell Intl. L.J.* 316 (2007), available at http://www.lexisnexis.com/us/lnacademic/results/docview/docview.do?docLinkInd=true&risb=21_T6141202373&format=GNBFI&sort=BOOLEAN&startDocNo=1&resultsUrlKey=29_T6141202382&cisb=22_T6141202381&treeMax=true&treeWidth=0&csi=12489&docNo=4 (accessible on campus only)

Supplemental Reading and Relevant Material:

- Edward Barney – father of modern public relations –use of propaganda and psychology to influence public opinions, pretrial publicity, and jury outcome

Week 6

Military Jury:

- Stephen A. Lamb, The Court-Marshal Panel Selection Process: A Critical View, 137 *Mil. L. Rev.* 103 (1992).
- Hiroshi Fukurai, "Saiban-in Seido (Lay Assessor's System), Kensatsu Shinsakai (Prosecutorial Review Commission (PRC)), and Okinawa's Quest for Self-Determination and Political Sovereignty," *Okinawan Journal of American Studies*, 2008, pp.31-42
- Jon D. Michaels, Beyond Accountability: The Constitutional, Democratic, and Strategic Problems with Privatizing War, 82 *Wash. U.L. Q.* 101 (2004).
- Bradley J. Huestis, Jury Nullification: Calling for Candor from the Bench and Bar, 173 *Mil.L.Rev.* 68 (2002)

Supplemental Readings or Relevant Issues:

- Military jury deliberation of 14 year old Iraqi teenager Abeer Qasim Hamza and the

killing of her parents by U.S. soldier, available at <http://www.guardian.co.uk/Iraq/Story/0,,1926954,00.html>

- Jamie Leigh Jones alleged to be gang raped by Halliburton and KGB employees in Iraq, available at http://en.wikipedia.org/wiki/Jamie_Leigh_Jones

Grand Jury, Its Civil Function, and Its Government Watchdog Role

Supplemental Readings and Issues on the Grand Jury

- Stephanie A. Doria, Adding Bite to the Watchdog's Bark: Reforming the California Civil Grand Jury System, 28 *Pac. L.J.* 1115 (1997)

Supplemental Reading on the McMartin Trial:

- Butler, Edgar et al. 2001. Anatomy of the McMartin Child Sexual Molestation Case. NY: University Press of America.

Week 7:

Civil Jury Trials as Mechanisms of Remedies for Social Injustices

- "Jungle Law: Politics & Power," Vanity Fair (2007), available at <http://www.vanityfair.com/politics/features/2007/05/texaco200705?printable=true¤tPage=all>
- Neil Vidmar & Valerie Hans, Chapter 13: Civil Liability, Chapter 14: Deciding Compensatory Damages, Chapter 15: Punitive Damages, in American Juries (2007)
- Judith Kimerling, Indigenous Peoples and the Oil Frontier in Amazonia: The Case of Ecuador, ChevronTexaco, and Aguinda v. Texaco, 38 *N.Y.J Int'l L. & Pol.* 413 (2006).

Supplemental Reading or Relevant Issues

Environmental Remedies

- CACI International sued by former Abu Ghraib prisoners, available at <http://www.bizjournals.com/washington/stories/2004/07/26/daily13.html?f=et87>

General Utility of Grand Jury

- Use of Federal Criminal Grand Jury – jailing of a blogger in SF in 2006 for refusing to testify and hand over a video tape of popular protests at the World of Eight conference demonstration in 2005, available at <http://www.nytimes.com/2006/08/02/us/02protest.html>
- Use of Federal Criminal Jury –convictions of a sheriff and a private attorney of conspiracy to defraud the government and theft in Jefferson County, Alabama, available at http://www.usdoj.gov/opa/pr/2006/January/06_crm_013.html
- Grand Jury & Family Jewels (referred to a set of reports detailing CIA activities) most 700 page documents released on 6/25/2007 after 3 decades of secrecy, available at [http://en.wikipedia.org/wiki/Family_jewels_\(Central_Intelligence_Agency\)](http://en.wikipedia.org/wiki/Family_jewels_(Central_Intelligence_Agency)),
- Federal Criminal Jury Probes Blackwater shooting in Baghdad, available at http://www.usatoday.com/news/washington/2007-11-20-blackwater-shooting_N.htm

Lay Participation in Law (Jury Systems) in Common Law Countries (1) (England and its Former Colonies & South Africa)

Australia:

- Michael Chesterman, Criminal Trial Juries in Australia: From Penal Colonies to a Federal Democracy, in World Jury Systems (Neil Vidmar ed.) (2000), at 125-165.

