

Jurors Matter

The Official
Newsletter for the
Civil Jury Project at
NYU School of Law



December '16, Vol. 1, Issue 1

Upcoming Events

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| Dec. 9, 2016 | Texas Trial Lawyers Annual Meeting, Dallas, <i>Susman on How to Save Jury Trials</i> |
| Feb. 1-3 2017 | Kansas Legal Revitalization Conference, Kansas City, <i>Susman on Vanishing Jury Trials—Why? Do we care? What to do?</i> |
| Feb. 9, 2017 | Jury Improvement Lunch, Dallas, Texas |
| Feb. 9, 2017 | Texas Business Litigation Annual Seminar, Houston, <i>Susman and Jolly on Jury Trial Innovations</i> |
| April 4, 2017 | Civil Trial Innovations Conference, Missouri, <i>Susman on the Preservation of Trials and Trial Judges</i> |

Opening Statement

Dear Readers,

Welcome to the first newsletter of the Civil Jury Project at New York University School of Law. We are the nation's only non-profit academic institution dedicated exclusively to studying and bettering the civil jury and raising public awareness of its dramatic decline.

Why study civil juries? Because the jury remains the genius of our system of justice. A number of strangers are hailed into court, asked to review evidence and deliberate dispassionately with fellow citizens, provide an answer without justification, and then—most importantly—go back to their lives. Each aspect of this process is critical in ensuring judicial integrity. That the jury is comprised of multiple laymen assures a connection to society and democratic norms. That they are disinterested safeguards the impartiality of their rulings. That they deliberate in secret assures that they can debate the evidence candidly without fear of reprisal. Finally, their impermanence guarantees that they cannot be easily bribed.

In pursuit of our objective, we have held conferences and public events, produced scholarship and online content, and conducted empirical studies with data still worthy of review. Going forward, we plan to use this newsletter to periodically update you on our findings, successes, and challenges. Anyone wishing to see all our ongoing projects and the status therefore should click [here](#). We hope you enjoy working with us as we try to ensure the role of juries in public dispute resolution.

Sincerely,
Stephen D. Susman

What is a Jury Improvement Lunch?

These lunches invite citizens who have recently served on juries to come and discuss their experiences. The purpose is not only to honor these jurors, but also to learn from them how the justice system and jury duty can be improved.

Find out more on pg. 3





Trial by Jury in Patent Cases

The Civil Jury Project dedicated its Fall Conference to the role of juries in resolving patent disputes.

The Project chose patents as its focus because if a patent case can be fairly decided by a jury, then it is hard to imagine a civil case that is too complicated for a jury trial. It is also the only area of federal law to see an increase in the number of disputes decided by a jury. But it is also an area of law in which juror involvement is harshly critiqued. Therefore, patent litigation offers a great opportunity to discuss the role of the jury in the United States and how it can be improved.

The event opened with insightful remarks from the Hon. Kathleen M. O'Malley (Fed. Cir.). She rejected the notion that lay jurors cannot comprehend complex cases and celebrated their involvement in resolving public disputes. She recognized no "patent exception" to the 7th Amendment, noting that any restriction to the right should be

scrutinized with the utmost care.

Following this opening, two scholars debated whether the 7th Amendment guarantees the right to a civil jury in patent disputes, with Profs. Renee Lerner (George Washington) and James Oldham (Georgetown) drawing different conclusions from the historical record. Maggie Diamond (NYU) then presented empirical data on patent litigation trends, which showed an increase in patent trials.

A panel of trial judges with a wealth of experience in handling patent cases the presented. The panel included the Hon. William Conley (W.D.WI), the Hon. Rodney Gilstrap (E.D.TX), the Hon. Leonard Stark (D. Del), and the Hon. William Young (D. MA). They all agreed that juries usually get it right. That is, while they as judge may not always

agree with the jury's decision, they often understand why the jury decided as they did. Further, they emphasized the important role of advocates in teaching the jurors about the technology. Without good guidance, the judges concurred, jurors will return bad verdicts.

