

AALS SECTION ON LITIGATION NEWSLETTER

We have a great program for the 2006 Annual Meeting in Washington, D.C. Mark your calendars for **Friday, January 6, 10:30 am to 12:15 pm**. We will have four of the top experts in empirical jury research telling us about how juries think. Here is a preview:

Thinking Like a Juror

As litigators and teachers of litigation-related subjects, we must often be concerned with how juries receive and process information at trial, and how they deliberate to a verdict. As scholars, we should work to make the process more efficient and just.

Until recently, the traditional cloak of secrecy surrounding the jury has forced us to speculate about how real juries think. In the last several years, however, empirical scholars have been able to study real juries, and have come up with some ideas to improve the process.

These ideas have made their way into the American Bar Association's Principles for Jury Trials, approved in February, 2005. Principles 13 through 17 relate to jury comprehension and the deliberative process, and suggest several innovative techniques for courts to use to help jurors understand the facts and law better and reach a more accurate and just result. The ABA is now embarking on a campaign to implement these Principles in state courts throughout the nation.

Our panel will talk about the empirical research they and others have done on real juries, particularly the studies that led to the ABA Principles for Jury Trials. They will describe the field testing of such innovations as allowing jurors to take notes and/or to ask questions or giving jurors instructions on the law at different times during the trial, and in understandable language, and unanimous/majority verdicts. They will take us behind the jury rail, behind the door to the jury room, and will let us see ourselves from the other side.

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Stephan Landsman is the Robert A. Clifford Professor of Tort Law and Social Policy at DePaul University College of Law. He was the Reporter for the American Jury Project of the American Bar Association, which drafted the ABA Principles for Juries and Jury Trials, approved in 2005. Steve will talk about Principle 13 H of the ABA Principles for Juries and Jury Trials, which urges a single unitary trial. It views with some disfavor the bifurcation or multifurcation of cases. For a period, perhaps culminating in the late 1980s or early 1990s, bifurcation was viewed as one of the most promising procedural avenues to efficient litigation. In that period a group of scholars decided to study, empirically, bifurcation's effects. What was found suggested that bifurcation can have unanticipated and untoward consequences that undermine rather than enhance the soundness of trials. On the strength of these empirical insights and the criticisms voiced in more traditional scholarship the Principles were drafted in a manner urging caution with this procedural tool.

Shari Seidman Diamond is the Howard J. Trienens Professor at Northwestern University School of Law. She is also a Senior Research Fellow of the American Bar Foundation and a member of the American Jury Project. Shari will discuss "Re-visiting unanimity."

Unanimous jury verdicts were at one time the norm and are still required in nearly all felony trials in federal and state courts. The unanimity standard, however, has significantly eroded for verdicts in civil cases. In a recent resurgence of support for unanimous jury verdicts, the ABA Principles for Juries and Jury Trials endorses unanimity as an optimal decision rule for both criminal and civil jury trials. Using data from the deliberations of 50 real juries, Shari analyzes how juries operate when unanimity is not required. She considers the costs and benefits of the unanimity rule in light of actual jury behavior.

Paula Hannaford-Agor is a Principal Court Research Consultant at the National Center for State Courts. Paula will present preliminary findings from the NCSC "State-of-the-States" Survey on State Jury Reform Efforts. The Survey is the first national study of jury reform to examine how often judges and lawyers permit techniques such as juror note taking, juror questions to witnesses, written copies of instructions, juror discussions during trial, and guidance on deliberations. The study also examines court summoning and qualification operations, voir dire practices, and state and local jury reform efforts. Data collection for the State-of-the-States Survey is still underway, but the most recent practitioner dataset includes judge and lawyer reports on over 4,000 jury trials from state and federal courts in 44 states during the past year.

Bradley Saxton is Dean and Professor of Law at Quinnipiac University School of Law. Brad will discuss an empirical study conducted in the mid-1990's in Wyoming, in which he worked with the Wyoming trial courts to gauge how well jurors in real trials (criminal and civil) had understood the jury instructions in the cases in which they had just reached verdicts. He will relate some of the practical problems the project encountered in using real juries and real trials to test comprehension of jury instructions and how the project addressed those problems. He will also report some of the more interesting results from the study, and he will discuss how and why the empirical work became an important part of the process that laid the groundwork for a number of changes in Wyoming's jury trial procedures.

Get involved -- Join our Executive Committee!!!

This Section provides a great opportunity for you to get involved and shape the agenda for the Section. There are only a few of us who carry on what little business the Section has, and we welcome and are eager to have more active members. You can become one of the leaders simply by staying after the speakers on Friday, January 6, from about 12:00 noon to 12:15 pm., for a brief business meeting.

Chair: Timothy Wilton, Suffolk University Law School
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