The architecture of the courtroom provides insights into the philosophy of justice espoused by the community—it embodies particular perspectives about the presumption of innocence, the dignity of the person, the right to effective representation, and more generally, the right to a fair trial. The physical position of the accused in a criminal trial, the subject of this Article, varies considerably between jurisdictions, from a privileged place at the defense table to a dock isolated from other courtroom participants. The legal issues associated with the place of the accused are particularly evident when the dock is enclosed in glass. This Article reviews the history of the dock, exploring why it was abolished in the U.S. but not elsewhere, and how the glass cage emerged in several countries to manage particularly unruly or dangerous defendants in the courtroom. The role of appeal and trial courts in resisting such moves is outlined, with U.S., European, and Australian courts contributing to an emerging consensus that finds highly visible forms of constraint to be prejudicial to the rights of the accused.
Two Weeks at the Old Bailey: Jury Lessons from England
Nancy S. Marder 537

I spent two weeks observing jury trials and interviewing judges and barristers at the Old Bailey in London. There were several jury practices at the Old Bailey that would benefit American jurors, such as providing them with a "jury bundle," and we should introduce such practices in the United States. There are other practices, such as eliminating peremptory challenges, which are worth adopting over time because there would be some initial resistance. There are many practices that the two systems share in common, such as allowing jurors to take notes, to ask questions of witnesses, and to have a written copy of the jury instructions, but these practices need to be encouraged more broadly. Finally, there are some English jury practices that would not serve American jurors well, and should be rejected, such as seating the defendant in the dock and accepting a majority verdict from the jury. From my two weeks at the Old Bailey, I learned that there is no one way to design a jury system and that we should be willing to look to other countries' jury practices for ideas and inspiration.

Jury Selection and Jury Trial in Spain: Between Theory and Practice
Mar Jimeno-Bulnes 585

Even though Spain has traditionally followed a civil law system, it is at present the only European country to have introduced the common law model of jury trials into its criminal proceedings through the Spanish Jury Law of 1995. Despite counterproposals for mixed courts composed of professional judges consulting with lay assessors (escabinado), the Spanish jury system is now fully functional and diligently applies its sometimes extremely complex content. The rules on jury selection mean that the selection process is long and somewhat tedious in both theory and practice. However, theory and practice can differ in jury trials, as a jury may be dismissed in certain cut-and-dry trials following "plea bargaining" agreements between the accused and the prosecution. Although this particular mechanism is not expressly contemplated in law, such practices—grounded in the jurisprudence of the Provincial Court—have been applied at the Jury Court of Burgos, Spain. Other more general jurisprudence from the Supreme Court serves to limit the competence of jury courts. This Article discusses the role of the Spanish Jury Court, both in theory and in practice, from an institutional and a procedural perspective, and examines the reality of the jury selection process and jury service in Spanish Jury Courts, as well as the development of jury trials in court. The examples throughout this Article are drawn from criminal proceedings in the course of jury trials, with special emphasis on the Provincial Court of Burgos. Having compared theory and current practice in all areas of these proceedings, the Article draws to a close with a number of succinct concluding remarks.

Should Criminal Juries Give Reasons for Their Verdicts?: The Spanish Experience and the Implications of the European Court of Human Rights Decision in Taxquet v. Belgium
Stephen C. Thaman 613

This article uses the European Court of Human Rights judgment of Taxquet v. Belgium, decided by the Grand Chamber in 2010, which held that in some cases the trial jury's failure to give reasons for its verdict of guilt could constitute a violation of the right to a fair trial under Article 6 of the European Convention of
Human Rights, as a springboard for discussing whether or not criminal trial juries in Europe and the United States should be more accountable for their verdicts. The article explains the special jury verdicts traditionally used in Europe and the new Spanish requirement that juries give reasons for their verdicts, and then proposes that these procedural arrangements might be useful in limiting the number of erroneous guilty verdicts in U.S. criminal trials.

