

# Jury Matters

The Newsletter for the  
Civil Jury Project  
at NYU School of Law



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## Upcoming Events

- 4.4** Jury Improvement Lunch; Salt Lake City, UT
- 4.16** Inns of Court Program; Cleveland, OH
- 5.16** Jury Innovations Program; New York, NY
- 8.6** Annual Conference of Circuit Court Judges, Naples, FL



## Opening Statement

Dear Readers,

Welcome to the Civil Jury Project's April newsletter. This promises to be a busy and rewarding month, as the Project prepares to host its first academic roundtable here at NYU Law. We have also been hard at work organizing judicial meetings that will set the stage for future Jury Improvement Lunches in Philadelphia, Albuquerque, Minneapolis, and El Paso.

This edition features an article by Professor Beth Thornburg, an Academic Adviser of the Civil Jury Project. Thornburg's piece showcases a new seminar on the civil jury system developed for students at the SMU Dedman School of Law. Suann Ingle, who serves as a Jury Consultant Adviser to the Project contributes an article on why attorneys should think carefully before excusing potential jurors on the strength of information that is found through social media investigations into their backgrounds.

Thank you for your support of the Civil Jury Project. You can find a full and updated outline of our status of projects on our [website](#). In addition, we welcome op-ed proposals or full article drafts for inclusion in upcoming newsletters and on our website either by email or [here](#).

Sincerely,  
Stephen D. Susman

**Last week the Supreme Court heard arguments in *Flowers v. Mississippi*.  
Read the transcript [HERE](#).**

*"Batson* said: We're going to give you the tools to eradicate that so that the — not just for the fairness to the defendant and to the juror, but that the community has confidence in the fairness of the system."

- Justice Kavanaugh

## Law Students Learn (and Blog) about Juries

By Beth Thornburg



Popular culture holds some [unflattering views](#) of juries: people think that jury duty is onerous and inconvenient and that jurors are the people who were too stupid to get out of it. Law students – the trial lawyers, judges, and lawmakers of the future – need to know the real story. How do juries go about their duties, how well do they do it, and what practical reforms might help them do it even better? As a legal academic who focuses on civil procedure, I want to equip my students with that knowledge, and so I decided to teach a seminar about juries for the students at SMU Dedman School of Law.



The class focuses on the extensive empirical data about juries and how they function. Their main readings are from two books: Dennis Devine's excellent compilation of the studies, *Jury Decision Making: The State of the Science*, and *American Juries: The Verdict*, by Neil Vidmar and CJP Academic Advisor Valerie Hans. Based on Professor Hans' advice, I also required each student to interview an actual juror about his or her experience, and sharing those stories was a powerful learning experience. All of this information should help equip students to understand how to competently try jury cases, and also to support evidence-based reforms of jury trial

practices. They will also talk with trial consultant Kacy Miller, to explore how the academic research plays out (or doesn't) in advice to trial lawyers about jury selection and the construction and presentation of a case narrative.

Trying cases and seeking reform both require the lawyer to be able to communicate clearly and concisely to non-legal audiences, and so they are practicing those skills (and broadening their knowledge) by blogging. In addition to writing the text, they're learning the importance of visuals, catchy titles, and other ways to catch the public's eye.

Each of the 20 students must regularly contribute to the class's blog, [Thinking About Juries](#).

There are already 60 entries for this year's class, and readers of this newsletter might find some of them fascinating (both for their content, and as a window into what this generation of future lawyers finds interesting). Here are some examples:

### Jury Decisionmaking Processes

- [The Incredible Shrinking Attention Span](#)
- [The Holdup with Holdout Jurors](#)
- [The Significance of Table Shape in Jury Deliberation Rooms](#)
- [Does defendant's fate rest with the foreperson?](#)
- [Introversion, Extroversion, and the Jury](#)
- [Jury Forepersons: Why the ENTJ May be Your BFF](#)
- [I'm Too Sexy for your Jail, Please Let Me Out on Bail: how attractive defendants are treated more favorably by juries](#)

## Impact of Social Media and the Internet

- [“I’m on jury duty LOL #blessed”](#)
- [Social Media: The Double-Edged Sword](#)
- [We, the Internet, Find the Defendant Guilty](#)
- [Jurors Cannot Escape Social Media](#)
- [Lurking on LinkedIn](#)

## The Composition of the Jury Panel

- [Autism Spectrum Disorders and Jury Duty](#)
- [The Price of Impartiality: The Financial Burden of Jury Duty](#)
- [Jury Service & The “Senior Discount”](#)
- [Is the jury elitist?](#)
- [Felons as Jurors: A Right or a Bad Idea?](#)
- [TLDR: The Advent of the Millennial Juror](#) (the students, who are mostly themselves millennials, were pretty offended that they were being regarded as a problem to be managed)
- [President of the United States, Reporting for Jury Duty](#)

