

Law Day 2005

planning kit

“I consider trial by jury as the only anchor ever yet imagined by man, by which a government can be held to the principles of its constitution.”

– Thomas Jefferson



“Gentlemen, a court is no better than each man of you sitting before me on this jury. A court is only as sound as its jury, and a jury is only as sound as the men who make it up.”

– Atticus Finch, “To Kill a Mockingbird”

The American Jury
WE THE PEOPLE
IN ACTION

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This guide was produced
by the Director of State
Courts Office.

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Special thanks to the State Bar of
Wisconsin for providing handouts
to Law Day organizers.

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law day

The American Jury: We the people in action

President Dwight D. Eisenhower established Law Day in 1958 to provide an opportunity for reflection on our legal heritage and the role of law in our society. Law Day has been celebrated around the nation every May 1 since then.

This year, the American Bar Association has chosen “The American Jury: We the People in Action” as its Law Day theme. This theme gives the Wisconsin court system an opportunity to showcase its efforts to improve the management of the jury system to ensure that the system is attentive to both the efficiency of the process and the jurors’ level of satisfaction. Those who manage the system work hard to achieve this delicate balance and Law Day is a perfect time to promote jury service while sharing information about our efforts to improve the system.

Wisconsin launched its first statewide campaign to celebrate Law Day in 1997 with open houses in the courts. The effort recognized that Law Day offers judges, lawyers, clerks of circuit court, and others in government who do the work of justice an important opportunity to educate the public about the law.

In 1998, we gave the program a sesquicentennial twist, packing the kit full of information on Wisconsin’s court history and legal lore. The 1998 Law Day Planning Kit, Sesquicentennial Edition, was recognized with an award from the American Judicature Society for “enriching the public’s understanding of the courts’ vital role in serving citizens throughout the 150 years of Wisconsin’s statehood.” From 1999-2004, we continued the tradition, providing new ideas, speeches, and lists of possible partners in each kit.

This year, we provide new mock trial scripts, new program suggestions, new speaking points, and a variety of updated resources. Each planner will receive a copy of this guide. The first person listed in each county is responsible for organizing the local Law Day committee. It is suggested that members of the county bar, county board, law enforcement, and community groups be invited to help. In addition to the court personnel and lawyers listed in the contacts section, you will also find a list of 4-H youth agents in each county who may be willing to plan or host events.

This kit is being provided at no cost to you. It contains order forms for many handouts that will also be provided at little or no charge. Individual committees are responsible for any additional costs incurred for refreshments, banners, plaques, materials ordered from the American Bar Association, etc.

We wish you a successful 2005 Law Day celebration!

planning

APRIL 2005

- Planning kits distributed to organizers (see page 7).
- Organizers convene committees; assign duties.
- Visit the American Bar Association's Law Day Web site at www.lawday.org or call 800/285-2221 to find out how to order Law Day products. Or use the order forms and suggestions at the end of this guide on pages 88-91.
- Download mailing labels for local schools from the Department of Public Instruction at www.dpi.state.wi.us/dpi/dltcl/lbstat/labels.html.
- Order community group mailing list from local chamber of commerce.
- Contact community groups and schools to offer judges and lawyers to speak on how court decisions have shaped our school system or other law-related topics speakers can use this opportunity to announce Law Day activities. Make use of the speaking points and synopses of jury-related cases beginning on page 48.

Also consider using information from *Famous Cases of the Wisconsin Supreme Court* or articles on Wisconsin's legal history, both available on the court system Web site (see Resources, page 89).

April 7

Recruit all necessary volunteers: judges, lawyers, law professors, and law students; lawyers to staff an advice booth and coach mock trial participants; tour guides; contest judges, etc.

Solicit door prize donations for Juror Appreciation Dinner (see page 38).

Research local businesses' jury duty practices to determine which business should receive the Juror Employer Award (see page 38).

Send first press release to announce Law Day activities (see sample, page 46).

Assign a local lawyer or judge to write Law Day guest column (submit by April 15).

Contact schools with invitations to participate in your Law Day event(s) and to provide information activities.

Invite community groups, local officials (see page 44).

planning

APRIL 2005

April 8 Meet with buildings/grounds personnel to choose space for Juror Appreciation Dinner (see page 38).

Invite former jurors to Appreciation Dinner (see page 40). Give one-week deadline for response.

April 11 Order refreshments, decorations, banners (see page 91).

Design and distribute a flyer promoting Law Day activities.

Meet with buildings/grounds personnel to finalize space/furniture needs for Juror Appreciation Dinner (see page 38).

Deadline to judge contest entries (see pages 34-35).

April 15 Contact award winners and order plaques (see pages 37 and 90).

Contact caterer and make nametags for Appreciation Dinner.

Send press release (see page 46).

Design certificates for contest winners (see page 92).

Deadline for ordering State Bar of Wisconsin materials.

April 25 Reminder calls to all volunteers.

Send second press release (see page 47).

April 27 Set up tables, booths, hang banners, set out handouts, etc.

**April 29 to
May 6** Time frame for celebration of Law Day 2005. Good luck!

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jury history

Origins of the jury system

The American jury system is rooted in medieval England. King Henry II, who ruled from 1154 to 1189, was especially influential. King Henry set up a system for resolving property disputes with panels of twelve “free and lawful men.” Unlike the modern jury, this version was self-informing, meaning the jurors were expected to decide cases based on information they knew before the trial, or gathered after they were selected to serve. By the 1400s, this process gave way to one of juries hearing and deciding on evidence presented in court, but jurors remained free to consider outside information well into the 1600s.

King Henry also created a precursor to the modern grand jury with the Assize of Clarendon in 1166. The presenting jury, as it was called, required panels to report under oath whether they knew of anyone suspected of a crime in their community. The accused would then be “tried” by being thrown into a pool of water blessed by a clergyman – if they were “rejected” by the blessed water and floated, they were declared guilty. In 1215, church leaders banned clerics from participating in trials.

It was in medieval England that the jury came to be seen as a protector of the accused. Criminal laws in those days were much harsher, with the sentence for most convicted felons being execution. Even jurors could be punished for delivering an “untrue” verdict.

The jury system in colonial America

The English colonists brought the idea of the jury trial with them to America and deeply resented the Crown’s attempts to interfere with this right. These resentments helped to fuel the move toward revolution. The First Congress of the American Colonies in 1765 passed a resolution declaring that, “Trial by jury is the inherent and invaluable right of every British subject in these colonies.”

The colonists chafed at the Crown’s insistence that bench trials be conducted by judges who depended upon the English government for their salaries. They also opposed the practice of subjecting defendants alleged to have committed crimes in the colonies to trial in England under British law. These concerns led the First Continental Congress in 1774 to resolve as follows: “That the respective colonies are entitled to the common law of England, and more especially to the great and inestimable privilege of being tried by their peer of the vicinage, according to the course of that law.”

Two years later came the Declaration of Independence, which formally registered the colonies’ objections to the King’s making “judges dependent on his will alone, for the tenure of their offices and the amount and payment of their salaries and his “transporting us beyond Seas to be tried for pretended offenses.” The original states, and every one of the states that would subsequently join the Union, all enshrined the right to a trial by jury in their constitutions.

In 1787, the U.S. Constitution was ratified, formally establishing the right to trial by jury in criminal cases. It made no mention of civil cases, and this was a point of contention held by anti-Federalists against ratifying the Constitution. States’ demands for amendments protecting individual rights, including trial by jury in both criminal and civil cases, resulted in the Sixth and Seventh Amendments in the Bill of Rights.

Trial by jury in serious criminal cases is guaranteed by the Sixth Amendment (“in all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an



King Henry II, from the book “Cassell’s History of England, Century Edition” published 1902



Painting of the First Continental Congress by John Trumbull

impartial jury”) and in the constitutions of all states. Supreme Court decisions interpreting the due process clause of the Fourteenth Amendment have applied the Sixth Amendment guarantee to state criminal cases. The Seventh Amendment guarantees trial by jury in most federal civil suits, and similar provisions exist in many state constitutions.

How many on a jury?

While the concept of relying upon a jury of one’s peers to determine guilt or innocence and to act as a safeguard against arbitrary law enforcement has a long and well-documented history, the story behind the 12-person jury is less clear. In its 1970 decision in Williams v. Florida (339 U.S. 78, 90 S.Ct. 1893), the U.S. Supreme Court reviewed this history, quoting from James B. Thayer’s “The Jury and Its Development,” [5 Harv.L.Rev. 295 (1892)]:

Some have suggested that the number 12 was fixed upon simply because that was the number of the presentment jury from the hundred, from which the petit jury developed. Other, less circular but more fanciful reasons for the number 12 have been given, ‘but they were all brought forward after the number was fixed,’ and the rest on little more than mystical or superstitious insights into the significance of ‘12.’ Lord Coke’s explanation that the ‘number of twelve is much respected in holy writ, as 12 apostles, 12 stones, 12 tribes, etc.’ is typical. In short, while sometime in the 14th century the size of the jury at common law came to be fixed generally at 12, that particular feature of the jury system appears to have been a historical accident, unrelated to the great purposes which gave rise to the jury in the first place. The question before us is whether this accidental feature of the jury has been immutably codified into our Constitution.

The Supreme Court ultimately concluded in Williams that a six-person jury was “large enough to promote group deliberation, free from outside attempts at intimidation, to provide a fair possibility of obtaining a representative cross-section of the community.” Many states, including Wisconsin, have set juries of fewer than 12 members for particular types of cases.

Eight years after Williams, the U.S. Supreme Court decided Ballew v. Georgia [435 U.S. 223, 98 S.Ct. 1029 (1978)], setting the minimum size of a jury at six people for both felony and misdemeanor criminal trials. Claude D. Ballew was convicted by a five-person jury on a misdemeanor charge of distributing obscene material for showing “hard core pornography” at the adult movie theater he owned in Georgia. Ballew appealed to the Supreme Court, which tossed out his conviction, declaring it unconstitutional. The Court wrote, “While the functions and purposes of a jury trial can be fulfilled by a jury of six members, the purpose and functioning of the jury in a criminal trial is seriously impaired, and to a constitutional degree, by a reduction in size to below six members.”

In drafting its opinion, the Court considered a great deal of research indicating “progressively smaller juries are less likely to foster effective group deliberation.” Larger juries increase verdict accuracy, Justice Harry A. Blackmun wrote for the Court, by providing a means to counterbalance the biases of individual jurors.

Also, as the size of a jury decreases, the likelihood of it being representative of the community decreases, the Court stated. “Although the Court in Williams concluded that the six-person jury did not fail to represent adequately a cross-section of the community, the opportunity for meaningful and appropriate representation does decrease with the size of the panels. ... Further reduction in size will erect additional barriers to representation.” The Court also found no significant advantage to the state of Georgia in reducing the number of jurors from six to five that would justify that reduction.

The Court concluded:

While we adhere to, and reaffirm our holding in Williams v. Florida, these studies, most of which have been made since Williams was decided in 1970, lead us to conclude that the purpose and functioning of the jury in a criminal trial is seriously impaired, and to a constitutional degree, by a reduction in



Justice Harry A. Blackmun

size to below six members. We readily admit that we do not pretend to discern a clear line between six members and five. But the assembled data raise substantial doubt about the reliability and appropriate representation of panels smaller than six. Because of the fundamental importance of the jury trial to the American system of criminal justice, any further reduction that promotes inaccurate and possibly biased decision-making, that causes untoward differences in verdicts, and that prevents juries from truly representing their communities, attains constitutional significance.

Do juries have to be unanimous?

Traditionally, juries had to be unanimous, but the Supreme Court has upheld verdicts of 11-1, 10-2, and 9-3.

Two such cases were decided on the same day in 1972, Apodaca v. Oregon (406 U.S. 404, 92 S.Ct. 1628) and Johnson v. Louisiana (406 U.S. 356, 92 S.Ct. 1628). In Apodaca, the Court upheld the defendant's conviction by a ten members of a jury of twelve. The Court declared an Oregon statute that only ten members of a 12-person jury had to concur to reach a verdict in certain non-capital cases was indeed constitutional, stating: "Until today, it has been universally understood that a unanimous verdict is an essential element of a Sixth Amendment jury trial."

In Johnson, the defendant was convicted of armed robbery by nine members of a 12-person jury under a Louisiana statute providing that for criminal cases for which the punishment is hard labor, a 9-3 vote is sufficient to return a verdict. The Supreme Court also upheld Johnson's conviction, finding that the statute "did not deprive the defendant of due process and did not deny equal protection."

However, in Burch v. Louisiana [441 U.S. 130, 99 S.Ct. 1623 (1979)], the Court overturned a 5-1 verdict reached in accordance with another Louisiana statute concerning six-person juries in criminal trials. The Court held that conviction by a six-person jury had to be unanimous. The statute allowing 5-1 convictions, Justice William H. Rehnquist wrote for the Court, "violates the rights of an accused to trial by jury guaranteed by the Sixth and Fourteenth Amendments."

The Court invoked earlier opinions on the unconstitutionality of a five-person jury in its ruling:

Much the same reasons that led is in Ballew to decide that use of a five-member jury threatened the fairness of the proceeding and the proper role of the jury, lead us to conclude now that conviction for a non-petty offense by only five members of a six-person jury presents a similar threat to preservation of the substance of the jury trial guarantee and justifies our requiring verdicts rendered by six-person juries to be unanimous.

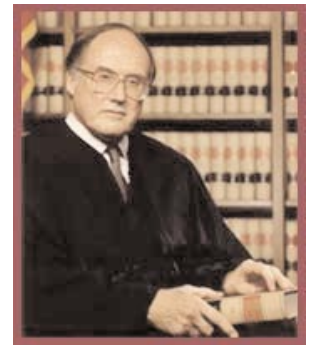
Who can serve?

Jury service in the United States was originally limited to people who could vote: white men who owned property.

Racial minorities won the right to be considered for jury service with the ratification of the Fourteenth Amendment in 1868, but were routinely excluded from actual service during jury selection and eliminated through peremptory challenges.

Women first served on juries in the American West. From March 1870 to September 1871, the Wyoming Territory allowed women to serve on juries. The first trial to include female jurors, a murder trial, was held in Laramie, Wyoming in 1870.

In 1898, Utah became the first state to allow women to serve on juries. When women gained suffrage with the ratification of the Nineteenth Amendment in 1920, they gained the right to serve on juries in many states, including Wisconsin, where state law held that all legal voters



Chief Justice
William H. Rehnquist

were qualified to be jurors. Wisconsin had joined 19 other states by 1927 in having women serve on juries. It was not until 1966 that women were allowed to serve on juries in all 50 states, when the last of the states prohibiting their service, Alabama, allowed it.

Even with the right to serve on juries secured, women were routinely excluded from service. Soon after the Nineteenth Amendment's passage, writers and legal scholars expressed concerns that jury service would expose women to the sordid matters that came before the courts, force them to neglect their homes and children, and cause the insertion of "feminine logic" into the case-deciding process.

While women were no longer legally excluded from the jury pool by the 1960s, about half the states still treated men and women differently with regard to exemption from jury duty. As late as 1961, in *Hoyt v. Florida* [368 U.S. 57, 82 S.Ct. 159 (1961)], the Supreme Court upheld different treatment for men and women in jury service. Hoyt was convicted of murdering her husband by an all-male jury, and on appeal challenged a Florida law that automatically exempted women from jury service unless they volunteered. The Court held the law did not violate the Fourteenth Amendment because the automatic exemption made sense because a woman's position was "still regarded as the center of home and family life."



Photo of an all-female jury that served in Newark, New Jersey in 1920

It was not until 1975, in a case called *Taylor v. Louisiana* [419 U.S. 522, 95 S.Ct. 692 (1975)], that women nationwide secured a practical, equal right to serve on juries. In that case, a male defendant appealed his conviction on charges of aggravated kidnapping by an all-male jury, arguing that a statutory requirement that excluded women from jury service unless they had filed written declarations stating their desire to serve, was unconstitutional. The Supreme Court, with Justice Byron White writing for the majority, ruled in that exclusion from jury service on the basis of gender was unconstitutional:

... that requirement that a petit jury be selected from a representative cross-section of the community is fundamental to the jury trial guaranteed by the Sixth Amendment, that such requirement is violated by the systematic exclusion of women from jury panels where in the judicial district involved women amounted to 53% of the citizens eligible for jury service, that such exclusion was not justified on ground that women as a class serve a distinctive role in society and jury service would substantially interfere with that function, that women as a class may not be excluded or given automatic exemption based solely on sex if the consequence is that criminal jury venires are almost totally male and that states remain free to prescribe relevant qualifications for jurors and to provide reasonable exemptions so long as the jury lists or panels are representative of the community.

Though the Court noted that a defendant was not entitled to a jury of any particular composition, it held juries could not be representative of the community if particular groups were excluded from service:

The purpose of a jury is to guard against the exercise of arbitrary power - to make available the commonsense judgment of the community as a hedge against the over-zealous or mistaken prosecutor and in preference to the professional or perhaps overconditioned or biased response of a judge. ... This prophylactic vehicle is not provided if the jury pool is made up of only special segments of the populace.

The role of peremptory challenges

Traditionally, lawyers on each side of a case, besides being able to challenge jurors "for cause," are allotted a certain number of peremptory challenges to jurors – basically, hunches that a particular juror will not be favorable to their side. Peremptory challenges allow either side to dismiss a juror without stating a reason. In recent years, courts, including the U.S. Supreme Court, have instituted procedures to see that these challenges are not used to impermissibly remove jurors of a particular ethnic group or gender.

In Batson v. Kentucky [476 U.S. 79, 106 S.Ct. 1712 (1986)], the Court deemed the exercise of peremptory challenges to eliminate jurors of a particular race unconstitutional. James K. Batson, a black man, was on trial for burglary and receipt of stolen goods. Four black men were summoned as potential jurors, but were excluded during *voir dire* by peremptory challenges, resulting in an all-white jury. This jury convicted Batson, who appealed that the prosecutor's use of peremptory challenges had violated his constitutional rights to a trial by an impartial jury representative of the community.

The Court decided that the Equal Protection Clause forbade prosecutors from "challenging potential jurors solely on account of their race or on the assumption that black jurors as a group will be unable to impartially consider the State's case against a black defendant."

Justices William H. Rehnquist and Warren Berger dissented. Berger quoted from the Court's ruling in Swain v. Alabama [80 U.S. 202, 85 S.Ct. 824 (1965)], which held use of peremptory challenges by prosecutors should be presumed legitimate unless defendants could overcome that presumption by showing a clear, consistent history of discrimination of a particular group from jury service, and highlighted the usefulness of the peremptory challenge in ensuring a fair trial:

The function of the challenge is not only to eliminate extremes of partiality on both sides, but to assure the parties that the jurors before whom they try the case will decide on the basis of the evidence placed for them, and not otherwise. In this way the peremptory satisfies the rule that 'to perform its high function in the best way, "justice must satisfy the appearance of justice.

In 1994, the Supreme Court extended its ruling in Batson, that jurors could not be eliminated through peremptory challenge on the basis of race, to gender.

Other groups have also been excluded from jury service in the form of automatic exemptions or an opt-in system, such as those who work in the court system or law enforcement.

Wisconsin judges and attorneys may opt out of jury service, but they are not restricted from serving. Wisconsin Supreme Court Chief Justice Shirley S. Abrahamson served as a juror on a Dane County criminal case in 1984. A speech Abrahamson gave on her service was printed in 1986 in *Georgia Law Review*, Vol. 20 No. 2, p. 257.

Abrahamson said she believes she was allowed to serve because the case was one of petty theft and basically involved a question of intent – whether the defendant had intended to steal a city directory, or to merely copy some pages and return it. "A lawyer or judge would have no better insight into intent than would the machine serviceperson, the homemaker, the government employee, or the retiree who were also on the jury. We were equals in the jury room," Abrahamson said.



Chief Justice Shirley S. Abrahamson

Terrorism and trial by jury

Although legislation passed since Sept. 11, 2001, permits certain suspected terrorists to be tried before special tribunals or denied the right to a trial altogether, terrorism cases have been and will continue to be tried in the regular criminal court system.

Some jurors who have participated in terrorism trials in the United States and the United Kingdom reported they felt threatened and fearful of retaliation by terrorist groups. Much like organized crime trials, this has been dealt with in some cases by adding security, or by having jurors serve anonymously.

But the question remains, can fearful juries be effective? Also, is it possible for a defendant in a terrorism trial to receive a fair trial by an impartial jury? Legal scholars have argued that after the Sept. 11 attacks, all Americans are real or potential terrorist victims, and victims do not, for obvious reasons, typically sit in judgment of suspected criminals.

timeline

Key cases involving the American jury:

1600s

Bushell’s Case (1670)

This case in England established the founding principle of judicial independence within the Anglo-American legal tradition – the right of the jury to make its decision on the facts of the case, free from coercion by the judge.

1700s

The Trial of John Peter Zenger (1735)

Zenger, a newspaper publisher, was tried for printing articles critical of a colonial governor appointed by the King. A New York jury acquitted Zenger though he was clearly guilty of the charge, demonstrating resistance to what it perceived as an unjust British law, providing an early example of jury nullification.

1800s

Strauder v. West Virginia [100 U.S. 303 (1879)]

The Supreme Court ruled that the Fourteenth Amendment guarantee of equal protection under the law applied to jury service. The Court declared a state law limiting jury service to white men unconstitutional, and barred discrimination from the jury pool on the basis of race.

Sparf v. United States [156 U.S. 51, 15 S.Ct. 273 (1895)]

The Supreme Court ruled juries have the right of nullification – they can, in the process of deciding a law, declare it illegal, nonsensical or unenforceable and ignore a judge’s instruction on the law - but the court should not make the jury aware of it.