The event closed with a panel of practitioners from both sides of the bar, including Juanita Brooks, Douglas Cawley, John Desmarais, and William Lee. Perhaps as expected, they were bullish on the jury's competence in resolving technical issues. They agreed that patent disputes often implicate issues of social concern and that public involvement is critical.

Video recordings of each of these panel discussions can be found on our website, [here](#).

Rush to Judgment? Prof. Lemley's New Findings

Prof. Mark Lemley (Stanford) presented at the conference as well, offering an update to his study, "Rush to Judgment? Trial Length and Outcomes in Patent Case." The new data incorporates 927 trials and 1,031 judgments between the years 2000 and 2015.

The results show that while jury trials typically take longer than bench trials in patent disputes, the overall length of trial does not affect outcomes in favor of one party over the other. There is one curious caveat, however: in the Northern District of California,



longer trials may actually benefit patentees.

For a review of these data, as well as its remarkable findings, you can review the study on our [website](#).



How do we improve jury service? Listen.

The Civil Jury Project held Jury Improvement Lunches in Houston and Dallas Texas. With the help of nearly a dozen law firms and professional associations, 84 jurors, 31 state and federal judges, and over 200 attorneys between the two events attended. We learned quite a bit.

The first thing most people do when they receive a jury summons is try to find a way to get out of it. They watch online videos or consult with friends, receiving such nuggets of wisdom as “wear a red shirt; they never pick someone in red.” But what these people often never have the opportunity to learn is that overwhelmingly, those who actually serve on a jury genuinely enjoy the experience.

The Civil Jury Project decided that it wanted to know what else those who served had to say about their jury experience. To do so, state and federal judges extended lunch invitations to jurors who had served over the past couple of months. The jurors were offered a free buffet lunch at a nice venue as well as a small honorarium for their time. Judges, too, were invited, as well as lawyers from the surrounding law firms.

At the lunches, jurors joined attorneys and judges around dozens of round tables to discuss their first-hand experiences. Designated moderators at each table helped to guide the small discussion and took notes about what the jurors appreciated and despised about jury services. Jurors also completed short

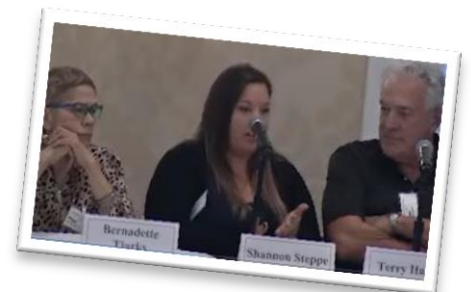
questionnaires, which asked them to rank various elements of their experiences on a numerical scale.

Once everyone finished eating, Steve Susman invited pre-selected volunteer jurors to join him onstage for a panel discussion. Susman then moderated a wide-ranging conversation that tracked the panelists’ experiences from summoning, empaneling, trial presentation, deliberation, and finally post-service. Each panelist provided thoughtful and articulate responses, and seemed to have a strong understanding of the process. Most noteworthy, almost every panelist agreed that he enjoyed the experience and would happily serve again. And the single lone dissenter was understandably hesitant because her trial had lasted over nine weeks. A video recording of the Dallas lunch is available [here](#).

Following the event, the Civil Jury Project reviewed the data collected from the table discussion, juror questionnaires, and panels. The results confirmed many of our suspicions. Namely, jurors take their responsibility seriously and consider it an great educational experience. They repeatedly drew upon words such as “civic duty,”

“important,” and “America.” A number of them even said that they were “honored” and “proud” to have participated.

This is not to suggest that the jurors offered no critiques. Many of them lamented the length of voir dire, their desire to ask questions of witnesses, and that lawyers tended to bore them with repetition and poor use of courtroom technology. Complaints about courthouse parking and traffic were also numerous.



The Dallas lunch included two eleven-person panels of articulate jurors.

We received very positive feedback following the event. Many voiced their interest in holding lunches quarterly in Texas and around the country. We therefore produced a memo explaining how to host one of these jury improvement lunches. It is available on our website, [here](#).



Bull is a new TV procedural drama on CBS following the antics of an intrepid jury consultant.

