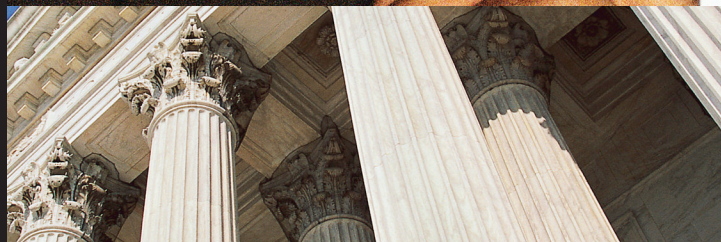


It's Jury Service, Not Duty

*Strategies for Promoting
Participation in the
Civil Justice System*





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Chicago, Illinois 60603

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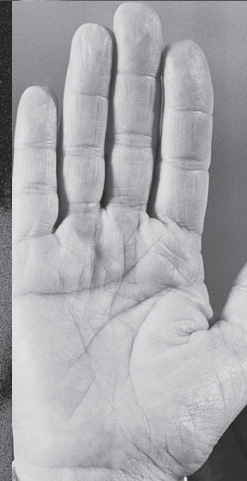
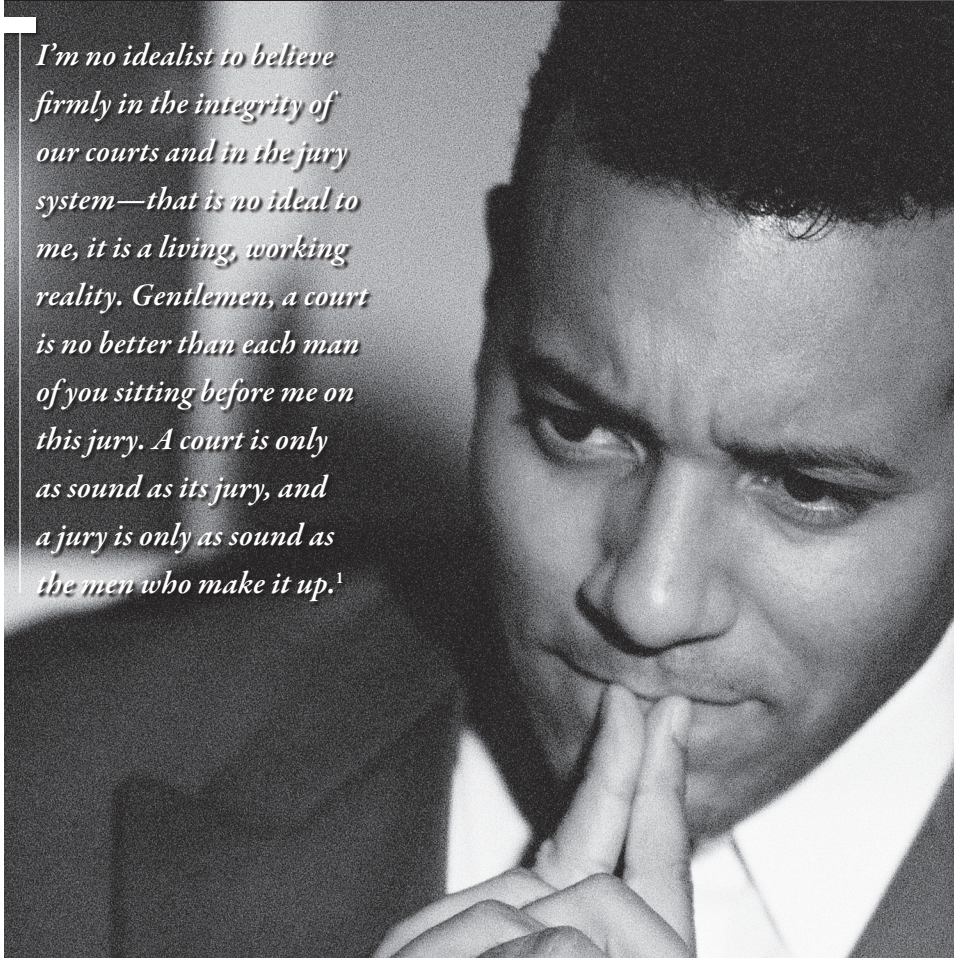
Produced in the United States of America

It's Jury Service, Not Duty

Strategies for Promoting Participation in the Civil Justice System

DRI Jury Service Task Force
January 2009

*I'm no idealist to believe
firmly in the integrity of
our courts and in the jury
system—that is no ideal to
me, it is a living, working
reality. Gentlemen, a court
is no better than each man
of you sitting before me on
this jury. A court is only
as sound as its jury, and
a jury is only as sound as
the men who make it up.¹*



¹ Harper Lee, *To Kill a Mockingbird* (New York: Grand Central Publishing, 1999), 274–275. Originally published 1960. Page reference is to the 1999 mass-market edition.

