The Resource Page: Focus on Jury Reform

THREE PLACES TO START


In this article, Arizona Superior Court Judge Mike Dann presents a compelling argument that the traditional legal model of juror behavior - in which jurors must act passively throughout a trial - is contrary to overwhelming social science and education research about how people, jurors included, learn best. He presents a reality-based behavior model of the juror, discusses the lessons we can learn from educators, and then discusses the implications of these lessons for jury reform. For an overview of the theory and practice of jury reform, this article is a great place to start. If you can't find a copy, contact the COURT REVIEW editor and we'll send you one.


This jury reform manual was the work product of a unique committee that looked into reforms needed in both federal and state courts. The report includes detailed references and analysis. Copies are available from the Council for Court Excellence, 1150 Connecticut Ave., N.W., Suite 620, Washington, D.C. 200-36-4104 - (202) 785-5917. The Council requests payment of $5 to cover postage and handling.


All of the proposals for jury reform are catalogued here with pros, cons and citations to cases and articles discussing each one. Topics covered include juror questioning of witnesses, juror note-taking, and juror discussion of evidence during trial. More than one hundred pages of appendices include sample preliminary jury instructions, instructions about the deliberation process, and jury exit questionnaires. To order, send $18 (which includes postage & handling) to National Center for State Courts, Fulfilment Dept., P.O. Box 580, Williston, VT 05495-0580 - or call 1-888-228-NCSC - or e-mail: ncsc.orders@aidcvt.com.

OTHER BOOKS, ARTICLES OF NOTE

Paula L. Hannafoord, B. Michael Dann & G. Thomas Munsterman, How Judges View Civil Juries, 48 DePaul L. Rev. 247 (1998)(part of a symposium issue on the jury, the authors provide a thoughtful commentary on the approaches judges take to civil juries).


Whether you want to look at this full argument, in a 63-page law review article, or just read a synopsis, found in the 4-page excerpt, it's worth the time to consider this trial judge's views on the problems inherent in current peremptory challenge practice.

Nancy J. King, Why Should We Care How Judges View Civil Juries?, 48 DePaul L. Rev. 419 (1998)(brief response to the Hannafoord, et al. piece listed above, arguing that the views of judges influence the way jurors do their work and that judicial attitudes are the key to the success of any jury reform agenda).


Douglas G. Smith, Structural and Functional Aspects of the Jury: Comparative Analysis and Proposals for Reform, 48 Ala. L. Rev. 441 (1997)(provides a comprehensive review of jury reform literature and proposals, including comparison to civil law inquisitorial system of finding facts).


Neil Vidmar, The Performance of the American Civil Jury: An Empirical Perspective, 40 Ariz. L. Rev. 849 (1998)(reviewing research regarding the competence of juries to find facts and concluding that they are equal or superior to judges).
NEW BOOKS


Professor Sunstein endorses the judicial inclination to avoid sweeping constitutional pronouncements, preferring instead for the court to decide only the issue presented in the case before it. He reviews cases in a variety of areas, including affirmative action, free speech and the right to die, showing how the Supreme Court has avoided rulings that were broader than necessary and arguing that this was the proper choice.


How does the chief judge of a busy, federal appellate court keep churning out book after book, including ones that examine virtually every important topic of legal theory? We have no earthly idea. If all he did was to issue revised editions of his prior work (see next book listing), the task would be daunting enough. But Judge Posner constantly offers new approaches and comments on the views of other theorists as well. In this book, Posner argues against reliance on moral philosophy in deciding legal cases. Instead, he urges a pragmatic approach based on a full understanding of the social, economic and political facts out of which legal controversies arise. His publisher promotes the book as one “that pulls no punches and leaves no pieties unpunctured or sacred cows unkicked.” No replies have yet been recorded from the cows.


Revising his first edition, published in 1988, Judge Posner surveys the intersection between literature and the law. Classic works by Sophocles, Shakespeare, Dostoevsky, Melville and Kafka are discussed along with contemporary fiction by William Gaddis, Tom Wolfe and John Grisham. New to this edition is a discussion of efforts by legal scholars to enrich their scholarship by borrowing the methods and insights of literature. A large section of the book also reviews the extent to which judicial opinions can be viewed as literature.

INTERNET SITES OF INTEREST

Judicial Independence Resources
http://www.courts.state.co.us/scao/judind.htm

Resources on judicial independence have been collected at this page on the Colorado state courts' Web site. Among the resources listed are the November 1998 symposium on judicial independence held at the USC law school (found at http://www.usc.edu/dept/law/), remarks by three members of the U.S. Supreme Court on different occasions, an ABA report, and links to other sites with materials on judicial independence.

Another Judicial Independence Page
http://www.abanet.org/judind/What.html

The ABA's Judicial Division hosts this judicial independence site, which includes model speeches, talking points, guest editorials and a good bibliography on the topic. The site also provides updates regarding ABA activities related to judicial independence.

Citizens for Independent Courts
http://www.faircourts.org/

This is the bi-partisan group announced with some fanfare in June 1998 by former New York Governor Mario Cuomo, former Congressman Mickey Edwards, former Senator Alan Simpson and former White House Counsel Lloyd Cutler. Its Web site includes news releases put out by the group during the 1998 election cycle about perceived risks to judicial independence from campaigns in California, Michigan, Ohio, Oklahoma and Texas; the site also includes links to other sites and articles of interest. You can sign up at the site for notice of posting of the site's biweekly Web newsletter.

American Judicature Society
Center for Judicial Independence
http://www.ajs.org/indepen1.html

The American Judicature Society has a collection of materials on judicial independence at this site. The most interesting aspect of the site is its “Judges Under Fire” section, which details and documents attacks on judges throughout the country. These real life examples of attacks on judges present many lessons for us all.

FOCUS ON JURY REFORM

The Resource Page focuses on resources about jury reform on page 31.