

**TADR 424 JURY SELECTION (43840)**

**Spring 2022**

**Tuesdays, 1:00 p.m.-3:00 p.m.**

**Course Syllabus**

**Instructor**

Ray McKoski, Adjunct Professor

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Office hours: by appointment

**Course Description**

This two-credit course provides an in-depth examination of the goals and process of jury selection. Topics include the history of the jury, jury composition, jury selection procedures and techniques, the use of jury consultants and questionnaires, ethical considerations in dealing with jurors, the use of social media in jury selection, and impeaching a jury’s verdict. The course will enhance understanding of the jury process through class discussions, mock jury selection simulations, preparation of voir dire documents, and a final paper.

**Prerequisite**

Trial Advocacy

**Attendance**

Course attendance is governed by the University of Illinois Chicago Law School’s [“Attendance Policies: First-Day Attendance, General Attendance, and Roll-Verification.”](https://uofi.app.box.com/s/3vnk9z3wn678bvqyjkfwc10kp3ft3un3)

The maximum number of class absences is three out of 13 classes. Exceeding the maximum permitted number of absences will result in a grade of WF.

The interactive nature of the class requires punctual attendance and active class participation.

**Text and Materials**

1. No required text.
2. Required readings and viewings for each class session are assigned in the syllabus.

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**Class Recording Policy**

Most regularly scheduled on-campus and synchronous class meetings, make-up class sessions, and review sessions will be recorded by the Law School for access by students enrolled in the course. Access to recordings is for students’ personal, educational use. Recordings may not be copied, shared, transmitted, downloaded, uploaded, or otherwise distributed. Recordings by students are prohibited unless granted as an accommodation under the ADA or authorized by the Vice Dean under the Interim Class Recording Policy. Consult the [Interim Class Recording Policy — COVID-19](https://uofi.app.box.com/s/skvq2vi6zuv00wlhk8vflvzufbj5jze1) for additional information.

**Class Disability Accommodation Policy**

UIC is committed to full inclusion and participation of people with disabilities in all aspects of university life. If you face or anticipate disability-related barriers while at UIC, please contact the Disability Resource Center (DRC) at drc.uic.edu, via email at drc@uic.edu, or call (312) 413-2183 to create a plan for reasonable accommodations. Accommodations are not implemented retroactively, so please contact the DRC as early as possible

**Academic Integrity**

As an academic community, UIC is committed to providing an environment in which research, learning, and scholarship can flourish and in which all endeavors are guided by academic and professional integrity. All members of the campus community—students, staff, faculty, and administrators—share the responsibility of ensuring that these standards are upheld so that such an environment exists. Instances of academic misconduct by students are governed by law school policies on academic integrity and professional misconduct as well as by the UIC Student Disciplinary Policy. For additional information, consult the [UIC Student Disciplinary Policy](https://go.uic.edu/disciplinarypolicy), the Law School’s [Honor & Professionalism Code](https://uofi.box.com/s/dcyeri4djaaal0223mv4wt92jprl95wc), and the [Complaint and Concern Reporting Procedures for Law School Students, Staff, and Faculty](https://uofi.app.box.com/s/2oo2y4hgnowpgiyrc79uj58ytmospyow) .

Under [ABA Standard 310](https://www.americanbar.org/groups/legal_education/resources/standards/), each credit hour corresponds to not less than approximately one hour of classroom or direct faculty instruction (synchronous and asynchronous) and two hours of out-of-class student work per week for fifteen weeks, or the equivalent amount of work over a different period of time.

**Course Syllabus Subject to Modification**

The Course Syllabus may be revised during the semester at the instructor’s discretion. Make-up classes, if necessary, may be conducted via Zoom. If courts revert to conducting jury selection via Zoom, a mock jury selection exercise may be conducted via Zoom.

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**Grading Criteria**

1. Class participation (10%);

2. Simulations: mock jury selection and voir dire documents (20%);

3. Final paper of 2,800 words (including footnotes) on a jury-related topic (70%).

Final paper topics may relate to theoretical or practical aspects of the jury. If requested, the instructor will assist in choosing a topic. Hard copies of papers are due at the beginning of class on April 12, 2022. Any student who wishes the instructor to review a first draft of a paper must submit the draft to the instructor no later than the beginning of class on March 29, 2022. First drafts are not required. “Paper Grading Criteria,” posted on the Blackboard class site, includes an explanation of grade deductions for late papers.