FOREWORD

Many elements of jury service have changed since Harper Lee published *To Kill a Mockingbird*. For one, women and minorities now serve on juries. In the past, women, African Americans and members of other racial and ethnic groups were excluded from jury service. A series of Supreme Court cases mandated otherwise, and today's jury pools are more inclusive. However, other factors present continuous challenges to the jury system. In recent years the rate of civil jury trials has steadily declined in favor of alternative dispositions such as summary judgments and settlements.² While the causes of the decline in jury trials are many, the role of the jury itself cannot be overlooked. To the extent that jury service is undervalued or misunderstood by participants and the public, undervaluation or misunderstanding can serve as both a cause and a symptom of the decline in jury trials and devaluation of jury service.

While the task of reversing hundreds of years of misperceptions is beyond our reach, the DRI Jury Service Task Force set out to inquire about the state of jury service in this country and the prospects for improvement. Happily, the task force found that many organizations have studied and researched jury service issues and that innovations likely to increase understanding of the value of jury service are underway.

DRI embraces the proposition that maintaining a well-functioning jury system is vital to preserving public confidence in the civil justice system as a means of resolving intractable disputes. It behooves defense lawyers to address the stresses on the jury system.

As most aspects of jury service are based on state law, innovation and reform to increase jury service begins mainly at that level. DRI's Jury Service Task Force encourages defense attorneys, through state and local defense organizations (SLDOs), to promote jury service across jurisdictions, by offering concrete recommendations to increase jury service participation and foster value of the jury system. In this paper, the task force offers suggestions for projects that state and local defense organizations can undertake to increase public understanding of the importance of the jury to the American legal system. Such projects can improve the response rate of those summoned to serve and highlight the value placed on their service. This paper also collects information about resources available to further examine the uniquely legal and uniquely human issues surrounding jury service.

² National Center for State Courts, *State-of-the-States Survey of Jury Improvement Efforts*, available at: http://www.ncsconline.org/D_Research/cjs/jury-topics.html.

THE DRI JURY SERVICE TASK FORCE



VALERIE SHEA, CHAIR
Gordon Hargrove & James
Fort Lauderdale, Florida



JAY BARRY HARRIS, CO-CHAIR
Fineman Krekstein & Harris
Philadelphia, Pennsylvania



PATRICK A. LONG
Long Williamson & Delis
Santa Ana, California



KATHLEEN GUILFOYLE
Campbell Campbell Edwards & Conroy, P.C.
Boston, Massachusetts



K.B. BATTAGLINI
Greenberg Traurig
Houston, Texas



KEVIN J. KELLY
Conway Farrell Curtin
New York, NY



HAROLD L. "PETE" PETERSEN
Petersen & Associates
Salt Lake City, Utah



TYLER HOWES
DRI



MICHELLE PARRINI
DRI

January 2009

ENHANCING JURY SERVICE: STRATEGIES FOR DEFENSE BAR ORGANIZATIONS

By and large, U.S. citizens respect the justice system and are willing to serve as jurors, despite the sacrifice involved and negative perceptions captured in jokes. Prospective jurors provide a necessary service to our communities, states, and country—a service grounded in a right with deep historical roots.

The right to a jury trial continues to be relevant to our lives today. All citizens have a stake in preserving the right. The jury is a fundamental legal institution that is unique to the United States in its breadth and scope. As defense attorneys, our efforts to ensure that jury trials are available to Americans are invaluable.

Contrary to the media's portrayal of jury trials, which omit essential information about legal procedures, jury service confers great responsibility. Verdicts are essentially final. American legal doctrines strive to preserve a jury's verdict. These legal doctrines generally defer to a jury's judgment.³

Defense attorneys can allay misconceptions, effectively educate and communicate the value of the jury in all its facets. The country at large requires this assistance. A citizen's individual jury service *is* meaningful. Without a diverse and willing jury pool—whether for a local, state or federal trial or for a criminal or civil case—a jury can fail.⁴ A defense attorney—in a dual role as a citizen and advocate for the civil justice system—has a part to play in the preservation of the jury system.

