



Program Title Haters Gonna Hate...Juries Gonna Deliberate: A Fresh Look at the Jury System, Yesterday, Today and Tomorrow
 Date Presented 12/6/16 Inn Year 2016-2017
 Presenting Inn Garland R. Walker Inn Inn Number 30015
 Inn City Houston Inn State Texas
 Contact Person Samantha Doring Phone 713.892.5400
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Please consider this program for the Program Awards: ☐ Yes ☒ No This program is being submitted for Achieving Excellence: ☒ Yes ☐ No
 (Submit within 60 days of presentation.)

Program Summary:

Be concise and detailed in summarizing the content, structure, and legal focus of your program. Please attach additional sheets if necessary.

~~A presentation on the history of trial by jury from the Colonial American period forward. This was accomplished through songs with adapted lyrics from the musical "Hamilton; quotes regarding jury trial; video clips from movies and television shows regarding jury trial; a look at famous jury trials; and discussions of jury trials in relation to social media and the future of jury trials.~~

Program Materials:

The following materials checklist is intended to insure that all the materials that are required to restage the program are included in the materials submitted to the Foundation office. **Please check all that apply and include a copy of any of the existing materials with your program submission:**

☒ Script ☐ Articles ☐ Citations of Law ☐ Legal Documents ☐ Fact Pattern ☐ List of Questions ☒ Handouts
☒ PowerPoint Presentation ☐ CD ☐ DVD ☒ Other Media (Please specify) scripts, videos and lyrics

Specific Information Regarding the Program:

Number of participants required for the program 15-20 Has this program been approved for CLE? ☒ Yes ☐ No
 Which state's CLE? Texas How many hours? 1.25 ☐ Pending ☒ Approved

Recommended Physical Setup and Special Equipment:

i.e., DVD and TV, black board with chalk, easel for diagrams, etc.

~~Stage, screen, projector, laptop, microphones, Colonial costumes for singers, table and chairs~~

Comments:

Clarify the procedure, suggest additional ways of performing the same demonstration, or comment on Inn members' response regarding the demonstration.

~~More famous jury trial discussions could be substituted for the musical songs, but the Inn members seemed to enjoy the musical numbers very much.~~

Program Submission Form

Roles:

List the exact roles used in the demonstration and indicate their membership category; *i.e.*, Pupil, Associate, Barrister or Master of the Bench.

Role	Membership Category

Agenda of Program:

List the segments and scenes of the demonstration and the approximate time each item took; *i.e.*, "Introduction by judge (10 minutes)."

Item	Time

Program Awards: *Please complete this section **only** if the program is being submitted for consideration in the Program Awards.*

Describe how your program fits the Program Awards Criteria:

Relevance: How did the program promote or incorporate elements of our mission? *(To Foster Excellence in Professionalism, Ethics, Civility, and Legal Skills)*

Entertaining: How was the program captivating or fun? _____

Creative and Innovative: How did the program present legal issues in a unique way? _____

Educational: How was the program interesting and challenging to all members? _____

Easily Replicated: Can the program be replicated easily by another Inn? Yes No This program is: Original Replicated

Questions:

Please contact program library staff at (703) 684-3590 or by e-mail at programlibrary@innsofcourt.org.

Please include ALL program materials. The committee will not evaluate incomplete program submissions.

**HATERS GONNA HATE...JURIES GONNA DELIBERATE:
A FRESH LOOK AT THE JURY TRIAL, YESTERDAY, TODAY AND TOMORROW**

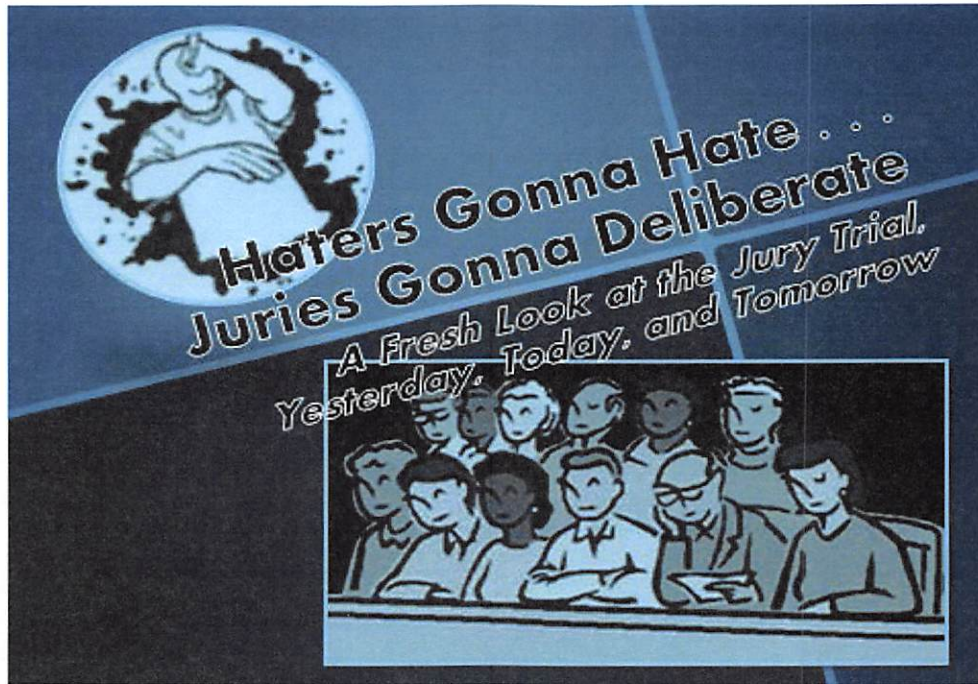
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ATTACHMENT 1