4. The instructor reserves the right to administer two unannounced quizzes. A quiz will be administered if, in the instructor’s opinion, student preparation is insufficient to support class discussion and the “Learning Objectives” identified below. Each quiz will count as five percent of a student’s final grade. If one quiz is given, the weight of the final paper will be reduced by 5%. If two quizzes are given, the weight of the final paper will be reduced by 10%.

**Learning Outcomes**

After completing Jury Selection, students will:

Have critically analyzed the major Supreme Court cases concerning jury unanimity, jury size, and the right to a fair cross-section of the community, especially in the context of a juror’s race, ethnicity, and gender.

Recognize the significance of racial and ethnic bias in the impeachment of a jury’s verdict.

Demonstrate an understanding of the nature, purpose, and art of jury selection through simulated voir dire examinations.

Demonstrate effective oral communication during mock jury selection exercises.

Demonstrate competence in legal research and analysis and effective written communication skills in the final paper.

Understand the ethical constrains on a lawyer’s contact with jurors and prospective jurors.

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**Class Sessions**

January 11, 2022: Course Introduction and Overview of the History of the Jury in America

 Assigned reading:

 “Course Syllabus,” on Blackboard class site

 Alexis de Tocqueville, *Of the Jury in the United States Considered as a Political Institution* (available on Blackboard class site)

*Duncan v. Louisiana,* 391 U.S. 145, 151-157 (1968)

January 18, 2022:Jury Composition and Selection

1. Jury Size and Unanimity
2. Fair Cross-Section Requirement
3. Juror Qualifications

Assigned reading:

Ballew v. Georgia, 435 U.S. 223 (1978) (jury size) (edited version on Blackboard class site)

Ramos v. Louisiana, 140 S. Ct. 1390, 1392-1408 (2020) (unanimity)

Berghuis v. Smith, 559 U.S. 314, 319-333 (2010) (fair cross-section)

Illinois Supreme Court Rule 234; 28 U.S.C. §1865

January 25, 2022: Jury Composition and Selection (continued)

1. Challenge to the Array
2. Batson – Theory and Practice
3. Preemptory Challenges and Challenges for Cause
4. Preparing a Statement of the Case

Assigned reading:

Batson v. Kentucky, 476 U.S. 79, 82-100 (1986) (race)

J.E.B. v. Alabama, 511 U.S. 127, 132-146 (1994) (gender)

Illinois Supreme Court Rule 434

Du Page County, Illinois, Local Rule 9.03 (Statement of the Case)

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February 1, 2022: Jury Composition and Selection (continued)

1. **Statement of the Case Assignment Due**
2. Jury Selection – Panel and Strike Methods
3. Preparing for Voir Dire in Criminal Cases
4. Social Media Investigation of Jurors

Assigned reading:

Kerper, *The Art and Ethics of Jury Selection*, 24 Am. J. Trial Advoc. 1-31 (available on Westlaw)

ABA Formal Opinion 466 (edited version on Blackboard)

February 8, 2022: Jury Composition and Selection (continued)

 a. Review Statement of the Case

b. Preparing for Voir Dire in Criminal Cases (continued)

c. Juror Questionnaires

Assigned reading:

*Ortiz v. State,* 869 A.2d 285, 317-318 (Del. Super. 2005)

Colquitt, *Using Juror Questionnaires*, 40 Conn. L. Rev. 12-28 (2007)

Harris v. United States, No. 18-CF-547 (D.C. Court of Appeals, Oct. 7, 2021, (read pages 1-15), available at <https://www.dccourts.gov/sites/default/files/2021-10/Harris%20v.%20U.S.%20%2818-CF-547%29.pdf>

February 15, 2022: Mock Voir Dire – Criminal Case

1. Jury Selection Simulation–Criminal Case
2. Students voir dire a mock jury comprised of classmates.

Assigned reading:

Gobert, *Jury Selection, The Law, Art and Science of Selecting a Jury*, (on Westlaw) §§ 12:10, 12:12, 12:16, 12:23 & 12.29; in §13:19 read, Counsels introductory remarks, Dealing with trial procedures, Dealing with prejudice, Dealing with objections, Dealing with probation application, and Forewarning the jurors of questions to be asked.

