

Syllabus for Advanced Trial Practice: The Jury

Spring 2018 Semester
THURSDAY 6:10-8:00PM
Room: 202

Professor Fred Klein
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Office hours - Any time or by appointment

TEXTS: 1) “The Jury Process” by Nancy S. Marder, Foundation Press 2005
2) “Mastering Voir Dire and Jury Selection” by Jeffrey T. Frederick
American Bar Association Third Edition 2011

(purchase “The Jury Process” in bookstore, online or elsewhere.
Frederick can be purchased on line)

OBJECTIVES:

As every trial lawyer knows, it does not matter whether the evidence is on your side or how skillful your litigation abilities are if you do not have the appropriate jury, that is, a jury that can be fair to your client. Accordingly, many argue that the jury is the most important part of the case.

1. This course will focus primarily on the substantive law relating to juries as well the skill and art of jury selection. Specifically, topics we will cover include the history and composition of juries, how juries are assembled and selected, jury issues that arise during trial, as well as during deliberations and during and after a verdict including juror misconduct. Although not completely a trial advocacy class, we will also spend considerable time and effort learning about and demonstrating jury selection

techniques. Despite numerous clinics, externships and trial practice classes, this may be your only opportunity to learn about and actually study, perform and be evaluated during simulated jury selection.

The law and practice relating to the jury is derived from constitutional law, statutes and local case law. Accordingly, we will be discussing overarching constitutional rules governing the jury together with statutory procedures and case interpretation of the various statutes. Our statutory focus will be on New York State's Judiciary and Criminal Procedure Law although we may also discuss the Federal Rules of Criminal Procedure on selected issues.

METHODOLOGY

Reading assignments from the text will be given for discrete areas of the law. These will be supplemented by the assignment of statutory sections and individual cases (usually from the United States Supreme Court and New York State) to be read on line or in the library. Please use the TWEN site for this course to view assignments. Students will be expected to brief the assigned material, orally discuss the cases in class (including the facts, issues and holding) and respond to and pose questions concerning the material.

Jury selection will be a significant focus in this class. Accordingly, time will be spent learning the legal rules and techniques associated with this skill. There will be guest lecturers who will demonstrate jury selection from the perspective of prosecution/plaintiff and defendant. Most importantly, students will be assigned to engage in simulated jury selection exercises during the class. If time permits, I plan to show the film "12 Angry Men" (which is an American classic portraying jury deliberations in a NYC murder case) in the last class and discuss how students would conduct jury selection to avoid (or encourage) the problems illustrated in the movie.

REQUIREMENTS

1. Reading- All assignments in the text as well as outside cases are required to be read prior to class. You will be kept informed of specific reading assignments for upcoming classes. Reading cases is more demanding than reading narrative. This is because each sentence in the case may be important. If you skim a case, you could miss the key sentence. You will be expected to know and discuss the facts, legal rules, application of the rules and policy arguments contained in each case. You should read concurrences and dissents equally because today's dissent/concurrence

could be tomorrow's majority.

2. Attendance- The law school must certify to the Board of Law Examiners that a student was in "good and regular attendance." You must attend 80% of all scheduled classes to pass this course. That means you get 3 unexcused absences. More than that and you will fail the course. Attendance will be taken at all classes by passing around a sign in sheet. It is the student's responsibility to make sure that their name is signed by them. If you believe you must be absent from more than the permitted number of classes (3), you should contact the Office of Student Affairs as soon as possible. Accommodations may be made for students who must be absent for religious reasons and in cases of truly compelling hardship. Any request for an exception must be made to the Office of Student Affairs and must be accompanied by appropriate documentation. Lateness must be avoided at all costs. It is wasteful and distracting to those students who are punctual.
3. Participation- It is essential that you are prepared for class and participate in class discussions when called upon. Do not expect to sit in class and absorb information by listening and taking notes alone. Learning the law is not a spectator sport and involves more than memorizing rules. You need to be able to apply those rules to varying situations and to express yourself clearly and persuasively whether summing up to a jury, negotiating a business transaction or interviewing a client. When asked to discuss a case, do not read from the text or a commercial outline. You may use your own notes. Try to only discuss the pertinent facts, not every conceivable detail. Your preparedness and class participation will count toward your final grade.
4. Each student will perform a simulated jury selection exercise. You will be notified a week ahead of time and given a fact pattern to use for your simulation and the side you will be on. These simulations are graded exercises so it is important that you put your best effort into preparing for and conducting the simulation. The rest of the class will also be participating either as prospective jurors or in the audience. The quality of your participation as a juror or as the audience will be factored into your class participation assessment.
5. Paper – Each student is responsible for turning in a 15 page legally oriented research and writing paper which will be separately assessed as part of your final grade. Choosing a topic will be your responsibility but I would be glad to discuss your topics ahead of time. The paper can be in the form of a memorandum of law, a law review article, an appellate brief, a judicial decision