GARLAND R. WALKER AMERICAN INN OF COURT
DECEMBER MEETING - TUESDAY, DECEMBER 6, 2016



Rap along with us as we examine the changing role of one of the law's most cherished institutions – the jury trial. A lively cast will lead us through time, highlighting episodes from jury-trial history to show how and why the American jury trial is evolving. Join us as we consider the impact on today's practice and what the future might hold for the jury trial.

1.25 MCLE credit hours, including .25 ethics credit

6:00 p.m. - 8:00 p.m.

**The Magnolia Hotel, 1100 Texas Avenue,
Magnolia Ballroom (3rd Floor), Houston, TX 77002**

R.S.V.P. by Thursday, December 1, 2016

to Samantha Doring at sam@smglawgroup.com or 713.892.5400.

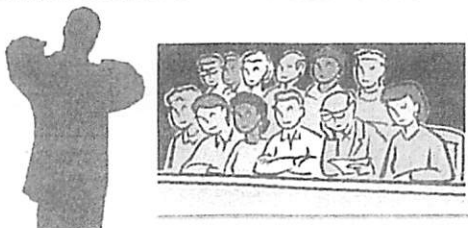
Valet parking is available at the hotel for \$12 with voucher. The Saks Garage is located directly behind the hotel (621 Fannin at Capitol St.) and is the closest parking garage. Street parking is available **after** 6:00 p.m. on various streets around the hotel.

Your attendance is appreciated. We look forward to seeing you.

Roger B. Greenberg, Executive Director

ATTACHMENT 2

Haters Gonna Hate . . . Juries Gonna Deliberate



A Fresh Look at the Jury System, Yesterday, Today, and Tomorrow

Prelude

A Quotation Montage: Reflections on the American Jury System

Introduction

Hon. Kem Frost

The Jury Trial: Perceptions and Portrayals

"Dear Trial by Jury"

Julia Morton

A lyrical rendition on the jury trial performed to the beat of
"Dear Theodosia" from the Broadway sensation *Hamilton*

A Video Montage:

My Traumatic Jury Duty Experience -- Kaia Brynn

Twelve Angry Men -- There's Always One

A Civil Action -- Opening Scene

The Verdict -- Frank's Closing Statement

A Look at Famous Jury Trials

The Trial of Peter Zinger

Rory Hatch

The Boston Massacre Trials

Jennifer Tomsen

"My Shot"

Leah Buenik

A lyrical rendition on equal representation as portrayed by
John Adams in the trials of the British soldiers, performed to
the beat of "My Shot" from *Hamilton*

The Trial of Susan B. Anthony

Hon. Maria Jackson

The "Scottsboro Boys" Trials

Hon. Al Bennett

The Dingo Trial

D.J. Seidel

The *Pennzoil v. Texaco* Trial

Hon. Al Bennett

"Alexander Hamilton"

Sarah Eng Koong

A lyrical rendition on famous trials, performed to the beat
of "Alexander Hamilton" from *Hamilton*

Lessons from the Famous Trial

Senior Partner

Dean James Alfini

Associate

Christopher Wallhagen

The O.J. Simpson Trial

Hon. Al Bennett

The Menendez Brothers Trial

Tara Taheri

The Casey Anthony Trial

Jennifer Tomsen

Reflections on Jury Service *Julia's Fed Up with Jury Duty*

Jury Challenges in a Changing World j

Jury Issues Relating to the Use of Social Media

Dean James Alfini

The Future of the Jury Trial

Angela Nolan

Rapping It Up! A lyrical wrap-up featuring the ensemble cast

ACKNOWLEDGEMENTS

Pupilage Group Leaders

Hon. Kem Frost and Ashley Harper

Rap Song Lyrics

Leah Buenik, Julia Morton, and Sarah Eng Koong

Pennzoil Sketch Scriptwriters

Christopher Wallhagen and Dean James Alfini

PowerPoint and Video

Asst. Dean Wanda Morrow

Program Support

Angela Nolan, Joshua Fuchs, Julia Morton, and Cris Estrada

The Inn gratefully acknowledges the contributions of Chris Rogers of South Texas College of Law of Houston for his generous assistance with video editing and technical support.

