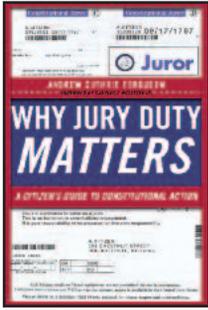


Why Jury Duty Matters A Citizen's Guide to Constitutional Action

By Andrew Guthrie Ferguson
New York University Press (2012)
Reviewed by Louis J. Virelli III



Why do I have to serve on a jury and why shouldn't I do everything in my power to get out of it? These are two of the least ambitious questions addressed and answered in Andrew Ferguson's engaging and impassioned new book *Why Jury Duty Matters: A Citizen's Guide to Constitutional Action*. Ferguson, a former public defender in Washington, D.C., and currently an assistant professor at the David A. Clarke School of Law at the University of the District of Columbia, offers an insightful and beautifully written account of jury service that speaks to the prospective juror in all of us, while at the same time offering lessons in the history and constitutional significance of the jury that will be enlightening for lawyers and lay readers alike.

Perhaps the most striking feature of the book is its versatility. On the very surface, Ferguson provides an inspirational primer for jury service. He speaks directly to the hypothetical readers in the juror waiting room, explaining their role in the process and how they should expect their time to be spent, from voir dire through trial and deliberation. Ferguson's tone reveals his significant experience in communicating with jurors. It is straightforward and informal without diminishing the seriousness of its message. He offers his frank and thoughtful perspective on the process from his (former) position "in the well of the courtroom," describing the enormous responsibility jurors bear to the litigants and their communities. He supplements his firsthand observations with stories from juror interviews in his own and other trials, all of which are poignant reminders of the emotional and intellectual investment most jurors feel after serving. Beyond his deep insight into every aspect of a juror's service, Ferguson's overriding optimism and palpable reverence for the jury as an institution are powerful enough to make even the most skeptical readers view their next jury summons in an entirely new light.

Why Jury Duty Matters, however, has far greater aspirations than serving as an intelligent and helpful guide to the process of sitting on a jury. Interwoven with his account of how jury service looks and feels, Ferguson provides a compelling historical and constitutional case for the profound *meaning* of jury service both to individual citizens and our constitutional democracy more broadly. This is the book's core mission. He explains in his introductory chapter:

This book ... was written with the realization that most of us — my client, the litigants, the witnesses, most especially the jurors — do not see the constitutional principles all around us. These good citizens are playing a role at the heart of our constitutional structure without realizing their connection to the larger principles of our nation. ...

[T]he truth is that we are all constitutional actors. As a citizen — regardless of whether you want to accept it — you have been entrusted to act within the constitutional system. This book seeks to reconnect you to those constitutional principles through one of the last unifying acts of citizenship — jury duty. Yes, jury duty — our recurring civic obligation. ...

Ferguson succeeds in making this connection by drawing parallels between several of our most closely held constitutional principles and the history and modern functionality of the jury. Like a professor teaching a course in constitutional theory, Ferguson highlights how jury service implicates principles of citizen participation in government, fairness, equality, civic republicanism, liberalism, deliberative democracy, tolerance, and accountability.

In his chapter on jury service as a form of public participation, for example, Ferguson begins by offering an engaging account of what goes through the mind of an (admittedly highly introspective) hypothetical juror when "[t]he letter arrives in the mail. 'Dear Citizen' it begins." He outlines the feelings of uncertainty, inconvenience, skepticism, and confusion that may confront prospective jurors, ultimately reminding them that the mandatory call to serve "goes to the heart of our constitutional system." He reinforces this claim through historical examples of colonial juries serving as vehicles of

resistance to the perceived injustices of English law, and by textual references to constitutional provisions — like the voting provisions of Article I and the First Amendment's protection of the rights to petition, free speech and assembly — that encourage public participation in government. He cements this connection between public participation and jury service by showing how jurors' experience in the courtroom offers an education in small-group democratic decision making that will enhance their future contributions to our constitutional scheme.

This is just one example of an exercise that is repeated successfully throughout the book and across a wide range of constitutional principles. The end result is a clear and highly accessible account of our democratic government and the jury's place within it. Readers whose only experience with constitutional law is having received a jury summons in the mail will feel as if they have been educated not only in how to be a better juror, but in how that experience can make them better Americans. For lawyers and judges, the book is a handbook for a much-needed juror appreciation campaign; it offers a ready-made platform from which they can spread the word about the benefits of an institution that is critical to their professional mission.

This would all be no small feat on its own, but is, alas, not the end of the book's contribution. More experienced readers will benefit from the scholarly depth and conviction of Ferguson's analysis. He has done the thinking for us about how jury service is a microcosm of constitutional citizenship and he offers a sophisticated and compelling call to action for people who write and teach about juries going forward. He pushes his readers to consider how the historical features of American juries can and should inform the modern judicial system, and he does so without resorting to (likely unrealistic) calls for extensive law reform. Constitutional law teachers and commentators will view this book as an opportunity to recast an oft-maligned but fundamental institution of the American judicial system in a new and more fruitful light.