Sheppard v. Maxwell [384 U.S. 333, 86 S.Ct. 1507 (1966)]

This case centered on a conflict between the First Amendment right to a free press and the Sixth Amendment right to a fair trial by an impartial jury. Dr. Sam Sheppard was charged in 1954 with killing his pregnant wife, and the trial became one of the first “sensational” trials of the television age. Stations broadcast from the courthouse, details of the case and about jury members were published during the trial, and jurors were not sequestered. The conviction was appealed to the Supreme Court, which ruled Sheppard’s rights had been violated, stating the principle that “the jury’s verdict be based on evidence received in open court, not from outside sources.”

1960s

Duncan v. Louisiana [391 U.S. 145, 88 S.Ct. 1444 (1968)]

The Supreme Court held that because trial by jury in serious criminal offenses is “fundamental to the American scheme of justice” and essential to due process, the Fourteenth Amendment guarantees a state criminal defendant the right to a jury trial in any case that, if tried in federal court, would require a jury under the Sixth Amendment.

Witherspoon v. Illinois [391 U.S. 510, 88 S.Ct. 1770 (1968)]

The Supreme Court ruled juries in death penalty cases could be “death qualified,” meaning service could be limited to those who agree they would, under some circumstances, be willing to consider the death penalty. The Court ruled a potential juror’s general opposition to the death penalty was not a sufficient reason to exclude that person from serving on a capital jury, stating that if a prospective juror states that he or she is able to set aside personal beliefs and apply the law, that person should be allowed to serve.

1970s

Williams v. Florida [339 U.S. 78, 90 S.Ct. 1893 (1970)]

The Supreme Court concluded a verdict from a six-person jury satisfied the Sixth Amendment in a non-capital case. As long as the selection process produced a jury representative of the community, the Court stated, a six-person and a twelve-person jury should be equally fair to the defendant. The Court deemed the twelve-person number largely “historical accident,” and left it up to states to decide the sizes of their juries, stating a jury should be large enough “to provide a fair possibility for obtaining a representative cross-section of the community.”

Apodaca v. Oregon [406 U.S. 404, 92 S.Ct. 1628 (1972)] and **Johnson v. Louisiana** [406 U.S. 356, 92 S.Ct. 1628 (1972)]

The Supreme Court ruled a unanimous jury conviction was not necessary in criminal cases to satisfy the Sixth and Fourteenth Amendment rights to a fair trial, due process, and the reasonable doubt requirement.

Taylor v. Louisiana [419 U.S. 522, 95 S.Ct. 692 (1975)]

The Supreme Court deemed a state statute making jury service for women voluntary unconstitutional because it systematically eliminated women from the jury pool, thereby failing to provide a fair cross-section of the community under the Sixth Amendment right to an impartial jury. The Court stated a defendant is not entitled to a jury of any particular composition.

Ballew v. Georgia [435 U.S. 223, 98 S.Ct. 1029 (1978)]

Claude D. Ballew was convicted by a five-person jury on a misdemeanor charge. On appeal, the Supreme Court upheld the constitutionality of a six-person jury, but ruled Georgia’s use of a five-person jury in a criminal trial unconstitutional, saying it impaired the ability of the jury to function and did not uphold the defendant’s rights.

Barnes v. United States [446 U.S. 907, 100 S.Ct. 1933 (1980)]

This trial, of New York crime boss Leroy “Nicky” Barnes, was the country’s first anonymous jury trial. The jury was selected from a pool whose names, addresses, religions and ethnic backgrounds were unknown to either side, because of the personal risk jurors faced from the defendant and his associates.

1980s

Batson v. Kentucky [476 U.S. 79, 106 S.Ct. 1712 (1986)]

Batson, a black man, appealed a conviction on the grounds that the prosecutor had used peremptory challenges to keep blacks from serving on the jury. The Supreme Court affirmed earlier holdings that no one had a constitutional right to be tried, in whole or part, by jurors of the same race, but held that jurors could not be purposefully excluded from jury service based on race through peremptory challenge. In 1994, the Supreme Court extended its ruling to prohibit peremptory challenges of jurors based on sex.

Turner v. Murray [476 U.S. 28, 106 S.Ct. 1683 (1986)]

The Supreme Court held that a capital defendant accused of an inter-racial crime is entitled to have prospective jurors informed of the race of the victim and questioned on the issue of racial bias. This does not hold for non-capital crimes.

1990s

Hernandez v. New York [500 U.S. 352, 111 S.Ct. 1859 (1991)]

Dionisio Hernandez was on trial for attempting to murder his girlfriend and her mother, and two witnesses were to testify through a Spanish-language interpreter. A Brooklyn assistant district attorney used his peremptory challenges to exclude all Latino jurors. The Supreme Court upheld this action, ruling Spanish-speaking prospective jurors could be excluded based on their language out of concern they would not be able to abide by the official English interpretation of the Spanish testimony.

Lewis v. United States [518 U.S. 332, 116 S.Ct. 2163 (1996)]

A 5-4 Supreme Court majority held that the Sixth Amendment does not guarantee a jury trial to a defendant charged with multiple petty offenses, defined as an offense for which the maximum term of imprisonment upon conviction is six months. Dissenters argued a criminal defendant could be sentenced to many years’ imprisonment without a jury trial.

in the news

News stories dealing with jury issues pop up frequently and can be used to enliven presentations on jury service. Here are some that made national headlines in March 2005:

“Colorado Court Bars Execution Because Jurors Considered Bible” by Kirk Johnson
March 29, 2005

The New York Times

The Colorado Supreme Court upheld a lower court’s decision to overturn the death sentence of a man convicted of rape and murder and grant him life without parole after jurors consulted a Bible in reaching their verdict. The Court said the Bible constituted an improper outside influence and a reliance on a “higher authority” than the law.

“Blake Jury Called ‘Incredibly Stupid’”

March 25, 2005

The New York Times

Los Angeles District Attorney Steve Cooley said the jurors who acquitted actor Robert Blake of murdering his wife were “incredibly stupid,” because Blake was “guilty as sin.” One juror, Chuck Safko, said: “To hear him say we aren’t a smart jury is sour grapes. They didn’t have a good case.”

“Case Stirs Fight on Juries, Jews and Execution” by Dean E. Murphy

March 16, 2005

The New York Times

The convictions of dozens of death-row inmates in California are being examined after a former Alameda County prosecutor accused the county court of excluding Jews and black women from juries in capital trials as “standard practice.” The prosecutor said a trial judge once advised him during jury selection that “no Jew would vote to send a defendant to the gas chamber,” and that black women were excluded because they were widely seen as being too sympathetic to defendants.

“Lay Seeking Separate Juries”

March 15, 2005

The Washington Post

Former Enron Chief Executive Kenneth Lay sought to have two different juries hear criminal charges against him, one to deliberate a broad conspiracy case against Lay and other Enron executives, the other to hear more limited charges of bank fraud against Lay alone. Lay’s defense lawyers argued using the same jury for both trials could cause prejudice and many other practical problems.

“Supreme Court, 5-4, Forbids Execution in Juvenile Crime” by Linda Greenhouse

March 2, 2005

The New York Times

The majority ruled capital punishment for crimes committed before age 18 unconstitutional in the face of “evolving standards of decency” in the United States and abroad. In his dissenting opinion, Justice Antonin Scalia said the majority had failed to justify a “constitutional imperative that prevents legislatures and juries from treating exceptional cases in an exceptional way by determining that some murders are not just the acts of happy-go-lucky teenagers, but heinous crimes deserving of death.”

activities

The key to a successful Law Day is providing programs that are interesting enough to bring people to the courthouse. Consider especially reaching out to the elderly, low-income, and immigrant populations by arranging for transportation to bring them to the courthouse for Law Day. Many of the activities listed below come from the American Bar Association.

ELEMENTARY STUDENTS (K-5)

Mock *voir dire*

The process for examining prospective jurors in order to assemble a jury that will be unbiased can teach children a great deal about the role of the jury. Consider having them sit in on a real *voir dire* and/or conduct a mock *voir dire* in the classroom. Lawyers (or teachers or students) can act as prosecutors and defense counsel while students play the roles of prospective jurors.

Juror interviews

The lawyer, judge, or clerk of circuit court who is planning Law Day activities contacts local schools for this activity and identifies teachers who would be interested in a juror-interview project. The project involves asking each student, or each class of students, to talk with the adults in their lives and find one or more who have served on a jury. Ask them to develop a list of questions that cannot be answered with a “yes” or “no” and then request that they interview the adult(s) about the experience and write a summary of what they learned. They also could take pictures of the adult whom they interview. These essays and photos could be displayed in the school, the public library, or in the courthouse as is deemed appropriate. People who are currently serving on a jury should, of course, not be interviewed until their service has concluded.

Sample lesson: Seeking facts to solve mysteries

Developed by Dale Greenawald (www.abanet.org/publiced/lawday/schools/lessons/k3_dueprocess2.html)

This scenario about a missing bicycle will help students distinguish between facts and opinions, and then use the facts to reach a reasonable decision, like jurors do.

Teaching time: approximately 30 minutes

Scenario and evidence

On May 15, 2004, John’s red ten-speed bicycle disappeared. Detective Jim Shoes was assigned to investigate the case.

Detective Shoes: “When did you last see the bicycle?”

John: “I rode home after delivering my papers yesterday, May 14, at about 6:30 p.m. I parked the bike in the corner of the garage. I didn’t put a lock on it because it was in the garage. When I got up to ride it to school, the bike was gone. I think Lou took it, because he wanted a bike like mine and I don’t think he likes me.”

Detective Shoes then interviews a neighbor and asks, “Did you see John’s bicycle yesterday?”

[take note]

Mock trials and
dramatizations on
page 60

Neighbor: “Yes, I was cutting grass at about 6:30 and I saw John ride his bicycle into the garage. At about 9:30, I let my dog out and saw a suspicious shadow moving in the garage. I think it was Lou. He’s always in trouble.”

Detective Shoes then interviews Lou. He says, “John’s bike is missing, Where were you and what were you doing at about 6:30 p.m. on May 14, 2004?”

Lou: “I was just having fun. I was pitching for the Highland Park Champs. After the game, the whole team went out for hamburgers. My folks picked me up about 10:30 p.m. at the Big Shake Restaurant and we went home together. I had a really good evening. My brother John and I had a pillow fight, which really made a mess. Then we went to sleep. I think Harvey took the bike.”

Discussion

Have the class review the testimony and distinguish the facts from the opinions.

Sorting it out

Using the facts, the class should think like a jury and decide what to do. They should discuss the following points to arrive at a decision:

- What are the arguments in favor of finding Lou responsible for taking John’s bike?
- What arguments can be made in support of Lou?
- How strong is each argument?
- Are other arguments possible?

Mystery solved

John’s bike was returned by Mike, who had asked John two weeks before if he could borrow it on May 14. John had simply forgotten that he had given Mike permission.

MIDDLE SCHOOL STUDENTS (grades 6-8)

Go straight to the source

This project is similar to one recommended for elementary-age students, but more detailed and polished work could be required of these older children. Have students interview a family member or another adult from the community who has served on a jury and write up an article on that juror's experience. Compile a class newsletter or magazine or display (for the courthouse or the school or a public library) or find another way to share the collection with the community. Take care only to interview jurors whose service is complete, and ensure that they understand their comments will be made public. Consider having the children take pictures of the people whom they interview.

Use technology

Video and digital cameras are so readily available that students could easily do a video survey project on jury service, film a short movie, or create a slide show or Web site. If the finished product turns out nicely, it could be presented to other students and community members, and could be preserved for future years.

Sample lesson: Right to an impartial jury

Developed by Wendy Bay Lewis and Suzanne H. Livers (www.civicmind.com/ljury.htm)

This lesson helps students analyze and understand the Sixth Amendment right to trial by an impartial jury by tying the concept to criminal trials in the news and personal attitudes.

Teaching time: 40-60 minutes

Preparation

Review news reports of a criminal trial making headlines, and write a brief case statement for students that includes:

- the facts alleged by the prosecution and defense and arguments on each side
- key witnesses and their testimony
- any information on the demographics of the jury, if available
- the jury instructions given by the judge

Have students determine the simple facts of the case, from the point of view of the prosecutor, the defendant, and, if applicable, the victim's family. What is the criminal charge against the defendant?

Discussion

Discuss why some jurors are excused from jury service in the *voir dire* process. What sorts of jurors might be biased toward one side in the case being examined, due to factors like economic status, gender or race, or due to media coverage?

Discuss the reasons for a change of venue and the relative advantages and disadvantages to moving a trial to a new venue. Should this trial be moved? How might the different players involved respond to that? What else might be done to ensure the fairness of the process?

Examine how juries are selected. In Wisconsin, jurors are selected at random by the clerk of the circuit court for each county according to the procedures set out in Chapter 756 of the Wisconsin Statutes. The clerk uses lists provided by the state Department of Transportation of individuals who hold driver's licenses or identification cards. Though few counties use additional lists, the law does allow this. The clerk may supplement the Department of Transportation list with other publicly available lists including:

- Voter registration lists
- Telephone and municipal directories
- Utility customer lists
- Property tax rolls
- Lists of high school graduates who are 18 years of age or older
- Lists of persons who are receiving aid to families with dependent children.

1. Discuss the ways in which any selection process might be biased against certain groups.
2. Ask students to put themselves in the place of potential jurors and ask them if they can be impartial. Are there some witnesses or defendants they might find more or less credible?
3. Ask students to consider these two quotes, from lawyers, that appeared in the Kenosha News:

Lawyer #1: “Diversity gives a sense of fairness to litigants. You wouldn’t want, for example, only members of one occupation, political party or religion on a jury.”

Lawyer #2: [Explaining why he prefers all-white juries for his black clients]: “Black jurors hold black defendants to a higher standard. Black jurors usually are in the middle class and see a black defendant as the bad apple.”

Now have the students put themselves in the shoes of a defendant in a criminal case in their own community. Would they want jurors more similar to themselves, or do they believe they would get a fairer shake from jurors with backgrounds that are dissimilar to their own?

HIGH SCHOOL STUDENTS & BEYOND (grades 9 & up)

Ideas for older students and adults include exercises that can be conducted in the classroom or with community organizations and activities that can be organized in the courthouse.

A literary approach to the jury

Work with a local teacher and have the students read Harper Lee’s “To Kill a Mockingbird” and/or watch the 1962 film. Discuss how the jury might have reached its decision (Lee didn’t tell). Supplement by having students write or perform how the jury’s deliberation might have played out.

Ad campaign

Work with a teacher to have a class develop an advertising campaign promoting jury service. The class might be split into two or three groups to develop competing campaigns and then present them at a public event and/or display at the courthouse. The campaigns might include print materials such as brochures and posters, billboards, public service announcements for radio and TV, and more. A business-school class or public relations class at a local college might be especially interested in this project.

Prepare for the “real world”

Gear programs toward high school seniors or college students who are or will soon be legal adults. Educate them on the basics of jury service, or other ways their adult status will affect practical law-related issues, such as driving and traffic offenses, leasing an apartment and getting married. Order and distribute the State Bar of Wisconsin publication “On Being 18” to supplement these presentations.

Careers in law for minority students

The Dade County (Florida) Bar’s Young Lawyers Section sponsored a Pre-Law Minority Careers Conference for Law Day 1997. It featured panels of local judges, lawyers and law students representing diverse groups and speaking about their career paths and education. Also included were panelists who pursued non-traditional paths with their legal degrees, such as one who had become a sports agent.

Sample lesson: A comparative analysis of jury systems

Developed by Lee F. Weber for the National Constitution Center
(http://web.archive.org/web/20020214172013/http://constitutioncenter.org/sections/teacher/lesson_plans/html/71189ag.asp)

This lesson aims to show students some different types of jury systems present in other democracies, specifically France and Germany, and to allow them to critically compare those systems with the American version.

Background information

Prior to this lesson, students should be introduced to the basics of the American jury system. Specifically, that a jury usually consists of 12 persons chosen randomly from the community to reflect a cross-section, or ‘jury of one’s peers,’ who, in Wisconsin, must arrive at a unanimous verdict in a criminal case and a five-sixths verdict in a civil case (although the judge generally will ask that the jury try to reach a unanimous verdict). We do not permit people to volunteer for jury duty and do not maintain a system of professional jurors.

The process in other democratic countries is different

In **France**, juries consist of nine laypersons and three professional judges. Each person has one vote and a verdict requires only eight, and undecided votes count in favor of acquittal.

In **Germany**, there are two systems. In serious cases, five people sit on a jury – two laypersons and three professional judges. In less serious cases, one professional judge joins

[take note]

Donate books at
your Law Day
event, see
page 38

two laypersons. In each system, only a majority vote is required for a verdict. In addition, German jurors serve one-year terms and hear all the cases within a community for the duration.

To complicate matters, consider other countries and other forms of government.

Discussion

What are the pros and cons of each system, from a practical standpoint and based on broader principles of justice and fairness? What do the different systems mean for persons accused of crimes? Jury members? The community? Government institutions?

community

Host a 'Dialogue on the American Jury'

This program is designed by the American Bar Association to help high school classes and community groups explore some of the many issues related to trial by jury. Dialogues can focus on jury history, current issues or landmark cases. Visit www.abanet.org/jury/dialogue.html for materials and tips on hosting a dialogue.

Educate community members on jury service

Is your community prepared to serve? Visit the Wisconsin court system's Court Services for Jurors page at www.wicourts.gov/services/juror for detailed information on jury service in Wisconsin. The Web site includes a juror handbook, the new "Jury Service in Wisconsin" video, information for employers, a glossary of terms, and a section of frequently asked questions.

Information fair

Set up tables for handouts/displays from the courts, county and state bar associations, the ABA, police, sheriff, and county agencies. Consider reserving one table as a legal advice booth (see below), one for voter registration, and one for often-asked questions (for example: how to apply for a passport, how to file a small claims action, what happens when one fails to pay a fine). Give a tour of the court system's Web site on public access terminals. Many bar associations have programs geared to high school seniors. A lawyer discusses a topic with a small group of students, allowing time for their questions. Students move round robin to another lawyer until all students have met with each lawyer. Each lawyer discusses a different issue such as leases, drunk driving, marriage, and domestic abuse.

Legal advice booth

Identify local lawyers with a broad range of expertise to staff the booth in shifts (see pages 42-43). Alternative: Partner with a local television or radio station and have attorneys take call-in questions. Promote in fliers and press releases.

Town Hall Meeting

Organize a town hall meeting for community members to meet with lawmakers, judges, and attorneys to talk about key issues related to the law and the courts. Promote with fliers.

Newspaper supplement

In 2003, the Marathon County Bar Association worked with local businesses to produce a special Law Day supplement to the *Wausau Daily Herald*. Atty. Michael K. Moran worked with members of the county bar, State Bar of Wisconsin, and Supreme Court staff to pull together information for the 12-page supplement, and then brought it to a member of the *Herald's* advertising staff, who created the publication. The supplement ran in the *Herald* on Law Day, May 1.

Moran reported that the supplement was very well received, and that it was an excellent way to convey law-related information and to highlight the positive contributions of lawyers in the area. For those who want to try this, he offers the following tips:

- Contact a local newspaper's advertising manager to inquire about printing a special insert highlighting the legal community.

- Work with your local bar association to decide on a format and information to present.
- Generally, inserts are produced with advertising revenue from businesses and organizations that do business within the focus of the insert. The paper running the insert might contact local law firms and other law-related businesses to solicit advertising. If businesses are reluctant to place ads due to the one-time nature of the supplement, you might explain that the advertising will be cost-effective since it promotes a positive view of the legal system. In addition, potential clients can use it beyond the day it will run in the newspaper. Small firms may be more willing to contribute ads if large firms agree to do so, as well.
- Ask members of your local bar, as well as local judges, to submit articles for the supplement.
- Contact the Director of State Courts Office (Amanda Todd: 608/264-6256) and State Bar of Wisconsin (Dee Runaas: 608/250-6191) for additional ideas and materials.
- For additional advice on producing a supplement, contact Atty. Michael K. Moran (715/842-1603) and Paul Pawlowski, *Wausau Daily Herald* (715/845-0709).

Involve special education students

The Dallas Bar Association held a Special Education Art Contest for students in grades K-12, in which students were asked to create posters reflecting their understandings of our freedoms as American citizens. In cooperation with the Dallas Association of Court Administrators, they mailed entry packets to more than 200 special education teachers. All entrants received honorable mention ribbons, and winners were selected in the elementary, middle and high school categories. All entries were displayed in the courthouse, and at a community Law Day luncheon, where two attending judges got into a bidding war over one fourth-grader's poster – it sold for \$100.

Use local media to reach a wider audience

Write letters to the editor or guest opinion pieces in your local paper detailing how jury service works in your jurisdiction, or highlighting an issue relevant to your community and court system, such low response rates to jury summonses among minority groups.

Or, take to the airwaves and host a call-in show on the local radio station. Answer public questions pertaining to jury service or the justice system, or have listeners call in with personal tips and perspectives.

Use art that imitates life

Show a film or organize a book club-style discussion of a work dealing with issues of justice, and use it to spark discussion of relevant issues. Everything from classics to fairy tales to popular fiction and hit movies can serve as springboards for a wide range of ages and interests. Visit the American Bar Association's Web site for more ideas and tips for hosting community programs at www.abanet.org/publiced/lawday/community/programs/home.html.