ATTACHMENT 3

Lyrics for Music of "Dear Theodosia"

**The ancients had trial by jury
Rome tried, convicted Socrates
Put the man to death
Put jury trial to the test**

**Then the English got in on the act
with the Magna Carta pact
Made it solid law
What everybody saw**

**We took it from there
The Zenger trial was fair
Trial by jury put to the test
Resulted in freedom of the press**

CHORUS (original words from "Hamilton"):

**You will come of age with our young nation
We'll bleed and fight for you
We'll make it right for you
If we lay a strong enough foundation
We'll pass it on to you
We'll give the world to you
And you'll blow us all away
Someday, someday...
Yeah, you'll blow us all away
Someday, someday...**

**When we broke away from the King
Jury trial in our Constitution, familiar ring?
In Amendments 5th, 6th, and 7th
For both rich man and peasant**

**We're here to talk to you tonight
About trial by jury - to shed some light
Hopefully, you will enjoy
And even learn something, oh, boy!**

CHORUS (repeat)

ATTACHMENT 4

Famous American Trials



In 1735, John Peter Zenger was acquitted of the crime of “harshly criticizing” the colonial New York governor based on the unrecognized defense of a right to print the truth. This decision was an early example of jury nullification and established freedom of the press.

Boston Massacre Trials - 1770

"The Part I took in Defence of Cptn. Preston and the Soldiers, procured me Anxiety, and Obloquy enough. It was, however, one of the most gallant, generous, manly and disinterested Actions of my whole Life, and one of the best Pieces of Service I ever rendered my Country. Judgment of Death against those Soldiers would have been as foul a Stain upon this Country as the Executions of the Quakers or Witches, anciently. As the Evidence was, the Verdict of the Jury was exactly right." --John Adams



The Trial of Susan B. Anthony



More than any other woman of her generation, [Susan B. Anthony](#) saw that all of the legal disabilities faced by American women owed their existence to the simple fact that women lacked the vote. When Anthony, at age 32, attended her first woman's rights convention in Syracuse in 1852, she declared "that the right which woman needed above every other, the one indeed which would secure to her all the others, was the right of suffrage." Anthony spent the next fifty-plus years of her life fighting for the right to vote. She would work tirelessly: giving speeches, petitioning Congress and state legislatures, publishing a feminist newspaper--all for a cause that would not succeed until the [ratification](#) of the [Nineteenth Amendment](#) fourteen years after her death in 1906. She would, however, once have the satisfaction of seeing her completed ballot drop through the opening of a ballot box. It happened in Rochester, New York on November 5, 1872, and the event--and the trial for illegal voting that followed--would create a opportunity for Anthony to spread her arguments for women suffrage to a wider audience than ever before.

*"The Scottsboro
Boys" Trials
1931 – 1937
(Powell v. Alabama)*



No crime in American history-- let alone a crime that never occurred-- produced as many trials, convictions, reversals, and retrials as did an alleged gang rape of two white girls by nine black teenagers on a Southern Railroad freight run on March 25, 1931. Over the course of the two decades that followed, the struggle for justice of the "Scottsboro Boys," as the black teens were called, made celebrities out of anonymities, launched and ended careers, wasted lives, produced heroes, opened southern juries to blacks, exacerbated sectional strife, and divided America's political left.

The Dingo Trial

On August 17, 1980, a mother was heard crying 'My God, my God, the dingo's got my baby!' The event occurred at a campsite in the vicinity of Australia's famous Ayer's Rock. Whereas many were shaken by the heart-wrenching distress call of the mother, there were others who considered the cry as a fabrication to cover the crime of murder. A 12-member jury comprised of 9 men and 3 [women](#) reached the verdict that 'The mother, Lindsay Chamberlain, had murdered her ten-week-old daughter Azaria' and was imprisoned. Three years later, while she was in prison, Azaria's blood-stained jacket was found in a dingo's den, and the mother was found innocent.