DRI maintains that jury service is worthy of promotion by state and local defense organizations (SLDOs). Many such organizations have spearheaded or been pivotal in their state's reform efforts. SLDOs can enhance the civil justice system by becoming involved in one or more of the following activities, many of which present partnering opportunities. DRI presents the following seven strategies to SLDOs in the hope that SLDOs will become informed and involved in efforts to enhance jury service.

The goal of the strategies is to

- impress on the public the importance of jury service and of the jury trial as a legal right,
- set right misconceptions about jury service,
- create a positive perceptions of civil defense attorneys and
- recognize the role of citizens as jurors as invaluable to the legal system.

³ Randolph N. Jonakait, *The American Jury System* (New Haven: Yale University Press, 2003), 265–278.

⁴ Jonakait, 281.

1.

Form a special committee to study jury service on the state or local level and identify and implement appropriate measures described in items A and B below.

A. *Identify areas and advocate for change at the state level. By what method are jurors called? What are the response rates? What improvements could be made in compilation of source lists?*

How are jurors in your jurisdiction or state summoned today? A lot of mystique surrounds the process. Many people are called as soon as they become eligible, while others go for years and even decades without receiving a summons in the mail.

In most states, the selection process is governed by statute, with the eligible pool being defined as all registered voters and adults with driver's licenses or state-issued IDs, or a merging of the two. From the pool, names are selected at random. True randomness would explain why some are called more frequently than others.

Research suggests many systems by which jurors are summoned are faulty, increasing the call to service on some segments of the eligible population, while disproportionately failing to reach others. Indeed, studies have shown that the national average for undeliverable summonses is in the 15 percent range.

Who do summonses generally miss? Low income and poor persons, thought to change addresses more frequently than earners of other income levels, fail to receive summonses in disproportionate numbers.⁵ A Wisconsin study showed that the undeliverable rate for minorities was 40 percent, while it was only 14 percent for whites.⁶ Similarly, a study by the *Pittsburgh Tribune-Review* found that a higher percentage of summonses directed to individuals living in poor neighborhoods were returned as undeliverable, because residents of those neighborhoods are likely to move far more frequently than they register a formal change of address with the driver's license or voter registration bureau.⁷

Attention to creating an effective system of summoning jurors serves two important interests: it distributes service equitably, and it increases the likelihood of representative juries. Chronically unrepresentative juries raise serious questions about the appearance of justice, and perhaps whether justice is in fact being done.

⁵ Ronald Randall *et al.*, "Racial Representativeness of Juries: An Analysis of Source List and Administrative Effects on the Jury Pool," 29 *Justice System Journal* (Feb. 2008): 71. This article empirically analyzes ways in which certain methods of calling prospective jurors contribute to jury pools that are noninclusive and nonrepresentative. In the specific jurisdiction studied, minorities were significantly underrepresented no matter which source lists were used. The authors concluded that it was necessary to administratively track returned summonses.

⁶ Arizona Supreme Court Committee on More Effective Use of Jurors, *Jurors: The Power of Twelve* (1994), Section B, Summoning Jurors. <http://www.supreme.state.az.us/jury/Jury/jury111.htm>.

⁷ Mark Houser, "A Jury of Peers?" *Pittsburgh Tribune-Review*, July 21, 2002. This article found that residents of poorer neighborhoods were serving far less often because they were less likely to be homeowners and were more likely than other socio-economic groups to move frequently.

Form an SLDO task force to study summons response rates and offer recommendations. Defense lawyers, because of their professional relationship with the judiciary, representation of the business community, and frequent involvement in community activities, are uniquely positioned to spearhead such efforts.

B. Examine the system at the state level and advocate for change. What is the no-show rate and how does it compare with other areas? What can be done to increase the number of citizens reporting for jury service?

According to the National Center for State Courts, the national failure to appear rate for all summonses is nine percent. However, the failure to appear rate varies by jurisdictions, from less than one percent to up to 50 percent.⁸

What is the no show rate in your jurisdiction? Juries should represent the entire community. Chronically unrepresentative juries raise serious questions about the appearance of justice, and perhaps whether justice is in fact being done. Many jurisdictions have recognized that their jury pools are far from racially and ethnically representative of the community and are taking steps to remedy it. If your jurisdiction is involved in such efforts, find out how your local or state defense organization can help to increase the diversity of the jury pools in your community.