Host a discussion on jury service Furnished by the Constitutional Rights Foundation

This exercise could serve as a good opening activity to get a class or audience thinking about jury issues. Also consider using the mock *voir dire* (see "Mock trials and courtroom dramatizations" section, beginning on page 60).

Give your audience the list that appears below, and ask each person to select the three most important reasons, in his/her view, for having a jury system. Then, discuss them as a group.

- Achieve fair and impartial justice
- Assess the evidence

- Bring closure to difficult cases/conflicts
- Determine guilt/liability or innocence
- Discover the truth
- Establish the facts of a case
- Fight corruption
- Give the people a voice in government
- Improve the efficiency of the legal system
- Increase the acceptance of verdicts by the community
- Make the legal system more predictable
- Preserve individual liberty
- Promote a sense of openness and fairness
- Protect the rights of the accused
- Provide a democratic check on government
- Quicken the legal process
- Save money in the legal system
- School for popular education in democratic principles
- Other _____

Run a contest

Contests can be a way to engage members of the community, and can easily be tailored to age and interest. Don't feel constricted by tight deadlines; Law Day can be just the start of a longer celebration of, and promotional campaign for, jury service.

1. Visual arts contests

Have participants create advertising campaigns (posters, brochures, buttons, T-shirts, yard signs, Web sites, etc.) promoting jury service. Consider developing a mural for a wall in the courthouse, or a quilt with various diverse groups donating squares that in some way speak to their concept of justice. See our special section, beginning on page 34, for detailed information on running the two most popular contests: posters for 4th graders and essays for 5th graders.

2. Other creative contest ideas

- | | |
|---------------------------|--------------------------|
| Drama festivals | Poetry readings or slams |
| Fiction-writing | Rap competitions |
| Songwriting or performing | Web site design |
| Student-film festivals | |

3. Forensics competitions

Consider using these questions (courtesy of the American Bar Association) in a discussion or debate:

What are the strongest arguments that the founding fathers made regarding the role of juries in a democracy?

Should juries be concerned only with the facts and the judge only with the law?

Are juries capable of hearing evidence and reaching sound verdicts in complex legal cases relating to advanced technology or medical science?

Should the law regarding jury service be standardized across states?

How can jury service be made more inviting and equitable?

What does “a jury of your peers” mean and how likely is it that this ideal is achieved?

How are the right to trial by jury and democracy connected?

[take note]

See our special section on page 34 for the most popular contests

award winners

The following programs are past winners of the ABA's Outstanding Law Day Activity Awards. The ABA describes hundreds of successful Law Day programs on its Web site at www.abanet.org/publiced/lawday/ideas/home.html.

Juror Appreciation Day

Genesee County (Mississippi) Bar Association

The Bar celebrated Law Day 2000 with an event thanking jurors for their service. The event featured complementary refreshments, T-shirts and brochures about law-related topics. Fifteen local attorneys also volunteered to provide free legal advice.

"The Us in Justice... is Everyone" photo exhibit

Alaska Court System and State Bar

This exhibit for Law Day 2002 featured 37 portraits of diverse Alaskans and their personal statements on the meaning of justice. About 40,000 people viewed the exhibit in schools, courthouses and other public venues. By putting a face and voice to an abstract concept, the project succeeded in raising public awareness about the legal system and the work of legal professionals.

"Teens Speak Out"

Pima County (Arizona) Bar Association, the Arizona Superior Court, and the Pima County Teen and Juvenile Courts

This effort for Law Day 1997 focused on not just informing teens about the law, but also encouraging policymakers to consult with young people. The program created a variety of resources for students to investigate personally relevant legal issues, then discuss and debate those issues directly with local lawmakers, judges, lawyers, law enforcement officers and members of the media at a forum.

Multilingual education

The Houston (Texas) Bar Association

For Law Day 1997, the Bar published a free, Spanish-language handbook covering important legal issues in layperson's terms, and held a series of educational programs in five different languages. The Bar also set up an information booth at a local festival, and held a radio call-in program where volunteer lawyers answered questions.

Hands-on experience

Baton Rouge (Louisiana) Bar Foundation and Uintah County (Utah) Justice Court

On Law Day 2000, the Baton Rouge Bar Association sponsored a celebration for students featuring mini mock trials performed by volunteer judges and lawyers. The city clerk's office also gave a presentation and set up actual voting booths for students to try out. The Uintah County Court held a similar open house for the entire community in 2002, and printed an "ask the judge" feature in local newspapers throughout the month.

Other Notable Programs

U.S. Air Force judge advocates in Wyoming

Judge advocates (JAGs) spoke to more than 500 ninth-graders at two local junior high schools. JAGs talked to small class groups and used a variety of interactive techniques – mini courts-martial, search and seizure hypotheticals, etc. to involve students (see below). Further, JAGs set up a legal question and answer session in the base dining hall and held an estate planning seminar at the base family support center.

Search and seizure: Hypothetical situations

- 1 You are walking down the street in downtown Cheyenne. You do not match the description of any wanted criminal suspects and no crimes have recently been committed in the area. A police officer walks up to you, asks you your name and some identification. Can you walk away without answering?
- 2 You and two friends are driving around Lyons Park at 10:30 p.m. A police officer drives by. He doesn't like your looks or the looks of your two friends. He thinks you look like troublemakers. You don't break any law. Can he pull you over and ask you for your license and registration?
- 3 You and two friends are driving around Lyons Park at 10:30 p.m. A police officer drives by. He doesn't like your looks or the looks of your two friends. He thinks you look like troublemakers. You have a broken headlight. Can he pull you over and ask you for your license and registration?
- 4 You and two friends are driving around Lyons Park at 10:30 p.m. A police officer drives by. He doesn't like your looks or the looks of your two friends. He thinks you look like troublemakers. You have a broken headlight. He pulls you over. He approaches your car and knocks on your window. As you roll down your window a wave of marijuana smoke blows out and hits him in the face. He asks you to step out of the car and then proceeds to search it for drugs. Can he do that?
- 5 You and two friends are driving around Lyons Park at 10:30 p.m. A police officer drives by. He doesn't like your looks or the looks of your two friends. He thinks you look like troublemakers. You have a broken headlight. He pulls you over. He approaches your car and knocks on your window. You roll down your window and he asks you if he can search your car. You say no. There is no sight or smell of anything illegal. He searches your car and finds drugs. Can he arrest you and use that evidence against you?
- 6 You've been arrested for marijuana possession. No one has read you your Miranda rights. They take you to the station and want to fingerprint you. You don't consent. They do it anyway. Your fingerprints show you to be the mysterious third who helped Timothy McVeigh in the Oklahoma City bombing. Can they use those fingerprints against you in court to prove you are that person?
- 7 You've been arrested for marijuana possession. A police officer reads you your Miranda rights. You say you want to speak to a lawyer. Can she continue to question you?
- 8 You've been arrested for marijuana possession. A police officer reads you your Miranda rights. You say you wish to remain silent. Can she continue to question you? What if it is about a completely unrelated car theft that happened last Saturday?

contests

(Note: enclose this information with the invitation to schools)

Essay Contest for Fifth Graders

- Rules:**
1. Teachers should screen all submissions and forward the top two to XYZ, the committee person in charge of contests (see address below).
 2. Entries will be screened by a committee of judges and lawyers. Judging criteria are as follows:

How well the question is addressed
Originality
Clarity
Grammar
Spelling
Construction

3. Teachers should staple a cover sheet to each entry with the following information: teacher's name and telephone number; student's name, name of school, number of the question being addressed.
4. To be considered, entries must be received no later than Wednesday, April 13.
INSERT RETURN ADDRESS HERE

Questions (choose one):

1. Describe one of the rights that you, as a child, have under the U.S. Constitution. What are some of the things that right allows you to do?
2. If you could amend the U.S. Constitution, what right would you give to children and why?
3. Should children be allowed to serve on juries? Why or why not?
4. Should juveniles accused of serious crimes be tried as adults? Why or why not? If so, for which crimes and at what ages?

Prizes:

First, second and third-place winners will be called on or about April 18. Due to the expected volume of entries, those who entered but did not win will not be notified. The winners will be honored at a ceremony at the X County Courthouse at noon on May 2 as part of our Law Day celebration. Judge Y will present each winner with a certificate/ribbon/plaque and ask each to read his/her essay aloud to the group that will be assembled for Law Day activities. The children's parents, principal and teacher will all be welcome to attend. Awards for a fourth-grade poster contest will be given at the same ceremony.

Please note that winning essays will be submitted to the local newspaper unless teachers ask that they not be.

[take note]

To order plaques
and ribbons, see
page 90

Poster Contest for Fourth Graders

- Rules:**
1. Teachers should submit all entries to XYZ (the committee person in charge of contests). See address below.
 2. Entries will be judged by a team of judges and lawyers on the following criteria:
 - Creativity
 - Originality
 - How well the question is addressed through the art
 3. Teachers should tape a sheet to the back of each entry with the following information: teacher's name and telephone number, student's name, name of school, number of question being addressed and a short description of what the student is showing (for example: Billy has drawn himself worshipping at his church). To be considered, entries must be received no later than Friday, April 22. Send to:
INSERT RETURN ADDRESS HERE

Topics (choose one):

1. Create a poster that shows the role of the law in protecting children.
2. Create a poster showing what you think our country might be like if we didn't have the Constitution to protect our freedom.

Prizes:

Winners will be notified by telephone on or about April 26. Due to the expected volume of entries, those who do not win will not be notified. All posters received will be hung in the X County Courthouse during the week of May 2, in honor of Law Day. The first, second and third-place winners will receive ribbons, which will be tacked to their posters during a ceremony at noon on Monday, May 2, at the courthouse. The children, their parents, principal and teacher will be welcome, and the children will be asked to explain the meaning of their posters to the group that will be assembled at the courthouse for Law Day. Awards for a fifth-grade essay contest will be given at the same ceremony.

judging

Essay/Poster Number: _____

(Note: The person who receives the essays/posters should not be one of the people judging them. S/he should remove all identifying marks and give each poster a letter, keeping a master key that matches name to letter).

Note: Essays are judged on all criteria; poster criteria may need to be narrowed.

Criteria: _____ **Points (max for each = 5)**

How well addressed question _____

Originality _____

Creativity _____

Clarity _____

Grammar _____

Spelling _____

Construction _____

Score: _____/35

Sample notification of schools

Congratulations! Your student, XYZ, has won (first, second, third) place in ZZ County in the Law Day 2005 essay contest. You and s/he should be very proud.

The judging was done by Judge X and Lawyers P and D. All identifying marks were removed from the essays ahead of time to ensure fairness. We received essays from # schools from all over ZZ County.

We would like to invite you, the school principal, the student's parents and the student to a ceremony at which we will honor all essay contest winners. This will take place at noon on Monday, May 2, at the ZZ County Courthouse, address here. Judge X will present the top three essayists with plaques and the children will each be asked to read their essays aloud to the various groups who will be present for the Law Day open house.

We will be sending the student's essay to the local newspaper and will invite the media to cover the awards ceremony. If the child's parents would prefer that s/he not be given media exposure, please notify me of that immediately. Please also call as soon as possible to let me know how many we can expect at the ceremony.

I can be reached at XXX. Congratulations again!

Sincerely yours,

PDQ
Chair, Law Day 2005 Committee

appreciation

Juror Appreciation Dinner

Open the courthouse on the evening of May 2 for a special dinner honoring jurors (see sample letter/invitation, page 40). Invite everyone who has served on a jury in the last three months (adjust according to the size of the group you wish to have). Cater in a dinner, perhaps using the jury assembly room for the event. Provide free childcare on site. Solicit door prizes from local businesses (judges should not do the soliciting). To boost attendance, make the dinner free. Hand out comment cards soliciting the jurors' ideas for improving the system. Consider inviting the news media for a story that will publicize jury service.

Juror Employer of the Year Award

Give an award – perhaps in the form of a plaque (see page 90) – to a local business that has made jury duty easier on its employees by permitting shift changes, giving paid time off, promoting jury duty in the personnel policy, etc. The award might be given either at the courthouse or at the business' headquarters. Alert the local media to the award ceremony (see sample press release, page 47) and contact the company's newsletter, if one exists.

Book Donation

Purchase books having to do with juries and jury service and donate them, in a Law Day ceremony, to the local public libraries and school libraries. Here are a few to consider:

- Aaseng, Nathan. *You are the Juror*. Minneapolis, Minn.: The Oliver Press, 1997. Book for young adult readers puts them in the role of jurors in eight famous trials.
- Abramson, Jeffrey. *We, The Jury: The Jury System and the Ideal of Democracy*. New York: Basic Books, 1994.
- Adler, Stephen J. *The Jury: Trial and Error in the American Courtroom*. New York: Times Books, 1994.
- Baldwin, John and McConville, Michael. *Jury Trials*. Oxford: Clarendon Press, 1979.
- Fukurai, Hiroshi, Butler, Edgar W., and Krooth, Richard. *Race and the Jury: Racial Disenfranchisement and the Search for Justice*. New York: Plenum Press, 1993.
- Gobert, James J. *The Jury on Trial: A Political, Philosophical, and Psychological Examination of the Jury*. 1993.
- Hans, Valerie P. and Vidmar, Neil. *Judging the Jury*. New York: Plenum Press, 1986.
- Hastie, Reed, Penrod, Steven, and Pennington, Nancy. *Inside the Jury*. Cambridge, Mass.: Harvard University Press, 1983.
- Litan, Robert E. (Ed.). *Verdict: Assessing the Civil Jury System*. Washington, D.C.: Brookings Institution, 1993.
- Levine, James. *Juries and Politics*. Pacific Groves, Cal.: Brooks/Cole, 1992.
- Uviller, H. Richard. *Virtual Justice: The Flawed Prosecution of Crime in America*. New Haven, Conn.: Yale University Press, 1996.

Thank-you letters

Write a thank-you letter to all who have served on jury duty in the last year (see sample letter, page 40). A “jury service” bookmark could also be enclosed.

Sample Press Release: Juror Employer Award

CONTACT:
Committee Member X
phone number

FOR IMMEDIATE RELEASE

XYZ Company Named ‘Juror Employer of the Year’

Everywhere, Wis. (April 15) - XYZ Company has been named Q County’s Juror Employer of the Year for its commitment to supporting its employees who are called for jury service.

XYZ, which employs N people at its factory/store/warehouse/etc. in Anywhere, has taken the following steps to assist employees in carrying out this important civic duty:

Q County’s Law Day Planning Committee chose XYZ as the first recipient of this award. “XYZ has taken important steps to ensure that its employees can answer the call to jury duty,” said Committee Chair Jane Doe. “Jury service is the one of the key ways in which citizens can participate in government, and it is the bedrock of our justice system. XYZ has recognized that making it easier for its employees to answer the call to jury duty boosts employee morale and upholds the values of the community.”

XYZ President Bud Smith will accept a plaque on behalf of the company at X p.m. during the Law Day celebration on Monday, May 2, at the Q County Courthouse at 111 Main St., Everywhere. Judges P, D, and Q will present the award in the Branch I courtroom. The media and public are welcome to attend.

In addition to the award ceremony, the following activities will take place at the Q County Courthouse on Law Day: A, B, C.

Members of the public are encouraged to join in the Q County Courthouse’s and Bar Association’s celebration of Law Day 2005.

###

Sample Thank-You Letter/Invitation: Jury Service

Dear Ms. X:

I want to take this opportunity, as Law Day 2005 approaches, to thank you for your jury service in the past year. [If juror appreciation activities are planned, mention them here].

As you know, jury service is the bedrock of our justice system. Without your participation, the system could not work. And without a healthy justice system, this community would not be the wonderful place that it is to work and live.

The Wisconsin Supreme Court in 1997 amended the statutes dealing with jury service to institute shorter terms of service and more efficient use of jurors' time. This will help ensure that the time and goodwill of citizens called for jury duty is not wasted or taken for granted. The changes, we hope, will preserve the jury system and enhance the quality of the decision-making process.

I thank you for your commitment to our justice system and invite you to call or write to XYZ with any suggestions or comments on your experience.

Sincerely yours,

Presiding Judge

legal advice

Guidelines for giving free legal advice

Those counties choosing to offer free legal advice clinics should keep in mind the following:

People seeking advice may assume that by talking with the attorney they have retained that person. It is important to make it clear at the outset that the attorney is not representing them.

Attorneys giving advice may or may not choose to offer their business cards. That is entirely up to the individual attorney.

Brochures designed to help people access the State Bar's Lawyer Referral Service are available at no charge (see page 88).

A number of other resources are available to people who need help. See page 42 for referral information.

Sample legal advice disclaimer

This is a legal advice service provided free of charge on Law Day. Although I will not be your personal attorney, I will provide what information I can. Information will be general in nature since it is not possible to analyze all the facts of your case over the phone/in a short meeting. If you desire a personal attorney, you will receive information about how to find one.

**[Lawyer Referral &
Information Service]**
of the State Bar of Wisconsin

800/362-9082 or
608/257-4666

Monday - Thursday
7:30 a.m. - 6 p.m.

Friday
7:30 a.m. - 3 p.m.

resources

Advocacy, Coalition for

608/267-0214 (Madison)
414/342-8700 (Milwaukee)

Aging and Long Term Care, Board on

800/242-1060 (Medigap Helpline)
800/815-0015 (Ombudsman Program)

Agriculture, Trade & Consumer Protection

608/224-5058
715/839-3848 (Eau Claire)
920/448-5110 (Green Bay)
608/224-4960 (Madison)
414/266-1231 (Milwaukee)

ACLU (American Civil Liberties Union)

414/272-4032

Attorney General's Office

608/266-1221

BAPR (see Lawyer Regulation, Office of)

Briarpatch (juvenile runaway & abuse counseling)

608/251-1126 (crisis line)
608/251-6211 (business line)
608/798-1126 (crisis line)

Business Information

800/435-7287 (Wisconsin Department of Commerce Business Helpline)
608/263-2221 (UW Business School, Small Business Development Center)
608/263-7680 (UW Business School, Business Counseling Line)
608/250-6006 (State Bar Association Business Assistance Program)
608/441-5263 (Federal Small Business Association, Madison)
414/297-3941 (Federal Small Business Association, Milwaukee)

Centers for Prevention and Intervention (formerly

PICADA)
608/246-7606

Child Support; refer to local office.

City Attorney; refer to local office.

Clerk of Circuit Court; refer to local office.

Consumer Protection (Justice Department; see also

Agriculture, Trade and Consumer Protection)
608/266-1852
800/998-0700

Credit Counseling Service

608/252-1334

Crisis Intervention Center (24-hour rape, suicide hotline)

608/280-2600

District Attorney; refer to local office.

Domestic Abuse Intervention Services, Dane County

608/251-4445 (crisis line, shelter, and legal program)
608/251-1237 (business)

Elder Law Center

800/488-2596 (guardianship hotline)
608/224-0660

Equal Employment Opportunity Commission

800/669-4000
414/297-1111 (Milwaukee)
608/266-4910 (Madison)

Equal Rights Division (Wisconsin Department of Work

force Development)
920/832-5301 Labor Standards Bureau
608/266-6860 (Madison)
920/832-5302 (Menasha)
414/227-4384 (Milwaukee)

Family Court; refer to local office.

Financial Institutions, Wisconsin Department of

800/452-3328 (Consumer Act section)
608/264-7969 (Madison)

Health and Family Services, Wisconsin Department of

608/267-3905 (Div. of Children & Family Services)

Humane Society; refer to local office

Institutionalized Persons, Legal Assistance to

608/262-1002

Insurance Commissioner

800/236-8517
608/266-0103 (Madison – complaints/consumer information)

Internal Revenue Service

800/829-1040

Judicial Commission

608/266-7637

Juvenile Court; refer to local office.

Lawyer Referral and Information Service

800/362-9082
608/257-4666 (Madison)

Lawyer Regulation, Office of

877/315-6941
608/267-7274

Mail Fraud - U.S. Postal Service

608/246-1297 (Milwaukee)

Medical Assistance Hotline

800/362-3002
608/221-5720 (Madison)

Mental Health Center of Dane County

608/280-2700

Motor Vehicles Division (Wisconsin Department of Transportation)

800/422-7128 (consumer complaints)
608/266-2353 (driver records)
608/266-2261 (suspension/revocation)
visit www.dot.wisconsin.gov/about/contacts/phoneguide.htm
for a comprehensive list of transportation issue contacts.

Municipal Court; refer to local office.

National Labor Relations Board

414/297-3861

Parental Stress Center

608/241-2221 (stressline)
608/241-4888 (business)

Public Service Commission

800/225-7729
608/266-2001 (Madison - consumer complaints)

Regulation & Licensing, Wisconsin Department of

608/266-2112

Small Claims Court; refer to local office.

Tenant Resource Center (for tenants & landlords)

608/257-0006 (housing counseling)
877/238-7368
608/242/7406 (housing help desk)
608/257-0143 (business)

Traffic Court; refer to local office.

Unemployment Compensation

608/232-0678 (Madison)
414/438-7700 (Milwaukee)

Veterans' Services

800/827-1000 (federal regional office)
608/266-1311 or 800/947-8387 (state)
608/266-4158 (Dane County)

Workers' Compensation

608/266-1340

Workforce Development, Wisconsin Department of

608/266-0327 (Division of Workforce Solutions)

invitations

Sample invitation to community groups/officials

Dear (Rotary, Kiwanis, NAACP, Mayor, Police Chief, Legislator, etc.):

The X County courts are planning a big celebration on Monday, May 2, in honor of Law Day. We would like to invite you to join in the festivities.

Law Day U.S.A. was established by President Dwight D. Eisenhower in 1958 to give Americans an opportunity to reflect on the country's legal heritage, the role of law in our society and the rights and responsibilities that come with a Democracy.