The O.J. Simpson Jury Trial - 1995

In *People of the State of California vs. Orenthal James Simpson*, the former football celebrity and actor, was tried for the [murder](#) of his ex-wife Nicole Brown Simpson and her friend Ronald Goldman in what was called the Trial of the Century. The 12-member jury was comprised of a cross-section of society and was composed of 8 black jurors, 2 Hispanics, 1 half-Caucasian half-Native American, and 1 Caucasian female. The trial spanned 133 days and cost \$15 million. After deliberating for three hours, the jury gave the verdict 'not guilty of the crime of murder.'



Lyle and Erik Menendez a.k.a. The Menendez Brothers - 1993

Just two years after its launch, Court TV (which changed its name to TruTV in 2008) broadcast [the high-profile trial](#) of Lyle and Erik Menendez, a.k.a. The Menendez Brothers. With cameras rolling and millions of viewers watching, the brothers' sordid defense for killing their wealthy parents—claiming dad was an abusive pedophile and mom was a self-absorbed drug addict—turned the proceeding into worldwide media fodder, particularly as the brothers were tried together (though a separate jury decided each one's fate). In the end both juries were deadlocked, leading to a second trial in 1995, in which no cameras were allowed. The second time around, it took only four days for the brothers to be convicted—both on two counts of first-degree murder—and sentenced to life in prison.



Casey Anthony 2011

If it weren't for polarizing personality Nancy Grace, the case of Casey Anthony, the young Florida mom charged with murdering her two-year-old daughter Caylee Marie, might not have been such a national cultural obsession. Largely spurred by Grace's outrage over the case (in which she nicknamed the defendant "Tot Mom"), HLN offered all-Casey coverage all the time for the entire six weeks of the trial—not to mention the hundreds of hours logged analyzing the evidence in the three years that elapsed between Casey's arrest and the final verdict. In the 15 minutes it took for the jury to announce its acquittal of the 25-year-old, [5.2 million people watched the verdict](#) on HLN, bringing in the channel's highest-ever ratings (to this day). Grace's response to the judgment? "The devil is dancing tonight."



Pennzoil v. Texaco – 1988 “What makes a binding agreement?”

On Nov. 19, 1985, a Houston jury awarded Pennzoil \$10.53 billion in damages, plus interest that mounted at the rate of \$2.6 million a day. That was only the start of Texaco's woes. Under Texas law, the company could not appeal until it posted a bond for the full amount of the judgment, plus interest - something that even Texaco, the nation's third-largest oil company, could not afford to do. Six days after the Texas Supreme Court ruling denying Texaco's request for a rehearing of the case, Texaco filed for bankruptcy.

Some lawyers say that the most telling lesson of the Texaco-Pennzoil struggle is how much control management loses - and how vulnerable it becomes - when it chooses the Bankruptcy Court as a shield against litigation.



ATTACHMENT 5

The Boston Massacre Trials

In 1770, the Boston Massacre took place. It involved eight British soldiers firing into a crowd, killing five.

Consider the timing, and you can guess how unpopular a cause it was to defend the King's soldiers – but Revolutionary John Adams took it on. He defended the Captain by saying the Captain never ordered the soldiers to fire, and the soldiers that they were provoked and threatened by the crowd.

With tensions so high, the trial was delayed because of fears that the jury would be inflamed – something the revolutionaries in Boston stirred up deliberately.

- Propaganda circulated before the trial, notably including an engraving by Paul Revere printed in the newspaper, showing the Captain yelling “Fire!” in front of a building labeled “Butcher’s Hall” – showed how this event and trials were used as a tool of the Revolution.
- The jury was allowed to hear the deathbed testimony by a victim that the soldiers were provoked and he didn’t blame them – the testimony was presented by his doctor and was the first recorded use of the “dying declaration.” The testimony helped acquit six of the eight soldiers.
 - Judge: “This [man] was not upon oath, it is true, but you will determine whether a man just stepping into eternity is not to be believed, especially in favor of a set of men by whom he had lost his life.”
- For the Captain’s trial, the jury was sequestered – this was unusual for the time. The Captain was acquitted, which was remarkable for the time, for “reasonable doubt” about who yelled “fire!” According to the John Adams Historical Society, this was the first time a judge had used the phrase.

[Read the quote] Adams considered the representation of these soldiers and their Captain one of the “best pieces of service” he ever rendered.

Primary source: Official website of the John Adams Historical Society, available at <http://www.john-adams-heritage.com/boston-massacre-trials/>.

Casey Anthony Trial “The Social Media Trial of the Century”

This was the trial you couldn't avoid if you wanted to.

