

Los Angeles Lawyer

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Reclaim the Civil Right, Duty, and Power of Jury Service

GROUCHO MARX QUIPPED that he was married by a judge but should have asked for a jury. While juries have no place in wedding chapels, we should trust and rely upon them in litigation more than we currently do. We have all heard that jury trials and trial lawyers are headed toward extinction. Perhaps we did not pay much attention to this prediction. It is time we do, however, or we may witness the end of a critical function of government.

As the Founders of this country recognized, all juries, whether civil or criminal, serve as a check on government power. The Founders wanted courtroom decisions made by impartial citizens who possessed a fresh, collective wisdom, and not by a governmental agent who possessed allegiances and agendas different from those of citizens who were not employed by the state. They also wanted citizens to retain the power to send a message to the government.

Statistics reveal, however, that civil jury trials are drastically diminishing. In its 1991 annual report, the Judicial Branch for the state of California revealed that of 670,024 civil cases filed, 4,170 were tried before a jury. In 2010, it reported that 1,152,926 civil cases were filed but only 1,590 were tried before a jury. In its 1997 annual report, the Administrative Office of the U.S. courts revealed that 249,336 civil cases were pending in the U.S. district courts, with 4,557 tried to a jury. In 2011, with 270,839 cases pending, only 2,254 were tried to a jury. Only 1.1 percent of all civil cases terminated that year were by bench or jury trial.

Although it is difficult to pinpoint the reasons behind this disturbing trend, many trial lawyers cite some explanations. For example, the legal process has become increasingly laborious and expensive, especially due to the surge of statutes and rules relating to civil procedure. This tends to slow cases down, making them expensive and rendering courts inaccessible to the average citizen.

Additionally, misperceptions and prejudices about lawyers, jury trials, and our system of justice remain unchecked. Media reports include examples of miscarriages of justice (real or not) and omit the large number of good decisions that juries make daily. For example, we have allowed the McDonald's hot coffee case to dominate our minds as an example of a flawed system, yet we seem to ignore the thousands of trials that have never been reported in the media because they were not sufficiently sensational, sexy, or aberrant.

Lobbying efforts by special interests are also part of the problem. It is widely known that big business has paid millions of dollars to attack our esteemed system of justice. They propagate unfounded fiscal fears but do not point to the public benefit that lawsuits have brought to such important matters as civil rights and product safety. Corporate interests routinely include arbitration clauses in their contracts and enforce them with the blessing of our busy courts.

While affording parties an opportunity to settle is important, many cases are pushed into settlement far too aggressively. Many cases

are settled through scare tactics and antitrial sentiments made by settlement officers, mediators, and even lawyers. An unreasonable misconception persists that a jury trial is a failure of the system rather than the fulfillment of a constitutional promise.

Judges and lawyers have also fallen short in keeping jurors interested, particularly in this quickly evolving society. The legal profession is so steeped in tradition that even the most respected judges insist upon trial conduct that tends to distance jurors from the process, such as requiring attorneys to remain standing at the lectern during trial, reducing attorney involvement in voir dire, and disallowing juror ques-

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tions to witnesses. Also, lawyers frequently come to trial unprepared, consuming time by deposing witnesses aimlessly on the stand and fumbling through trial exhibits.

It also appears that people have forgotten their basic civics lessons taught in school, prompting Justice Sandra Day O'Connor to spearhead an effort to teach children civics through several online games (see www.icivics.org). The slow process of neglect and indifference is lethal to jury trials, and our system of justice is withering from lack of interest and attention.

There are several ways we, in our capacities as lawyers and citizens, can protect and strengthen our right to jury trial. For example, we should not perform work that is not necessary to either further the client's cause or protect the client's rights. Clients should not run out of resources before they have their day in court. We should keep them well informed so that they are able to make decisions that are best for them, unfettered by unreasonable fears and misperceptions. If, after doing that, a client decides not to settle, we should respect and support the decision and not attempt to force a settlement.

When trial comes, we should always try to keep jurors interested. We should encourage judges to allow juror questions during trial and use technology as much as possible to keep the jury engaged. We can be creative, be prepared, and waste as little time as possible.

Most important, we can encourage everyone—especially those who have been summoned to serve on a jury and who complain about it—to serve on a jury, and explain the importance of jury service. We can also steadfastly refuse to advise anyone about how to get out of jury service. In short, we can encourage our citizens to reclaim the government by serving on a jury. ■

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