The theme of this Law Day is "The American Jury: We the People in Action," and we believe there is no better place to celebrate that than at the local courthouse, where we work every day to promote fairness and equality in education and beyond.

We are planning an open house at the courthouse with (for example): refreshments, a team of local attorneys providing free legal advice, a table full of free materials on a variety of law-related topics such as landlord/tenant law, real estate transactions, bankruptcy, buying and selling automobiles and much more; a voter registration table, tours of the courthouse and the jail, an opportunity to meet the judges and a display of posters on the Constitution crafted by local fourth graders.

We hope you are able to join in this celebration and ask that you please call Y (committee person) if you have a group larger than five.

Sincerely yours,

XYZ

Sample invitation to schools

Dear Principal X:

I am writing to invite your students to participate in a statewide Law Day celebration. The theme of this year's Law Day is "The American Jury: We the People in Action," and we believe there is no better place to celebrate that than at the X County Courthouse, in the town of XXX, where we work every day to promote fairness and equality in education and beyond.

President Dwight D. Eisenhower established Law Day U.S.A. in 1958 to provide an opportunity for reflection on our legal heritage and the role of law in American society.

On May 2, 2005, in honor of Law Day, the X County courthouse, along with courthouses around the state, will host an open house. There are a number of ways in which your students might participate:

First, the Law Day 2005 organizing committee is sponsoring a poster contest for fourth graders and an essay contest for fifth graders (see attached contest information).

Second, the committee is making lawyers and judges available to visit your school and lead discussions designed to help your students understand the rule of law and the role of an independent judiciary.

Third, we would like to offer you the opportunity to schedule a tour of the courthouse on May 2 for a group of students. XYZ activities will be taking place (include the mock trial, if you will have one for them to watch). If you should have a contest winner, that student, his/her parents, the teacher and yourself will be invited to an awards ceremony at the courthouse.

We hope you choose to participate. Please call me at XXX if you are interested. Thank you!

Sincerely yours,

XXX
Chair, Law Day 2005 Committee

press releases

Sample press release #1

CONTACT:
Committee Member X
Phone Number

FOR IMMEDIATE RELEASE

XYZ County Courthouse Will Celebrate Law Day with an Open House

Everywhere, Wis. (April 11) - Need free legal advice? Want to register to vote or pick up free materials on your legal rights and how to protect them? How about taking a tour of the jail or meeting your sheriff and judges?

The XYZ County Courthouse, in celebration of Law Day, will sponsor an open house for the community on Monday, May 2, from 8 a.m. until 4 p.m. Refreshments will be served and Judges P, D and Q along with Police Chief R, Sheriff S, County Executive T and members of the City Council and County Board will be on hand to greet the public.

Cheesehead the Clown will also make an appearance to hand out home safety tips.

Local lawyers A, B and C will staff a free legal advice booth from 8 a.m. to 3 p.m. to answer your questions. In addition, a variety of free handouts on topics such as landlord/tenant law, divorce, marital property, bankruptcy, starting a business and much more will be available.

City Clerk Z will have a voter registration table set up. In order to register, you must be at least 18 years old. Bring an identification card and anything showing your current address (check with your city clerk to make sure this is what they will want).

Law Day U.S.A. was established in 1958 by President Dwight D. Eisenhower to give Americans an opportunity to reflect on their legal heritage and the role of law in society.

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Sample Press Release #2

(Note: If you have essays from fifth- and/or eighth-graders, enclose them with the press release)

CONTACT:

XYZ

Committee Member

Phone Number

FOR IMMEDIATE RELEASE

Courthouse Will Celebrate Law Day on May 2

Everywhere, Wis. (April 19) - The community is invited to a Law Day celebration Monday, May 2, from 8 a.m. to 4 p.m. at the X County Courthouse. Free legal advice, refreshments, tours of the courthouse and jail, a voter registration table, and an opportunity to meet the judges are just a few of the activities planned.

Law Day U.S.A. was established in 1958 by President Dwight D. Eisenhower to provide an opportunity for Americans to learn more about their legal heritage and the rights and responsibilities that come with a Democracy.

At noon, a ceremony will honor local students who have created posters and essays (editor: see enclosed essays) in honor of Law Day. The winners will be given ribbons and plaques and asked to present their work to the assembled group.

At 5 p.m., local people who (have served on juries in the last three months/serve as foster parents) will be honored at a courthouse reception with the judges.

All members of the community are encouraged to attend the festivities, or just stop by and pick up a variety of free handouts that answer legal questions on such topics as buying and selling automobiles, real estate transactions, starting a business, divorce, probate and much more.

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speeches

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Improving jury service in Wisconsin

Serving on a jury is one of the most important duties one can perform as an American citizen. It is also one of the few ways, besides voting, to participate directly in a democracy.

Managing the jury system is a delicate balancing act for a court. A successful system is attentive to both the efficiency of the process and the jurors' level of satisfaction. Those who manage the system must supply sufficient numbers of jurors to try all matters before the court without wasting court resources or the time and good will of the jurors.

In an effort to meet these challenges, the Wisconsin Supreme Court in January 1997 amended the jury code in order to incorporate the American Bar Association's Standards Relating to Juror Use and Management. The court's action came after three years of intensive work by the Wisconsin Judicial Conference (the organization of the state's judges), the Wisconsin Judicial Council, and numerous clerks of circuit court and court administrators who reviewed proposals and paved the way for their implementation. The overhaul of the system brought many changes including:

- A system for following up with people who do not respond for jury duty;
- Elimination of automatic exemptions from jury duty;
- Development of additional representative source lists for jurors;
- A mandate that employers grant employees time off for jury duty with no loss of time in service and a prohibition on demoting or discharging employees for taking time off to report for jury service;
- Shorter terms of jury service (maximum of 31 days' availability for service or five days' actual service – unless additional time is required to complete a trial);
- Longer terms of ineligibility between terms of jury service (four years, although an individual circuit may shorten this period to two years)
- appointment of a supervising judge to be responsible for managing each county's jury system; and
- A system for annual evaluation of each county's system, to include monitoring whether the master list from which jurors are summoned is representative and inclusive of the population of the circuit and whether the procedures for summoning and qualifying jurors are effective.

Following the overhaul of the jury code, the Committee of Chief Judges, which is composed of 10 judges from around the state whom the Supreme Court has appointed to assist with administrative matters, established the Subcommittee on Juror Selection and Treatment to improve communication of ideas and problems in the jury system and to work on issues such as jury pay (which Wis. Stat. § 756.25 requires county boards to set at no less than \$16 per day); protection of confidential information supplied by jurors; responsiveness to summonses; development and maintenance of more up-to-date Department of Transportation lists; development of informational materials such as a statewide jury orientation video; and identification of ideas - from better parking to better reading materials - to help clerks of court make jury service a more pleasant and positive experience for citizens.

[take note]

Juror appreciation
ideas on page 38

How Wisconsin jurors are selected

Each year, across Wisconsin, about 70,000 people are summoned for jury duty. They are selected at random by the clerk of the circuit court for each county according to the procedures set out in Chapter 756 of the Wisconsin Statutes. The clerk uses lists provided by the state Department of Transportation of individuals who hold driver's licenses or identification cards. Though few counties use additional lists, the law does allow this. The clerk may supplement the Department of Transportation list with other publicly available lists including:

- Voter registration lists
- Telephone and municipal directories
- Utility customer lists
- Property tax rolls
- Lists of high school graduates who are 18 years of age or older
- Lists of persons who are receiving aid to families with dependent children

Because the selection process must be random, no one may volunteer for jury duty. After the clerk determines how many jurors will be needed for a given period, a computer program randomly selects that number of names, and juror questionnaires are sent out to those people. When the questionnaires are returned, they are reviewed to ensure that each potential juror is eligible under law to serve.

Jurors must be United States citizens, residents of Wisconsin, and residents of the circuit where they are summoned in order to serve. They must be at least 18 years of age and able to understand the English language. The statute previously required that jurors be able to read and understand English; this was deleted following the recommendation of the Wisconsin Supreme Court's Interdisciplinary Committee on the Court-Related Needs of the Elderly and People with Disabilities, which was appointed by the chief justice following the passage of the federal Americans with Disabilities Act to study the court system and jury service to find ways to ensure the full participation of people with disabilities. Today, it is common to see people with disabilities performing their civic duty alongside their fellow citizens, thanks to accommodations involving technology, transportation, scheduling of court hearings, and accessible courtrooms.

When the people who have been summoned report to the local courthouse, they are checked in, provided with an orientation that explains the role of the juror in the American justice system, and then, when the assigned judge is ready to select one or more juries, the prospective jurors are taken to the appropriate courtroom and the final selection process begins.

The final step in the selection process is called *voir dire*, which is a French phrase meaning "to speak the truth." This involves the attorneys questioning the jurors, both as a group and as individuals, to try to develop a jury panel that both sides believe will be fair and impartial. Attorneys whittle the jury panel through the use of challenges. The two main types of challenges are called "for cause" and "peremptory". If an attorney challenges a juror for cause, he or she must provide a reason – for example, maybe the juror knows one of the attorneys or the people involved in the case. If the judge agrees, the juror is dismissed. There is no limit to the number of challenges one can make for cause. If an attorney claims a peremptory challenge, the juror is excused and the reason need not be given. There are a limited number of peremptory challenges allowed. After the jurors have been selected, the judge will instruct the members of the jury regarding the case and the rules of conduct.

These rules of conduct are very specific and important to the fairness of the process. Generally, they include prohibitions on discussing the case with anyone, including family, the court staff or other jurors (until it's time for deliberation), watching or reading news accounts of the trial, and conducting one's own investigation by looking at the Internet or going to places involved in the case, or consulting maps or calendars. All these rules are designed to ensure that the jurors reach a decision based only upon the law and the evidence presented in court.

Jury diversity

In June 1996, the *Kenosha News* ran a story on a drug trial in that county's circuit court. The story began as follows:

A black defendant glanced at the white crowd from which a jury would be selected to decide her fate on a drug charge. She then asked her attorney, "Why aren't there any black people here?" [The attorney] scanned the 135 potential jurors filling the Kenosha Circuit courtroom and found no African-Americans. Following her conviction, the woman based an appeal on Kenosha's jury-selection system, but lost.

Efforts to ensure that Wisconsin juries reflect the racial and ethnic make-up of each county's population are many and varied – as are opinions on whether this is necessary. In that same *Kenosha News* story, criminal defense lawyers differed on the importance of a racially mixed jury. One lawyer said: "Diversity gives a sense of fairness to litigants. You wouldn't want, for example, only members of one occupation, political party or religion on a jury." But others opined that jurors' ability to understand testimony and arrive at a verdict based upon the facts and the law is all that matters. Another lawyer told the newspaper that he prefers white juries for his black clients, based upon conversations with blacks who have served as jurors. "Black jurors hold black defendants to a higher standard," the lawyer said. "Black jurors usually are in the middle class and see a black defendant as the bad apple."

While it is unreasonable to expect any one jury to represent the racial mix of a county, it is reasonable to expect that, over time, a county's jurors will be representative of the county population. In an effort to improve jury diversity, the Legislature has given the courts the ability to tap different source lists in addition to the Department of Transportation list. Utility company customer lists, phone books, voter registration lists, Aid to Families with Dependent Children lists, and lists of high school graduates are among those acceptable for use by clerks who find that their DOT sampling has not provided an adequate representation of minorities.

Few Wisconsin counties actually use the supplemental lists, for several reasons. First, the law requires that they pull the same percentage from the supplemental lists as was pulled from the DOT list, and strike any duplicates. So, for example, if a clerk pulls 800 names at random from a DOT list of 32,000 county residents, that clerk has pulled 2.5 percent of the names. If these people do not prove to be racially and ethnically representative of the population, the clerk could opt to pull names from a supplementary list from another source, but would be limited to pulling 2.5 percent of whichever list was chosen. And there is no guarantee that a random selection of 2.5 percent of county AFDC recipients or high school graduates, after duplicates are stricken, will bring enough racial and ethnic minorities into the pool to make an appreciable difference. A second reason that these supplemental lists are not tapped is that they are not routinely available. Most utility companies, for example, do not share their customer lists.

Instead of using additional lists, the courts have focused their jury diversity efforts on improving the rate of response from people who are summoned for jury duty. In Dane County, for example, 50 percent of the summonses sent to minorities are returned as undeliverable while just 17 percent of summonses to non-minorities bounce back. While court staff try to track down new addresses, these efforts have not, to date, yielded significant results. The most successful initiatives to improve response rates have focused on public awareness of the importance of jury duty. Posters, letters to newspapers, communications with churches and other organizations with high minority membership, presentations in high schools, public service announcements, and other efforts have been undertaken. None of these initiatives holds the key to improving jury diversity, but all contribute small results that eventually may make an appreciable difference.



"Drawn on the Jury," an engraving by S. G. McCutcheon that appeared in Harper's Weekly, Dec. 28, 1878. The caption reads: "The older man reads the notice of his being drawn for jury duty... the younger man looks amused."

How well must jurors understand English?

Wisconsin's population is becoming increasingly diverse. Between 1990 and 1999, the state's Hispanic and Asian-Pacific Islander populations each grew by more than 50 percent and speakers of east European and African languages also are arriving in considerable numbers. If an immigrant becomes a citizen, understands English, and reaches the age of 18, she or he may be called for jury service - but, as anyone who understands a second language knows, a basic conversational understanding is different from the kind of linguistic ability that enables a person to comprehend and analyze complex legal arguments.

The level of English that a Wisconsin juror must possess was the subject of a case called State v. Carlson that was decided by the Wisconsin Supreme Court in 2003. The case originated in Brown County, where Michael W. Carlson was convicted of second-degree sexual assault as a repeater. One member of the jury that convicted Carlson was Tony Vera, a native of Laos who had lived in the United States for 20 years. He had become a U.S. citizen, obtained a driver's license, and, one day, received a summons to appear for jury duty. Vera noted on his juror questionnaire that he did not understand English. Ordinarily, this would disqualify a person from serving but in this case, for an unknown reason, the clerk of circuit court kept him on the roster and his name was entered into the computer for random juror selection. During *voir dire*, when attorneys question potential jurors, Vera was not asked any questions individually. The judge asked the group whether anyone had trouble understanding English but Vera did not raise his hand. Ultimately, he was seated on this jury. During deliberations, the jury sent a note to the judge that read:

We believe that you need to talk to Tony. It is our belief that he does not understand most of the trial proceedings. We would like you to evaluate the situation.

The judge discussed the note with the attorneys, who expressed concern that questioning Vera individually might look like an attempt to influence his vote. No further action was taken.

The jury found Carlson guilty and he filed a motion for a new trial due to Vera's alleged inability to understand English. The court held a hearing at which Vera was questioned at length in English, without an interpreter. His work supervisor and another member of the jury also testified (both said Vera had trouble with English). The judge ultimately determined that Vera did understand enough English to have served on the jury, and he denied Carlson a new trial.

The Court of Appeals affirmed the conviction, concluding that the judge had carefully considered all the evidence on Vera's English abilities and had reached a reasonable conclusion.

But the Wisconsin Supreme Court saw it differently. In a 6-1 opinion written by Justice N. Patrick Crooks, the court reversed Carlson's conviction and remanded the case for a new trial. Crooks wrote that the defendant's rights were violated "when a juror who was not qualified under the statutes, and who did not have sufficient understanding of English so that he could meaningfully participate in the trial process, was allowed to serve as a juror."

The decline of the American jury trial

Justice Ann Walsh Bradley originally gave a slightly longer version of this speech to the Wisconsin Association of Trial Lawyers in December 2004.

I am going to be focusing today on a core part of our system of justice: the jury trial. We are going to look at the current state of affairs, nationally and then in Wisconsin. Along the way, we'll discuss some of the possible causes of the declining number of jury trials and examine some potential consequences for the future. Now, briefly, to the justice system of the past.

In preparing for today's presentation, I looked for the earliest Wisconsin decisions involving juries in civil litigation. To give you context, let me set the stage:

During territorial days, the state was divided into court districts. Each district had a trial judge. On occasion the trial judges would meet and sit as an appellate court. So, it was when we became a state. We continued our territorial system for those five years before our separate supreme court was established.

From 1848 to 1852 the state was divided into five judicial districts. The five trial judges met once a year in Madison and reviewed decisions of the justices of the peace and their own decisions.

Now you might think that sitting in review of your own decisions might sound pretty good to some trial court judges, but you can imagine how fast relationships soured when your colleagues decided that one of your decisions was a loser.

It is said that the first chief justice, Alexander Stowe, once returned home from Madison complaining bitterly after his colleagues on the Supreme Court reversed one of his decisions. He disagreed with them, maintaining with certitude the errors of their ways, and was quoted as calling them "consummate blockheads."

Then in 1853, the experiment of using the five district trial judges as also the supreme court justices, ended, and a new, separate Supreme Court was born. At first the new court had only 3 justices. That lasted until 1877 when the number increased to 5. Finally in 1903 the number was established as 7 and that number remains today.

One of the earliest cases involving a jury following statehood is Winne v. Elderkin, 2 Pinn. 248 (1849). I marvel at the cycle of life. What, do you think, is the subject of this early Wisconsin jury trial case? Alternative Dispute Resolution. How coincidental that in 1849 we were dealing with the intersection of ADR and jury trials – a focus of some of my comments regarding the justice system of today and the consequences for the system of tomorrow.

Turn back with me if you will, to that not so thrilling case of yester-year, Winne v. Elderkin. The case was tried in the May term of 1849 in the court of Walworth County. This was during the period, as I just noted, when the five district judges would meet in Madison once a year, and sit as a supreme court in review of their own cases.

That's not the only difference between the court of yesterday and today...the entire opinion of the court consists of only seven paragraphs.

The facts are simple: Elderkin "hired" to Winne the use of Elderkin's horse. Subsequently, Elderkin sued Winne for the latter's "carelessly and unskillfully using the horse," which resulted in the horse's death. Before suit was filed, the two parties entered into an agreement to submit all matters of difference between them to arbitration. Each party chose an arbitrator, and the two arbitrators met with the parties and heard testimony. It had been agreed that if the two could not decide the case, then they would choose a third.

After deliberations, the two could not decide, so they brought in a third, who reviewed the



Justice Ann Walsh
Bradley

[take note]

Wisconsin jury-
related cases on
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evidence, and ultimately the arbitrators made an oral award in favor of Winne (the alleged horse abuser).

Elderkin then brought suit in Walworth County and, in the course of the trial, the judge refused to allow any evidence of the submission of the dispute to the arbitrators or of the award of the arbitrators to come before the jury. The trial judge ruled that the arbitrators' award was not valid because it had not been reduced to writing. The jury found in favor of Elderkin and awarded him \$58.33 for his dead horse.

Winne (not one to let sleeping dogs lie, or dead horses rest) appealed the question of whether evidence of the arbitration proceeding should have been heard by the jury. The supreme court found that an oral award is binding upon the parties at common law, and there was nothing in the statute to suggest that the legislature intended anything different.

The statute provided that in order to have an arbitration submission, the parties must make an agreement in writing and acknowledge it before a justice of the peace. Winne contended that the statute took away the right of parties to submit a matter in controversy between them to arbitrators in any other mode.

The court stated: "We are of the opinion that this is not a correct view of the subject; the statute contains nothing which shows that the legislature intended to prevent parties from adjusting their differences by the convenient mode of common law arbitration," citing to similar statutes in other states. The court held that the award was valid, that it was also admissible in evidence, and that the trial judge had erred in rejecting the evidence. The judgment of the lower court was reversed.

Our system looked a bit different then, and handled a different caseload. During the 19th century, railroads, logging and milling were important economic activities in Wisconsin and influenced the development of agriculture, transportation, construction, trade and finance. During the logging and lumber era, civil actions in circuit courts concerned mostly contracts, real and personal property, and tortious damage to property.

The 20th century was characterized by the increasing intervention of state and national governments in people's lives. These shifting patterns of legislative and administrative activities were, as you might expect, accompanied by changes in the work of the courts. Changes in technology were reflected in the business of the courts. The introduction of automobiles brought new personal and property damage cases, and the automobile initiated economic and social changes that affected the business of the courts. Let's fast forward to more recent times.

Over the past generation the law and the legal world seems to have grown dramatically. On almost any measure—the number of lawyers, the amount spent on law, the amount of authoritative legal material, the prominence of law in public consciousness – all have increased with leaps and bounds.

It seems curious then to find a contrary pattern in something central to the core of our justice system: the jury trial. The number of trials has not increased in proportion to these other measures. And in many, if not most, forums, the number of trials has undergone a remarkable decline. Let's take a look.

U.W. Law Professor Marc Galanter is a nationally recognized expert who has conducted "landmark research" on federal jury trials. His research showed that in 1962, 11.5 percent of all civil cases in federal court were tried to a jury. By 2002, that number had dropped to 1.8 percent. In raw numbers, federal civil jury trials dropped from a peak in 1985 of more than 12,500 to slightly more than 4,500 in 2003.

There is an abundance of data that show a decline in trials in the federal courts, both civil and criminal. But I want to focus on the civil trials and litigation in the state courts. Because the federal system is a unified system, the statistics have been available to chart the decline of the jury trial in the federal system. But there has been a dearth of information available on

state courts. Some state court systems just did not keep the information, or characterized the information that they did have in disparate ways...so that collecting the information in a useful form was a daunting if not impossible task in the past.