**Jury Trials for Violent Hate Crimes in Russia: Is Russian Justice Only for Ethnic Russians?** Nikolai Kovalev 669

The article examines issues of potential anti-victim jury bias in hate crime trials of skinheads in Russia. The study is based on the analysis of court transcripts and interviews with judges, prosecutors, defense attorneys, and victims' lawyers who participated in four high profile criminal cases. The cases selected for analysis resulted in scandalous acquittals, which raised many questions within the Russian society as to whether lay citizens can and should adjudicate hate crimes committed against members of ethnic and racial minority groups. The results of the study have revealed that the juries in these cases did not demonstrate any bias against ethnic and racial minority victims. On the contrary, it can be suggested that after hearing evidence presented to them, juries were left with a reasonable doubt regarding the guilt of the accused.

**The French Jury at a Crossroads** Valerie P. Hans and Claire M. Germain 737

Since its inception, the French jury system has generated controversy and passionate argument. The jury originated at the time of the French Revolution as a potent symbol of democratic self-governance. Alternately praised and attacked by successive governments over two centuries, the jury became entrenched in the French justice system and in the French mind. Yet, in recent years, the French jury's future has become the subject of intense political debate. This article provides an overview of historical changes to the French jury system, describing how it was transformed from an independent body of lay citizens into a mixed decision-making body of professional and lay judges. The article then turns to a discussion of recent developments, including the introduction of a unique jury court of appeals (the Cour d'assises d'appel); the reclassification of offenses so that they are no longer eligible to be tried by jury; and government proposals for change in the use of French lay citizens as legal decision makers. The article also considers the implications of Taxquet v. Belgium for the French jury system.

**Silent Lay Judges—Why Their Influence in the Community Falls Short of Expectations** Stefan Machura 769

Lay judges in Germany serving at mixed courts are ascribed an "education function," and they should communicate their experience. Data from surveys of German lay assessors are used to investigate this claim. The results are likely to apply to other countries which employ mixed courts. While many lay judges talk about their experience with their families—partly to ease their minds—they are more reluctant to tell colleagues and friends. For a start, many lay judges are no longer part of the work force because they are older in age, and therefore, have a limited number of contacts. Lay judges serving at criminal courts will often encounter resentment when they try to communicate a more nuanced and often positive experience. Often lay judges' personality and habits prevent their education function as many Germans shy away from stating their views. In every country, there are differences in understandings of justice and in the inclination to contribute to a community's discussion, both of which will have an impact on the educational function of lay judges.
Japan’s Quasi-Jury and Grand Jury Systems as Deliberative Agents of Social Change: De-Colonial Strategies and Deliberative Participatory Democracy

Hiroshi Fukurai

Direct participatory democracy touches Japan anew in its current attempt to reform and reconstruct the criminal justice system through the introduction of two tiered systems of quasi-jury (saiban-in) and grand jury (kensatsu shinsakai) institutions. Not only did the twin systems of lay deliberation help create an effective and investigative mechanism against the corporate predation and governmental abuse of power, they also allowed the prosecution of military crimes committed by U.S. Armed Forces personnel and their families stationed in Japan. My paper then examines the historical evolution of these newly established lay justice institutions, exploring the increasing adoption of lay forms of adjudication as both de-colonial and emancipatory agents of social change in Japan.

Metropolitan and Town Juries: The Influence of Social Context on Lay Participation

Maria Inés Bergoglio

Lay participation in Argentinean criminal trials, even if prescribed by the 1853 Argentine Constitution, was not established in the country until 2004, when the province of Cordoba created a mixed court to deal with cases of aberrant crimes and corruption.

This article describes the initial experience with mixed courts in the metropolitan area of Great Cordoba, and in small cities of the province, to depict the impact of different social contexts on lay participation. The support for citizen participation in legal decision making, the responses to the introduction of the new mixed courts, and jury-judge agreement rates are some of the issues compared. The analysis uses data obtained in the sentences pronounced in the period 2005-2009, and interviews of lawyers, magistrates, and common citizens who served as jurors for trials conducted both in metropolitan and town areas. Qualitative material gathered in the interviews is also used to explore the effect that lay participation in legal decision making has on the construction of an identity as citizens.