I began this review by asking two seemingly simple questions and promising that Andrew Ferguson's new book would answer them and more. I hope I have succeeded in making the case for the "more." *Why Jury Duty Matters* is an innovative and important work for

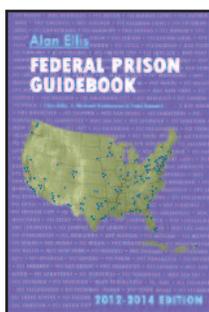
jurors, lawyers, law professors, judges, and anyone else who values the place of ordinary citizens in our constitutional democracy. ■

About the Reviewer

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Federal Prison Guidebook 2012-2014 Edition

By Alan Ellis, J. Michael Henderson
✎ Todd Bussert
James Publishing (2012)
Reviewed by Elizabeth Kelley



Just as every two years congressional and legislative elections take place, so too, former NACDL President Alan Ellis and his co-authors publish a new edition of the *Federal Prison Guidebook*. Simply put, the *Federal Prison Guidebook* is indispensable — for criminal defense lawyers, judges, U.S. Attorneys, probation officers, and individuals (along with their families) facing federal time.

Like the previous editions, the 2012-2014 edition of the *Guidebook* is divided into two sections. The first section, of approximately 200 pages, is an introduction to the Bureau of Prisons (BOP) and the seemingly labyrinthian world of federal sentencing. The second section is a guide to every federal prison, including facilities that are privately managed, organized by region of the country. The information in this section is arranged in a format that is easier to read than that found on the BOP's website, which is difficult to navigate. Additionally, there are useful features such as nearby lodging and accommodations for families and visitors.

If you have a previous edition of the *Guidebook*, you might legitimately ask why you need to buy a new one. (I know a superb criminal defense lawyer who joked that his edition was so old that he was committing malpractice.) You should invest in a new edition for three reasons: one, we owe it to our clients and those we serve to provide the most up-to-date information possible (we would never cite case law that has been over-

turned); two, the field of federal sentencing law is continually changing; and three, the new sections of the *Guidebook*, particularly in the areas of sentencing for those convicted of child pornography and white collar offenses, are at once scholarly and practical.

“Scholarly” and “practical” happily co-exist in the *Federal Prison Guidebook*. On the one hand, the book defines potentially difficult terms such as “departures” and “variances” and explains the purpose and strategies behind Section 2255 and 2241 motions. On the other hand, it contains intensely practical information including a model letter for someone wishing to submit a character letter on behalf of a person about to be sentenced, a list of commissary products available for purchase (including harmonicas, Fig Newtons, and wheat germ), and an explanation of TRULINCS (Trust Fund Limited Inmate Computer System), a program that allows inmates to send and receive email. Indeed, the chapter titled “How to Do Time” should be given to anyone about to enter the federal prison system. All would be wise to heed these words:

[T]he offender would be well-advised to keep important personal information about themselves and their families confidential, period! This does not mean being so secretive as to arouse the suspicions of other inmates. But it should be painfully obvious that there are real criminals in federal prisons, and becoming vulnerable to these criminals will only complicate life for the well-meaning inmates who truly wish to serve their sentences with as little hassle as possible. Well-meaning inmates can be conned, their family's privacy and well-being compromised, and life seriously disrupted, if they are too friendly with the wrong inmates (80).

Make no mistake, the *Federal Prison Guidebook* is written from a particular perspective. Alan Ellis and his co-authors are advocates for the rights of those awaiting sentencing and those who are incarcerated. Still, the bulk of the information in the *Guidebook* is objective and heavily footnoted. That is the reason the *Guidebook* is useful to all relevant parties in the federal system, and has been since the first edition was published in 1998.

A modified version of Elizabeth

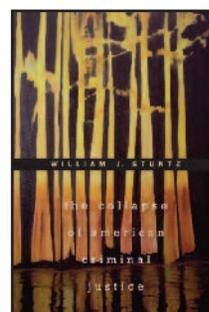
Kelley's review will appear in *The Federal Lawyer*. ■

About the Reviewer

Based in Spokane, Wash., Elizabeth Kelley is chair of the NACDL Membership Committee. She has a special commitment to representing individuals with mental illness and intellectual disabilities who are accused of crimes.

The Collapse of American Criminal Justice

By William J. Stuntz
Harvard University Press (2011)
Reviewed by Timothy Zindel



Harvard law professor William Stuntz succumbed to cancer in 2011 at 52, months before the university published his masterpiece, one of the most important books about American criminal justice to be published in many years. Stuntz's humanism and compassion make this work both readable and convincing. His book has no trace of academic dryness.

Stuntz begins: “Among the great untold stories of our time is this one: the last half of the twentieth century saw America's criminal justice system unravel.” He asks: How did it unravel? What can be done to repair it? His work is rich with ideas. While the book contains too many ideas to describe in a short review, three will be explained here.

The failings of the American justice system arise in part from two Reconstruction-era Supreme Court rulings construing the Equal Protection Clause of the 14th Amendment — United States v. Cruikshank and United States v. Reese. The former limited the Clause's reach to state officials and the latter made proof of discriminatory motive prerequisite to an Equal Protection claim. Because most discrimination is done by private actors who keep their motives hidden, the Clause for over 100 years has played virtually no role in American justice, resulting more recently in cases such as McCleskey v. Kemp (rejecting evidence of the disproportionate imposition of the death penalty on Georgia killers of white victims, especially killers who are black)