## Issues of Bias

- [Jurors Backing the Blue . . . Or Not](#)
- [Should Attorneys Use Peremptory Challenges to Address Anti-LGBT Bias?](#)
- [The #MeToo Movement + American Jurors = ?](#)
- [For Law Enforcement Officers Accused of Excessive Force, Juries May Be Their Best Allies](#)
- [Bringing Batson to Life](#)
- [“Reputation Precedes Me” – Taylor Swift, Paul Manafort, and the Dwindling Prospect of a Publicity-Induced Change in Trial Venue](#)

## Juries, Experts, and “Complexity”

- [Hot-Tubbing the Experts: Will They Sink or Swim?](#)

- [Myth or Fact: Jurors Can Detect Inaccurate Eyewitness Testimony](#)
- [Should There be Juries in Tax Court?](#)

## The Twists and Turns of the El Chapo Jury

- [Protecting El Chapo’s Jurors: Where do we draw the line?](#)
- [Juror \[REDACTED\]: The Rise of Anonymous Juries](#)
- [El Chapo’s Tainted Jury](#)
- [The Danger of Knowing What You Shouldn’t Know](#)

Some blog entries tell human interest stories, such as [this one](#) about the friendship that developed (after trial) between the plaintiff in a police misconduct case and the presiding juror, or “[The Most Famous Signature in New York](#),” about Norman Goodman, the clerk of New York County-Manhattan for 45 years.

I hope that the students will bring both their knowledge of juries and of social media into their practice lives. For those with a passion to defend the institution of jury trial, reaching out to the legal profession and the general public to provide accurate information can be invaluable. Here’s a nudge to get started: 1) a [research guide](#) about juries that was developed by the Associate Director of SMU’s Underwood Law Library, Donna Wolff; and 2) some inspiration – the ABA’s [Blawg 100 Hall of Fame](#) , or [these blogs](#) about juries and trials highlighted by the ABA Journal (read some really good ones, and see the impact you could make).



Elizabeth Thornburg is the Altshuler Distinguished Teaching Professor and Richard R. Lee Endowed Professor of Law at SMU Dedman School of Law.

# Social Media and the Duty of Jury Service

By Suann Ingle



Having spoken on panels and written about the ethics of social media in jury trials, I continue to pursue a particular interest in the impact of social media on our jury system. As a purely academic topic, much can be gathered about prospective jurors when the venire is provided ahead of jury selection. In fact, some judges require searches of prospective jurors so as to weed out the cause challenges early and minimize surprises. Others direct the opposite, accept no searching at all (or a promise to disclose everything that was found) as in the fairly well known by now *Oracle Am., Inc. v. Google, Inc.* in the US District Court for the Northern District of California. When the parties in that case would not agree to the ban, prospective jurors were given time to change their privacy settings after they were told that attorneys in their trial were likely going to be conducting Internet searches.

This essay focuses on the discrete overlap between elements of social media and the willingness to fulfill one's duty to serve on a jury.

I recall welling up with pride while in the audience during Hon. William G. Young's keynote at the 2015 ABA Qui Tam Trial Institute in Washington, DC. He inspired validation and honor to the call to serve on a jury - the random opportunity for any qualifying citizen to fulfill the important duty of judging the society one represents.

I remember feeling a similar pride of citizenship while watching Steve Susman's delightful 2016 interview of Justice Sotomayor (more than once). Therefore, I was surprised to find myself in 2019 being "lulled" into a particular sympathy during the first couple of days of a recent weeklong voir dire (for a trial expected to go two months), when juror after juror asked to be excused for the financial hardship. If they were seated on the jury in that civil dispute, they might be there for up to two months by all estimates. I say first couple of days because I witnessed a shift in attitude as jurors began answering questions in the language of open mindedness rather than reticence and debilitating bias. After a full three days, the judge even remarked that he was inspired that it seemed we had more and more of the group willing to serve, judging by their

answers. His faith may have been restored, but it was due in large part I think to his earnest descriptions of duty and citizenship throughout the first three days of voir dire.



As an example of what had been overcome: on the day she filled out the 12 page juror questionnaire in this particular matter, a prospective juror posted publicly to a friend "I have a little something for you after I get out of jury duty."

I was in the courtroom weeks later when she displayed a convincing case for anxiety and her inability to serve because the "whole thing" makes her vulnerable to panic attacks and sweating (a result she foretold in that post). She added that something similar had happened before when she was summoned and quickly released. The parties stipulated that she be released for cause.