The Piper Lecture

“Mancession” or “Momcession”?: Good Providers, a Bad Economy, and Gender Discrimination

Joan C. Williams and Allison Tait

In the aftermath of the 2008 economic downturn, two of the hardest hit industries were manufacturing and construction. As a result, men became unemployed at a higher rate than women, and consequently, women—for the first time ever—became over fifty percent of the employment. This “mancession” gave rise to great debate over the place of women in the workforce and the important role that employment plays in shaping male identity. An intervening critique came in the form of the “momcession” discourse that focused on the impact of the recession on mothers, who were often responsible for caretaking, homemaking, and providing the primary income for the family. This paper explores the interplay between mancession and momcession, and what each discourse expresses about the right to employment, workplace privilege, and discrimination against caregivers in the workplace. The paper subsequently investigates claims of caretaker discrimination, brought by both men and women, and finds that men and women alike suffer from the illicit association of carework with feminine concern and the circumscription of carework to the home, exclusive of the working world.
STUDENT NOTES

ARTIFICIAL INSEMINATION AND THE PRESUMPTION OF PARENTHOOD: TRADITIONAL FOUNDATIONS AND MODERN APPLICATIONS FOR LESBIAN MOTHERS  
William M. Lopez 897

This note traces the history of the presumption of parenthood and applies the traditional rationales underlying the presumption to support its application to married lesbian couples. Part I discusses the formation of the presumption in England and recognizes that the presumption was created for three important reasons: to protect the child; to protect the public purse; and to protect the biological family. Part II discusses state laws on artificial insemination and dissects the basic requirements for both same-sex and opposite-sex parents. This Part then applies the presumption's traditional rationales to lesbian couples having children, arguing that the same presumption should apply regardless of the orientation of the parents.

WHEN A DOOR CLOSES, A WINDOW OPENS: USING PREEMPTION TO CHALLENGE STATE MEDICAID CUTBACKS  
Martina Brendel 925

Following the Supreme Court's 2002 decision in Gonzaga University v. Doe, several circuit courts of appeal have disallowed enforcement of key Medicaid provisions under § 1983. Notably, courts have placed no similar restrictions on the enforceability of these provisions under the Supremacy Clause. This article discusses Lankford v. Sherman and Independent Living Center v. Shewry, two recent appellate decisions in which plaintiffs succeeded in preventing Medicaid cuts under a preemption theory. It then addresses the limits of the Supremacy Clause, which applies to a narrower range of state action than § 1983. It argues that Medicaid reimbursement rates are "laws" within the meaning of the Supremacy Clause and, therefore, should be preempted by Medicaid's "equal access" provision if they are insufficient to attract providers into the Medicaid system.

HEAVY METAL ALLOYS: UNSIGNED ROCK BANDS AND JOINT WORK  
Michael S. Young 951

This note uses humorous illustrations culled from the history of popular heavy metal music to facilitate examination of the effectiveness of joint authorship analysis by modern federal courts. The note carefully considers a variety of common contributions made by band members in the absence of any written or verbal agreement about authorship, and concludes (1) that a more equitable regime would do away with the requirement that a co-author make an "independently copyrightable" contribution, and (2) that courts must take greater care not to transform "will to control" into "intent to be a sole author."

LEAGUE PARITY: BRINGING BACK UNLICENSED COMPETITION IN THE SPORTS FAN APPAREL MARKET  
David Franklin 987

Should professional sports teams and collegiate institutions have an exclusive right to merchandise their logos? Recent court decisions have effectively provided these organizations with a monopoly in the fan apparel marketplace, as retailers who are not "officially licensed" by the underlying team or university are likely to face trademark infringement liability. In some contexts, this extension of trademark law has prevented companies from selling merchandise that merely displays
a team’s color scheme. However, such a broad prohibition on the use of team logos is inconsistent with the goal of trademark law, which is intended to prohibit uses of a mark only where consumers are likely to be confused as to the source or sponsorship of the underlying product. Importantly, the thrust of this goal is to bring clarity to the marketplace, as consumers use trademarks to quickly gauge a product’s quality. To this end, the fan apparel context is unique because consumers do not view team logos as indicators of product quality. Rather, team logos function merely as a way for fans to show support for a given team. Because team logos do not serve to indicate a product’s quality, companies should be able to design and sell fan apparel without obtaining authorization from—and paying licensing fees to—the underlying teams. Consumers would benefit greatly from this de-monopolization of the fan apparel marketplace, and they would no longer have to pay a premium to support the teams they love.
SYMPOSIUM ON COMPARATIVE JURY SYSTEMS

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