

Our Civil Jury System and Those Oily Democrats

I write this column as I sit in the Superior Court Jury Assembly Room, fulfilling the privilege of serving as a juror in our democracy, waiting to see if I'll be sent to a courtroom.

The court staff, (who are absolutely fantastic, by the way), just finished playing a video about the jury system and the role jury trials play in our democracy. The video is excellent, explaining that the right to a jury trial appears several times in the Constitution because jury trials play a vital role in a democratic society. It explains that jury trials are rooted in the knowledge that no one politician, judge, regulator or singular group can be trusted – their word, not mine – to make the important decisions about people's lives and society that our court system is tasked with resolving. Instead, these decisions are best left to the community, as reflected in a jury.

As I look around the room, I notice that most are intently watching the video. I suspect it is the first time in a long time, if ever, many have heard this basic civics lesson.

According to the National Center for State Courts, civil jury trials have been on the decline over the past several decades, as more cases have been increasingly resolved by motion practice or non-jury proceedings, including forced arbitration. This decline is more precipitous in federal court than in state courts. Today, juries resolve less than 1% of federal civil cases, down from 5.5% in the 1960's. As for the number of civil jury trials that occur per capita, California courts are worse than the national average.

The decline in the civil jury trial system is not surprising to plaintiff's lawyers. The effect of changes to procedural rules and substantive law, along with the increasing costs of taking a case through trial, have taken their toll on access to justice.

Many of these changes start, directly or indirectly, with our lawmakers. And too often, our lawmakers lack even a basic understanding of the role courts play in society. Perhaps we should make candidates watch the Superior Court's jury video as a prerequisite to running for political office.

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by: Timothy Blood, CASD President



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Also, and increasingly, many of our lawmakers find it personally beneficial to remain ignorant of the civil justice system, instead taking campaign bounty from the very corporate interests who fear citizen scrutiny of their conduct, and then voting the way those corporate interests instruct. Yes, I speak of the corporate Democrat.

A recent example of the corporate Democrats' increasingly brazen conduct arose from the battle over legislation to curb petroleum use in California to stem global warming. Corporate Democrats, lead by Adam Gray of Merced, forced the Senate leader to withdraw his petroleum reduction bill. According to Sacramento Bee columnist Dan Morain, Gray accepted about \$160,000 from the oil industry since first campaigning for the Assembly in 2011. To kill the bill through poison pills, he introduced amendments to the legislation given to him by the oil industry lobbyists. Here's how Morain described the 20 or so corporate Democrats in the Assembly, who call themselves "moderates:"

As near as I can tell, being a moderate has little to do with their stands on social issues, or their willingness to challenge the core of Democratic support, public employee unions; they aren't.

Rather, the definition seems to revolve around a willingness to accept campaign

money from oil, tobacco or anyone else, and their malleability when donors come calling.

Morain, Dan, "How Oil Won the Battle for SB 350," *Sacramento Bee*, September 12, 2015, <http://www.sacbee.com/opinion/opn-columns-blogs/dan-morain/article34976295.html>, last visited September 16, 2015.

These same special interests are the enemy of the civil jury system and they will work hard and spend generously on people like Adam Gray to suppress ordinary American's access to justice and their right to a jury trial.

But the civil jury system is far from lost. First, commentators like Dan Morain are calling out the abuses of certain politicians. The fact that newspapers publish this type of story is a strong indicator that these stories resonate. Raising awareness is critically important.

Second, some of the systemic problems that work to suppress jury trials are being addressed. In both state and federal courts, the lack of court funding greatly aggravates the existing problem. The plaintiff's bar, through Consumer Attorneys of California, leads the state in lobbying to increase court funding, with increasingly favorable results. Meanwhile, other lawyer organizations recognize the seriousness of the problem and have taken action. The San Diego County Bar Association formed an ad hoc committee of lawyers from many different types of practices to lobby

San Diego legislators about the impact of the court funding crisis. The County Bar has made tremendous inroads educating San Diego Republicans and Democrats about the need to adequately fund the court system.

Third, with the help of CASD members like Skip Babbitt, CAOC successfully sponsored legislation to renew and improve the expedited jury trial law, allowing smaller dollar cases to cost-effectively be tried to a jury.

Fourth, many recognize the decline in civil jury trials presents a serious challenge to our democracy and are taking action to combat it. An example is attorney Stephen Susman of Texas-based Susman Godfrey, LLP (with offices in Los Angeles and elsewhere). Susman is funding a four-year project at New York University School of Law to research and promote public discussion about the vanishing jury trial. See Palazzolo, Joe, "Reversing the Decline of the Civil Jury Trial," *WSJ Law Blog*, July 28, 2015, at <http://blogs.wsj.com/law/2015/07/28/reversing-the-decline-of-the-civil-jury-trial/>, last visited September 16, 2015.

Fifth, we can beat the bad guys in the legislature. It takes time and money, but we don't need as much money as they do because the importance of access to justice and the jury trial system is an honest sell, grounded in core American values. We also need to actively and generously support candidates who are devoted to protecting the civil justice system and appreciate the role jury trials play in society. Those candidates also tend to be people of substance and integrity – the very type of elected official we all want.

I have many reasons to be optimistic. While I'm sure my fellow jurors griped about jury duty and joked about ways to get out of it, once there, they took it seriously. That's a very good indicator.

As for me, the day of jury duty ended early, without being called up to a courtroom. I guess there just aren't any jury trials going out today. Go figure. **TBN**

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