This course is designed to provide the students with hands-on experience in the art of jury selection. Students will act as lawyers and judges in two mock voir dires. In the first case several young lawyers will serve as venirepersons along with the members of the class who will take part in the second voir dire. The concluding voir dire will take place with the students who served as the venire in the first case now acting as lawyers and the judge in another case. A varied (to say the least) panel of persons outside the university will be brought in to make up the second jury selection. Both cases will be based solely on the facts of actual cases that went to the court of appeals. The cases are based on premises liability and involve independent third party acts against a business invitee.

The course will outline the many purposes of voir dire and the statutory and common law pertaining to jury selection. Students will learn active listening skills and how to interpret non-verbal behavior. Examples from prominent, practicing lawyers will be presented.

The ultimate purpose of the course is to bring recognition that jury selection is an art -- not a science -- and should be tailored to the facts of the case and the witnesses the attorney expects to present.
DAY 1, June 9, 2007

9:00  Introduction, explanation of grading (class participation and final topical paper) and goals
9:30  Juror questionnaires and sample case (facts sent out in advance)
10:00 Break
10:45  Continue sample case
11:00  Law pertaining to and purposes of voir dire (to be continued)
12:00  Lunch
1:00   The Role of Active Listening and non-verbal communication -- Wanda Lowenstein
2:00   Break
2:15   Notetaking, seating charts and strategy
2:30   Law and purposes, including Batson issues and juror non-disclosure (continued)
3:15   Break
3:30   Jury pool demographic, citizen attitudes and jury consultants
3:45   Practical Skills
4:15   Break
4:30   Pass out materials and assignments for June 25TH mock voir dire, and discuss final exam and papers.
5:00   Quit for the day

DAY 2, June 23, 2007

9:00  Anecdotes, stereotypes and myths
10:10  Break
10:20 -10:30  Ten Top Tips for the practice. Lawyers file motions in limine for both cases.
10:35 - 12:15  First mock voir dire (student judge and student lawyers - young lawyer’s panel)
12:15 - 1:00  Lunch
1:00 - 3:00   Second Mock Voir Dire  (student judge presiding, student lawyers - outside venire panel)
3:00   Break
3:15 - 4:00 Voir Dire continues to conclusion.
4:00   Break
4:15   Final Thoughts
5:00   Farewell

FINAL Date to be announced -- Papers due one week after final.
Other than a brief introduction by judge, the attorneys, with plaintiff going first, will conduct the voir dire. Each side will then be allowed follow-up questions. Challenges for cause will be taken up first.

I. CHALLENGES FOR CAUSE TO BE SUSTAINED AS FOLLOWING PERSONS ARE DISQUALIFIED TO SERVE ON JURY.

-- Under 21 (18)
-- Judge
-- On active duty in armed forces or National Guard
-- Convicted of a felony
-- Would suffer an undue hardship by serving
-- Related to either party by blood or marriage
-- Has formed an opinion on case or any material fact or issue that would influence decision (bias-prejudice)

Will be made first by plaintiff, then defendant.

II. PEREMPTORY STRIKES.

-- Three per side, alternating with plaintiff going first, then the defendant makes a strike. First twelve on the remaining venire panel list will be on the jury.
-- Of the next three on the list, using the same order, with one strike each, the alternate shall be selected.
ANNOTATED SUGGESTED READINGS

These two "in a nutshell" West publications offer brief but excellent examples of how to frame voir dire questions to both elicit deeper information about the members of the venire, and to get across the theme of your case. We will use some of the examples in class.

An excellent analysis by a *Dallas Morning News* reporter on the effect of the terrorist attacks of September 11th on juror's thinking.

Demitrius has consulted in more than 600 jury trials, and Mazzarella has been a practicing trial lawyer for 20 years. Together they help the reader learn how to read non-verbal clues in predicting behavior. This book teaches the reader how to evaluate people's complex characteristics and how to see the overall pattern those characteristics form.

This is considered one of the best books on the subject.