The National Center of State Courts (NCSC) undertook a project to chart the course of jury trials in state courts. The NCSC looked at general civil trials, a combination of tort, contract and real property rights cases. It focused on 10 states that collected and reported general civil disposition data for the years 1992-2002. The project has recently been completed, the available statistics have been compiled and this is what it shows:

1. General civil jury trials have decreased over the last 11 years by 44 percent in the states surveyed.
2. General civil jury trial rates (the number of these trials per 1,000 general civil dispositions) remained constant between 1992 and 2000, around 19 jury trials per 1,000 dispositions or 1.9 percent of all general civil dispositions. After 2000, general civil jury trial rates fell dramatically to end at 13 jury trials per 1,000 dispositions in 2002.

The National Center study set out to determine if the declining trials phenomenon seen in the federal courts also applies to the state courts. The answer is that generally it does.

Wisconsin follows the national trend. We only have statistics for the last six years, but we are still able to track the declining number of jury trials statewide, from 906 in 1998 to 616 last year. We define civil to include personal injury, property damage, contracts, real estate and some miscellaneous civil actions.

This decline is even more dramatic when you look at the rate of dispositions in civil cases. Dispositions are on the rise, which means the percentage of cases disposed of by jury trial has dropped.

We find the same story in Milwaukee County, where civil jury trials declined from 255 in 1998 to a low of 113 in 2002 before rebounding a bit in 2003 to 141. Again, you can see that total civil dispositions rose steadily.

There is a national discussion and debate about the status of civil jury trials. Some characterize the status as vanishing. An ABA Project is entitled: *The Vanishing Jury*. Yet in other jurisdictions, like Hawaii and Philadelphia, the number of jury trials is on the rise. And in still others, like New Mexico, the number remains essentially unchanged.

Thus, there are those who challenge the label “the vanishing trial”. Yet for those jurisdictions where the civil jury trial numbers are declining, the inevitable question is: why? What is causing the decline of civil jury trials? Some of the plausible explanations, although not necessarily correct explanations include the following:

1. Alternative dispute resolution
 - Approval and encouragement of ADR by judges. Supreme Court Rule 802.12, effective in 1993, provides express authority for judges to order settlement alternatives.
 - Recognition and embracing of ADR options by corporate and business parties.
2. Complexity
 - Cases are more complex, more costly to carry to trial.
 - More focus on discovery and motion practice.
 - Research shows that civil trials of today tend to last longer.
3. Case management
 - Judicial management supplies great incentive and opportunity for judges to dissuade parties from trial.
 - It used to be the norm that settlement occurred on the courthouse steps; now, more settlements are occurring earlier in the process.
 - Shift of judicial conception of role from presiding at trials to resolving disputes.

[take note]

More jury history
on page 15

I mention these as possible consequences, because the data, other than anecdotal, does not exist to support a conclusion with any degree of certainty. A 2001 article in *Wisconsin Lawyer* describes the different approaches of mediators and the benefits of mandatory mediation in Wisconsin. The article concludes:

Anecdotally, everyone interviewed for this article believes that the number of trials is down, and that mandatory ADR has moved settlement discussion from the courthouse steps on the eve of trial to a mediator's office, where lawyers can save some expenses of litigation without losing face with their clients. And that sounds like a win-win proposition for everyone.

But is that correct? Is it a win-win situation for everyone? Whatever the causes, what are the possible consequences for our justice system of tomorrow? Here are a few to consider:

1. Effect on the development of precedent. (With fewer civil jury trials, is precedent instead going to be developed on motion practice?)
2. Effect on supply of markers to facilitate settlements. (What are cases worth? In a particular community the jury award is a good indicator.)
3. Effect on litigants. (Can only the rich afford some alternatives?)
4. Effect on litigants' perception of fairness, and their opportunity for their "day in court."
5. Effect on the public perception of courts and their authority.
6. Effect on judges-their self-image and role.
7. Effect on the bar-diminished number of attorneys with trial experience.
8. Effect on law firms. Litigation departments become more focused on discovery and motions rather than trials. Young associates have little opportunity to be part of a trial. Some are encouraged to do pro bono work, or to take public defender work in order to get some trial experience.) I remember as a young attorney having the opportunity to do many jury trials. Indeed, in some counties in this state I was the first woman to do a civil jury trial in that county.
9. Effect on public education through jury service.

Where is this change leading us? In some ways, we seem to pretend that it is business as usual. We expend a lot of time and resources in this system on trial management, jury standards, etc., with fewer and fewer trials. And what else is on the horizon for jury trials? On the immediate horizon is the ABA project for establishing principles for juries and jury trials. The ABA House of Delegates in February 2005 approved a set of modern jury principles, which encourage the use of 12-person juries and advise that jurors should be allowed to take notes during trials and should be permitted to submit written questions for witnesses. The ABA American Jury Project, which developed these principles, is working to present them to state courts as a model.

While the effect of these changes on our justice system is still unclear, I think one constant here, as elsewhere in our system, will be change. I hope that another will be a commitment to the principle of trial by jury, a cornerstone of our democracy.

I close with a quote from John Adams, one of our founding fathers, who expressed his view on the central role of jury trials in our emerging democracy:

Representative government and trial by jury are the heart and lungs of liberty. Without them we have no other fortification against being ridden like horses, fleeced like sheep, worked like cattle and fed and clothed like swine and hounds.

Additional jury-related talking points

From the American Bar Association (www.abanet.org/publiced/lawday/talking/jurytalk.html)

1. In spite of the fact that their numbers appear to be declining, jury trials are still more common in the U.S. than in any other nation in the world. It's been estimated that the United States accounts for 95 percent of all jury trials in the world. Even England no longer uses juries as heavily as we do. What arguments could be made for why juries fill an important role in a democracy? What arguments support severely limiting their role?
2. In many cases, lawyers have used psychologists to guide them as they select a jury. The idea is that they will develop profiles of potential jurors that will help the lawyers select those more apt to favor their side. Does this threaten the concept of "jury of one's peers" and the ideal of "equal justice under law?"
3. In a number of cases, most notably Sheppard v. Maxwell, 384 U.S. 333 (1966), the Supreme Court has expressed concern over publicity that imperiled the accused's ability to "receive a trial by an impartial jury free from outside influences," and in that case a new trial was ordered. Yet, in an era of instant news transmission and information overload, how can that be achieved?
4. Some commentators have suggested that very complex civil cases are beyond the power of a jury to deal with. In one recent case, the Supreme Court held that it did not offend the Constitution if a jury decided the issue of liability, but the judge set the damages. Is that an appropriate solution to the problem, or does it unwisely take discretion from the jury?
5. Does live television in the courtroom make a fair trial more difficult by affecting the behavior of the parties in the case, i.e., lawyers, witnesses, jurors?

Selected Wisconsin cases

Prejudicial statements made during jury deliberations as grounds for a new trial:

After Hour Welding v. Laneil Management Co.

108 Wis. 2d 734, 324 N.W.2d 686 (1982)

The Wisconsin Supreme Court ruled that a juror's prejudicial remarks about an officer of the defendant corporation during deliberations in this case were grounds for a new trial.

During deliberations, one juror called the officer a "cheap Jew," complained about how the officer's son (an attorney), had defended a motorcycle gang, and claimed the officer's sons were "involved" in the suicide of a local judge.

The Supreme Court stated that whenever there is evidence a jury's verdict may have been the result of any form of prejudice based on race, religion, gender, or national origin, the trial court should conduct an investigation, and that a new trial should be ordered when the prejudice would have a "probable effect" on the verdict.

State v. Poh

116 Wis. 2d 510, 343 N.W.2d 108 (1984)

The Wisconsin Supreme Court held that a juror's statements during deliberations about the criminal defendant's prior drinking record were grounds for a new trial because they constituted "extraneous prejudicial information" improperly brought to the jury's attention.

The court also held that in a criminal case, the prejudicial statement need not be shown to have a "probable effect" on the verdict; it is enough to show a "reasonable possibility" that the prejudicial statement contributed to the conviction.

State v. Shillcutt

119 Wis. 2d 788, 350 N.W.2d 686 (1984)

The Wisconsin Supreme Court held that a juror's use of racial slurs in a discussion of a criminal defendant during jury deliberations was not sufficient grounds for a new trial.

James B. Shillcutt, a black man, was tried and convicted of soliciting prostitutes and keeping a place of prostitution. The prosecution's chief witness, a white woman, testified that when she was 17 years old, Shillcutt recruited her to become a prostitute.

Shillcutt moved for a new trial, supported by an affidavit from one of the jurors

stating that during deliberations, another juror commented, “Let’s be logical, he’s a black man, and he sees a 17-year-old white girl - I know the type.”

The Wisconsin Supreme Court upheld the conviction in a split decision, with the majority concluding that the statement did not introduce facts from outside the record into the deliberations.

Excluding groups from the jury pool:

State v. Chosa

108 Wis. 2d 392, 321 N.W. 280 (1982)

Wisconsin courts have upheld federal court rulings that it is illegal to exclude potential jurors on the basis of factors such as race or gender. For instance, in this case, a Native American defendant’s conviction was reversed because all Native Americans had been excluded from the jury panel.

The Special Verdict Statute:

The Special Verdict Statute (Wis. Laws 1856. c. 120, Sec. 171) says that juries given a special verdict form should only answer the questions they are given to answer – their role is to determine questions of fact. This statute has given rise to a number of cases.

Ryan v. Rockford Insurance Co.

77 Wis. 611, 46 N.W. 885 (1890)

In the first case in which Wisconsin courts took up this question, the Supreme Court held juries should deliver findings based upon fact and free of prejudice or bias in favor of either party, and should therefore not consider the effects of their ruling upon either party. The Court wrote:

It has often been demonstrated in the trial of causes that the non-expert juryman is more liable than the experienced lawyer or judge to be led away from the material issues of fact involved by some collateral circumstance of little or no significance, or by sympathy, bias or prejudice; and hence it is common practice for courts, in the submission of such particular questions and special verdicts to charge the jury, in effect, that they have nothing to do with, and must not consider the effects which their answers may have upon, the controversy or the parties.

Banderob v. Wisconsin Cent. Ry. Co.

133 Wis. 249, 113 N.W. 738 (1907)

The Wisconsin Supreme Court clarified its ruling in Ryan, stating that it is reversible error to instruct or inform jurors, expressly or by implication, of the effects of their answers.

De Groot v. Van Akkern

225 Wis. 105, 273 N.W. 725 (1937)

The Supreme Court stated that erroneous instructions to juries regarding special verdict questions are generally prejudicial.

Bauer v. Richter

103 Wis. 412, 79 N.W. 404 (1989)

The Court reiterated that courts must not instruct jurors of the ultimate result of their answers.

McGowan v. Story

70 Wis.2d 189, 234 N.W.2d 325 (1975)

In McGowan, the plaintiff sued for injuries sustained while transferring hot tar from his employer’s truck to a distributor’s vehicle. The jury found the plaintiff 50 percent negligent, the employer 30 percent negligent, and the distributor 20 percent negligent. During deliberations, the jury returned to the courtroom and asked to be informed of the effect of its answers on the rights of the parties, but the trial judge refused. The plaintiff had also requested and had been denied a general verdict, which would have made the effect of

the jury's answer apparent.

The Supreme Court affirmed the trial court, writing:

It is argued that the refusal to fully inform the jurors is contrary to the traditional trust we place in the ability of juries to do justice. Of course, this criticism is in itself based on a fundamental distrust of the jury system, for it assumes that jurors are not faithful to their oath to follow instructions of the trial judge. We decline to explore the pros and cons of this controversy, because any change in the rule would be contrary to the established basis for the use of juries, particularly in negligence cases. . . . We suggest that the jury should be admonished, and impressed, that its function in a negligence case is fact-finding only and that it is not its role to usurp the legislative function or the judicial function in interpreting the comparative negligence statute.

Jury trials for juveniles:

State courts have ruled juvenile offenders do not have a constitutional right to a jury trial.

State v. Hezzie R.

219 Wis. 2d 849, 580 N.W. 2d 660 (1998) (www.wicourts.gov/html/sc/97/97-0676.htm)

Hezzie R. was a juvenile on trial for sexual assault. The Wisconsin Supreme Court held that the Juvenile Justice Code is non-criminal, and therefore does not require the Constitutional protection of a jury trial.

The Court did find that portions of the Juvenile Justice Code providing some juveniles to be transferred to adult prison at age 17 delivered a “de facto criminal sentence” without a jury trial and was therefore unconstitutional, removing them from the Code.

State v. Bollig

232 Wis. 2d 561, 605 N.W.2d 199 (2000) (www.wicourts.gov/html/sc/98/98-2196.htm)

The Supreme Court concluded that Wisconsin's sex offender registration requirement (Wis. Stat. § 938.34(15m)(bm)) is not a criminal punishment, and therefore does not require a jury trial for juvenile offenders.

Language barriers:

In Wisconsin, jurors are required to be able to understand English in order to serve. The Wisconsin Supreme Court has ruled evidence a juror did not understand English is grounds for a new trial.

State v. Carlson

2003 WI 40, 216 Wis. 2d 97, 661 N.W. 2d 51 (www.wicourts.gov/html/sc/01/01-1136.htm)

A Brown County jury convicted Michael W. Carlson of second-degree sexual assault as a repeat offender.

One member of the jury, Tony Vera, a native of Laos who had lived in the United States for 20 years, noted on his juror questionnaire that he did not understand English. Ordinarily, this would disqualify him from service, but for some reason the clerk of courts kept him on the roster, and Vera made it through *voir dire* and onto the jury.

During deliberations, the jury sent a note to the judge that read: “We believe that you need to talk to Tony. It is our belief that he does not understand most of the trial proceedings. We would like you to evaluate the situation.” The judge discussed the matter with the attorneys, but no further action was taken because questioning Vera directly might look like an attempt to influence his vote.

Carlson appealed his conviction, but the judge decided Vera did understand enough English to have served on the jury, and the conviction was upheld by the Court of Appeals.

The Supreme Court, however, overturned Carlson's conviction in a 6-1 decision and granted him a new trial. Justice N. Patrick Crooks wrote Carlson's rights were violated “when a juror who was not qualified under the statutes, and who did not have sufficient understanding of English so that he could meaningfully participate in the trial process, was allowed to serve as a juror.”

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mock trial

THE CASE OF THE MISSING PUPPY

A mock trial script appropriate for elementary school students

Developed by teachers Diane Tassej and Arleen Hill
Script furnished by the New Jersey State Bar Foundation

Facts

Mr. and Mrs. Green hired Amanda Barber, age 13, to baby-sit their son Mikey and their puppy Spot for the day. They told Amanda to play with their son, to make him lunch, and to be sure their dog was tied up outside for fresh air and exercise. While Amanda was preparing a sandwich for the child, the frisky dog broke free and ran away. The Greens blame Amanda for carelessness and want her to give them the cost of the puppy.

Issue

Is it Amanda's fault that the dog got loose or is it the owner's fault for giving her a rope that wasn't strong enough to hold their dog?

Participants in trial:

Plaintiff's Mr. and Mrs. Green
Defendant. . . . Amanda Barber
Witnesses for plaintiff. . . Mr. Brown, the Greens' neighbor
Witness for defense. . . Mrs. Castle, Amanda's former Girl Scout leader
Plaintiff's lawyer
Defendant's lawyer
Court clerk
Judge
Jury foreperson
Jury members
Bailiff

All participants except the judge will take their places.

COURT CLERK: We will now hear "The Case of the Missing Puppy." All rise for the Honorable _____.

(THE JUDGE ENTERS AND SITS.)

JUDGE: Will the plaintiff's lawyer please make his/her opening statement to the jury?

PLAINTIFF'S LAWYER: Good morning, ladies and gentlemen of the jury. My name is _____ and I am the lawyer for Mr. and Mrs. Green. In this case, we will prove that Amanda Barber was not careful and did not do the things she promised the Greens she would do. She lost their dog, Spot, and she is to blame.

JUDGE: Will the defendant's lawyer please make his/her opening statement to the jury.

DEFENDANT'S LAWYER: Ladies and gentlemen of the jury, my name is _____ and I represent 13-year-old Amanda Barber. We will prove that Amanda is a very careful baby-sitter. We will also show that the rope

SECTION NINE: MOCK TRIAL SCRIPTS

the Greens gave her was worn-out and was not strong enough to hold Spot.

JUDGE: The plaintiff's lawyer may now call his/her first witness.

PLAINTIFF'S LAWYER: Your honor, I will first call the plaintiff, Mrs. Green.

(THE BAILIFF BRINGS THE WITNESS TO THE COURT CLERK.)

COURT CLERK: Do you swear or affirm to tell the truth, the whole truth, and nothing but the truth?

MRS. GREEN: I do.

PLAINTIFF'S LAWYER: Mrs. Green, please tell us what happened.

MRS. GREEN: My husband and I needed a baby-sitter. We called Amanda Barber. She told us that she knew how to take care of children and pets. We told her to tie our new puppy Spot outside for a while so he could get some exercise. Later she told us that the rope was worn-out, and Spot got loose and ran away. Our Dalmatian was very expensive, and our son is very upset. This is all Amanda's fault! She should pay for a new dog.

PLAINTIFF'S LAWYER: Thank you, Mrs. Green. Your honor, next I will call a neighbor, Mr. Brown.

(THE BAILIFF BRINGS THE WITNESS TO THE COURT CLERK.)

COURT CLERK: Do you swear or affirm to tell the truth, the whole truth, and nothing but the truth?

MR. BROWN: I do.

PLAINTIFF'S LAWYER: Mr. Brown, please tell us what you saw.

MR. BROWN: On the day that the Greens' puppy was lost, I was looking out my window. I saw the little Green boy and his puppy playing outside in the yard. Soon, four children rode into the Greens' driveway on bikes. The baby-sitter let them come in. I saw that they forgot to close the gate. That's probably how the dog got out, but I didn't see it happen. Later I heard the baby-sitter call Spot, but she couldn't find him.

PLAINTIFF'S LAWYER: Thank you, Mr. Brown. The plaintiff rests, your honor.

JUDGE: The defense lawyer may now call his/her first witness.

Defense Lawyer: First I call the defendant, Amanda Barber.

(THE BAILIFF BRINGS THE WITNESS TO THE COURT CLERK.)

Court Clerk: Do you swear or affirm to tell the truth, the whole truth, and nothing but the truth?

Amanda: I do.

DEFENDANT'S LAWYER: Amanda, please tell us what happened.

AMANDA: I am 13 years old and a very good sitter for kids and pets. When I was at the Greens' house, I followed all their directions. I tied up their Dalmatian with the rope they left me. Then I went inside to make lunch for Mikey. While he was taking a nap, I went outside to get Spot, but he wasn't there. The worn-out rope had torn and he ran away. I looked all around for him, but I couldn't go far because Mikey was in the house asleep. I am very sorry this happened, but it is not my fault! The Greens should have given me a stronger rope.

DEFENDANT'S LAWYER: Thank you, Amanda. Your honor, next I will call Mrs. Castle, Amanda's Girl Scout leader.

(THE BAILIFF BRINGS THE WITNESS TO THE COURT CLERK.)

COURT CLERK: Do you swear or affirm to tell the truth, the whole truth, and nothing but the truth?

MRS. CASTLE: I do.

DEFENDANT'S LAWYER: Mrs. Castle, please tell us about Amanda.

MRS. CASTLE: I am a Girl Scout leader. Last year Amanda Barber earned a Pet Care Badge by taking care of my dog for two weeks. She gave him food and water, she played with him and she gave him treats. It was easy for me to see that she cares for animals very much and would never harm them. I don't think she would do anything to cause someone's pet to be lost.

DEFENDANT'S LAWYER: Thank you, Mrs. Castle. That is all, your honor. The defense rests.

JUDGE: We have heard the lawyers and all of the witnesses. The lawyers will now give the jury their closing arguments.

DEFENDANT'S LAWYER: Ladies and gentlemen of the jury, the plaintiff did not prove that Amanda was careless. Mrs. Castle testified that Amanda was careful with her dog. She put Spot outside like she was supposed to, but the Greens gave her a worn-out rope. She is not responsible for losing Spot.

PLAINTIFF'S LAWYER: Ladies and gentlemen of the jury, by listening to the evidence today, you should decide that Amanda Barber was not paying attention to Spot, and never checked on the dog while he was tied outside. She should pay for a new puppy for the Greens.

JUDGE: Ladies and gentlemen of the jury, you have heard all the evidence and now it is time for you to decide whether or not Amanda Barber is at fault for the loss of Mrs. Green's dog, and whether or not she should pay to replace him. Before you decide, you must ask yourself three questions:

1. Was Amanda not acting responsibly?
2. Do you believe that everyone has told the truth?
3. Are you more than half sure that your decision is right?

(JURY DELIBERATES AND RETURNS)

JUDGE: Ladies and gentlemen, have you reached a decision?

JURY FOREPERSON: Yes, your honor (verdict is announced and reasons may be given.)

mock trial

B.B. Wolf v. Curly Pig

A mock trial exercise appropriate for preschool and elementary school students.

Developed by Carol White, Chicago, Ill.
Furnished by the Nineteenth Judicial Circuit Court of Lake and McHenry Counties, Ill.
(www.19thcircuitcourt.state.il.us/bkshelf/resource/mt_bbwolf.htm)

Participants:

Judge
Plaintiff. . . B.B. Wolf
Defendant. . . Curly Pig
Jack Smith
Plaintiff's lawyer
Defendant's lawyer
Jury members
Bailiff

Scene

In the Once-Upon-a-Time Courthouse the Bailiff enters the courtroom and calls the case of B.B. Wolf, also known as Big Bad Wolf, versus Curly Pig. Wolf is seated with his attorney at the plaintiff's table, Pig with his counsel at the defendant's table.