What enforcement mechanisms are available in your state or locality for failure to respond to a summons? Typically the consequences for failure to respond are stated on the summonses. Most often, the penalty is a fine, with the possibility of being held in contempt and even serving jail time. For example, California judges now have the authority to impose monetary sanctions against prospective jurors failing to respond to a jury summons, after giving the prospective juror notice and an opportunity to respond. Following a hearing, the prospective juror can be found in contempt, which is punishable by a fine, incarceration or both. Likewise, the federal system provides for a fine, imprisonment or both for someone failing to show good cause for the failure to appear.

Enforcement of compliance, however, is inconsistent. In some states, ignoring a series of notices is unlikely to provoke official action, while in others an order to show cause is routinely issued.

An SLDO can form a community task force to study the efficacy of compliance enforcement options at the state level to recommend options for your particular locality or jurisdiction. Defense lawyers, because of their professional relationship with the judiciary, representation of the business community, and frequent involvement in community activities, are uniquely positioned to spearhead such efforts.

⁸ Paula Hanaford-Agor, "Tales of 'Tale' Juries," 23 *The Court Manager*, National Association for Court Management (2008): 28.

2 Participate in other groups' efforts to reform or improve jury service. How are such groups or the courts seeking to advance a favorable impression of jury service?

In recognition of the importance of the jury, and with an eye to improving public opinion of and participation in jury service, DRI urges you to participate in the efforts of other organizations to correct misunderstandings about and reiterate the value of the jury.

The National Center for State Courts' serial publication, *Jur-E Bulletin*, regularly reports on jury innovation projects and promising research, which allows you to find or identify like-minded initiatives that your local or state defense organization deems worthy of support.⁹

Tremendous reforms have been implemented by state courts to increase juror engagements. Several states have taken the lead in jury innovations. New York and Arizona have been prominent leaders, as have Michigan and California. DRI urges you to find out what is happening in your state that will benefit the civil trial and offer your local or state defense organization's support.

State and local defense organizations can join the efforts of others by encouraging other bar and civic groups to build coalitions to address the unique needs of your state. Joining the efforts of others with like-minded objectives fortifies the overall effort to preserve the civil trial jury.

3 Encourage court administrators to regularly solicit feedback from jurors and to disseminate the results of surveys.

What kind of orientation and preliminary information is provided to an individual called for jury service? Does it include information about expected hours, dress, compensation, meals and other issues of concern? Are jurors orientated, in part, by a judge, to reinforce the importance of service, introduce the judicial system or as preparation to serve competently?

Television and movies create the impression that trials run smoothly, without interruption. Are jurors told that some delays are inevitable, but that every attempt will be made to minimize them? Are frequent reasons for delays, which might include technical issues, emergency motions, and sidebar conferences, explained? Are trial elements, such as sidebar conferences, explained in terms of their function in providing important protections for the rights of parties?

⁹ National Center for State Courts, *Jur-E Bulletin*, available at: http://www.ncsconline.org/D_Research/cjs/.

Some jurisdictions have volunteer jury docents or court docent programs for court patrons.¹⁰ How do citizens reporting for jury service view such programs? How do citizens reporting for jury service view the court's administration of the jury system?

These are only a few of the elements that might be included in feedback surveys. The results can be incorporated into reports, press releases and advocacy tools.

DRI recommends that SLDOs urge appropriate courts to gather feedback and make the results widely available. Survey results can galvanize action. The results can also illustrate the elements of a jury system that are currently working.

4 Advocate for stable, and, ideally, increased funding of the judiciary. Stable funding is a necessity, and increased funding can only improve the courts in all areas of court administration, including jury management.

*Budgetary concerns should never compromise constitutional protections or a judge's control over the essential aspects of the courtroom. Nor should fees or charges be levied which unreasonably interfere with access to jury trial.*¹¹

What is the status of court funding in your state? Have budgeting issues impacted court functioning? In particular, have budget constraints forced suspension of jury trials?¹²

Is the information on the local or state juror website sufficient? First contact with a court after a summons for many individuals is often through the court system's website. An informative website allows anyone summoned to refer to it for basic questions, such as what to expect, pay, employment rights, and the procedure for filing for an extension. The American Judicature Society (AJS) has made some recommendations about the elements, which, in its estimation, constitute a good juror information site, as well as links to model websites. The California state courts have created a model jury information website for California citizens. Citizens are greeted on the first page by a message from the Chief Justice. Creating effective websites requires funds. Well-constructed websites can only improve impressions of jury service.

