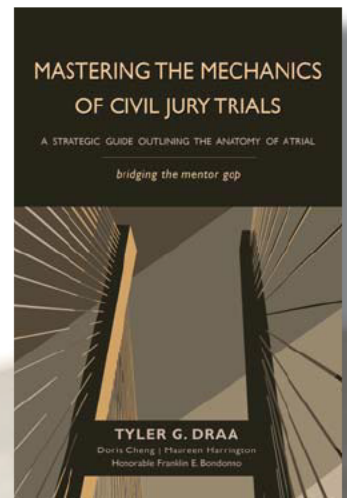


# A Mechanical Guide for a Smooth Running Trial

By David Gurnick



IN HIS 1875 BOOK, *HISTORY OF TRIAL BY JURY* (James Cockroft & Co.), Scottish lawyer William Forsyth explains that in Europe, a system of “procédure secrète” prevailed. This system of inquisitions, in which judges decided law and fact, was “an engine of grievous injustice.”

Jury trials in civil cases are very important. Alexander Hamilton said the civil jury is a valuable safeguard to liberty (*Federalist* #83). James Madison said that in civil cases, jury trials are “essential to secure the liberty of the people.” (*Madison Papers* 12:196—209).

But jury trials are also complicated. In a sense, they have a lot of moving parts, ranging from personalities of judges, to panel members who would rather be elsewhere, to the process of voir dire, presenting evidence, arguments, verdicts and numerous other procedures. So it is apt that the authors of *Mastering the Mechanics of Civil Jury Trials*, (Balcony 7, September 2015) continue the metaphor of a jury trial as a complex engine. This new book, by attorney Tyler Draa with co-authors Doris Cheng, Maureen Harrington and Judge Franklin Bondonno, reads like a user-friendly mechanics guide.

*Mastering the Mechanics* breaks the complexity of the jury trial into basic components. In plain English, with understandable summaries, straightforward instructions, occasional numbered step-by-step directions and real-life examples, the authors describe “how-to” and “what-to-do” from pre-trial, through every step of trial, and post-trial motions and appeals.

The book has chapters on inquiring about and making a peremptory challenge of the judge, and dealing with and relating to opposing counsel (“colleague first, adversary second”). Good guidance is provided for motions in limine and other pretrial filings, conducting voir dire, logistics of trial and evidence presentation, including course of action for direct and cross-examination, and making objections. Settlement, argument and guidance for jury deliberations, verdict and post trial proceedings are also addressed.

Throughout, the book is filled with practical tips that have value to new trial lawyers and are good reminders to the experienced professional: present your own personality and courtroom demeanor (“do not pretend to be someone else”); embrace harmful evidence, transform it into an advantage (“be the first source that reveals it to the jury”).



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There are fundamental tips for presenting evidence, and even style before the jury (“never be more indignant than the least indignant juror, lest you appear unnecessarily harsh”).

Many chapters include a “Judicial Comment,” providing the judge’s perspective on the subject. For example, “Trial attorneys often put far less effort into voir dire of alternate jurors . . . . And yet, in many cases, an alternate juror serves. You need to be as careful choosing alternate jurors as you are choosing the initial panel members.” These are valuable tips that could be unknown to newer lawyers, and easily overlooked, even by those with deep experience.

Tyler Draa and his co-authors are very experienced trial and appellate lawyers. Draa, for example, tried over 70 cases and has more than a dozen published appellate decisions. Judge Bondonno was a trial lawyer for 32 years before being appointed to the Superior Court, where he has presided over trials for eight years. A how-to guide by practitioners of this caliber, with this much experience, would be valuable in any field. *Mastering the Mechanics* does not disappoint.

In 1875, Forsyth could not find the specific origin of the jury trial. But in Tyler Draa’s manual, we know how to master the process now to achieve the best possible outcome. Through this mastery we can tell how the trial is conducted, how we can conduct the trial, and where it is going. *Mastering the Mechanics* will help any lawyer make the trial engine zoom, to our clients’ advantage. 