JUDGE: This is the case of Wolf versus Pig. As I understand the pleadings, the charge against Pig is attempted Wolf cooking. Now, are there any opening statements?

PLAINTIFF'S LAWYER: Your honor, in this case, we will show that last August 19, the defendant, Mr. Pig, did indeed attempt to cook the plaintiff. We will show that he placed a steaming cauldron of boiling water in a spot where he was sure Mr. Wolf would show up, and that furthermore, his cookbook was found open to the recipe for Poached Wolf. Thank you your honor.

JUDGE: Does the attorney for Curly Pig have any opening statement?

DEFENDANT'S LAWYER: Your honor, Mr. Wolf's charge is ridiculous. We will show that the cauldron was inside Mr. Pig's home--a home Mr. Wolf was trying to forcibly enter. We will also show that Mr. Wolf's actions were just the latest in a long series of harassment of the Pig family – harassment that include the eating of Mr. Pig's two brothers, Larry and Hoe. We will show that Curly Pig was merely protecting his home and life.

JUDGE: Very well, call your first witness.

PLAINTIFF'S LAWYER: I call B.B. Wolf as my first witness.

JUDGE: (Bailiff brings B.B. Wolf forward to be sworn in.) Please raise your right paw. (B.B. Wolf does so.) Do you swear that the evidence you are about to give is the truth, the whole truth and nothing but the truth?

WOLF: I do.

JUDGE: Please be seated.

PLAINTIFF'S LAWYER: Please state your name.

WOLF: My name is Big B. Wolf. Most of my friends call me B.B.

PLAINTIFF'S LAWYER: Where do you live?

WOLF: Oh, I've got a nice little den in the woods outside (insert local city). You know it's got redwood paneling. I've got a pretty nice stereo.

PLAINTIFF'S LAWYER: A kitchen?

WOLF: Well, uh, I uh, eat out a lot, you might say.

PLAINTIFF'S LAWYER: Ah, yes. Well, let's move on to the morning of August 19, 1981. Do you recall your whereabouts on that morning?

WOLF: Yes, I do. Quite clearly, actually. I was taking my usual morning stroll and I passed the house of my old pal, Curly Pig. I was admiring his house -- it's quite well built, you know -- and thought I'd pay good old Curly a visit and tell him just that -- what a fine job he'd done in building that place of his. Anyway, I knocked on the door and called out his name, but there was no answer. And so I knocked harder and called out louder, but still there was no answer. And then I sat down on the front porch to wait. I figured Curly was probably out at the store or something and would be back in a minute. You see I really did want to see my old buddy, and I don't get into that neighborhood all that often. And then it hit me; Curly is a real sound sleeper and was probably just sleeping in. I thought if I just left, he'd be sorry I hadn't woken him. So I tried to think of a way I could get into the house to wake him up. And I thought and I thought and finally it came to me -- I could climb down the chimney.

PLAINTIFF'S LAWYER: And so did you?

WOLF: Well, yes and no. That is, I started to, but when I got almost all the way down, suddenly someone took the lid off this cauldron of water boiling down there. Someone who wanted me to fall into the kettle.

DEFENDANT'S LAWYER: Objection! The witness is guessing at my client's motives.

JUDGE: I agree. Objection sustained. Continue, Mr. Wolf.

WOLF: Well, lucky for me, the steam was so powerful that it just sort of whooshed me right up and out of the chimney. I took off like all get out and decided Curly Pig was no friend of mine.

PLAINTIFF'S LAWYER: Your honor, that is all of our evidence. The Wolf rests.

JUDGE: Very well. We will now hear Curly Pig's side of case.

DEFENDANT'S LAWYER: Your honor, as my first witness, I will call Mr. Jack Smith. (Jack Smith, a middle-aged man in his business suit, is brought forward by the Bailiff and raises his right hand to be sworn. Judge administers the oath. Smith sits down.) What is your name?

SMITH: My name is Jack Smith.

DEFENDANT'S LAWYER: What is your occupation?

SMITH: I run the J. Smith Building Supply Company.

DEFENDANT'S LAWYER: Mr. Smith, are you familiar with the Pig family?

SECTION NINE: MOCK TRIAL SCRIPTS

SMITH: Well, I've got quite a few Pigs among my customers. There's Porky Pig. And Higgeldy Piggeldy. And of course, Miss Piggy.

DEFENDANT'S LAWYER: Then let me be more specific. Are you familiar the Three Little Pigs -- Larry, Moe and Curly?

SMITH: Ah, yes. Now there's a sad story for you.

DEFENDANT'S LAWYER: Just how is it you came to know the Three Little Pigs then?

SMITH: Well, when their poor mother sent them out into the world to make their own ways, they each came to me for building materials for their houses. The first brother, Larry, came to me and asked for a bundle of straw to build a house. I told him, 'kid, this isn't going to give you the tightest security,' but he insisted on straw, and so I sold him a bundle.

DEFENDANT'S LAWYER: Do you know if that house ever got built?

SMITH: Oh, it got built all right. But it didn't last long.

DEFENDANT'S LAWYER: Just what do you mean by that?

SMITH: Well, right after he got it built -- I think it was the day after that nice little house-warming party he had -- that old wolf over there (points at plaintiff) -- he's always up to no good. Why it wasn't a week before that that he was over on the other side of the forest making trouble for Little Red Riding Hood and her poor Granny.

PLAINTIFF'S LAWYER: Objection! This testimony about Little Red Riding Hood is completely irrelevant to the case at hand

JUDGE: Objection sustained. Mr. Wolf's attorney is correct. Proceed, Mr. Smith, but try to stay on track.

SMITH: Harumph. Well, the wolf came over to the Little Pig's house and said, "Little Pig! Little Pig! Let me come in! And the pig said, "Oh no, by the hair on my chinny chin chin." So the wolf got mad and said, "Then I'll huff and I'll puff and I'll blow your house in." So he huffed and he puffed and down came the house and he ate up the little pig.

JUDGE: Did I hear you correctly, Mr. Smith? Did you say he ate the pig up?

SMITH: Yes indeed, your honor. We're talking major pork-o-cide.

PLAINTIFF'S LAWYER: Objection! I don't think we need that kind of uncalled-for character assassination from the witness.

JUDGE: Sustained. Mr. Wolf's attorney is correct.

DEFENDANT'S LAWYER: Mr. Smith, did you not also sell-building materials to Curly Pig's other brother, Moe?

SMITH: Sure did. He wanted to build with sticks. I tried to talk him out of it. I said, you know, kiddo, you're going to have a lot of draft problems with a twig house, not to mention wolf problems. But he was set on a twig cabin, and so I sold him a load.

DEFENDANT'S LAWYER: And can you tell the court the present state of that house?

SMITH: I guess you'd call its present state gone. Pretty much as soon as Moe had that cabin finished, old B.B. -- notice how he didn't want to mention that that middle B stands for Bad -- stopped by with his "Little Pig! Little Pig! Let me come in!" routine. And Moe said, "Oh no! By the hair on my chinny chin chin." And the wolf said, "Then I'll huff and I'll puff and I'll blow your house in." And he did just that, and ate up poor little Moe same as he did Larry. At this point, everyone was

beginning to get the picture that B.B. didn't have any good intentions toward those Little Pigs. And so I for one was glad when Curly came to me and wanted to build his place out of bricks -- a nice little Colonial was just what he had in mind...

- PLAINTIFF'S LAWYER: I really must object to this entire line of questioning, your honor. The witness' testimony is pure hearsay. He never actually saw any of these things happen.
- JUDGE: Sustained. Perhaps, solicitor, you could move to another line of questioning.
- DEFENDANT'S LAWYER: Actually, your honor, I'm through with this witness. If Mr. Smith could step down, I'd like to call my client, Curly Pig to the stand. (Curly Pig rises, comes to stand, is sworn in, and sits down.) Please state your name
- PIG: Curly Pig.
- DEFENDANT'S LAWYER: What is your address, Mr. Pig?
- PIG: I live at 283 Sty Lane, just off Mud Avenue.
- DEFENDANT'S LAWYER: Now, Mr. Pig, are you familiar with the plaintiff in this case, Mr. B.B. Wolf? Are you, as he has testified, a good old pal of Mr. Wolf's?
- PIG: Are you kidding? That wolf in sheep's clothing?
- WOLF: Now wait a minute. Just because I'm wearing my shearling suit. Is there some law against that?
- PIG: He's just trying to look innocent. But he's not! Let me tell you!
- JUDGE: Gentle animals, please. If you don't stop this bickering, I'll have to hold you both in contempt of court. Let's proceed with the questioning.
- DEFENDANT'S LAWYER: Going back a bit, then, Mr. Pig -- how did you first come to know Mr. Wolf?
- PIG: Well, not under the friendliest of circumstances. I started knowing of him when he huffed and puffed and blew in the houses of my brothers, Larry and Moe. I mean talk about excessive! Nobody told this guy breaking and entering doesn't mean breaking the whole house and then entering it.
- DEFENDANT'S LAWYER: When did you come to know Mr. Wolf personally?
- PIG: After he'd done in my brothers, I guess B.B. thought I'd be easy pickings. What he hadn't counted on was that I'd built my house out of bricks. And so when he came over one morning with his cheap "Little Pig! Little Pig! Let me in!" trick, I just told him no way, by the hair of my chinny chin chin, and kept right on watching TV. "Then I'll huff and I'll puff and I'll blow your house in," he said, and I laughed. I just went into the kitchen to make myself a snack. Just a small one. I don't like to make a wolf of myself. Anyway, all the while I was in the kitchen; I could hear him out there huffing and puffing. When I went to bed that night, he was still huffing and puffing, but he wasn't going to get in. I made sure of that when I built that house with bricks.
- DEFENDANT'S LAWYER: And that was the last you ever saw of Mr. Wolf?
- PIG: Are you kidding? That was only the first I saw of him. About a week later, he came by and said -- real sweetly -- "Oh Little Pig, I know where to find the loveliest sweet turnips. He must've known pigs are fools for turnips. Anyway, I asked him where. "Oh," he said, "In Farmer Brown's farm. If you're ready tomorrow morning at six, I'll come by for you and we can go there together and get some for our dinner." Boy, that wolf must think I'm dumb. I knew that those turnips were only going to be the side dish in his dinner. And I knew just whom he had in mind for the main course.

SECTION NINE: MOCK TRIAL SCRIPTS

- DEFENDANT'S LAWYER: And so you didn't?
- PIG: And so I got up at five, picked my turnips and was back home having turnip stew by the time he came by at six.
- DEFENDANT'S LAWYER: What was Mr. Wolf's reaction to this?
- PIG: Oh, he was fuming all right. But he didn't show it. That wolf is one cool cucumber. He just watched me eating my stew and said, through the window, real sweetly, "Oh Little Pig, I know where you can get the juiciest red apples. I know where there is a tree just full of them." Being a curious fellow, I asked him where "Oh, in Farmer Green's garden. If you're ready at five o'clock tomorrow morning, I'll take you there." I said fine. Of course, the next morning, I was up and off to Farmer Green's garden at four.
- DEFENDANT'S LAWYER: And back home eating apple pie at five?
- PIG: Nope. Old Wolfie is pretty smart. He had me figured out by then. So he got up at four, too. I had just finished my picking and was about to come down out of the tree with a big bag of red apples when I looked down and saw old B.B. looking up at me, grinning with those rather largish choppers of his.
- DEFENDANT'S LAWYER: So what did you do?
- PIG: Well, I tried to do some fast thinking. He said, "Good morning Curly. My, but you're up early. How are the apples?" A real cool cucumber, like I told you. But I can be cool, too. I said, "They're delicious, wait a moment and I'll throw one down to you." And I threw it so far that I was practically home by the time he found it.
- DEFENDANT'S LAWYER: And that was the last time you saw Mr. Wolf before August 10?
- PIG: Oh no. He came by one morning later that week. This time he had a new trick. "How would you like to go to the fair, Curly?" he asked me. I said sure, just to see what he had up his sleeve. "Well then," he said, "be ready at three this afternoon and I'll come by for you." Well, I went to the fair by myself around noon and was on my way back with a butter churn I'd bought when who did I see coming up the hill toward me but old Wolfie himself.
- DEFENDANT'S LAWYER: What happened then?
- PIG: I got inside the churn to hide. But I tipped it over getting in and it started rolling down the hill with me inside it. I guess the strange sight of a churn on the loose like that scared the living daylights out of him. At any rate, he took off like a shot. The next day, he came to my house and told me he was sorry he had missed me the day before, but that just as he was coming for me, something strange had come rolling down the hill and frightened him so much that he had run straight home. Well, I had to laugh and tell him that what had frightened the big bad wolf so much was just I rolling down the hill in a butter churn. I think it might've been right about then that he decided to eat me up.
- DEFENDANT'S LAWYER: How did you know this?
- PIG: Well, I didn't know it, but he had this look in his eye – a nasty glint – and then he started climbing up the side of the house. At first I couldn't imagine what he was doing, and then it came to me – the chimney! And so I rushed to the fireplace – I already had a big pot of water on the boil for my tea – and took the lid off. I only wanted to warn him off. How was I to know he was already climbing down the chimney?
- DEFENDANT'S LAWYER: Thank you, Mr. Pig. That's all the questions I have.
- PLAINTIFF'S LAWYER: I'd like to cross-examine the witness if I may. (He steps forward to witness stand.) Mr. Pig, I've

been listening to this account of your dealings with Mr. Wolf, and it seems to me that you were doing an awful lot of teasing and baiting of my client. Wouldn't you say that's true?

PIG: Well, maybe I was having a little fun with the old boy, but seeing as he was trying to eat me, that doesn't seem like such a great crime, does it?

PLAINTIFF'S LAWYER: I'll ask the questions here, if you please. What about the reports that the cookbook next to your fireplace was found open to the recipe for Poached Wolf? Is this true?

PIG: Yes, but its not how it seems. I had it open to Warm Apple Pie. I was going to bake one with my extra apples. But then, when I took that lid off that cauldron, I guess that shot of steam must've flipped a few pages forward to Wolf, Poached.

PLAINTIFF'S LAWYER: You expect the court to believe that?

PIG: Well, it's the truth, by the hair on my chinny chin chin.

PLAINTIFF'S LAWYER: All right, Mr. Pig. Thank you. You may step down. (Pig steps down.)

JUDGE: Are there any summaries?

PLAINTIFF'S LAWYER: Your honor, we have shown that Mr. Pig did, on several occasions, taunt and tease Mr. Wolf, that he did lift the lid on the cauldron just as Mr. Wolf was coming down the chimney to pay him a visit, and that his cookbook and let the fact speak for itself -- was open to the recipe for Poached Wolf. I'm sure the jury agrees that he was attempting to do harm to Mr. Wolf.

DEFENDANT'S LAWYER: Your honor, we have shown that Mr. Wolf had it in for the Pig family. Clearly, he was up to no good any of the times he came over to Curly Pig's house. Mr. Pig is a law-abiding citizen who was minding his own business when Mr. Wolf began harassing him. If he teased Wolf, well, he 'certainly was egged on to it. I'm sure the jury will agree that his lifting the lid off the kettle and his cookbook opening to the wolf recipe just as Mr. Wolf came down the chimney were mere coincidences. He did not mean any real harm to come to Mr. Wolf.

JUDGE: Thank you. Does that conclude the evidence?

ATTORNEYS: (both) Yes it does.

(JUDGE TURNS TO JURY)

JUDGE: You now have heard the evidence. Now it is your job to decide whether Mr. Pig was trying to poach Mr. Wolf. Will you please go with the Bailiff to the jury room and after you have decided, would you please come back and inform the Court whether Curly Pig was trying to do in Mr. B.B. Wolf by lifting the lid off the cauldron of boiling water just as Mr. Wolf was coming down his chimney?

(BAILIFF TAKES THE JURORS TOT HE JURY ROOM. After a while, jurors come back with a verdict.)

JUDGE: Have you reached a verdict?

JUROR: Yes, we have, your honor.

JUDGE: What is the verdict?

JUROR: The jury has voted and has determined that...

mock trial

Nurseryland v. Roy L. Kingsman

Humpty Dumpty: Was it really an accident?

A mock trial exercise for grades 4 to 6.

Developed by Robin E. May Dorey, Sherwood Elementary, Sherwood, Arkansas
Furnished by Law-Related Education, Oklahoma Bar Association

Participants:

Judge. . . . Mother Goose
Bailiff. . . . Jack Horner
Defendant. . . . Roy L. Kingsman
Defendant's lawyer. . . . Twiddle Dee
Prosecution's lawyer. . . . Twiddle Dum
Witness for the Prosecution. . . . Kirk Kingsman
Witness for the Prosecution. . . . Wily Wolf
Jury members

.....

BAILIFF: (ALL STAND) All rise. The Superior Court for the State of Nurseryland is now in session. The Honorable M. Goose presiding.

JUDGE: (ENTER'S THE ROOM) Please be seated. This is the case of the State of Nurseryland versus Roy L. Kingsman which involves the charge that the defendant violated Criminal Code #12-345-6 and is now charged with the crime of first degree murder. Court is now in session. (STRIKE THE GAVEL) Is the Prosecution ready?

PROSECUTION: (STAND) Yes, Your Honor. (SIT DOWN)

JUDGE: Is the defense ready?

DEFENDANT'S LAWYER: (STAND) Yes, Your Honor. (SIT DOWN)

JUDGE: (LOOK AT THE PROSECUTION) Counsel, you may proceed with your opening argument.

PROSECUTION : (STAND, WALK AROUND THE TABLE AND LOOK AT THE JUDGE AND THE JURY) Your Honor, the State will prove beyond a reasonable doubt that the defendant, Mr. Roy L. Kingsman, violated criminal code #12-345-6 and by doing so is guilty of first degree murder. The State will show the following facts in this case. On the morning of March 5, 1992, Mr. Roy L. Kingsman and Mr. Kirk Kingsman were out riding the King's horses on their daily patrols. At this time they happened along the wall that divides Nurseryland from Fairytale Land. Whereupon Mr. Roy L. Kingsman and Mr. Kirk Kingsman came upon the victim Mr. Humpty Dumpty sitting on a wall. Mr. Dumpty began making remarks about the King's horses. Mr. Kirk Kingsman proceeded on his daily route, but Mr. Roy L. Kingsman stopped and inquired of Mr. Dumpty as to why he was making these remarks. At that time an argument ensued. Because of his rather unusual sitting position, Mr. Dumpty rolled off the wall and broke into many pieces. Mr. Roy L. Kingsman then left the helpless

victim and proceeded on his routine watch soon catching up to Mr. Kirk Kingsman. As the two approached the wall again, they found Mr. Dumpty lying in a heap on the road. Now Mr. Roy L. Kingsman will tell you that he and his companion, Mr. Kirk Kingsman, tried to put the pieces back together. He will also testify that the king's horses also tried to aid in this rather helpless attempt to piece Mr. Dumpty back together. But the prosecution will bring to you an eyewitness that was in the bushes during this whole ordeal. Mr. Wily Wolf will testify that while he was out taking his elderly Grandma some cookies, he happened along this same road and heard the argument between Mr. Roy L. Kingsman and Mr. Dumpty. Mr. Wolf will tell you that he saw Mr. Kingsman agitate Mr. Dumpty to the point that he rolled off the wall and Mr. Kingsman left him for dead. Mr. Kingsman's weak attempt to "fix" Mr. Dumpty was just a cover-up for his felonious deed. Ladies and Gentlemen of the Jury, the State will rely on the eyewitness statement of Mr. Wily Wolf to prove its case. From the evidence you will hear, you will have no choice but to find the defendant guilty of the crime as charged. Thank you. (SIT DOWN)

JUDGE: Thank you. The Court will now hear the Defense's opening statement.

DEFENDANT'S LAWYER: (STAND, WALK AROUND THE TABLE AND LOOK AT THE JURY) Your Honor, the Defense intends to show the following facts in this case. First of all, you have all heard the prosecution tell you that Mr. Dumpty was in a precarious sitting position on the wall. Let's look at the anatomy of the victim. His rounded bottom does not lend itself to sitting stable. My client, Mr. Roy L. Kingsman, will testify that he was on his regular daily rounds with Mr. Kirk Kingsman. They came upon the wall that divides Nurseryland from Fairytale Land. Mr. Dumpty was sitting on the wall and began to make menacing remarks to the King's horses. Mr. Kirk Kingsman did proceed on his daily routine, but Mr. Roy L. Kingsman stayed behind to talk to Mr. Dumpty. He tried to explain to him that making nasty remarks about the King's horses is not the way that people in Nurseryland should act. At that time, Mr. Roy L. Kingsman will testify to you, Mr. Dumpty became rather upset. He began talking about his life on the wall and how nobody ever bothers to check on him. Mr. Roy L. Kingsman will tell you that he felt it best to let the matter drop, and so he continued on his rounds. Upon returning to the wall, he and Mr. Kirk Kingsman found Mr. Dumpty in a heap. They did try to put the pieces back together, but all the King's horses and the all King's men could not get Mr. Humpty Dumpty together again. Ladies and Gentlemen of the jury, my client, Mr. Roy L. Kingsman, is an honorable man who continues in his daily rounds of protecting our fair land. While Mr. Dumpty's demise is unfortunate, I am sure that the evidence that you will hear today will prove beyond a reasonable doubt that Mr. Dumpty's fall was an accident. Mr. Roy L. Kingsman should be found not guilty. Thank you. (SIT DOWN)

JUDGE: Mr. Dum, you may proceed with your first witness.

PROSECUTION: (STANDING) Thank you, your Honor. The state would like to call as its first witness, Mr. Wily Wolf.

