

# *PRESERVING* the Future of Juries & Jury Trials

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*The greatest service of citizenship  
is jury duty.*

ABRAHAM LINCOLN

# Preserving the Future of Juries & Jury Trials

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*[I]n the American States, as in the federal judicial system, a general grant of jury trial for serious offenses is a fundamental right, essential for preventing miscarriages of justice and for assuring that fair trials are provided for all defendants.”*

DUNCAN V. LOUISIANA, 391 U.S. 145, 158 (1968)

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# Introduction

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The right to a jury trial has long been heralded as a fundamental pillar of the American justice system. Thomas Jefferson included the denial of this right as a reason for seeking American independence.<sup>1</sup> It is referenced in three different sections of the U.S. Constitution (Article III and the Sixth and Seventh Amendments), the only right so prominently highlighted.<sup>2</sup> Nearly two centuries ago, Alexis de Tocqueville in *Democracy in America*, argued that the jury “puts the real control of affairs into the hands of the ruled or some of them rather than into those of the rulers.”<sup>3</sup> This sentiment underscores the importance of the jury system in ensuring that justice is administered not by the elite but by all citizens who bring their values and perspectives into the courtroom.

The United States Supreme Court has repeatedly emphasized the significance of jury trials in upholding constitutional rights. In case after case, including most recently *Duncan v. Louisiana* and *Taylor v. Louisiana*, the Court

has affirmed the fundamental right to a jury trial in the American justice system, ensuring that individuals accused of crimes have their case decided by a jury of their peers. Scholars also highlight the jury’s role in fostering democratic skills among citizens and maintaining the legitimacy of the legal system.<sup>4</sup>

Despite their time-honored importance, juries and jury trials are facing unprecedented challenges. Attacks on juries and jury trials over the past half century, especially in response to unpopular jury verdicts in both civil and criminal cases, have eroded public trust in the institution.<sup>5</sup> Perhaps as a result, fewer people are willing or able to serve as jurors, partly due to the inconvenience and financial hardship it can impose, and partly due to a decline in civic education and engagement. This has resulted in jury pools that are less representative of the communities from which they are selected, further diminishing public confidence in the system.

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1 THE DECLARATION OF INDEPENDENCE para 20 (U.S. 1776) (“For depriving us, in many cases, of the benefits of trial by jury.”)

2 U.S. CONST. art III, §2, cl. 3; amend. VI; amend VII.

3 ALEXIS DE TOCQUEVILLE, *DEMOCRACY IN AMERICA*, Book 1, ch. 16 (1835).

4 JOHN GASTIL et al., *THE JURY AND DEMOCRACY: HOW JURY DELIBERATION PROMOTES CIVIC ENGAGEMENT AND POLITICAL PARTICIPATION* (2010); Andrew G. Ferguson, *Jury Instructions as Constitutional Education: Reclaiming the Lessons of Jury Service*, 84 CO. L. REV. 233 (2013).

5 See generally Valerie Hans & Neil Vidmar, *Jurors and Juries*, in AUSTIN SARAT (ed.), *THE BLACKWELL COMPANION TO LAW AND SOCIETY* 195-211 (2004).

In addition to these concerns, the legal profession itself is grappling with structural issues that threaten the future of jury trials. The decline in the number of cases going to trial, driven by the rise of plea bargaining in criminal cases and negotiated settlements and alternative dispute resolution in civil cases, means that younger lawyers often lack the trial experience necessary to effectively advocate for their clients in front of a jury.<sup>6</sup> Lawyers who lack experience with jury trials are less prepared to oversee jury trials when they are selected to serve as trial judges. This creates a feedback

loop where fewer trials result in lawyers and judges who are less prepared to handle them, leading to even fewer trials and greater pressure to settle or plea bargain cases.

The implications of these challenges are far-reaching. Without meaningful reform, the jury system could become an increasingly marginalized part of the justice system, with fewer people participating and less public trust in the outcomes.



6 Shari S. Diamond & Jessica M. Salerno, *Reasons for the Disappearing Jury Trial: Perspectives from Attorneys and Judges*, 81 LA. L. REV. 119 (2020); Marc Galanter, *The Vanishing Trial: An Examination of Trials and Related Matters in Federal and State Courts*, 1 J. EMPIR. LEG. ST. 459 (2004).