A survey by DRI's Judicial Task Force of defense bar leaders from a majority of states supports concerns about the impact of court funding on the quality of the justice system. The survey showed that 87 percent of respondents believed that inadequate funding of the state judicial institutions was a threat to the effectiveness of the judicial system in the state. DRI's Judicial Task Force further found courts in every part of the country had reported being prevented from adequately carrying out their work due to monetary issues. Some counties could not conduct civil jury trials because funds were allocated for higher priority criminal trials.¹³

¹⁰ Los Angeles Superior Court, Jury Docent Program, <http://www.lasuperiorcourt.org/jury/docentprogram.htm>; W. Terry Clinton III, "Opening the Courts to the Community: Volunteers in Wisconsin Courts." *Bureau of Justice Assistance Bulletin* (April 2000), <http://www.ncsconline.org/WC/CourTopics/ResourceGuide.asp?topic=Volunt>.

¹¹ American Bar Association American Jury Project, *The ABA Principles for Juries and Jury Trials (and Commentary)* (2005), 7.

¹² Conference of State Court Administrators, *Position Paper on State Judicial Branch Budgets in Times of Fiscal Crisis*, 2, http://cosca.ncsc.dni.us/white_papers.html.

¹³ DRI, *Without Fear or Favor: A Report by DRI's Judicial Task Force* (2007), 14, 17.

DRI urges local and state defense organizations to advocate for increased funding for the judiciary, which will allow for improvements in the administrative aspects of jury service. Improving the administrative aspects of jury service can only help to boost the image of the court system and the summons response rates. The total experience from first accessing a website to participating in an orientation to dismissal will ideally impress on jurors that they are valued. Defense lawyers are well-positioned to influence legislators. Defense lawyers understand the vital need for funding for the judiciary and can speak to the issues.

5 Develop a speakers' bureau on the importance of the American jury and jury service, and seek opportunities to appear on or before local access channels, radio, civic groups, school classes, and other places in the state or community.¹⁴ Alternatively, sponsor a Law Day event focusing on the importance of jury service, the necessity of representative juries, or another relevant topic.

Speakers for lay audiences about legal topics are in great demand. DRI receives frequent requests for recommendations for speakers to speak on various topics about the law and the legal system in different forums. If your state or local defense organization already offers a speakers' bureau, adding speakers who will talk about aspects of the American jury would add value to your speakers' bureau and serve to clarify misunderstanding about its role in the judicial process. If your state or local defense organization does not currently offer a speakers' bureau, consider creating one.

Topics to cover might include the right to jury trial, the jury's role in a trial, stages in a jury trial, and constitutional issues, such as the development and importance of the fair cross-section of the community jury pool requirement. If your state or locality has implemented novel innovations to enhance jury service and function, develop speaking programs about such innovations. If your state or locality has adopted the one-day or one-trial system, create presentations about that particular innovation.

If developing a speakers' bureau is currently impractical, work with state and local bar associations, many of which have established speakers' bureaus, to place engaging members of your organization on their rosters to speak about jury-related topics.

Most states, and many U.S. territories, have state law-related education centers, also frequently associated with state bars, but sometimes independent, which work with

¹⁴ The American Civil Trial Bar Roundtable issued a White Paper in September 2000, *An Overview of the Civil Justice System: Points of Agreement by and Between Legal Associations Concerned with the Civil Trial Practice*. The 2000 paper included a section on "The Role of Jurors and the Status of the Jury System," which outlined, among other elements, public outreach strategies to increase awareness of the importance of jury service. DRI was a signatory to the paper. In addition to involving attorneys in outreach, the paper suggests involving judges in educational efforts, particularly in the schools and with the media.