The Civil Jury Project has been drawing on the program to launch a broader discussion about the role of juries in our judicial system. You can read them [here](#) on Texas Lawyer.



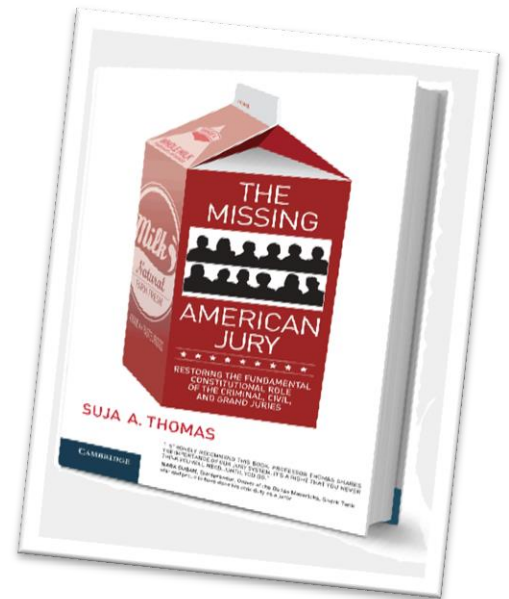
Steve Susman represented the Civil Jury Project on Bloomberg Radio

Executive Director Steve Susman was interviewed by Michael Best of "Bloomberg Law" on November 8. Their discussion reviewed the changes in litigation landscape over the last few decades and how those changes have come to affect public dispute resolution and the civil jury. You can listen to a recording of their conversation [here](#).

Where have all the juries gone?

The Civil Jury Project invited Profs. Suja Thomas (Illinois College of Law) and Burt Neuborne (NYU Law) to discuss Professor Thomas's new book "The Missing American Jury: Restoring the Fundamental Constitutional Role of the Criminal, Civil, and Grand Juries." Steve Susman moderated the hearty discussion.

The event opened with Prof. Thomas providing an overview of her book. The book emphasizes the constitutional role of civil, criminal, and grand juries. It argues that the jury is a core institution of government that should be recognized as a co-equal of the traditional constitutional actors (legislature, executive, and judiciary). Specifically it should be seen as a significant check to balance their powers and should therefore be treated as a



One of the main reasons Prof. Thomas offers to explain the jury's decline is the unwillingness of the traditional branches to acknowledge its significance. Whereas with other disputes between branches the Supreme Court has doctrines to balance authority, no such rule has emerged with respect to the jury. She highlights that the Court has upheld almost every procedural device restricting the civil jury that has come before it. This includes summary judgment—a procedure that she claims violates the 7th Amendment, as it did not exist at common law.

In response, Prof. Neuborne argued that while there is no denying that juries of all ilks are vanishing, this is better explained by the emergence of managerial judges, rather than disrespect for the institution. He said that judges have assumed a more active role in handling their dockets out of economic necessity. Moreover, he argued that summary judgment is a useful tool for weeding out wasteful cases. Indeed, if at common law a judge had power to order a new jury many times over until one returned a legally reasonable verdict, there is no reason that we cannot "move-up" that process.

The discussion touched on many additional topics, including criminal and grand juries. For those interested, a video recording of the Forum talk is available [here](#).



governmental "branch." It then explores the reasons for the decline of jury trials in the United States and the effects this decline has on our society and democracy. It further provides a global perspective on citizen involvement in public dispute resolution, and how it differs between countries.

Status of Project: 2017

The Civil Jury Project looks forward to continuing its efforts into 2017 with the following objectives:

- Continue our efforts to enlist and involve judicial advisors around the country
- Identify and study those courts who are trying the most jury cases, developing suggested techniques
- Devise empirical research projects, including replicating Eisenberg & Millers study of 8-K Forms as well as survey the general public's feelings toward civil juries.
- Encourage public discussion and debates about the pros and cons of public dispute resolution, particularly through the use of social media

This is but a sampling of our objectives for the New Year. A comprehensive list is available on our website, [here](#).

Thank you for your involvement in this important project. We believe that by working together we can reach a better understanding of how America's juries work and how they can be improved.



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