JUDGE: Mr. Wily Wolf, please take the stand.

BAILIFF: (ADDRESSING MR. WOLF) Raise your right hand and repeat after me. Do you swear or affirm that the testimony you are about to give is the truth, the whole truth, and nothing but the truth?

WOLF: I do. (SIT DOWN) (BAILIFF RETURN TO CHAIR)

PROSECUTION: (STAND AND APPROACH THE WITNESS) State your name for the court, please.

WOLF: Mr. Wily Wolf.

PROSECUTION: Where do you live, Mr. Wolf?

WOLF: 321 Watch Hood Lane.

PROSECUTION: Where were you on the morning of March 5, 1992?

SECTION NINE: MOCK TRIAL SCRIPTS

WOLF: I was in the woods on my way to bring my grandma some cookies.

PROSECUTION: Did you see anything unusual happen that day?

WOLF: I certainly did.

PROSECUTION: Tell the court what you saw.

WOLF: As I was walking rough the woods to take my grandma some cookies, you know she just loves the ones with the big chocolate chips, well, anyway, as I approached the wall between Nurseryland and Fairytale Land I saw a man on a horse talking to Humpty Dumpty.

PROSECUTION: Do you see that man in the courtroom today?

WOLF: (POINTING TO ROY L. KINGSMAN) Yes, that's him.

PROSECUTION: Let the record reflect that the witness identified the defendant. Now proceed Mr. Wolf, what did you see then?

WOLF: Well, this man was talking to Mr. Dumpty and then the conversation got really loud.

PROSECUTION: Could you hear what was being said?

WOLF: The man was teasing Mr. Dumpty about his rounded bottom. Who is this guy to talk about someone else? Has he looked in the mirror lately?

DEFENDANT'S LAWYER: (RISING TO ADDRESS THE JUDGE) Objection – the witness is offering opinion. I request that statement be stricken from the record.

JUDGE: Sustained. (LOOKING AT MR. WOLF) Please confine your testimony to the facts.

WOLF: Yes, your Honor.

PROSECUTION: Please continue, Mr. Wolf, what else did you see?

WOLF: As I was saying, this guy was really giving Humpty Dumpty a bad time. Humpty began to get really upset and started to rock. That man kept shouting at him until finally Humpty fell off the wall.

PROSECUTION: What happened then?

WOLF: The guy just rode off. He left Humpty lying there sort of helpless.

PROSECUTION: What happened next?

WOLF: Well, in just a few minutes the guy came riding along with another guy.

PROSECUTION: What did they do?

WOLF: They rode back by Humpty Dumpty.

PROSECUTION: Did they do anything?

WOLF: The other guy got down and tried to put Humpty Dumpty together again.

PROSECUTION: Were they successful?

WOLF: No, have you ever seen an egg that has been dropped that you could put back together again?

PROSECUTION: No further questions, your Honor. (LOOK AT THE DEFENSE) Your witness. (SIT DOWN)

DEFENDANT’S LAWYER: (STAND AND APPROACH THE WITNESS) Mr. Wolf, why were you hiding in the bushes?

PROSECUTION: (STANDING) Objection, Mr. Wolf did not indicate that he was hiding. (SIT DOWN)

JUDGE: Sustained. Please refrain from giving opinions.

DEFENDANT’S LAWYER: Yes, your Honor. Mr. Wolf, why were you behind the bushes?

WOLF: As I said before, I was on my way to Grandma’s house with cookies when I saw this man harassing Humpty Dumpty.

DEFENDANT’S LAWYER: Please keep your comments to just the facts.

WOLF: Hey man, those are the facts.

DEFENDANT’S LAWYER: Tell us, Mr. Wolf, why did you wait to come forward to tell your story?

WOLF: You know wolves have been getting a bum rap in all of these stories. I think it’s time people find out the truth.

DEFENDANT’S LAWYER: Mr. Wolf, did you see Mr. Kingsman attack Mr. Dumpty?

WOLF: Not physically, but verbally. He called him fatso.

DEFENDANT’S LAWYER: But words can’t hurt you.

WOLF: Look we all have feelings. Words can hurt a lot more than sticks and stones.

DEFENDANT’S LAWYER: But Mr. Wolf, did you see Mr. Kingsman physically cause Mr. Dumpty to fall from the wall?

WOLF: No, but . . .

DEFENDANT’S LAWYER: No further questions. (SIT DOWN)

JUDGE: (LOOK AT THE WITNESS) You may step down Mr. Wolf. (LOOK AT THE PROSECUTION) Call your next witness.

PROSECUTION: (STAND) The prosecution calls Mr. Kirk Kingsman. (SIT DOWN)

JUDGE: Mr. Kirk Kingsman, please take the stand. (Mr. Kingsman MOVES TO THE WITNESS STAND AND REMAINS STANDING)

BAILIFF: (APPROACH THE WITNESS STAND) Raise your right hand, please. Do you swear or affirm that the testimony you are about to give is the truth, the whole truth, and nothing but the truth?

KINGSMAN #2: I do (SIT DOWN)

PROSECUTION: Mr. Kingsman, where were you on the morning of March 5, 1992?

KINGSMAN #2: I was on routine patrol through Nurseryland.

PROSECUTION: Did anything unusual happen while you were on patrol?

KINGSMAN #2: What do you mean unusual?

SECTION NINE: MOCK TRIAL SCRIPTS

PROSECUTION: Did you have any encounters during your patrol?

KINGSMAN #2: I did have a conversation with Humpty Dumpty.

PROSECUTION: What was the nature of the conversation?

KINGSMAN #2: I asked him how things were going -- just simple chit-chat.

PROSECUTION: Was anyone with you at this time?

KINGSMAN #2: My partner, Roy L. Kingsman, was with me.

PROSECUTION: Did he also have a conversation with Mr. Dumpty?

KINGSMAN #2: Yes, he did talk to him.

PROSECUTION: What was the nature of his conversation?

DEFENDANT'S LAWYER: (STANDING) Objection – calls for speculation.

PROSECUTION: Mr. Kingsman was present at the time; he is aware of the kind of conversation it was.

JUDGE: Overruled.

PROSECUTION: Mr. Kingsman, what was the nature of the conversation?

KINGSMAN #2: Roy L. was joking with Mr. Dumpty about his figure.

PROSECUTION: Would you say Mr. Dumpty took this as joking?

KINGSMAN #2: Mr. Dumpty did seem to get upset, but it was all in fun.

PROSECUTION: What did you do?

KINGSMAN #2: I continued on my rounds.

PROSECUTION: Did you see Mr. Roy L. Kingsman again?

KINGSMAN #2: Yes, he caught up to me on patrol.

PROSECUTION: What was his attitude when he caught up to you?

KINGSMAN #2: He seemed a little rattled. I asked him if everything was okay and he snapped at me to leave it alone.

PROSECUTION: What did you do then?

KINGSMAN #2: I left it alone.

PROSECUTION: What happened next?

KINGSMAN #2: We continued on our rounds.

PROSECUTION: Did you come back to the wall?

KINGSMAN #2: Yes.

PROSECUTION: What did you see when you returned to the wall?

KINGSMAN #2: Humpty Dumpty had fallen off the wall and was broken to pieces.

PROSECUTION: What was Roy L. Kingsman's reaction to this?

KINGSMAN #2: He asked if I liked scrambled eggs.

PROSECUTION: What did you do?

KINGSMAN #2: We got down and tried to put the pieces together, but Roy told me that it was hopeless. He was right.

PROSECUTION: No further questions. (LOOKING AT DEFENSE) Your witness.

DEFENDANT'S LAWYER: (LOOKING AT PROSECUTION) Thank you. (TURNING TOWARD WITNESS STAND) Now, Mr. Kingsman, you said that you rode off when Roy L. Kingsman was still talking to Humpty Dumpty.

KINGSMAN #2: Yes, that's true.

DEFENDANT'S LAWYER: So, you didn't actually hear the conversation between Mr. Kingsman and Mr. Dumpty. Did you?

KINGSMAN #2: Well, I didn't hear all of it, but I heard enough to know what it was about. They were arguing.

DEFENDANT'S LAWYER: But you didn't hear all of it, did you?

KINGSMAN #2: No.

DEFENDANT'S LAWYER: When you came back to the wall and saw Humpty Dumpty, what was your reaction?

KINGSMAN #2: I was shocked.

DEFENDANT'S LAWYER: Now, you indicated that Mr. Roy L. Kingsman joked about Mr. Dumpty.

KINGSMAN #2: Yes, he did.

DEFENDANT'S LAWYER: As you looked at Humpty Dumpty, did you think there was any hope to put him back together?

KINGSMAN #2: It did look hopeless, but I had to try.

DEFENDANT'S LAWYER: So, Roy L's not trying to help may have been that he recognized the hopelessness of the situation.

KINGSMAN #2: Yes, that's true.

DEFENDANT'S LAWYER: No further questions. (SIT DOWN)

JUDGE: (LOOK AT THE WITNESS) You may step down, Mr. Kingsman. (LOOK AT THE PROSECUTION) Call your next witness.

PROSECUTION: (STANDING) The Prosecution rests, your Honor. (SIT DOWN)

JUDGE: (LOOKING AT DEFENSE) Is the defense ready to proceed?

DEFENDANT'S LAWYER: (STANDING) Yes, your Honor.

JUDGE: Call your first witness.

SECTION NINE: MOCK TRIAL SCRIPTS

DEFENDANT’S LAWYER: The defense calls Mr. Roy L. Kingsman. (SIT DOWN) (KINGSMAN #1 MOVES TO THE WITNESS STAND AND REMAINS STANDING)

BAILIFF: (APPROACH THE WITNESS STAND) Raise your right hand, please. Do you swear or affirm that the testimony you are about to give is the truth, the whole truth, and nothing but the truth?

KINGSMAN #1: I do (SIT DOWN)

DEFENDANT’S LAWYER: Mr. Kingsman, where were you on the morning of March 5, 1992?

KINGSMAN #1: I was making my rounds through Nurseryland.

DEFENDANT’S LAWYER: Did anything unusual happen that morning?

KINGSMAN #1: Well, as my partner and I approached the wall between Nurseryland and Fairytale Land, Humpty Dumpty started making some snide remarks about the King’s horses.

DEFENDANT’S LAWYER: Then what happened?

KINGSMAN #1: I told him he should have more respect for the King’s men and all the King’s horses.

DEFENDANT’S LAWYER: What was his response?

KINGSMAN #1: He started saying how he wished he was in Fairytale Land instead of Nurseryland because he never really fit into Nurseryland.

DEFENDANT’S LAWYER: What happened next?

KINGSMAN #1: I decided that he was having a bad day and it was just best to leave him alone.

DEFENDANT’S LAWYER: Did you start an argument with him about his size?

KINGSMAN #1: I did not start the argument.

DEFENDANT’S LAWYER: But did you argue?

KINGSMAN #1: Well, he did say that no one ever liked him because of his shape.

DEE: What was your reply?

KINGSMAN #1: I asked him if he ever considered doing something about his weight. Maybe he would feel better about himself if he wasn’t so chubby.

DEFENDANT’S LAWYER: What was his condition when you left him?

KINGSMAN #1: Well, I guess you could say that he was in a foul mood. Hey, you know everyone has those kind of days when nothing seems to go right – well, I guess it was his day.

DEFENDANT’S LAWYER: When you left Humpty Dumpty, was he still sitting on the wall?

KINGSMAN #1: Yes, he was.

DEFENDANT’S LAWYER: No further questions. (LOOKING AT PROSECUTION) Your witness.

PROSECUTION: (LOOKING AT DEFENSE) Thank you. (TURNING TOWARD WITNESS STAND) Mr. Kingsman, you have testified that Humpty Dumpty was still sitting on the wall when you left him, is that correct?

KINGSMAN #1: Yes, that is correct.

PROSECUTION: But you also said that he was in a foul mood. Is that correct?

KINGSMAN #1: Yes.

PROSECUTION: What was he in a foul mood?

KINGSMAN #1: Hey, how should I know. Chubby people aren't always happy. No matter what we would like to think.

PROSECUTION: Mr. Kingsman, did you at one time have a weight problem?

KINGSMAN #1: I've had my problems, but I learned how to control myself. That's all it takes, a little self control.

PROSECUTION: So you feel that Mr. Dumpty did not have any self-control?

KINGSMAN #1: I didn't say that.

PROSECUTION: But would you say that you feel like that?

KINGSMAN #1: Well, he could take better care of himself. Get off that wall and exercise a little. That wouldn't hurt him.

PROSECUTION: Thank you. No further questions.

JUDGE: (LOOKING AT THE WITNESS) You may step down. (LOOKING AT THE DEFENSE) You may call your next witness.

DEFENDANT'S LAWYER: The defense rests, your Honor.

JUDGE: Fine. We will now hear closing arguments. (LOOKING AT THE PROSECUTION) Mr. Twiddle Dum, are you ready to close?

PROSECUTION: (STANDING) Yes, your Honor. Thank you. (LOOKING TOWARD THE JURY BOX) Ladies and gentlemen of the jury, I want to thank you all for taking, the time to hear this case. As you can see it is a very simple case of jealousy and power. Mr. Roy L. Kingsman knows that he has more self-control than Mr. Humpty Dumpty and he used that self-control to agitate Mr. Dumpty to the point that he fell off the wall. You heard the testimony from his partner. Mr. Kirk Kingsman, that he did nothing to help pick up the pieces of Humpty Dumpty when they returned and found him. Is this the action of a compassionate man? I should think not. Mr. Roy L. Kingsman knows his position as one of the King's men gives him power in Nurseryland and he used this power to belittle Humpty Dumpty. It was certainly a dastardly deed that was done. Mr. Wily Wolf testified that he watched from the bushes as Mr. Roy L. Kingsman taunted and teased Humpty Dumpty. Ladies and gentlemen, you have no choice but to return the verdict of guilty against Mr. Roy L. Kingsman. He is guilty of the death of Humpty Dumpty and has shown no remorse for this crime. Thank you. (RETURN TO YOUR SEAT)

JUDGE: Mr. Twiddle Dee, you may make your closing statements.

DEFENDANT'S LAWYER: (STANDING) Thank you, your Honor. (MOVE TOWARD THE JURY BOX) Ladies and gentlemen of the jury, Mr. Twiddle Dum would have you believe that this is a simple open and shut case. But I submit that that is simply not the case. Mr. Kingsman has testified that Humpty Dumpty was still on the wall when he left him. Even Mr. Wolf, the prosecution's own witness, testified that Mr. Dumpty was still on the wall when Mr. Roy L. Kingsman left the scene. If Mr. Dumpty fell off the wall, it is because of his agitation and not from the actions of my client. Mr. Roy L. Kingsman has been a member of the King's men for a number of years and has not had any problems. He may not have used good judgment in his comments to Humpty Dumpty, but that doesn't make him a murderer. Ladies and gentlemen, for you to return a verdict of guilty,

SECTION NINE: MOCK TRIAL SCRIPTS

then you must believe that the State has proven beyond a reasonable doubt that my client, Mr. Roy L. Kingsman, is guilty of murder. If you still have some doubts about this, then the verdict is simple – not guilty. Thank you. (RETURN TO YOUR SEAT)

JUDGE:

(LOOKING AT JURORS) It is now your responsibility to deliberate and decide if indeed you believe Mr. Roy L. Kingsman is guilty or not of the crime of which he is accused. Your decision must be unanimous. (BAILIFF REMOVES THE JURORS TO DELIBERATE)

dramatization

Dramatization of the Salem Witch Trials

A mock trial activity for elementary school students consisting of a short play and a follow-up discussion.

Developed by Elizabeth Chorak
Furnished by the American Bar Association

A simple play and follow-up activities can provide elementary students with an opportunity to compare fair and unfair trials. This lesson will work best using a local lawyer as a resource person. It leads logically into a discussion of why we have certain fair trial (or due process) protections under the Constitution and the Bill of Rights.

Preparation

1. Provide the lawyer with a copy of the lesson prior to his or her visit.
2. Obtain sufficient copies of the play to make one available for each student.
3. Review background information on the period and the prevailing customs prior to the lesson.

Class Activity

1. Select students for each part and have them stand in front of the class.
2. Allow the students a few minutes to read their parts and plan their presentation.
3. Read the story introduction to the class.
4. Introduce students to the class as their characters (i.e. as Mr. Goodwin, Rachel, Judge Smith).

The Play

A long time ago, before we had television, cars, or even electricity, some people believed in witches. A witch was any person who had special evil powers. In the town of Salem, Massachusetts, there was a law against witches. If someone said another person was a witch, that person was brought to court and tried. If found guilty, he or she was usually hanged or burned. Here is a story about one of those trials.

NARRATOR: There was a family by the name of Goodwin. The family included Mr. and Mrs. Goodwin and their two children: Rachel and Michael. They had a servant named Sarah.

MR. GOODWIN: “Sarah, two loaves of bread disappeared from the kitchen yesterday.”

MRS. GOODWIN: “We think you stole it, Sarah.”

SARAH: “I did not steal it. You don’t trust me. I curse you and your children. You will suffer for saying this.

NARRATOR: A few months later, the Goodwins noticed their children were acting strangely and couldn’t speak. (Rachel and Michael walk around in circles, wave their arms like birds and make strange noises.)

MR. GOODWIN: “Sarah, you did this. You are a witch. You cursed our family.

MRS. GOODWIN: “Let’s ask our friend Judge Smith to put her on trial.” (The Goodwins grab Sarah and take her to Judge Smith.)

MR. GOODWIN: “Sarah is our servant and she cursed our children and now they can’t speak and are acting strangely.”

JUDGE SMITH: Is she a witch?”

MRS. GOODWIN: “Yes.”

JUDGE SMITH: “Then she must be punished. I know you are good people and wouldn’t lie, and I don’t believe this woman Sarah, so I believe you. She is guilty and I sentence her to die.”

Follow-up

The teacher and lawyer direct the following questions to the students for group discussion:

1. Do you think Sarah had a fair trial? If not, why? (Make a list on the chalkboard of the students’ responses).
2. What do you think should have happened in this trial to make it fair? (Refer to unfair things on the board).

The teacher and lawyer lead a short discussion on the guarantees under the U.S. Constitution for a fair trial. (Refer to class discussion on fair and unfair trials.)

- Amendment V:** No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment of indictment of a Grand Jury... nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law...
- Amendment VI:** In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed... and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.
- Amendment VII:** In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise reexamined in any Court of the United States, than according to the rules of the common law.
- Amendment VIII:** Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.
- Amendment XIV:** Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Conclusion

Do you think Sarah was guilty? Why or why not? Tell the class that they are going to be divided into three groups (of no more than five students) to discuss the question of guilt or innocence as follows:

1. Group one will be the “judge” group and will have to decide if Sarah is guilty or not based on the presentations from the other groups.
2. Group two will make a list of the reasons why they think Sarah is guilty. They will select one person as recorder to write the list and one to present their reasons to the judge.
3. Group three will make a list of the reasons why they think Sarah is not guilty. They will also have a spokesperson and a recorder.
4. Repeat groups two and three for larger classes, if necessary. All groups will present their reasons for guilt or innocence to the judge.
5. While the other groups are working, the judge group should think of questions to ask the groups regarding Sarah and the Goodwins.
6. The judge group will listen to all presentations and ask each group questions. They will discuss the case openly, so the class may observe their reasoning, and vote on whether Sarah is guilty or innocent.

After explaining the instructions, designate the groups. Ensure that a recorder and a spokesperson are appointed and begin the activity. Following the decision of the judge group, ask if the class agrees or not? Discuss why or why not. Was the judge group decision fair? Were the group members impartial? Did they listen to what everyone had to say? The lawyer could discuss procedures in the court system in reference to the activity. Would lawyers develop the same arguments? How would they present them to the judge? How would the judge respond? Additional lessons could follow on the Constitution, Bill of Rights, or the judicial system.

dramatization

Military Tribunals v. Juries A Terrorism Trial

Suitable for high-school students and adults

Furnished by the Constitutional Rights Foundation

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In this activity, participants role-play members of juries and commissions deciding a terrorism case. To find a defendant guilty, both commissions and juries must find the defendant guilty beyond a reasonable doubt. A lesson on constitutional protections and policies on trying terror suspects would be beneficial before the activity. The Constitutional Rights Foundation's Web site provides a summary at www.crf-usa.org/terror/military_tribunals.htm.

1. Divide into groups of six or seven members.
2. Assign half the groups to be on commissions, and the other half to be on juries. The commissions will be allowed to consider one piece of illegal evidence, below, which is excluded from the criminal juries.
3. Each group should discuss the facts of the case and the evidence, listed below, and vote on whether the defendant is guilty or not guilty. If you are a jury, you must reach a unanimous verdict. If you are on a commission, two-thirds of your members must agree. Keep voting and discussing until you reach a verdict.

Once the juries and commissions report their verdicts, the group as a whole should discuss the results.

1. What are the pros and cons of requiring a unanimous verdict? A two-thirds verdict? Which do you think should be used in a military tribunal? Why?
2. Why do you think criminal courts ban the use of illegally seized evidence? Do you think such evidence should be allowed in military tribunals? Explain.

Facts of the case

On March 18, Kareem King, 32, was detained by the U.S. military for suspected terrorist activities. He had been the focus of an FBI investigation for his activities in the United States where he briefly resided on a tourist visa the previous January and February. Mr. King is a Moroccan citizen, the son of Algerian father and a British mother, but lived in the United States in the 1990s while attending school as an engineering student. There he became involved with a fundamentalist Islamic group and later received paramilitary training in Somalia. He has been transported to the United States for trial. Mr. King is accused of aiding and abetting a failed Al Qaeda plot to blow up American bridges in two cities.