K–12 schools to teach young people about the law. The mission of state law-related education centers is to improve understanding of the law and increase civic participation through student-centered curricula and hands-on programs. State law-related education centers associated with bar associations, such as the Arizona Foundation for Legal Services & Education and the Law Related Education Department of the State Bar of Texas, sponsor “Lawyer-in-the-Classroom” programs, in which lawyers team up with teachers throughout the school year to team teach about legal topics.¹⁵ In many states, such as Florida, judges are actively involved in classroom-based educational programs.¹⁶ The Texas Young Lawyers’ Association has developed an entire curriculum, “We the Jury,” available on the Internet, for team-teaching efforts between attorneys and social studies teachers about the American jury.¹⁷ Many state judiciary websites—for example, Indiana and Washington—offer fine jury educational materials intended for use in the schools.¹⁸

National organizations, such as the American Judicature Society and the American Bar Association, have developed curriculum materials for team teaching efforts between lawyers and teachers in the K–12 classroom. These same organizations have developed talking points and offer free program ideas for presentations to civic groups and other adult groups on jury-related topics. The Resources section that follows will direct you to time-saving resources so that you will not need to reinvent the wheel.

Law Day (May 1) also offers many partnering opportunities. Many law schools, state and local bars, and courts celebrate Law Day.¹⁹

As part of a Law Day celebration for 2005, the State Bar of Michigan sponsored a student essay contest on juries and race in criminal trials.²⁰ That same year, Michigan Chief Justice Clifford W. Taylor delivered a speech in which he explained the court’s decision to proclaim May 2005, Juror Appreciation Month: “[W]e in the bench and bar need to remind ourselves and the public that jury service is both a duty of citizenship and a high privilege—hence our observance of Juror Appreciation Month.”²¹

By creating or participating in community- and school-based educational programs about the American jury, defense attorneys can fulfill a professional responsibility to educate the public about the law and reinforce the value of jury service to society at large. Reaching out to citizens *before* they arrive at the courthouse by offering a positive learning experience will encourage a predisposition to view jury service favorably. This

¹⁵ Arizona Foundation for Legal Services & Education, <http://www.azflse.org/>; State Bar of Texas Department of Law Related Education, <http://www.texaslre.org/>.

¹⁶ Florida Law Related Education Association, Inc., <http://www.flrea.org/>.

¹⁷ Texas Young Lawyers Association, “We the Jury,” http://www.tyla.org/we_jury.html.

¹⁸ Indiana Courts, Lesson Plans and Materials, <http://www.in.gov/judiciary/citc/lessons/>; Washington Courts, Educational Resources, <http://www.courts.wa.gov/education/>.

¹⁹ American Bar Association, Law Day Past Themes, 2005: *The American Jury: We the People in Action*, a Law Day educational planning guide, <http://www.abanet.org/publiced/lawday/2009/history/selectedthemes.shtml>.

²⁰ State Bar of Michigan, Law Day 2005 Winning Essays, <http://www.michbar.org/programs/lawday/>.

²¹ Remarks of Chief Justice Clifford W. Taylor, April 25, 2005, <http://courts.michigan.gov/supremecourt/Press/Juror/Juror2005.html>.

task force recommends that state and local defense organizations make a concerted effort to educate the public about the importance and duties of jury service.

6. Sponsor a local or state-based Juror Appreciation Week.

One way to foster appreciation for the importance of jury service is to sponsor a juror appreciation week. To assist your efforts, the American Bar Association has developed a Juror Appreciation Week Kit.²²

For nine years running, Philadelphia has held an annual Juror Appreciation Day. In 2008, it was held on May 8, 2008, cosponsored by Pennsylvanians for Modern Courts and the Philadelphia Court of Common Pleas.²³ The entire state of Pennsylvania celebrated Juror Appreciation week, May 5–9, 2008. Pennsylvania Chief Justice Ronald D. Castille said, “[T]his week we honor those Pennsylvania citizens who, by serving as jurors during the past year, have kept faith with the founders of our Nation and helped to keep the principles of Democracy alive. We encourage all citizens to do the same.”²⁴

DRI urges SLDOs to sponsor juror appreciation events, if they are already in existence in a locality or state, or to take the lead to create such initiatives where none exist. State and local defense organizations are well-suited to unify bar groups, civic organizations, the judiciary, law schools, and the judiciary to take on initiatives, whether at the local or state level. DRI urges defense attorneys to use your unifying talents and persuasive skills to undertake juror appreciation initiatives to express our collective value of the jury system and the necessary and valuable role citizens play in maintaining it.

