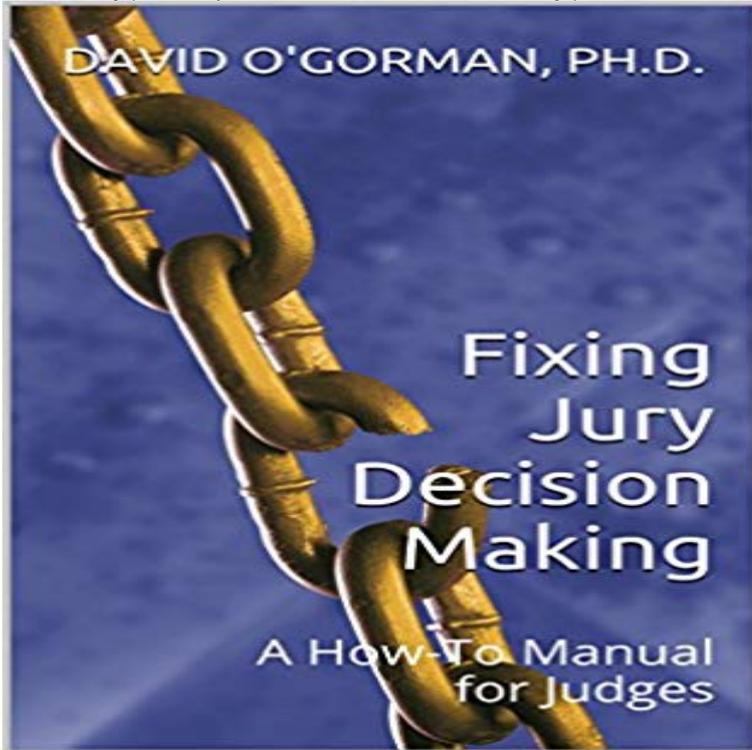


## Fixing Jury Decision Making: A How-To Manual for Judges



Judges are in a quandary. On one hand, they know that there can be major problems with the way juries make decisions. On the other hand, judges are precluded from telling juries how they should deliberate. The How-to Manual for Judges extricates judges from this quandary. This book presents a way to fix jury decision decision-making processes. That there are problems with what goes on during jury deliberations is not new. In 1946 Judge Julius Minor in his article titled The Jury Problem said, In a very real sense incongruity exists between the full acceptance of the institution of the jury as being vital to a free society and the lethargic tolerance with which its imperfections have been endured through the years. From my perspective as someone with some expertise in group decision processes, I dont think it is so much a lethargic tolerance as it is not knowing how to fix the jury decision-making process in a way that does not interfere with the prerogatives of the jury. Some countries, like Canada and Australia, have attempted to deal with the imperfections of the jury system by reducing the number of jury trials by substituting alternate dispute resolution processes and moving to more judge-only trials. However the United States remains strongly committed to the jury system with the result that the imperfections Judge Minor referred to in 1946 still plague us today. Bruce Spencer in his 2007 article Estimating the Accuracy of Jury Verdicts suggests that 15% of jury verdicts are incorrect, and notes that 15% is quite possibly understated. An imperfection is that some juries operate in a vote then deliberate mode. For example, it would not be unusual for a jury forepersons first statement to the jurors to be Lets take a straw vote to see where we stand, then we can discuss our differences. This may sound reasonable, but it essentially has the

effect of forcing jurors to make up their minds before the law and evidence are carefully considered. Once jurors have essentially decided where they stand they tend to stick with their initial decision, thereby setting the stage for conflicts, hung juries, and incorrect decisions. So the vote first then deliberate mode can easily lead to a miscarriage of justice. This document presents The How-to Manual for Judges that lays out a process to improve jury decision-making because it halts vote first then deliberate by using a structured process that focuses the jury's attention on the law and evidence before voting. In addition the proposed process can also mitigate other imperfections such as group think, conflicts during deliberations, and hung juries. The How-to Manual for Judges presents a conceptually sound but practical process. The how-to part for judges is simple. To use it, a judge would simply provide copies of the directions and forms to the jury foreperson. The foreperson then simply follows the directions. Of course, the jury can decide to use the process or not. This document is provided as a public service by Dr. David O'Gorman, Professor Emeritus of Business Administration, College of Business and Management, University of Illinois at Springfield. A PDF version that allows printing of the instructions and forms is available by emailing [ogorman@uis.edu](mailto:ogorman@uis.edu) with the subject line: Please send PDF of the petite jury document.

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