# Methodology

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To preserve the future of juries and jury trials, the National Center for State Courts (NCSC) convened a meeting of representatives from a broad array of justice system stakeholders as a project under the Justice for All Reauthorization Act (JFARA).<sup>7</sup> To frame the stakeholder discussions, NCSC employed strategic foresight, a methodological approach designed to explore a range of possible futures of juries and jury trials within the American justice system as a vehicle for identifying critical vulnerabilities within the current jury system and proposing targeted strategies to preserve and strengthen jury trials. Critical vulnerabilities are those areas of weakness that threaten to weaken the jury system if not addressed. By focusing on these vulnerabilities, courts and other stakeholders can take proactive steps to ensure that jury trials remain a cornerstone of American democracy, providing a fair and impartial means of resolving disputes and upholding the rule of law.

The report is structured to provide an overview of the key issues facing the jury system today, followed by detailed strategies to address

each of these challenges. It concludes with appendices that offer resources for stakeholders interested in further exploring the future of jury trials and outline the strategic foresight methods used in the analysis. Our goal is to offer a blueprint for preserving and enhancing the jury system, ensuring its continued relevance and effectiveness in a rapidly changing society.



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<sup>7</sup> The Justice for All Reauthorization Act of 2016 provides grant funding through the U.S. Department of Justice, Bureau of Justice Assistance (BJA), to support state, tribal and local efforts to protect the rights guaranteed by the Sixth Amendment to the Constitution. In 2018, BJA awarded a grant to a partnership of the National Association of Criminal Defense Lawyers, the Association of Prosecuting Attorneys, NCSC, and RTI, International. The Future of Juries and Jury Trials was a project funded under that grant.



*The jury, which is the most energetic  
means of making the people rule,  
is also the efficacious means of  
teaching it how to rule well.*

ALEXIS DE TOCQUEVILLE, *DEMOCRACY IN AMERICA* 1:367

# Critical Vulnerability #1:

## *Foster Public Education and Engagement About the Jury System*

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One of the most pressing vulnerabilities facing the future of jury trials is the lack of public education and engagement regarding the jury system and jury service. For many, jury duty is seen as an inconvenience or a burden, something to be avoided rather than a privilege of citizenship and a vital civic responsibility. This perception is rooted in a broader decline in civic education and a growing disconnect between the public and the legal system.

Historically, jury service has been promoted as a cornerstone of democratic participation—a means by which ordinary citizens can directly influence the administration of justice. This view, articulated by figures like Judge Marvin Aspen, U.S. District Court, Northern District of Illinois, posits that jury duty is not just an obligation but a powerful exercise of democracy in action.<sup>8</sup> Serving on a jury allows citizens to reflect their community's values in the deliberative process, preventing injustice and ensuring that justice reflects the moral and ethical standards of the populace.<sup>9</sup>

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One of the most pressing vulnerabilities facing the future of jury trials is the lack of public education and engagement regarding the jury system and jury service.

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8 [Jurors Play a Crucial Role in the Operation of Democracy in our Nation – The Civil Jury Project at NYU School of Law.](#)

9 Jeffrey Abramson, *We, the Jury: The Jury System and the Ideal of Democracy*, 22-38 (1994).

In recent years, traditional appeals to civic duty have grown increasingly less persuasive, particularly in the face of rising partisanship and social division. In this landscape, amplified by social media, it has become more challenging to convey the importance of jury service in a way that resonates with varied and diverse audiences. Moreover, the decline in funding for civics education has left many citizens ill-prepared to understand the significance of their role as jurors.<sup>10</sup>

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**Engaging the public in a meaningful way requires a nuanced approach that acknowledges the varied experiences and perceptions of different communities.**

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The challenges extend far beyond K-12 education. Engaging the public in a meaningful way requires a nuanced approach that acknowledges the varied experiences and perceptions of different communities. For example, young people, communities of color, and working-class individuals may have unique concerns about the jury system that need to be addressed in culturally relevant ways.<sup>11</sup> While schools can serve as a conduit for educating youth, outreach to more dispersed groups may require creative strategies such as radio public service announcements during commute hours or more sustained outreach to the business community to support employees who are summoned for jury service. Additionally, simple lectures about the importance of jury service and civic duty may not be as impactful as providing real-world examples of how this aspect of the democratic system, and the empowerment of ordinary citizens, benefits the local community. Helping individuals understand the jury system and principles in a non-abstract manner may be achieved by townhall meetings hosted by local judges, public oral arguments, mock jury trials, and other initiatives that demystify the process and allow citizens to experience the system before being empaneled on an actual jury.