Evidence for the prosecution

- Using a search warrant, FBI agents searched Mr. King's vacated hotel room in an American city and found structural and load-bearing diagrams of that city's largest bridge (Bridge 1).
- Police officer Peter Smith testified that he observed a man he identified as King taking measurements at the bridge late one night on January 22. When he approached King, King ran off. He chased, but did not catch, King.
- King was observed in the hotel coffee shop with a man suspected in the plot and listed by the FBI as a known Al Qaeda operative.
- Notes were discovered in a rental car returned by the Al Qaeda operative that referred to "the engineer Kareem" and stated that Valentine's Day was targeted for the simultaneous bombings.
- King's former girlfriend testified that he had visited her in January in a second American city (500 miles away) and advised her not to use that city's largest bridge (Bridge 2) in the second week of February.
- A rental van filled with explosives was found abandoned on February 12 near Bridge 2. The man who rented the van was described as a "Middle Eastern man in his mid-30s." Airline records show that King had traveled to this city on February 8.

Evidence for the defense

- ❑ Testifying on his own behalf, King stated that he had been in the United States during the time period but was merely trying to continue his engineering studies and had visited three different important bridges. He claimed he got the diagrams from old engineering texts and off the Internet.
- ❑ King denies that he ever knew or met the alleged Al Qaeda operative and that the person seen with him in the hotel was a Spanish tourist he met who was also interested in engineering.
- ❑ King admits to running from the officer on the bridge. He testified that he was doing research for his engineering studies when he saw the officer and became scared. He said that he had suffered police brutality in Morocco. He said even though he wasn't doing anything wrong, he instinctively ran when he saw the officer.
- ❑ On cross-examination, King's former girlfriend admitted that she had been extremely angry with King for breaking off their relationship and had once vowed to "make him pay big time."
- ❑ Professor Khalid, King's former teacher, testified that Kareem told him of his plans to visit the United States to continue his engineering studies by examining American bridges.

Instructions

A defendant may be found guilty of attempted bombing, even if the defendant personally was not going to take part in the actual bombing but did aid and abet the attempt. To prove a defendant guilty of aiding and abetting, the government must prove beyond a reasonable doubt:

The defendant knowingly and intentionally aided, counseled, commanded, induced or procured another person or persons to commit the attempted bombing.

It is not enough that the defendant merely associated with the person committing the crime, or unknowingly or unintentionally did things that were helpful to that person, or was present at the scene of the crime.

The evidence must show beyond a reasonable doubt that the defendant acted with the knowledge and intention of helping that person commit the attempted bombing.

To find a defendant guilty, you must find the defendant guilty beyond a reasonable doubt. This does not mean that no possible doubt must exist, because doubt will always exist. But after hearing all the evidence, you must feel certain and fully convinced of the defendant's guilt. There must be no reasonable doubt about the defendant's guilt.

Inadmissible evidence that may be used by Commissions only

An illegal wiretap shows that the defendant talked with the Al Qaeda operative. The conversation was short and they spoke about setting a possible meeting in his hotel room or elsewhere in the city.

For additional discussion and writing:

1. What is a military tribunal or commission? How does it differ from a regular U.S. criminal court?
2. What are some examples of the use of military commissions in U.S. history? Do you think their use was justified? Why or why not?
3. Do you think it is constitutional to try by military tribunal people who are illegally in the United States? Why or why not?
4. Do you support President Bush's military order on public policy grounds? Why or why not?

dramatization

Voir dire simulation

A mock jury selection that can be adapted to suit many ages.

Developed by Julie Van Camp, Furnished by the American Bar Association
(www.abanet.org/publiced/lawday/schools/lessons/79_dueprocess_voir.html)

Basic background information for participants

Voir dire is French for “to tell the truth.” It is the selection process by which potential jurors are questioned and challenged for bias. *Voir dire* is one of the most important aspects of any trial, as its purpose is to obtain as fair and impartial a jury as possible – one both sides are satisfied with.

Potential jurors can be “challenged for cause” and dismissed by the judge if they are shown to have a bias against one of the parties involved in the trial. Jurors may be disqualified if they are related to someone involved, if they stand to benefit directly or indirectly from a particular outcome, or if they have already formed an opinion on the case. There is no limit to the number of challenges for cause that can be brought. Jury selectors also have a limited number of peremptory challenges, challenges “without cause,” where a reason does not have to be given to the judge.

The simulation

Individual or small groups of participants will role-play lawyers for the prosecution and defense selecting a jury for an upcoming trial.

There are 30 potential jurors from whom to choose a six- or 12-person jury. You may impanel a jury of six or 12, depending on the number of participants involved. Give prospective jurors a number and a role to play. Call the first six or 12 names and have them sit in a mock jury box area.

They will be questioned first by the prosecutor and then by defense counsel. There are 30 possible questions that may be asked. Some might be asked by attorneys on either side, but some are designed to ferret out prejudices of particular interest to the State or the defendant.

Each side has four peremptory challenges and unlimited challenges for cause. The judge, who may be a real judge, a lawyer, or another community resource person, will rule on cause challenges.

After a jury has been impaneled, ask participants to analyze the process based on the objective of securing an impartial jury of one’s peers. Ask them if they feel that such factors as career, gender, political beliefs, socioeconomic status, nationality, and race influenced who was selected for the case.

Ask real attorneys to debrief the exercise by discussing what they would have been concerned about in the selection process.

Facts of the case

Jennifer, 20, was returning to State Technical College after spending the weekend with friends at the beach. She was not concentrating on her driving, and swerved off the right side of the road near the corner of Dale and Elm streets in Raleigh. She ran over Mr. Driscoll’s lawn, damaging shrubs and knocking down his fence.

An officer happened to drive by. After observing the situation he had reason to believe Jennifer had been drinking. There were two empty beer cans in the car. Jennifer’s subsequent Breathalyzer reading was .08. The damage to Mr. Driscoll’s property is estimated at \$850. The officer arrested her, and she was subsequently charged with one count of DWI. If convicted, Jennifer faces a minimum fine of \$150.

Jennifer is single, white and lives with two friends in an apartment. She has a part-time job as a waitress at Tony's Diner. She has never been in a car accident before, but is known to be a party girl. She is majoring in drafting and received a partial scholarship from her hometown chamber of commerce.

Prospective Jurors

- Emily is 34, white, single with a law degree. She is an attorney with the civil liberties union. Her hobby is racing sports cars on weekends.
- Gordon is 20, black, single and is a biology major at State Technical College. He has a part-time job as a gas station attendant. He's an excellent tennis player.
- John is 28, oriental, married with two small children. He is a research assistant working on a new Breathalyzer that will be more accurate.
- Deborah is 42, white, married, has two teenagers. She's a housewife and a heavy social drinker. Her husband is an insurance executive.
- Helen is 43, white, single with a journalism degree. She is managing editor of the Local Ledger, which carried feature articles on the new Safe Roads Act.
- Robert is 48, black, divorced and has two teenage daughters who live with their mother. He owns a chain of successful liquor stores and is expanding his business.
- Thomas is 27, white, single with a high school degree. He plays lead guitar in a local band. He was recently involved in a drug raid by local authorities.
- Lisa is 18, white, single and hopes to attend college after she graduates from high school this year. She drives a school bus and wants to major in business.
- Grace is 62, white, married with a high school degree. She is a housewife and has four married children and ten grandchildren. Her husband is a retired plumber.
- Cynthia is 41, white, divorced after a bitter court battle. She has a graduate degree in history and teaches history at the university. Her former husband is a truck dealer.
- Perry is 48, black, married. He owns his own tobacco farm. His two teenage daughters help with planting and plowing on weekends and after school.
- Alice is 43, black, separated. She has no children. She has a masters degree in business, is a local company executive and active in the Chamber of Commerce.
- Louise is 52, black, married. She is active in her church. Her two sons are married. Her husband is a plant supervisor and active in the trade union.
- James is 19, black, single and has a part-time job. At an auto body shop to help pay for his junior college education. He's an outstanding soccer player and believer in keeping physically fit.
- Mark is 65, white married. He's president of the county country club, enjoys visiting his four grandchildren and retires next year as bank vice-president.
- David is 51, white, married. His son was arrested on DWI charges and convicted last month. He's sales manager for a homeowners insurance company.
- Sandra is 21, white, single and is attending the criminal justice academy officer training program. She's also studying psychology and wants to counsel youth.
- Christine is 25, white, separated. She lives with two other girls and works as a waitress at the Blue Bunny Cafe. She didn't finish high school.
- Joseph is 56, white, a widower with a degree in administration. He is a high school principal. His two married daughters live near by.
- Wayne is 49, black, married with three teenage daughters. He is administrator of the county hospital and is a respected member of the community.
- Norman is 34, white, married with a high school degree. He's a country singer who spends a lot of time on the road. He has one child.
- Claudia is 56, black, married with a high school degree. She's a housewife with three married children. Her husband is a landscape gardener.
- Elmer is 54, black, married with a 11th grade education. He is a construction worker and a strong union supporter. He has two grown children.
- Betty is 46, white, married with two teenagers. She has a college degree and teaches high school social studies. Her husband is a computer programmer.
- Michael is 73, white, a widower with a high school degree. He's a retired electrician. His wife was killed in an auto accident involving teenage drinking.

- Joy is 60, white, married and has three married children and seven grandchildren. She's a volunteer at the hospital twice a week. Her husband is a car salesman.
- Lucille is 48, black, married. She teaches at the day care center, and is active in community youth programs. Her husband is a Baptist minister.
- Charlotte is 40, white, divorced. She has a medical degree and practices psychiatry at the county hospital clinic. She has no children and is devoted to her work.
- Vivian is 48, black, married and has two children in college. She is secretary at the arts council. Her husband is an engineer with a contracting company.
- Clyde is 73, retired. His wife is in a nursing home. He was in a car accident years ago but it didn't go to court. His son is a successful trial attorney.

Questions to potential jurors

1. Do you have an opinion concerning the alleged facts in the case?
2. Do you believe "impairment" is a judgment call by the arresting officer?
3. Do you believe alcohol affects different people in different ways?
4. Do you have a driver's license?
5. Have you ever been involved in an accident with a drunk driver?
6. Do you have relatives or close friends who have been involved in an accident with a drunk driver?
7. Do you belong to a religious or fraternal organization that condemns the sale or use of alcoholic beverages?
8. Do you have relative or friends who have been found guilty of DWI?
9. Are you related to anyone involved with this case?
10. Do you believe the burden of proof is the same for the prosecution in this case as in the case of rape or murder?
11. Have media accounts of this case caused you to form an opinion about the defendant?
12. Have you ever served on a jury before in a criminal case?
13. Do you believe our system of justice is fair?
14. Would your previous jury experience prevent you from being an impartial juror in this case?
15. Is there any reason you can't sit as an impartial juror in this case?
16. Do you understand that the prosecution must show "beyond a reasonable doubt" that the defendant is guilty as charged?
17. Do you occasionally drink some sort of alcoholic beverage?
18. Have you ever driven a car while consuming an alcoholic beverage?
19. Have you ever had an unpleasant experience with someone who was drinking alcoholic beverages?
20. Do you believe a person can safely drive a car after drinking two beers?
21. Have you ever been convicted of a traffic violation?
22. Do you ever inadvertently look away from the road while driving?
23. Will it be hard to recognize that opening and closing arguments by attorneys are not evidence in the case?
24. Will it be hard for you to disregard evidence the judge rules as inadmissible after you've heard it in open court?
25. Do you have any connection with or interest in an insurance company?
26. Do you believe that the defendant is innocent until proven guilty in this court?
27. Do you feel you would believe a police officer more than the defendant in this case?
28. Do you believe that youth, in general, drink too much and shouldn't be driving cars?
29. Do you believe that the officer is positive the defendant was drunk or he wouldn't have arrested her?

web sites

The Wisconsin court system site at www.wicourts.gov provides current information on the state's trial and appellate courts, as well as The Wisconsin Juror Handbook, the Guide to Small Claims Court, A Citizen's Guide to Filing an Appeal, and numerous court forms. Site users can access Wisconsin Supreme Court and Court of Appeals opinions and use Wisconsin Circuit Court Access to find trial court records. The site also provides information on court-related volunteer opportunities and Wisconsin legal history.

The U.S. Supreme Court at www.supremecourtus.gov provides current information on oral arguments and decisions. The site also provides information on visiting the Court.

The federal judiciary site at www.uscourts.gov provides information on the structure and function of the federal courts.

The Oyez Project of Northwestern University at www.oyez.org/oyez/frontpage offers brief biographies and portraits of all 108 U.S. Supreme Court justices, summaries of historic cases and U.S. Supreme Court opinions, and a virtual tour of the Supreme Court building.

Jury-related sites:

Jury Verdict Research - tracking trends in jury verdicts and settlements - www.juryverdictresearch.com

The Constitutional Rights Foundation Chicago's American Jury - www.crfc.org/americanjury

Megalaw.com's Jury Duty Web Resources - a collection of links to sites and articles on jury duty - www.megalaw.com/top/juryduty/php

Wisconsin:

State of Wisconsin e-government portal - www.wisconsin.gov

Wisconsin statutes - www.legis.state.wi.us/rsb/stats.html

Wisconsin Constitution - www.legis.state.wi.us/rsb/2wiscon.html

Current Wisconsin legislation - www.legis.state.wi.us/2003/data/acts (Acts); www.legis.state.wi.us/billtext.html (Bills & Resolutions)

Wisconsin State Law Library - <http://wsll.state.wi.us>

State Bar of Wisconsin - www.wisbar.org and www.legalexplorer.com

Local Ordinances:

Wisconsin State Law Library - <http://wsll.state.wi.us/ordinances.html>

League of Wisconsin Municipalities - www.lwm-info.org

Legal Research:

Cornell Law School Legal Information Institute - www.law.cornell.edu

web sites

FindLaw - www.findlaw.com

LawGuru - www.lawguru.com

Public Library Toolkit from the American Association of Law Libraries-
www.aallnet.org/sis/lisp/toolkit.htm

Nolo's Everybody's Legal Glossary - plain-English definitions for over a thousand legal terms - www.nolo.com/glossary.cfm

Nolo's Legal Encyclopedia - plain-English articles on everything from caring for children to wills and estate planning - www.nolo.com

General:

American Bar Association - www.abanet.org/publiced

U.S. Department of Justice - www.usdoj.gov

U.S. Department of Justice, Justice for Kids & Youth - www.usdoj.gov/kidspage

Miscellaneous:

Dumb Laws - www.dumblaws.com

Famous Trials - www.law.umkc.edu/faculty/projects/FTrials/ftrials.htm

National Youth Court Center - www.youthcourt.net

Wisconsin Teen Courts - www.wicourts.gov/about/organization/circuit/teencourt.htm

Government Documents and Resources:

FirstGov - Information portal for the United States Federal Government - www.firstgov.org

Government Guide, ZIP- code-based information on government - capwiz.com/mygov

Library of Congress list of executive branch government Web sites -
lweb.loc.gov/global/executive/fed.html

U.S. National Archives and Records Administration - www.nara.gov

U.S. Constitution - www.law.cornell.edu/constitution/

order

Handouts from the State Bar of Wisconsin

The State Bar is pleased to provide the following State Bar publications to support your Law day activities. There is a small charge for some of the publications. The first 150 items ordered will be shipped at no charge. There is a small shipping charge for more than 150 items. There are limited quantities available so get your order in as soon as possible.

How will these publications be used for Law Day activities? _____

	Quantity		
1.		Lawyer Referral Service brochures	_____
2.		Business Assistance brochures	_____
3.		ADR pamphlets	_____
4.		Arrest pamphlets	_____
5.		Bankruptcy pamphlets	_____
6.		Custody & Placement pamphlets	_____
7.		Guardian ad Litem pamphlets	_____
8.		Hiring & Working with a Lawyer pamphlets	_____
9.		Divorce pamphlets	_____
10.		Health Law pamphlets	_____
11.		Landlord/Tenant pamphlets	_____
12.		Marital Property pamphlets	_____
13.		Personal Injury pamphlets	_____
14.		Probate pamphlets	_____
15.		Buying & Selling Real Estate pamphlets	_____
16.		Revocable Living Trust pamphlets	_____
17.		Small Claims Court pamphlets	_____
18.		Starting a Business pamphlets	_____
19.		Traffic Accident pamphlets	_____
20.		Wills & Estate Planning pamphlets	_____
		Cost	
21.		The Bill of Rights (booklet)	_____ @ \$.25 ea _____
22.		On Being 18 (booklet)	_____ @ \$.25 ea _____
23.		Adventures in Law (comic book)	_____ @ \$.25 ea _____
24.		Opportunities in Law (booklet)	_____ @ \$.25 ea _____
25.		Understanding Guardianships: A Handbook for Guardians	_____ @ \$2.50 ea _____
26.		Powers of Attorney & Trusts: Duties & Rights as Agents & Trustees	_____ @\$2.50 ea _____
27.		Handbook for Personal Representatives	_____ @\$2.50 ea _____
28.		Pioneers in the Law Booklet (First 150 Women)	_____ @ \$5.00 ea _____
29.		Pioneers in the Law Videotape (First 150 Women)	_____ @ \$7.00 ea _____
Subtotal			_____
Total items			_____
Total items less 150			_____
		Shipping*	_____
		TOTAL ENCLOSED	_____

County _____ Person ordering _____
 Street address _____ City/State/Zip _____
 Telephone _____ CP119

**Order no later than
APRIL 15, 2005**

**Note: Due to
demand and limited
supplies, please
order only what you
think you will need.**

Make checks payable to the
State Bar of Wisconsin.

Return checks and order forms
to: State Bar of Wisconsin, PO
Box 7158, Madison, WI 53707-
7158.

*Shipping: 150 items or less –
no charge; quantities over the
first 150 – \$.02 each item

order

Resources from the Wisconsin Supreme Court

Due to budget considerations, the Wisconsin Supreme Court is not mailing out free copies of publications this year. There are a variety of publications available on the court system Web site at www.wicourts.gov. Here are a select few:

Court Services for Jurors: Details on jury service in Wisconsin, including a juror handbook and video – www.wicourts.gov/services/juror/index.htm.

Wisconsin Court System Court Services: Information tailored for audiences ranging from kids to attorneys to the general public – www.wicourts.gov/services/index.htm

The Wisconsin State Law Library's Jury page: wsl.state.wi.us/topic/justice/jury.html

Children's Activity Booklet – www.wicourts.gov/about/resources/activitybook.htm

Famous Cases of the Wisconsin Supreme Court: A booklet containing 25 case synopses – www.wicourts.gov/about/organization/supreme/famouscases.htm

Wisconsin's Legal History: A packet of plain-English articles – www.wicourts.gov/about/organization/history/articles.htm

Portraits of Justice: A book with biographies and portraits of the 77 men and women who have served on the Wisconsin Supreme Court since statehood – www.wicourts.gov/about/pubs/supreme/docs/portraitsofjustice.pdf

Court with Class: A brochure explaining a program that brings students statewide to oral argument at the Supreme Court – www.wicourts.gov/about/resources/courtclass.htm

Case of the Month: Each month, materials from an interesting, current case in the Wisconsin Supreme Court are presented. Access the archive for complete materials on 31 cases from the past three years – www.wicourts.gov/about/resources/casemonth/index.htm

order

How to order plaques and ribbons

In recognition of the contest winners, the Law Day committee may choose to present the student(s) with a plaque or ribbon. Plaques might be awarded to the essay contest winners and ribbons to the poster contest winners.

If the committee would like to order the plaques and/or ribbons from a local business, the yellow pages offer a wide selection. Another option would be to contact one of the Madison businesses listed below; all ship statewide.

Deppe's Awards Plus

608/244-8812 or 800/959-4045
e-mail: info@deppesawards.com
www.deppesawards.com

Championship Awards

608/226-0440
e-mail: randy@championshipawards.com
www.championshipawards.com

Total Awards & Promotions, Inc.

608/833-1716
fax: 608/833-2160
e-mail: awards@awardsmall.com
www.awardsmall.com

When placing an order, it may be helpful to have this information on hand:

- The price of a standard 5x7 plaque is around \$12 to \$15.
- The lettering charge on the plaques ranges from \$.15 to \$.35 cents per character.
- The price of ribbons begins at \$.30 per ribbon. Some businesses may include a set-up fee of \$5 to \$10 and/or require a minimum order.
- Most businesses require 3 to 10 business days to complete an order of ribbons or plaques, not including shipping time is applicable.

Large orders may require up to two weeks to complete and ship.

order

How to order banners

A banner on the outside of the courthouse is a great way to advertise a Law Day open house. Look in your local yellow pages under "Flags and Banners" for a vendor or call one of the businesses listed below. All provide statewide service.

In general, a plain red-white-blue eight-foot "bunting" banner will cost \$50. A custom-made, 20-foot banner with a message such as "Happy Law Day" will run between \$185 and \$400 and should last for several years.

Fox Stamp, Sign & Specialty

Menasha, WI
800/236-3699
www.foxstamp.com

Horizon Flag & Banner Co.

Milwaukee, WI
414/453-9848

The Flag Loft

St. Louis, MO
800/995-3524

Victory Corps

Minneapolis, MN
800/328-6120
fax: 763/561-8523
e-mail: info@victorycorps.com
www.victorycorps.com

sample

*The American Jury:
We the People in Action*

JOE SCHMOE

In recognition of his first-place essay in the Wisconsin court system's celebration of Law Day at the Dane County Courthouse.

Dated at Madison, Wisconsin, this 2nd day of May 2005

[signed by judges/county bar president]