Fulfer, Mac, J.D., *Amazing Face Reading*, 1996.
Fulfer, a practicing attorney, started studying physiognomy to help in jury selection. Because of his success, he published a practical guide for those interested in learning the basics of physiognomy, or "face reading." This book is a practical "how-to" guide, complete with illustrations for each gesture.

In this book, Gladwell maps out the "adaptive unconscious,--that facet of our mind that enables us to determine things in the blink of an eye. This book is filled with data to support the validity of intuition.

The authors' approach is both practical and theoretical. Covers the history of jury selection; functions of the jury, the law; characteristics of a jury; approaches to jury selection; mock juries; and the challenges of voir dire in both criminal and civil cases.

**Guastaferro, Joseph, "Affecting Jury Selection" the Professional Education Group, Inc. 2005, available through Missouri Bar CLE program.**
The author is a jury consultant and has been the dean of DePaul's School of Drama. The style of the notebook is easy and has many practical examples. His examples on pages 2 and 3 about not giving the impression the attorney asking the question is "evaluating" or "judging" the persons but is merely to get at why the person feels or believes as he or she does, are really on the mark.

Looks at current thinking among jury consultants who believe traditional views on juror demographics should be supplanted with new notions that differences in Generation X, Y and D persons now hold sway.

**Heglund, Trial and Practice Skills, 2nd Ed. pp. 199-203 and**

**Jeans, Jim, Trial Advocacy, 2nd Ed., 1993, pp. 270 to 302.**
Jim Jeans is an experienced trial attorney who has also been a law school professor at UMKC. Jeans, at pages 297-302, gives some terrific examples of how to use your questions and the answers of the venire persons to get your case's good points across to the potential jurors as well as to soften the blow of the bad points.

This text discusses the pros and cons of the present jury system and the many techniques for selecting a jury, especially the use of jury consultants.

**Lempert, "Why Do Juries Get a Bum Rap?" Commentary, 48 DePaul Law Review 453, 1998.**
Like the previous entry, this too is more of a study of juror process rather than of jury selection, but it is one of the best endorsements of the jury system I have seen. In class, we will allude to the famous McDonald's coffee burn case mentioned on pages 459 and 460, in which several jurors on that case said that after hearing only the bare facts on voir dire, they wanted to get on the jury to make a statement against greed by denying plaintiff's recovery.

As the title implies, this is primarily about the dynamics of deliberation of a selected jury, but contains interesting research showing that, contrary to the movie Twelve Angry Men, "the verdict favored by a majority of the jury at the onset of deliberation usually prevails."
A collection of studies of non-lawyers, primarily psychologists and social scientists. Also contains writings of Clarence Darrow and Melvin Belli that will be mentioned in a section on stereotypes.


If you choose to read only one publication in this list, this is the one. It is concise and outlines the purposes of voir dire with good examples of how to frame questions. If you remember nothing from this class other than the following quote, you will understand the process from the perspective of the citizen before you, who has been summoned to the courthouse: "Answering voir dire questions would not be most people's first activity of choice. Few people would say, "I think I'd like to go down to the courthouse and have lawyers probe my feelings and attitudes about all sorts of private matters in front of a bunch of people I hardly know. Since jurors often resent voir dire questioning, you can enhance rapport by empathizing with their possible discomfort and explaining the purpose of particularly personal or embarrassing inquiries."

This excerpt challenges some of the commonly-help myths surrounding the interpretation of body language. They present convincing reasons for moving with caution when attempting to interpret body language.

Nance, Jef, *Conquering Deception*, Irvin-Benham, LLC, 2004
Mr. Nance, a former undercover agent and interrogator for the Missouri Highway Patrol, now works as a corporate fraud investigator and speaks on the subject of "Deception." His folksy writing style offers a practical approach to spotting deception filled with useful tips.

Long, but a must read: observes that jurors are most sympathetic to parties or lawyers who share similar hobbies, interests and beliefs; explores importance of developing case themes and of telling potential jurors in voir dire of their power in deciding this case.

