

Jury Matters

The Official News-
letter for the Civil
Jury Project at NYU
School of Law



February '17, Vol. 2, Issue 2

Upcoming Events

- Feb, 1-3 2017 Kansas Legal Revitalization Conference, Kansas City, *Susman on Vanishing Jury Trials—Why? Do we care? What to do?*
- Feb. 9, 2017 Jury Improvement Lunch, Houston, Texas
- Feb. 9, 2017 Texas Bus. Lit. Annual Seminar, Houston, *Susman and Jolly on Jury Trial Innovations*
- April 4, 2017 Civil Trial Innovations Conference, Missouri, *Susman on the Preservation of Trials*
- May 4, 2017 Jury Improvement Lunch, Dallas, Texas

Opening Statement

Dear Readers,

Welcome to another issue of the Civil Jury Project's newsletter. We remain the nation's only non-profit academic institution dedicated exclusively to studying and bettering the civil jury and raising awareness of its decline.

We have learned that the general public is not aware that jury trials (indeed all civil trials) are vanishing, and just informing them of this trend might help prevent further decline. We have also learned that virtually everyone who serves on a jury found it to be an enriching experience that they would welcome to repeat. Conversely, those who report for jury duty but are not selected, lament it as a waste of time. And those who have been summoned but have not yet reported, are searching for ways to avoid serving. If there were only some way to put the latter in touch with those who have served rather than those who were not selected, we could not only increase the yield from summons, but could heighten the public's interest in preserving jury trials. We also discovered that those who serve on juries quickly forget what they liked and disliked, and if we want them to provide convincing testimonials, we need to ask them about their experience shortly after dismissal.

The obvious solution was to use social media. Since late last year, we have been dramatically increasing our social media presence and recently launched an entirely new public-facing website. These new channels will help to not only bring our message to the public, but also help to amplify the public's voice back to us. If we are going to better civil justice in this country, we all must be involved in the fight.

If you would like to review the updated status of projects, simply click [here](#). Thank you for your continued support of the Civil Jury Project.

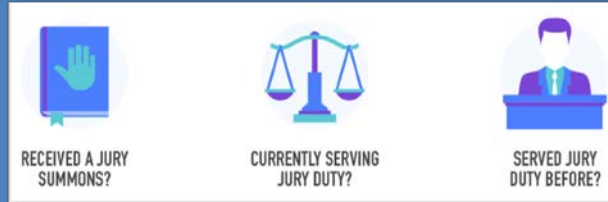
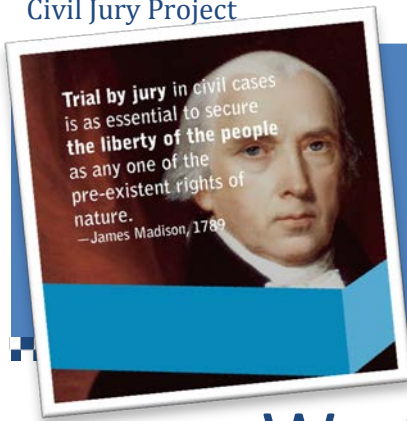
Sincerely,
Stephen D. Susman



The jury remains an integral part of our federal structure.

The right to trial by jury is the only right mentioned in all three of our founding documents—the Declaration of Independence, the Constitution, and the Bill of Rights—and continues to play an important role in preserving federalism.

Find out more on pg. 3



We the People. We the Jury.

The Civil Jury Project has expanded its social media presence and constructed an entirely new public-facing website.

The Civil Jury Project has always taken a multifaceted approach to its objective of studying and improving public dispute resolution. And we believe that one of the most effective ways to accomplish this task is to talk to those who serve on juries. This is why we developed [Jury Improvement Lunches](#) around the country, and it is precisely why we are diving headfirst into the world of social media.

Since late last year, we have been working with experts who specialize in the use of new media to advance social movement messaging over the Internet. With their assistance, we have kicked our online presence into high gear. This includes a full overhaul of our [Twitter](#), [Facebook](#), [YouTube](#), [Instagram](#), and [LinkedIn](#) pages.

We have been curating, authoring, and posting content daily on these channels. For instance, the above images of James Madison and Lin-Manuel Miranda have proved our most popular memes on social media. Furthermore, we are hard at work developing infographics and other easily-shareable information.

In addition to these, we have also launched an entirely new public-facing website called www.WethePeopleWetheJury.com. The purpose of this new website is to provide both a source of information to those who have just received their jury summons, but also to provide an outlet for those who have recently served. Furthermore, by having visitors answer short questionnaires, we hope to better

understand their experiences and use it to develop testable trial improvement innovations.

