THE JURY ON TRIAL

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Valerie P. Hans and Neil Vidmar. *Judging the Jury*. (New York: Plenum, 1986). 285 pp. Notes, index. $17.95.

Valerie Hans and Neil Vidmar set out to write a book that places the American jury system in a historical context and examines its political and symbolic value. They also determined to assess the competency, fairness, and rationality of the jury by reviewing major research findings about how well it has carried out its tasks. The questions they pose focus on the juror selection process, the representativeness of jury pools, and the quality of jury deliberations. Their goal was to comprehensively analyze the research evidence on whether jurors are competent to understand the issues in fact and law, whether prejudice plays an important role in the deliberations, and whether jurors observe or ignore the instructions they receive from the bench. Findings about the impact of recent changes in the size of juries and requirements about unanimous verdicts are also reported.

The authors recognized that there were likely to be many audiences interested in their work: the general public, members of the bench and bar, and social scientists who have been studying the jury and contributing to a rich and varied research literature on simulated and real juries. Finding the right mix of data, history, case law, and vignettes would be a challenge.

Both in their choice of the questions they use for evaluating the jury and in their style and mix of science, history, and lore, Hans and Vidmar have done well. They have presented a careful and comprehensive assessment of the jury's performance, and they have done so in a manner that allows different types of experts and lay persons to read their work with appreciation and understanding.

The authors rely heavily on the work of Kalven and Zeisel (1966) for their judgments about the jury's competency. They reiterate the widely published findings that trial judges and jurors agreed four out of five times in both civil and criminal cases and point out that in criminal trials the 20 percent disagreement between judges and jurors is distributed such that juries are six times more lenient than judges. In civil actions the disagreement is randomly distributed. Their uncritical acceptance of the Kalven and Zeisel study is perhaps the weakest aspect of the book. Hans

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and Vidmar fail to point out that only 15 percent of the judges contacted participated in the study and that the design of Kalven and Zeisel's research provides no check on whether the judges recorded their decisions independently and before they heard the juries' verdicts. While it is reasonable to measure the jury's competency against experts' opinions, it is important to point out the problems in the Kalven-Zeisel design.

Hans and Vidmar take issue with the beliefs held by many members of the bench and bar, and expressed most strongly by Judge Jerome Frank (1945), that juries' verdicts are often the product of sympathy and prejudice. Frank and such famous trial lawyers as Clarence Darrow and Percy Foreman have argued that appeals to prejudices, personal tastes, and feelings about deserving victims predict and explain juries' verdicts. Many of the famous trial lawyers claim that the most important part of their job, once the case goes to trial, is their use of peremptory challenges in the selection of the jury and the impression they make on the jurors during the voir dire. While again relying too heavily, from this reviewer's perspective, on data from Kalven and Zeisel, the authors conclude that "the jury is not often swayed to sympathies and prejudices by the charisma of the lawyers" (p. 148).

My own assessment of the factors that are most likely to influence jurors' verdicts based largely on data from mock jury deliberations are the witnesses' testimonies and instructions received from the bench. The jurors' demographic and social characteristics do not significantly influence the group's verdict, nor do personal experiences predispose a sympathetic response to a victim or a punitive reaction to a defendant. Hans's and Vidmar's search of the literature leads them to conclude that "actual incompetence is a rare phenomenon" (p. 129).

On the jury size issue, they report that most of the research literature shows that smaller juries provide poorer representation of community viewpoints, and that the variability of six-person decisions is greater than that of twelve-person juries. They conclude also that juries are more thorough in their evaluation of the evidence and the law, and are more satisfied with their verdicts under the unanimity rule as opposed to the majority.

Hans and Vidmar would probably defend their decision to devote much of their analysis to the criminal jury by arguing that most of the debate and more study has been done of the criminal than the civil jury. The authors point out that although juries decide less than 10 percent of all criminal cases, they often involve difficult, important, and politically sensitive issues. But it is the civil jury whose survival is in jeopardy. It is also the civil jury, especially as it functions in complex, long, drawn-out trials such as occur in antitrust cases, on which little is known. The criminal jury, in the authors' judgment, is not an endangered institution.

The final verdict on the American criminal jury is positive and

admiring. Juries are deemed to be competent, fair, and rational. This review ends with a message that more work needs to be done on evaluating jurors' performances in complex civil disputes, and with a commendation to the authors for their comprehensive analysis of the American criminal jury. They do the institution justice.

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