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February 22, 2022: Mock Voir Dire – Criminal Case (continued)

1. Jury Selection Simulation–Criminal Case (continued)
2. Students continue mock voir dire in a criminal case

Assigned reading:

Amy J. St. Eve, *What Juries Really Think: Practical Guidance for Trial Lawyers,* 103 Cornell L.Rev. Online 149, 149-170 (2018).

March 1, 2022: Mock Voir Dire – Criminal Case (continued)

1. Jury Selection Simulation–Criminal Case (continued)
2. Students continue mock voir dire in a criminal case

Assigned viewing:

View Ryan Brown’s voir dire, at <https://www.youtube.com/watch?v=gQm3w3Tr6aY>. List two things the student did well and two areas that could be improved.

# View the first 40 minutes of Jury selection in the trial of Derek Chauvin, https://www.youtube.com/watch?v=agugwV7WKpk

March 8, 2022: Mock Voir Dire – Criminal Case (continued)

1. Jury Selection Simulation–Criminal Case (continued)
2. Students continue mock voir dire in a criminal case

Assigned reading:

Massachusetts v. Perrot, pages 20-63, <https://www.documentcloud.org/documents/2378769-perrot-trial-2-transcript-1-of-10-pretrial-and.html>

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March 15, 2022: Mock Voir Dire – Civil Case

1. Preparing for Voir Dire—Civil Case
2. Jury Selection Simulation—Civil Case
3. Students voir dire a mock jury comprised of classmates

Assigned reading:

Gobert, *Jury Selection*, *The Law, Art & Science of Selecting a Jury,* (on Westlaw) Sections 11:4, 11:5, 11:8, 11:9

Kinsey v. Kolber, 103 Ill. App. 3d 933, 946-947 (1st Dist. 1982)

D.W.K. v. Abbott Laboratories, “Abbott’s Brief Regarding Damages Questions in Jury Questionnaire,” 2015 WL 1231842.

March 22, 2022: No Class-Spring Break

March 29, 2022: Mock Voir Dire – Civil Case (continued)

1. Jury Selection Simulation–Civil Case (continued)
2. Students will continue jury selection in mock civil trials

Assigned reading and viewing:

Voltaire, <https://voltaireapp.com>. Review website and watch video (jury selection app)

“Voltaire Uses AI and Big Data to Help Pick Your Jury,” https://www.artificiallawyer.com/2017/04/26/voltaire-uses-ai-and-big-data-to-help-pick-your-jury (jury selection app)

“Jury Duty,” <http://www.apppicker.com/apps/414359607/jury-duty> (jury selection app).

Illinois Pattern Jury Instructions-Civil, No. 1.08, read **Instruction 1.08** **Implied Bias,** **Notes on Use, and Comment**, available at [IPI Jury Instructions (illinoiscourts.gov)](https://www.illinoiscourts.gov/rules-law/ipi-jury-instructions/)

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April 5, 2022: Jury Consultants and Ethics and Professionalism

1. Ethics and Professionalism in Dealing with Jurors
2. Jury Consultants and Shadow Juries

Assigned reading:

Ill. Rules of Prof’l Conduct, R. 3.3 & cmt. [12]; R. 3.5 & cmt. [2]

Coughlan, *The (Im)partial Jury,* 84 Brook. L. Rev. 671, 676-681 (2019)

Zigterman, *Christensen Trial: Both Sides Utilizing Consultants to Try to Stack Jury*, June 9, 2019, on Blackboard class site

*Shadow Jury Out of the Shadows, Into the Jury Box*, <http://www.thejuryexpert.com/2010/09/out-of-the-shadows-into-the-jury-box>Bottom of Form

April 12, 2022: Special Topics and **Papers Due 1:00 p.m.**

1. Impeaching the Jury’s Verdict
2. Jury Nullification

Assigned reading:

Fed. R. Evid. 606(b)

[Pena-Rodriguez v. Colorado](https://1.next.westlaw.com/Document/I0b3c14c9026811e79822eed485bc7ca1/View/FullText.html?originationContext=docHeader&contextData=(sc.DocLink)&transitionType=Document&needToInjectTerms=False&docSource=c1bb9a9a152c4d399cf4534df0ae542a), 137 S. Ct. 855, 860-871 (2017)