7. Write Op-Ed pieces for local newspapers concerning the honor and responsibility of jury service.

Collaboratively educating the public and the media on legal issues generally and responding to misconceptions is essential for DRI and SLDOs. Ensuring that the public is fully informed of the facts for a given issue, including the jury’s role in the civil justice system, is vital to the health of the judiciary. Media exposure of high-profile civil cases can distort public perceptions of the jury’s role and undermine its function. DRI urges SLDOs to author Op-Ed pieces about the honor and importance of jury service. An Op-Ed offers four features that make it an effective communication tool: credibility, position-focus, quotes, and a thoughtful audience.

²² The American Bar Association has developed a Juror Appreciation Week Kit. See the Resources section.

²³ Pennsylvanians for Modern Courts, Juror Appreciation Day 2008, <http://www.pmconline.org/jurysystem/introjurynews>.

²⁴ Administrative Office of Pennsylvania Courts, New Release, May 5, 2008, <http://www.courts.state.pa.us/NR/rdonlyres/F35317E1-BDFA-40DC-ABBF-BB7C4CFCCC03/0/prrel08505.pdf>.

An Op-Ed carries the credibility of the editorial page and of its Op-Ed contributors, who are often nationally syndicated. Most of the people who read the Op-Eds understand that a selection process is involved in an Op-Ed's publication. An Op-Ed's publication process also provides a level of credibility that is hard to measure but that is nevertheless important.

By its very nature, an Op-Ed enables an author to take a position or provide a thoughtful opinion on a controversial or interesting issue. While being quoted in a news story enables a person being interviewed some opportunity to present his or her organization's position, it will usually be limited to a few words in a story that includes other angles and spokespeople. An Op-Ed can run from 300 to 700 words, enabling presentation of an actual argument about a topic by one or two individuals, as well as providing an opportunity for a call-to-action to support the position taken.

An Op-Ed is often quoted by reporters in the publication where the Op-Ed appears or by other news outlets, extending the author's reach, credibility and influence.

Finally, those who read Op-Eds are usually thoughtful, curious, well-educated, successful individuals, who are often influential with government, community groups, and other policy- and decision-making audiences. In other words, they are the individuals, for a variety of reasons related to work or other positions, on the cusp of considering how to best respond to a jury summons, or who may simply need a reminder of the importance of the jury trial.

CONCLUSION

Studies routinely demonstrate that the jury *is valued*. When asked, 75 percent of Americans would choose to have their own cases heard by a jury rather than simply by a judge.²⁵ Jurors do outstanding work.²⁶ And trial judges believe “overwhelmingly” that jurors are “conscientious, competent, and fair.”²⁷ The jury’s fact-finding acumen adds to the value of its service.

When a citizen responds to a jury summons, he or she does his or her part to make the U.S. government’s system of checks and balances succeed. Depending on the case facts, by answering a call for jury service, a citizen gives other citizens the opportunity to have grievances aired, rights wronged or crimes punished by impartial members of the community who consider the facts. Juries help to give the legal system legitimacy. As a close jury-studier writes, “[t]heir decisions are accepted as final by the public and litigants.”²⁸

DRI recognizes that individuals are pulled in multiple directions; all individuals contend with time constraints. But, as citizens, and as defense attorneys, the task force urges SLDOs to commit to preserve juries that “reflect a broad range of [*members*] of the community.”²⁹ As defense attorneys, we must commit to advocate for jury service. The preservation of the jury trial is entrusted to and depends on the contributions of each and every citizen.

²⁵ Harris Interactive Poll commissioned by the American Bar Association (July 15 through July 18, 2004), 5, 11. <http://www.abanet.org/media/releases/news080904.html>.

²⁶ Valerie P. Hans and Neil Vidmar, “The Verdict on Juries,” 91 *Judicature* (March–April 2008): 226; Jonakait, xv, 278.

²⁷ Neil Vidmar and Valerie P. Hans, *American Juries: The Verdict* (Amherst: Prometheus Books 2007), 16, citing “The View from the Bench: A National Law Journal Poll,” *National Law Journal*, August 10, 1987, 1; John Setar, “Comments on Judges Opinions on Procedural Issues,” 69 *Boston University Law Review* (1989): 765.

²⁸ Jonakait, 276.

²⁹ Vidmar and Hans, *American Juries: The Verdict*, 341.

RESOURCES

While a comprehensive resources list is beyond the reach of this paper, many resources are readily available that provide an entrée to the literature on the subject of jury service.

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55 West Monroe Street ■ Suite 2000
Chicago, IL 60603
312.795.1101 ■ Fax: 312.795.0747
E-mail: dri@dri.org ■ Website: www.dri.org