New Zealand:

- Neil Cameron et al., The New Zealand Jury: Towards Reform, in World Jury Systems (Neil Vidmar ed.) (2000), at 167-210.

Canada:

- Neil Vidmar, The Canadian Criminal Jury: Search for a Middle Ground, in World Jury Systems (Neil Vidmar ed.) (2000), at 211-248.

Ireland:

- John D. Jackson et al., The Jury System in contemporary Ireland: In the Shadow of a Troubled Past, in World Jury Systems (Neil Vidmar ed.) (2000), at 283-318.

South Africa:

- Milton Seligson, Lay Participation in South Africa from Apartheid to Majority Rule, in Lay Participation in the Criminal Trial in the XXIst Century, 72 *Revue Internationale de Droit Penal*, (2001), at 273-284.

Week 8:

Jury Trial in Non-Common Law Countries (1) (Venezuela, Brazil, Argentina, and Mexico) Venezuela (Mixed Court System):

Documentary, The War on Democracy (Christopher Martin & John Pilger, 2007) (90min)

- Stephen Thaman, Latin America's First Modern System of Lay Participation, *Festschrift Fur Stefan Trechsel Zum 65 Geburtstag 765-79* (Andreas Donatsch et al. ed, 2002) – *this article will be added later in quarter.*

Mexico (Revolution & Black President)

- Fukurai et al., "Is Mexico Ready for a Jury Trial?" (2009)
- Robert M. Kossick, Jr., The Rule of Law and Development in Mexico, 21 *Ariz. J. Int'l & C.L.* 715 (2004) (Sections only on jury reform, pp.782 and on)

Americas -- Justices of the Peace (Lay Justice in Latin American Countries)

- Luiz Flavio Gomes & Ana Paula Zomer, The Brazilian Jury System, in *St. Louis-Warsaw Transatl. L.J.* 75-80 (2001-2002)

Haiti:

- Republic Supervised, *Time & CNN*, available at <http://www.time.com/time/printout/0,8816,730211,00.html#>

The Value of a Jury in International Criminal Adjudication: Transplantations of Juries into International Contexts

- Amy Powell, Three Angry Men: Juries in International Criminal Adjudication, 79 *N.Y.U.L. Rev.* 2341 (2004)
- Monica Hans, Providing for Uniformity in the Exercise of Universal Jurisdiction, 15 *Transnat'l Law* 357 (2002).
- Kelsy Deye, Can Corporation be Held Liable Under the Alien Tort Claims Act? 94 *Ky. L.J.* 649 (2005).

Supplemental Issue:

- Aaron Fichtelberg, Democratic Legitimacy and the International Criminal Court, 4 *International Journal of International Criminal Justice* 4 (2006)
- ICC and Anti-Globalization movement & people's fight against international economic integration, available at <http://www.freerepublic.com/forum/a3b3cc60a1c65.htm>

Week 9:

Importance of Diversity and the Danger of Wrongful Conviction

- Neil Vidmar & Valerie Hans, Chapter 3: A Jury of Peers, and Chapter 4: Jury Selection, in American Juries (2006).
- Hugo Adam Bedau and Michael L. Radelet, Miscarriages of Justice in Potentially Capital Cases, 40 *Stan. L. Rev.* 21 (1987).

Supplemental Reading and Relevant Materials:

- After Batson retrial, the defendant was acquitted of all charges by a racially diverse jury in Philadelphia, available at <http://www.prisonradio.org/St StanleyTookieWilliams.htm>
- Florida youth boot camp 8 staff members acquitted by all white jury, <http://www.prisonradio.org/JuvenileJusticeMumia.htm> (Mumia Abu-Jamal Commentary)
- Peremptory challenges (Fukurai, Hiroshi & Richard Krooth, 2003, Race in the Jury Box,

Week 10: Student Presentations

HOW TO STRUCTURE YOUR FINAL RESEARCH PAPER

Please see the below for the suggested structure of the paper below.

ARTICLE STRUCTURE:

- (1) a brief, one-paragraph ABSTRACT of 300 words or less that clearly states the research QUESTION, describes briefly the LITERATURE REVIEW, and the DISCUSSION;
- (2) a LITERATURE REVIEW section, reviewing the relevant research from the most appropriate areas and fields;
- (3) a DISCUSSION section that analyzes major points of the reviews, interprets the implications, describe limitations, develop your arguments, and/or make any recommendations for further work;
- (4) a CONCLUSION that briefly summarizes your paper.
- (5) a REFERENCE list that contains full citations of books, articles, and/or websites used in the paper; and
- (6) an APPENDIX that contains any other information used in the paper (pictures, maps, etc.)