Effective public education and engagement strategies must also account for the realities of today's technology-based world. Traditional forums for social and educational engagement

10 [A Cry for Help: Civic Education in Today's America \(harvard.edu\)](#)

11 Susan C. Losh, Adina W. Wasserman & Michael A. Wasserman, *What Summons Response Reveal About Jury Duty Attitudes*, 83 *Judicature* 304 (May-June 2000).

“ ..... ”

Effective public education and engagement strategies must also account for the realities of today’s technology-based world.

have largely shifted online. Reaching the public now demands innovative, attention-grabbing content that can compete with the deluge of information available on social media. Outreach efforts also need to be inclusive, providing information in multiple formats and languages to engage a wide variety of communities, cultures, and non-English speaking populations who may be future jurors even if they are not presently qualified for jury service.<sup>12</sup>

Courts, businesses, educators, and others share responsibility for addressing these vulnerabilities. Courts, with their unique ability to convene diverse audiences, must lead efforts to educate and engage the public about the importance of jury service.

However, the task is far too large for courts to resolve. Businesses, which benefit from a civically engaged workforce, can and should also play a substantial role in promoting jury service among their employees. Educators, who shape the civic knowledge and attitudes of future generations, must ensure that civics education is not neglected in favor of other subjects. And cultural, civic, religious and other groups have a voice in addressing these profound issues as well.<sup>13</sup>



<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

## Strategies to Address the Vulnerability

- **Cultivate Modern Civic Engagement:** Develop outreach and education initiatives that resonate with diverse communities, using platforms like social media to reach younger audiences with creative and culturally relevant content. Maintain a social media presence and develop technological capabilities and resources for court spokespeople. Obtain celebrity endorsements and capitalize on popular shows such as [Jury Duty](#) to create awareness and enthusiasm.
- **Seek Feedback:** Seek to engage jurors after a trial's conclusion by sending them a thank-you note and by asking them to complete a survey about their experience, including whether they learned anything new. Consider the feedback both to seek to improve the experience (see vulnerability #2) and to determine key points of confusion that may need to be clarified in existing outreach materials. Use positive testimonies with permission in additional outreach materials.
- **Teach Students:** Collaborate with lawyers, judges, and educators to implement mock jury trial programs for students, conveying a deeper understanding of the jury system and the elements involved by recreating the experience.
- **Engage the Public:** Foster transparency and dialogue by hosting town hall forums open to the public, allowing participants to meet judges, ask questions, and express their concerns and views on the legal system. This allows judges to address skewed impressions residents may have about juries and at the same time receive feedback from a variety of perspectives that may be helpful when considering vulnerability #2.
- **Enhance Juror Orientation:** Provide engaging educational materials, including videos, both before jurors receive a summons and during their service to improve understanding and reduce anxiety about the process.
- **Outreach into Disenfranchised or Underrepresented Communities:** Solicit participation from local community leaders. Distribute information about jury service in multiple languages to reach a broader audience, including those who may be future jurors but are not yet proficient in English.
- **Collaborative Engagement:** Solicit employer support for jury service. Encourage businesses and educators to take an active role in civic education, fostering a workforce and a generation that values and understands the importance of jury service. Obtain state and local legislative support. Engage in efforts across branches in government to find ways to incentivize businesses to offer paid time off, including tax incentives.
- **Lead the Way:** Prioritize judicial leadership in conveying the importance of jury service.

## Examples of Strategies in Action

- The Superior Court in Maricopa County, Arizona, has successfully targeted employees through radio public service announcements about jury service, broadcast during morning commute hours, increasing awareness among a key demographic.
- Among other states, the Iowa State Bar Association coordinates a [statewide mock trial program](#) to teach students, with lawyers as coaches, about the jury system, the complexities of legal contexts, the language expressing law, and the elements of claims or defenses.
- Several states have published juror orientation videos online to educate potential jurors about the process and to improve participation rates. The Center for Jury Studies at The National Center for State Courts has compiled a [database](#) including 77 state and local juror orientation videos produced within the past 10 years from 33 states and the District of Columbia.
- The Iowa Supreme Court conducts a unique outreach initiative, holding [public court sessions](#) and hearing arguments in various cities a few times each year to increase public awareness and understanding of the judicial process by allowing local residents to observe how the Supreme Court listens to real cases. Afterward, the justices sometimes [engage with the community informally](#), answering questions and offering insights into how the judicial system functions. Many businesses offer paid time off for civic duties, such as jury service, to encourage employees to fulfill their civic responsibilities without financial hardship.