or other appropriate scholarly format. You will be graded on your creativity, thoroughness, precision, accuracy and the quality of your research and writing.

THERE WILL BE NO USE OF LAPTOPS OR OTHER DIGITAL DEVICES IN CLASS. YOU WILL NEED TO TAKE NOTES IN CLASS BY HAND WRITING THEM. RECENT STUDIES HAVE FOUND THAT STUDENTS LEARN BETTER WHEN TAKING HAND WRITTEN NOTES AS OPPOSED TO TRYING TO TRANSCRIBE WHAT IS TAKING PLACE VIA KEYBOARD. ALSO, STUDENTS WHO MISUSE LAPTOPS ARE DISTRACTING AND ANNOYING TO OTHER STUDENTS. FINALLY, STUDENTS HAVE TOLD ME THAT THEY LISTEN BETTER AND PARTICIPATE MORE IF NOT WEDDED TO A LAPTOP.

There will be absolutely no cell phone conversations (phones to be placed on vibrate), text messaging, e-mailing or surfing the internet while class is in session.

PLEASE DO NOT WEAR A HAT IN CLASS. I TRY TO MAINTAIN A FORMAL PROFESSIONAL LEARNING ENVIRONMENT THAT IS CONDUCIVE TO A THOUGHTFUL AND SERIOUS LEGAL DISCUSSION AND I FIND THAT HATS TEND TO DETRACT FROM THAT ATMOSPHERE. HOWEVER, IF YOU NEED TO WEAR A HAT FOR MEDICAL OR RELIGIOUS REASONS, PLEASE LET ME KNOW AHEAD OF TIME. THERE IS NO OTHER DRESS CODE FOR THE COURSE.

EVALUATION

There will be no written tests. Your grade will depend on your class participation, simulated jury selection exercises and a research paper of at least 15 pages on a topic of your choice relating to the subject matter of the course. Your demonstrated level of preparedness and the quality of your class participation will be factored into your final grade. The law school's mandatory grade curve will not apply to this course.

CONCLUSION

I can be reached after class, at times by appointment or by email. If you have questions, I will try to direct you to the correct answer without answering it for you. One of the skills attorneys must learn is how to answer questions themselves. I am eager to receive questions but answering them will be part of the learning process for you. Communication with me outside of the classroom (either during breaks, office meetings or via email) is not counted for your grade so don't worry about hurting yourself by asking. The only way you get hurt is by not asking and not learning.

I am excited about participating in this course with you. It is a subject that is unique and not frequently covered in a typical law school curriculum, particularly the jury selection component. It should be instructive and enjoyable at the same time. For those of you who are planning to become trial lawyers, it should be an invaluable part of your legal education. For those of you who hope to never step foot in a courtroom, I am hopeful that it will inspire you to change your minds.

At this stage of the semester, you are undoubtedly eager to learn the material in this course and hopeful that the practice of law, no matter what field you choose, will be interesting and rewarding. If at the end of the semester you have the same enthusiasm and goals, and a solid foundation in jury law and techniques, I will consider that a success. I look forward to learning with and from all of you.