Casey Anthony was a young single mom living with her grandparents. When the grandparents reported Casey's 2-year old daughter missing, Anthony said she hadn't seen her in weeks, and told various lies to detectives. The daughter's body was eventually found in a nearby woods, but it was not clear how she died. The prosecution said murder, the defense said she drowned in a swimming pool.

Over thirty-three days, there were more than 100 witnesses. Jurors were sequestered. The trial was notable for its constant coverage – you couldn't escape it, even if you were not following it. People were competing over the limited seats in the courtroom.

Despite the media circus, the diverse jury acquitted. Several jurors said they were sick about the verdict but did not want to rule on their emotions. One specifically said the physical evidence wasn't there.

Shock was such that it was afterwards labeled “OJ 2.” Even the trial judge said he was shocked. The jury's identities were not immediately released because of fears for their safety. In an unusual step, the judge ordered a three-month “cooling off” period – Judge Perry believed that they faced risk. Some jurors got death threats – even from coworkers – and asked for protection. One juror said “I'd rather go to jail than sit on a jury like this again.”

What has been the impact of this trial? The verdict has been blamed on something called “the *CSI* Effect” --

- Jurors expect more forensics than may be available, or techniques that don't even exist – resulting in more acquittals where such evidence is absent.
- Jurors have greater confidence in forensics than is warranted – resulting in a higher rate of conviction where the evidence is present.

Some have suggested the *CSI* Effect has rewritten the burden of proof from “beyond a reasonable doubt” to “beyond any doubt.”

[TAKE A POLL – WHO IN THE ROOM BELIEVES THE *CSI* EFFECT IS A REAL PHENOMENON?]

Multiple sources, including “Casey Anthony Trial Fast Facts,” CNN Library, June 29, 2016, available at <http://www.cnn.com/2013/11/04/us/casey-anthony-trial-fast-facts/>.

“Casey Anthony: Five Things to Know About Her Murder Trial Five Years After Acquittal,” Steve Helling, July 5, 2016, People.com, available at <http://people.com/crime/casey-anthony-five-things-to-know-about-murder-case-five-years-after-acquittal/>.

ATTACHMENT 6

Pennzoil v. Texaco Intro to Alexander Hamilton Song

There was a journal, writer, 2 days of trial,
And a warrant, issued for the arrest for the offensive blurt,
in a community in Province,
John Peter Zenger's paper
exposed Crosby for misuse of his powers.

The New Yorker, putting complete trust in his lawyer,
there was Alexander, and I think a few others,
Defending the defamer,
By appealing to jurors,
Thomas Hunt, and 11 men set free John Peter Zenger.

Before the day
airwaves were broadcasting Nancy Ann Grace,
Before Orenthal James had really gotten away,
Eighty Five, was when the corporation slayer left the nation's eighth
largest corporation with nowhere to go but bankrupt.

Negotiations caved,
the king of torts reigned,
they came back with a verdict that really made it rain,
Ten billion dollar judgment, connect that to your brain,
the Houston, Texas jury caused Texaco so much pain.

Well the word got around,
They said this case is insane man,
Constitutional violation, try another bench,
The US Supreme Court, sent it back from whence it came,
and the jurors gonna deliberate,
What that case, man?

Pennzoil v. Texaco,
The case is Pennzoil v. Texaco,
And there's a bunch of things you haven't heard,
but just you wait, just you wait.

ATTACHMENT 7

Pennzoil v Texaco Sketch

Associate 1: What are you working on?

Associate 2: A memo on the distinction between a Contract and an Agreement?

Senior Partner 1: Did you find a White Horse Case?

Associate 2: Just this old case from the First District Court of Appeals, Pennzoil v. Texaco.

Senior Partner 2: You know all about that case?

Associate 2: Uhh, not really.

Associate 1: I have heard about it in passing. What exactly happened?

Senior Partner 2: In early 1984 Pennzoil and Getty agreed to the terms of a merger. But Before the written agreement was executed, Texaco made a better offer, and Getty backed out of the Pennzoil deal and sold to Texaco. Pennzoil sued for Tortious interference with a Contract, won the case in late 1985 with a verdict of (Senior Partner makes the Dr. Evil Sign with his right hand and month (optional))..\$11.1 Billion Dollars.

Associate 1: That would make a dent in those Student Loans. But surely it wasn't upheld on appeal?

Senior Partner 2: There was a \$2 Billion dollar Remittitur from the First District Court of Appeals, and the Texas Supreme Court didn't hear the case.

Senior Partner. 1: Mind you, the verdict in the case was only ninety times larger than the largest judgment ever previously sustained on appeal.

Associate 2: Who represented who?