By addressing the public's need for education and engagement with the jury system, stakeholders can help restore public confidence in the legal process and ensure that the jury system remains a vital component of American democracy.

Additional resources for addressing critical vulnerability #1 can be found in [Appendix A](#).

*We find the defendant guilty  
and recommend that he be  
sentenced to jury duty.*

CHON DAY

# Critical Vulnerability #2:

## *Focus on the Juror-Centered Experience*

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The experience of serving as a juror is a crucial aspect of maintaining the integrity and effectiveness of the jury system. Historically, the juror-centered experience has not been a high priority, leading to barriers that discourage participation and diminish the quality of jury service. The failure to focus on the juror-centered experience poses significant vulnerabilities to the future of jury trials, as a negative juror experience can deter others from serving, ultimately weakening the system's ability to function effectively.

From one perspective, jury service can be viewed as inconvenient and burdensome. Potential jurors face various obstacles, such as difficulty in traveling to and from the courthouse, the challenge of balancing jury duty with personal and professional responsibilities, inadequate compensation, and the stress of the experience.<sup>14</sup> These barriers are especially difficult for single parents to navigate or for individuals who work multiple jobs. These barriers may be exacerbated by outdated trial procedures that do not support

**A negative juror experience can deter others from serving, ultimately weakening the system's ability to function effectively.**

14 NCSC [found](#) in 2022 that the average amount of juror pay on the first day of service in state courts was a meager \$16.61. While some jurisdictions have since raised juror compensation rates, many still lag behind minimum wage. Additionally, costs associated with transportation are not always reimbursed. BRANDON W. CLARK, JUROR COMPENSATION IN THE UNITED STATES (Apr. 2022).





active learning or engagement during the trial process. For example, many judges and lawyers still prohibit jurors from taking notes, receiving preliminary instructions, having written copies of instructions, or submitting written questions to witnesses, practices that have been shown to enhance juror understanding and attentiveness.<sup>15</sup>

The consequences of a poor juror experience extend beyond the individual juror. When jurors leave the courthouse with negative impressions, those perceptions can spread through their communities, discouraging others from participating in future jury service. This reduces the pool of willing jurors and risks creating a jury system that is less

representative of the community, undermining public trust in the justice process.

Addressing this vulnerability requires a fundamental shift in how the justice system approaches jury service. Instead of viewing jurors as passive observers of trial proceedings, judges and lawyers should recognize them as central figures in the trial process who deserve respect and support throughout their service. Furthermore, courts must consider the future impact today's jurors have on public perceptions of jury service. This shift involves rethinking everything from the moment a potential juror receives a summons to the post-trial support they may need, especially in cases involving traumatic testimony or evidence.<sup>16</sup>

15 B. Michael Dann & Valerie P. Hans, *Recent Evaluative Research on Jury Trial Innovations*, CT. REV. 12 ( Spring 2004); Jennifer Bailey, [Let Jurors Ask Questions](#), 107(1) JUDICATURE (citing Marina Garcia Marmolejo, Jack of All Trades, Masters of None: Giving Jurors the Tools They Need to Reach the Right Verdict, 28 Geo. Mason L. Rev. 149, 177 (2020)).