We will also be using this website to advance the news of the decline in civil jury trials more generally. While judges, practitioners, and academics are all very much aware that civil jury trials today account for the smallest percentage of trial disposition in our nation's history, the popular myth of an explosion of so-called frivolous litigation remains strong. We hope that visitors to the new website will walk away with a more complete understanding of what is happening in their courthouses around the United States.



We Want to Hear From You, Too!

In addition to these public-facing efforts, we are also excited to announce the launch of a blog focused on judges, practitioners, and academics like you. We want to hear about your trial experiences, your suggestions for how to better public dispute resolution, and your

ideas for how the Civil Jury Project can improve.

If you visit our current website <http://civiljuryproject.law.nyu.edu>, you will soon see a new "Commentary" tab. Clicking here will let you type into a text box or upload a document or PDF. Once we have

received a few responses, we will collate them into subject matter.

With your help, we hope to promote a broad and productive dialogue around this most important of issues.

Federalism & Juries by Richard Jolly

Juries were designed to be, and remain today, an integral part of the United States' federal structure. Even in 1835, Alexis de Tocqueville recognized that the American jury was fundamentally a "political institution." He noted "in no country are the judges so powerful as where the people share their privileges." Although Tocqueville doubted the jury's usefulness to the litigants themselves, he understood that jury service was an important and, critically, local form of participatory democracy.

These observations would have pleased the Founders, who had entrusted the jury with no less a responsibility than the preservation of federalism. As Prof. Akhil Amar notes, "The dominant strategy to keep agents of the central government under control was to use the populist and local institution of the jury." And as Prof. Suja Thomas highlights, the jury's role as a check on the powers of the federal executive, legislature, and judiciary, position it not merely as the "lower house" of the courts, but more a full-blown branch of government.

The jury's ability to act as a bulwark against powerful social and political actors has always been part of its appeal to its supporters and cause for reservation to its detractors. The founders, for instance, debated whether a guarantee to civil jury trial was necessary. True, it would help prevent encroachments from the federal government, but it could also undermine the young nation's ability to attract investments. Democracy can cut in more ways than one.

Of course, the antifederalist won with the inclusion of the 7th Amendment. Prof. Renee Lerner might suggest this victory was unsurprising.

Richard serves as the CJP's Research Fellow at NYU School of Law.



She reminds that revolutionaries around the world have often been fond of juries. For those under an imperial power with no popular representation, juries offer one of the only opportunities to participate. Once government representation is achieved, however, this role for the jury is minimized. When the people have a voice, it is less important for the jury to check the results of democracy. In part for this reason, other young nations who once experimented with juries, have greatly curtailed their use today.

The United States too has limited the jury's powers, but by no means as radically. And I would argue that this is not only because of the guarantees found in our Constitution. Instead, juries have long given voice to a culturally American skepticism of the federal government. This has at times been in ways that we might celebrate, such as refusing to give teeth to the Fugitive Slave Act or the 19th Amendment. But it has also been in far more despicable ways, like racial discrimination and preventing implementation of inclusionist policies. Again, it cuts both ways.

Even today, the recent tumultuousness in federal politics suggests that many remain deeply troubled with Washington D.C. The Tea Party Movement's revanchist rhetoric in 2010 and the growing protests against Donald Trump's presidency share the same core concern of an overreaching national government—concerns that the jury was designed to, and is still capable of, addressing.

The jury has certainly changed since 1789, but this does not mean that its role in preserving federalism is gone. That will only become a vestige if we allow attacks on jury rights to continue unchecked.



The Federalist Society sponsored a fantastic discussion between Profs. Lerner and Thomas on the past and future of jury trials.

You can watch a full video of the conversation by clicking [here](#).



CBS renewed Dr. Bull for a full 22-episode season, and we've kept up to date with our reviews of America's favorite intrepid jury consultant.

You can read our coverage of every episode on Texas Lawyer by clicking [here](#).

Status of Project: Spring 2017

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

- Continue our efforts to enlist and involve judicial, academic, and practitioner advisors around the country
- Identify and study those judges who are trying the most jury cases, endeavoring to understand their techniques
- Develop plain language pattern jury instructions
- Advance a large scale survey regarding public perceptions of public dispute resolution
- Encourage public discussion and debates about the pros and cons of public dispute resolution, particularly through the use of social and traditional media

This is but a sampling of our objectives for the coming 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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