Although we do not have time to hear an in-depth study of the law about errors in selecting a criminal jury, this is a good, general examination of current cases.
Law professors and judges at a conference agreed that juries generally reach the same conclusions as a trial judge would have; they probably enter higher amounts in punitive damages; juries understand and assess expert witnesses far better than imagined; and, very importantly, the system creates better citizen understanding of legal system, and jurors often extol about the great experience they have had by serving on a jury.


This text is written from a research perspective. It covers research done on all aspects of jury selection with actual research studies to support text.

This presents a unification of law and psychology to jury selection. The author explains how the use of open-ended questions and a concise explanation of the case to persons who know nothing about the case can ferret out preconceived notions of potential jurors. Also stressed is the added value of establishing the attorney as one who can be trusted, polite person who will listen to the venireperson.

Website: Jury Research Institute, http://www.jri-inc.com

This book expounds on the title that jury selection is an art, as well as educated guesswork. He explains why he believes that "juries are extremely resistant to rational selection, even by the best trial lawyer."
PLEASE READ BEFORE JUNE 9, 2007 CLASS

Riggs, her three young children, and her boyfriend, Christopher McMillan, resided at the Goodwill Chapel Trailer Park outside Sedalia. Their landlord, Sherry Woolery, lived in one of fifteen mobile homes that were situated side by side in the trailer park. They were arranged so that home No. 0 was closest to Woolery's home, and home No. 14 was at the opposite end of the park. When Woolery rented home No. 8 to Riggs she mentioned there were some rules and regulations she and the children were to follow. Specifically, the children were not allowed past home No. 1 because there was an open basement and an unfenced duck pond located about 80 feet behind Woolery's home. The distance between the Riggs' mobile home and the pond was approximately 628 feet.

Ida Anderson lived in home No. 5 on July 22, 1997. Anderson testified she was in her home on that day and heard Riggs' four-year-old son, Jason, yelling and screaming. Anderson went outside and Jason told her that his brother Ben was "up in the pond." Anderson told Jason to go home and started running toward the pond, enlisting the help of a neighbor, Chip Robinson. She stopped to call 911. Robinson testified that he reached the pond first and saw Ben lying face up in two and a half to three feet of water. Robinson pulled Ben out of the pond and attempted to perform CPR. Meanwhile, several people had congregated around the pond, including Riggs and McMillan. According to Robinson's testimony, Riggs looked concerned, upset and was crying. Within a short time an ambulance arrived and paramedics also attempted CPR. Ben was transported to a nearby hospital where he was pronounced dead.

Officer David Keller from the Pettis County Sheriff's Department had arrived at the scene while the paramedics were already performing CPR on Ben. Keller then briefly spoke with Riggs about the incident. Riggs stated that she and McMillan had gone to town that morning, returned around noon, and Jason, age four, and Ben, age two, went outside to play. After the boys played for about forty-five minutes, Jason came in and said something about Ben being in the water. Jason told Keller that Ben had run into the water after some baby ducks. Keller elected not to then take a statement from Riggs due to her emotional state. Since she was extremely upset, Keller felt it would be better to wait at least until the next day to take the report.

At trial, McMillan testified for the defense regarding the events that took place on the fateful day. He testified that he, Riggs, and her children returned home around noon that day from a trip to Sedalia. Riggs made sandwiches for the three children and herself. While she made the sandwiches, McMillan began to watch a movie. Ben and Jason ate their sandwiches outside on the steps. Later, Jason came in for a glass of water, and at this time, Ben was standing at the front door where Riggs could have possibly seen him. According to Riggs, she later got up to check on the boys and they were still on the steps.

Shortly thereafter, Jason was screaming, but Riggs and McMillan could only hear the words "Ben" and "water." Riggs ran outside to look around the trailer and after
noticing everyone running toward the duck pond, Riggs and McMillan followed. When they arrived at the pond, Robinson was trying to perform CPR on Ben. Riggs' emotional state at the time was described as "hysterical."

Defendant Karen L. Riggs was charged with the felonies of involuntary manslaughter, § 565.024, RSMo 1994, and endangering the welfare of a child, § 568.045, RSMo 1994.