16 *Id.*

Remote jury selection is one innovation that can significantly improve the juror experience. Allowing potential jurors to participate in parts of the selection process online saves jurors' time and reduces associated costs, such as childcare, transportation, and parking. For these reasons, remote selection can increase participation rates, as it offers a more flexible and convenient option for many individuals.<sup>17</sup>

It is also critical for courts to enhance juror utilization. Courts should strive to minimize the number of prospective jurors who report for service but are never sent to a courtroom, and the time jurors spend waiting, by improving the efficiency of the selection and trial processes. This could involve better scheduling practices or the use of technology to streamline administrative tasks.<sup>18</sup> Courts should also consider using pretrial case-specific questionnaires that judges and lawyers could use to identify and remove jurors who cannot serve impartially without having the juror appear in person at the courthouse. When prospective jurors' time is valued, they feel respected and are more likely to have a positive experience, to be willing to serve again in the future, and to share their positive experience with others who may be called to serve as jurors.<sup>19</sup>

Another essential aspect of a juror-centered approach is addressing the mental health needs of jurors.<sup>20</sup> Exposure to graphic or disturbing testimony can be traumatic, and courts have a responsibility to provide resources, such as counseling services, to help jurors cope with any psychological distress. Some courts have already begun to implement such measures, recognizing that supporting jurors' mental health is not just a matter of compassion but also crucial for maintaining the overall health of the jury system.

**When prospective jurors' time is valued, they feel respected and are more likely to have a positive experience, to be willing to serve again in the future, and to share their positive experience with others who may be called to serve as jurors.**

17 "Remote Jury Selection: Technology and Staffing," Joint Technology Committee Quick Response Bulletin (2023). Available at [https://www.ncsc-jurystudies.org/\\_data/assets/pdf\\_file/0037/91999/JTC-2023-04-Remote-Jury-Selection-QR-Final.pdf](https://www.ncsc-jurystudies.org/_data/assets/pdf_file/0037/91999/JTC-2023-04-Remote-Jury-Selection-QR-Final.pdf); Streamlining Jury Selection: the Power of Remote Case-Specific Questionnaires (webinar hosted by NCSC, Sept. 5, 2024), available at <https://vimeo.com/1007729187>.

18 "Saving Money for Everyone: The Current Economic Crisis Is An Opportunity to Get Serious About Improving Juror Utilization." Available at [06\\_Hannaford.indd \(ncsc-jurystudies.org\)](https://www.ncsc-jurystudies.org/_data/assets/pdf_file/0017/7505/juror-utilization-best-practices.pdf).

19 "Best Practices for Effective Juror Utilization," Jury Managers' Toolbox, National Center for State Courts (2009). Available at [https://www.ncsc-jurystudies.org/\\_data/assets/pdf\\_file/0017/7505/juror-utilization-best-practices.pdf](https://www.ncsc-jurystudies.org/_data/assets/pdf_file/0017/7505/juror-utilization-best-practices.pdf).

20 [CONF. STATE COURT ADMINISTRATORS, CITIZENS ON CALL: RESPONDING TO THE NEEDS OF 21ST CENTURY JURORS \(Dec. 2023\)](#).

## *Strategies to Address the Vulnerability*

1. **Implement Remote Jury Selection:** Utilize technology to allow potential jurors to complete the selection process online, reducing the time and costs associated with in-person appearances and increasing participation rates.<sup>21</sup> If a prospective juror lacks access to a stable internet connection, consider offering publicly available computers at a private setting in the courthouse for the purposes of jury selection.
2. **Improve Juror Utilization:** Enhance scheduling practices to minimize wait times and ensure that jurors' time is used effectively, improving their overall experience.
3. **Modernize Trial Procedures:** Allow jurors to take notes, ask questions, and use visual aids during the trial to enhance their engagement and understanding of the proceedings. Consider permitting jurors to take breaks at more frequent intervals in support of juror comprehension and attentiveness.
4. **Support Juror Mental Health:** Provide mental health resources, such as counseling services, to jurors who are exposed to traumatic testimony or evidence during trials. Additionally, include information on local mental health support services for potential jurors – even if they are not selected.

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<sup>21</sup> See [JOINT TECHNOLOGY COMMITTEE, REMOTE JURY SELECTION: TECHNOLOGY AND STAFFING \(Apr. 2023\)](#) for guidance on conducting remote jury selection.

## Examples of Strategies in Action

- Several courts have adopted remote jury selection processes, which have been particularly effective in increasing participation among individuals who may otherwise face significant barriers to in-person attendance.
- The Boston Marathon bombing trial is an example where jurors were provided with counseling services funded by the federal government, recognizing the potential trauma associated with serving on such a high-profile case.<sup>22</sup> Massachusetts recently implemented a program offering mental health counseling to all jurors, not just those serving in high-stress trials.
- Juror note-taking, the submission of written questions to witnesses, and other decision aids have been extensively studied over the past three decades and were found to increase juror comprehension and recall without prejudicing the parties or burdening trial procedures. Both jurors and judges report increased engagement and confidence in the outcomes.