Senior Partner: There were some real Rock Stars of the litigation world in the ring for this one: Joe Jamail, King of Torts, represented Pennzoil, and David Boies represented Texaco in the post judgment phase.

Associate 2: Why was the case here in Texas and not in Delaware?

Senior Partner. 1: Well it was in Delaware, for an application for preliminary injunction, but since the Defendant didn't file an answer or a summary Judgment, and only filed a R. 12 b(6) motion, The Plaintiff was able to automatically non-suit without prejudice by R. 41(a), and re-file in the Jurisdiction of their choice. That was Harris County Texas.

Associate 1: I mean, you could say that Jury Trials are good places for the everyman, and woman, to vent against faceless corporations....

Senior Partner 2: True, But to be honest with you, this was a very unusual case: Senior Managers of both sides were personally involved in the disputed transaction, and later testified under

stinging cross examination at trial, being subjected to vigorous personal attacks in arguments to the jury.

Sen Partner 2: At the end of the Day, Texaco filed for Bankruptcy, and in late 1987 the two companies agreed on a \$3-billion settlement as part of Texaco's Financial Reorganization.

Associate 1: So what's the movie pitch? Lincoln Lawyer meets Perry Mason? Twelve Angry men meet The Firm?

Senior Partner 1: This case involved a lot of interesting intersecting themes: Knowledge of the Law of U.S., New York, Delaware, Knowledge of the procedural law of Texas, knowledge of the predilections and prejudices of the relevant Courts on Oral Contracts, Large Oil Companies, Wall Street Lawyers and investment Bankers, Huge jury Verdicts, The competence and probity of the Texas Judiciary, and the obligation of a State Court to apply the laws of other states faithfully in cases arising under those laws.

Senior Partner 2: Well, the Trial lasted for five and a half months, and created 24,000 pages of transcript. There were also fifteen thousand pages of transcripts of pretrial depositions in the case. The work was so intense that Miller, Texaco's lead counsel, moved out of his home and into a hotel near the courthouse for four and a half months. Throughout the trial, Jamail and the Pennzoil team hammered away at a very simple theme: The Getty people had made a promise and were honor-bound to keep it. The Pennzoil legal team talked about oil patch honor and about multi million dollar deals made by oilmen on the strength of a handshake. They were able to get the jury to ignore the niceties of contract law.

Senior Partner 2: In his biography, Joe Jamail underscored that simple theory of the case—living by one's promises—when he described how he approached the selection of the Pennzoil jury [reads from the biography]: "There were two characteristics I was looking for, loyalty and honesty. Why? When you give your word, that brings in your loyalty. I could prove that the Getty board was disloyal to J. Paul Getty, who had founded the company. I wanted jurors who had longevity in marriage, longevity in job, longevity in church."

ATTACHMENT 8

Hamilton Rap Song
(music clip separate)

