

The Resource Page: Focus on Jury Reform



THREE PLACES TO START

B. Michael Dann, "Learning Lessons" and "Speaking Rights": Creating Educated and Democratic Juries, 68 IND. L.J. 1229 (1993).

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.

D.C. JURY PROJECT, JURIES FOR THE YEAR 2000 AND BEYOND: PROPOSALS TO IMPROVE THE JURY SYSTEM IN WASHINGTON, D.C. (1998)(112 pp.).

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.

G. THOMAS MUNSTERMAN, ET AL., JURY TRIAL INNOVATIONS (1997)(334 pp.)

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, Fulfillment 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. Hannaford, 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).

Morris B. Hoffman, *Peremptory Challenges Should Be Abolished: A Trial Judge's Perspective*, 64 U. CHI. L. REV. 809 (1997).

Morris B. Hoffman, *Viewpoint: Abolish Peremptory Challenges*, 82 JUDICATURE 202 (1999).

Whether you want to look at his 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 Hannaford, 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).

Joel D. Lieberman & Bruce D. Sales, *What Social Science Teaches Us About the*

Jury Instruction Process, 3 PSYCH. PUB. POL. & L. 589 (1997)(reviewing research regarding juror understanding of instructions and the potential steps for improvement).

ROBERT E. LITAN (ED.), *VERDICT: ASSESSING THE CIVIL JURY SYSTEM*. Brookings Institution, 1993 (\$34.75). 542 pp.

This book includes the papers presented at a major 1992 symposium on the future of the civil jury system – the seventeen contributors represent many of the nation's leading experts on the American jury system.

Bradley Saxton, *How Well Do Jurors Understand Jury Instructions? A Field Test Using Real Juries and Real Trials in Wyoming*, 33 LAND & WATER L. REV. 49 (1998)(based on surveys of jurors in actual trials, the author makes a series of recommendations to improve juror comprehension of jury instructions).

William W. Schwarzer, *Reforming Jury Trials*, 132 ER.D. 575 (1991)(reviewing various reform proposals).

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).

Franklin Strier, *The Road to Reform: Judges on Juries and Attorneys*, 30 LOY. L.A. L. REV. 1249 (1997)(reviewing surveys of judicial opinion on juries and jury reform proposals, focusing on a large-scale survey of the California judiciary).

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).



The Resource Page



NEW BOOKS

Cass R. Sunstein, *One Case at a Time: Judicial Minimalism on the Supreme Court*. Harvard Univ. Press, 1999 (\$29.95). 320 pp.

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.

Richard R. Posner, *The Problematics of Moral and Legal Theory*. Harvard Univ. Press, 1999 (\$29.95). 336 pp.

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 un-kicked." No replies have yet been recorded from the cows.

Richard R. Posner, *Law and Literature* (Rev. ed.). Harvard Univ. Press, 1998 (\$18.95 paper). 416 pp.

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/independ1.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.

SUGGESTIONS FOR THE RESOURCE PAGE

Each issue of *Court Review* features The Resource Page, which seeks to help judges find solutions to problems they may be facing, alert them to new publications, and generally try to provide some practical information judges can use. Please let us know of resources you have found useful in your work as a judge so that we can tell others. Write to the editor, Judge Steve Leben, 100 N. Kansas Ave., Olathe, Kansas 66061, e-mail: sleben@ix.netcom.com.