

The Jury Judged: A Book Review

by Kevin Bouly

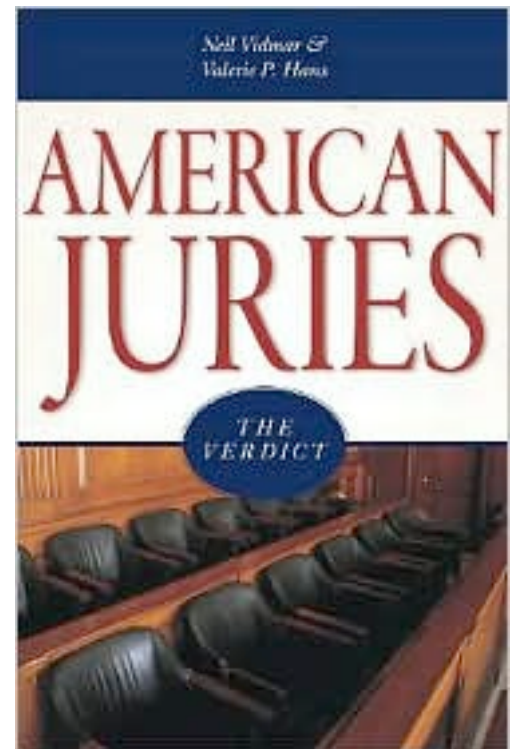
American Juries: The Verdict. (2007). Neil Vidmar and Valerie P. Hans. Prometheus Books: New York.

American juries cannot stay out of the spotlight. Go back before Scott Peterson. Go back before the famous white Bronco. Go back nearly one hundred fifty years before Stella Liebeck spilled hot McDonald's coffee to the jury trial of John Hendrickson, Jr. In 1853, a jury tried Hendrickson in Albany County, New York, for allegedly killing his wife with a rare poison. Circumstantial evidence created significant obstacles for Hendrickson's defense, but the testimony of a 28 year-old physician-expert witness who claimed to have found the poison in the wife's intestines, tasted it from his finger, and tested it in his laboratory, finally sealed his conviction. During the appeal, a few vocal critics and then a broad swath of United States medical experts weighed in on the expert and the verdict, which was based in large part on the novel scientific testimony. There was widespread public interest. American medical journal articles challenged the expert's methods, and the hoopla included expert opinions from Ireland and England. Hendrickson's conviction stuck and he was hanged in May of 1854. Many blamed the jury for not scrutinizing the expert evidence more critically.

Since their first collaborative book in 1986, Neil Vidmar and Valerie Hans have been peerless contributors to the jury research literature, authoring highly credible works on the behaviors, competency, and legitimacy of the American jury. Their latest collaboration is *American Juries*, a comprehensive trial of the jury system that renders a useful, data-based verdict with objective and authoritative style. This examination of the American jury is grounded in lively anecdotes (like that of Mr. Hendrickson), evaluated in political and legal context, and combined with current empirical research as Vidmar and Hans explore the jury's evolution and standing in today's legal landscape. Perhaps most importantly, the text acknowledges public opinion and perception, particularly on controversial issues, and responds based on systematic evaluations of a range of available information.

Overtly designed to appeal to a wide audience – “a layperson, a student, or a lawyer” – this book is more broad than it is deep (p. 19). It covers the range of jury issues, and each chapter engages a wide approach to its topic, typically starting with historical context, summarizing key example cases throughout history, and weaving in studies and research updates along the way. It does, however, read mostly like a textbook. Specialists in the legal field (e.g. litigation consultants, jury researchers, or litigation attorneys) should expect to skim parts of the book primarily because you will have your own experiences and familiarity with the history and case examples presented. The research provided is pointed and relevant rather than exhaustive.

Nonetheless, *American Juries* is a definitive text for anyone interested in a comprehensive commentary on the American jury. Perhaps most engaging is Vidmar and Hans' acknowledgement of the American jury's proclivity for the spotlight. The book is framed to recognize public opinion or common criticism and respond through systematic and



empirical examination. The authors address numerous issues, and conclude each discussion with their verdict of the American jury's performance, many in stark contrast to public perception and rumor (e.g. the perception that juries wildly and haphazardly award money damages). The information is evenly presented so the reader can draw her own conclusions before the authors provide closure to each chapter with theirs.

For instance, Chapter Three focuses on the “democratic goal” of achieving a jury of peers. This touchstone of the jury system is supposed to create juries that “represent the various views of the community, serve as a political body, and, through rendering fair and just verdicts, provide legitimacy for the legal system” (p. 66). A history of poor representativeness – including inequitable representation of races, genders, and socio-economic statuses – has placed these lofty ideals in question. But Vidmar and Hans clearly describe the value of a representative jury and lay out an excellent argument that includes observations from the Arizona Jury Project as well as empirical research findings that “diverse juries are better fact-finders” (p.74). The findings that diverse juries engage in longer, more thoughtful deliberations and add legitimacy to the face of our justice system are important benefits and points well-made. Despite eventually labeling representativeness as a key vulnerability in the jury system as a whole, Vidmar and Hans reassure that “the American jury is more representative than ever before in its history” (p. 81). The history, research, and conclusion give readers a broad but objective view of representativeness just like the other key issues covered in the text.

Including students and laypersons in the target audience inherently limits space for more specific and practical content applicable to trial attorneys. While strategic recommendations are purposefully scarce, three chapters at the heart of the book give trial attorneys some practical information for trying civil cases. In these chapters, the authors focus on jury tasks, juror comprehension, and an evaluation of scientific and expert evidence. By framing issues such as jurors' construction of case stories, judge-jury agreement, jury competence in complex civil cases, and reactions to statistical evidence, *American Juries* offers some guidelines for effective trial strategy, allowing the reader to realize jury strengths and deficiencies and adapt accordingly. To a somewhat lesser degree, Chapter Nine (“Judging Criminal Responsibility”) and Chapter Ten (“Deciding Insanity”) provide similar principles for criminal trials. Still, other than the authors' evaluations at each chapter's end (which are excellent), the intent and flavor of this work is decidedly descriptive rather than prescriptive.

There are a few things that readers will not find in *American Juries*. Generally speaking, you will not find legal citations or case law references applicable to your practice. It has no procedural elements whatsoever. It is not organized to provide practical recommendations for litigators or exhaustive research reviews for researchers and consultants. Trial consultant readers may appreciate some of the legal history and case examples, but most should expect to be generally familiar with the research.

In the end, *American Juries* highlights the strengths, vulnerabilities, and signs of vitality in the America jury system. The authors' final conclusion is not surprising to those who frequently work with juries, and is generally consistent with Vidmar and Hans' view of the American jury in 1986. However, the manner in which the authors reach the conclusion is more comprehensive and expansive than has been accomplished before. It is cogent, complete, and supported through the historical, political, and empirical data presented. *American Juries* is the definitive text on the American jury system.

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November's issue of *The Jury Expert* is filled with practical tools to use in a changing world. Whether you want tips on engaging liberals, conservatives, women, varying generations or using the just world belief system to your advantage--it's all here. Plus strategies for cross-examination of narcissistic witnesses and learning about reiterative and conceptual graphics....what more could you want? Something to read? Check out our book review.

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Here's a sampling of what we have coming up in future issues: race in juries, confidentiality issues in pre-trial research, a Snyder/Batson update, how disgust figures into decision-making, authoritarianism and litigation, many kinds of bias and how to work around it. And much more. Thanks for being a part of *The Jury Expert* and if you like us, tell your friends and colleagues.

Rita R. Handrich, PhD



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