ATTACHMENT 9



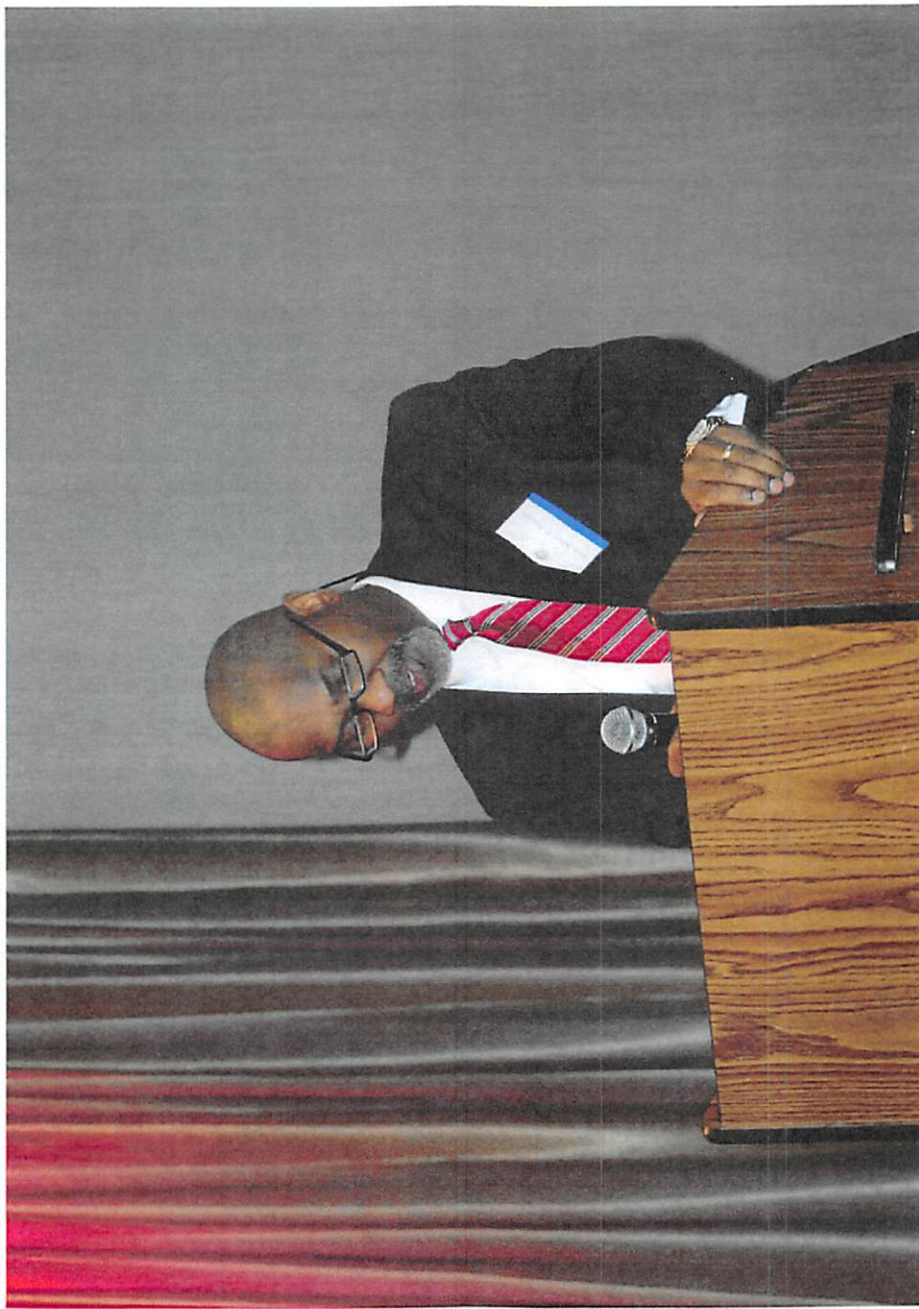
Colonial Singers



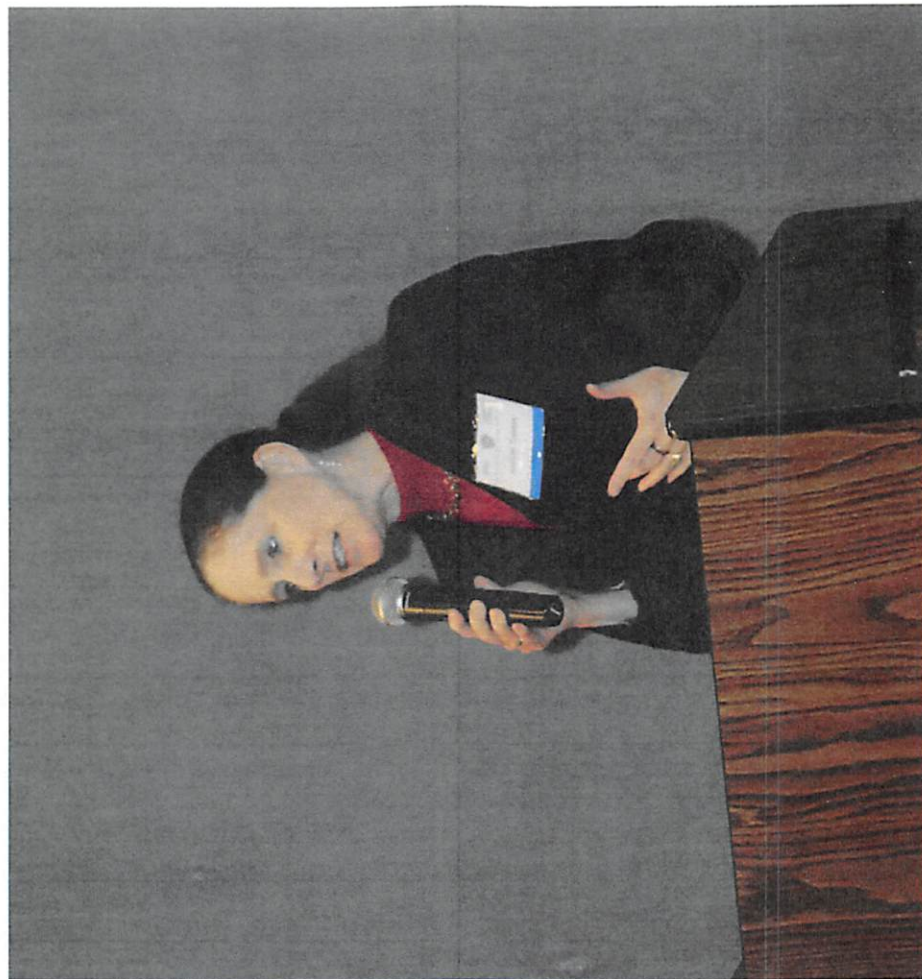
Panel Discussion



Colonial Singers



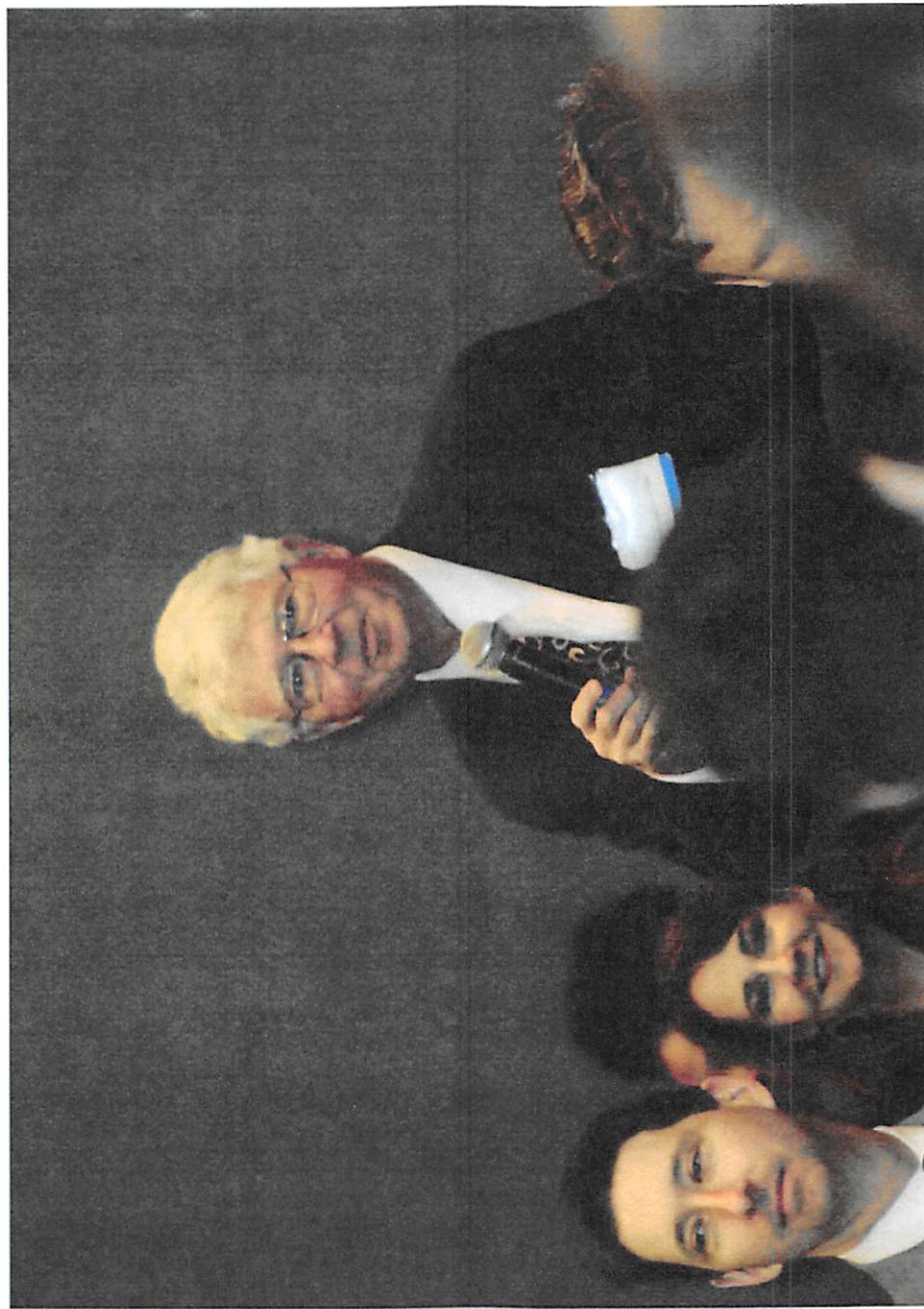
United States District Judge Al Bennett discussing historic trials by jury



Inn member Jennifer Tomson discussion historical juy trials



Colonial Singers



Dean James Alfini (South Texas College of Law - Houston) working the room during the discussion on the future of trial by jury



Finale - Hamilton Rap Song