Notably no one else in that venire had so publicly stated their intention to avoid their duty (though this is not uncommon). In fact, after the 3rd day of the judge's eloquently worded and earnest introduction to summon citizenship and participation, answers to voir dire questions began to take on a different tone. No longer were people using key phrases that showed an eagerness to "get out" of the responsibility of jury service even if it meant significant rearrangements would be required. They had apparently heard the message that it was more participatory and vital to their duty than voting even. It didn't matter that they couldn't relate to the world in which the dispute arose. They could perhaps relate to the need for resolution and their vital role in reaching one.

## New Advisors Spotlight



**Hon. Sherri Collins**  
*15<sup>th</sup> Judicial Circuit  
Court of Florida*



**Hon. Don Hafele**  
*15<sup>th</sup> Judicial Circuit  
Court of Florida*



**Hon. Bradley  
Harper**  
*15<sup>th</sup> Judicial Circuit*



**Hon. Krista Marx**  
*Chief Judge, 15<sup>th</sup>  
Judicial Circuit of  
Florida*

After the first 100 or so people were whittled down by day three, another random 20 were called. This time, social media searches and background checks had to happen even faster than they had occurred during the first comprehensive round, when each side had over a week with the prospective juror names and questionnaires. It was then that my curiosity piqued again about the optimal way to synthesize the information found on easy social media perusals into data that is relevant to determine a person's biases. On the one hand it's readily available information about a particular juror's online presence, on the other hand, it's just that. And one not think too hard about how that might differ from one's true orientations or predictions of how one might vote in a trial. And yet, in the quest for a fair and impartial jury, teams must make an effort (unless otherwise instructed by the Court) to search out evidence of prejudging, inability or unwillingness to hear all of the evidence

I would venture a characterization of our ability to use Internet searches and access other public databases to any degree of reliable usage as inchoate at this point in time. Why? Because what you find may be fleeting, contradictory or worse deliberately misleading. Much can also be misinterpreted or plainly mistaken about material found among the self-reported online personas people assume. And "gathering" is not the same as "identifying" and as with much in life, context is key.

There are companies that offer to mine and provide venire information by assigning as many people at the ready as needed to search simultaneously

on a moment's notice, and report the results on a rush basis. They are quick to add that they offer no analysis.

One thing our interest in social media tends to gloss over is touched upon by Justice Sotomayor in Steve Susman's February 2016 interview. She highlights a "...dynamic that occurs among the venire people. People will say things openly that others have not considered. It is something so valuable..." This alone, might be the strongest case for using social media findings as a sort of isolated data point that must be considered in the context of the prospective juror's presence in the room, their eye contact, their words and manner. Social media becomes a culprit of distraction when trying to reach meaningful conclusions about one's ability to be fair and impartial.

And so I'd like to end this piece with Susman's interview of Justice Sotomayor, the one person our highest court with the most trial experience. She didn't just wax poetic about the privilege of jury duty. She reminded her audience that it "is the one responsibility of citizenship that no one else can do."

She added, "You're asked to come to a decision on behalf of the society you represent...there is something about that process that is both engaging and self-fulfilling....to come to a decision after you've looked at all sides of an issue. We often don't make decisions that way."

Reasons enough to lessen the weight an attorney might give social media posts. They are, after all thoughts published before people hear all the good, important reasons that jury duty begets a democracy of quality and participation.



**Suann Ingle, MS,**  
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# Status of Project: Spring 2019



The Civil Jury Project looks forward to continuing its efforts throughout 2019 with the following objectives:

- Continue with our efforts to enlist and involve judicial, academic, and practitioner advisors around the country
- Identify and study those judges who are trying the most jury cases, endeavoring to understand their techniques
- Develop plain language pattern jury instructions
- Encourage public discussion and debates about the pros and cons of public dispute resolution, particularly through the use of social and traditional media

This is but a sampling of our objectives for the coming year. A comprehensive list is available on our website here.

*Thank you for your involvement in this important project. By working together we can reach a better understanding of how America's juries work and how they can be improved.*

## Contact Information

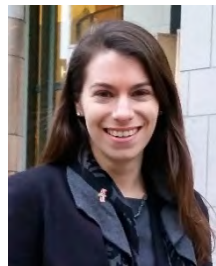
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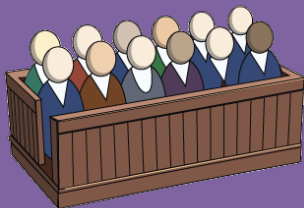


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## Preview of Future CJP Newsletter Content . . .



**Professor Leslie Garfield Tenzer and Richard Montalvo** share an article on pre-trial social media publicity and its impact on prospective jurors.



**Professor Janet Randall** of Northeastern University describes research showing the effect of Plain English instructions on juror comprehension.