When courts focus on the juror-centered experience, they create a more efficient, effective, and humane jury system. This approach not only benefits the jurors themselves but also strengthens the overall integrity and public trust in the justice system.

Additional resources for addressing critical vulnerability #2 can be found in [Appendix B](#).

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Remote jury proceedings have increased access for prospective jurors to attend and participate in trials. Barriers that often prevent jurors from serving, such as finding childcare and transportation, paying for parking, and having unknown schedules, are frequently eliminated as hardships for participants involved in remote voir dire processes and trials. Courts have anecdotally reported increased participation rates, which typically result in more diverse venires.

JTC QR BULLETIN ON REMOTE JURY SELECTION

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<sup>22</sup> Dawn E. McQuiston et al., Vicarious Trauma in the Courtroom: Judicial Perceptions of Juror Distress, Judges' J., Spring 2019

*You can only protect your liberties  
in the world by protecting the  
other man's freedom.*

CLARENCE DARROW

# Critical Vulnerability #3:

## *Increase Capacity and Incentives for Jury Trials*

The jury trial, which was once considered the gold standard of justice in both civil and criminal cases, is increasingly under threat due to insufficient capacity within the legal profession and the growing disincentives for pursuing jury trials. This vulnerability is particularly concerning because it undermines the very foundation of the Sixth Amendment right to a jury trial, which guarantees that individuals accused of crimes have the opportunity to be judged by their peers.

One of the most significant challenges is the declining number of cases that go to trial. The rise of plea bargaining and alternative dispute resolution has dramatically reduced the frequency of jury trials, particularly in criminal cases. Today, only a small percentage of federal and state cases are decided by juries, with the vast majority being settled through guilty pleas or other non-trial methods.<sup>23</sup> This trend is not just a result of convenience; it reflects deeper structural issues within the legal system.<sup>24</sup>

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Today, only a small percentage of federal and state cases are decided by juries, with the vast majority being settled through guilty pleas or other non-trial methods.

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23 [PAULA HANNAFORD-AGOR & MORGAN MOFFETT, 2023 STATE-OF-THE-STATES SURVEY OF JURY IMPROVEMENT EFFORTS: VOLUME AND FREQUENCY OF JURY TRIALS IN STATE COURTS \(May 2024\)](#); National Association of Criminal Defense Lawyers, *The Trial Penalty: The Sixth Amendment Right to Trial on the Verge of Extinction and How to Save It* (2018).

24 [Growing backlog of court cases delays justice for crime victims and the accused - CBS News: U.S. Courthouses' Backlog On Criminal Cases Could Take Years To Get Through](#) : NPR

A major factor contributing to this decline is the high cost of jury trials. Preparing for a trial involves extensive discovery, often consultation with expert witnesses, and management of large volumes of evidence, all of which can be prohibitively expensive. For many trial lawyers and their clients, the financial and time commitments required for a jury trial often outweigh the perceived benefits, particularly because the outcome is uncertain. The number of judicial officers has not kept pace with increased caseloads. These factors create incentives – by both attorneys and judges – to encourage pretrial plea agreements or settlements, perceived as more efficient, cost-effective, and predictable.<sup>25</sup>

More fundamentally, the legal profession itself is facing a capacity crisis. Many newer attorneys have little to no experience in jury trials, and

opportunities for young lawyers to gain trial experience have become increasingly rare. Without this foundational experience, fewer attorneys feel comfortable taking cases to trial, further perpetuating the decline in jury trials.<sup>26</sup>

The implications of this trend are profound. As fewer cases go to trial, the skills and experience necessary to conduct jury trials are eroding within the legal profession. This creates a feedback loop where the lack of experience leads to fewer trials, which in turn reduces opportunities for gaining that experience.<sup>27</sup> Additionally, the lack of trial experience among lawyers means that when cases do go to trial, they may not be handled as effectively, potentially leading to less favorable outcomes for clients and, at least indirectly, undermining public confidence in the jury system.

“.....  
As fewer cases go to trial, the skills and experience necessary to conduct jury trials are eroding within the legal profession. This creates a feedback loop where the lack of experience leads to fewer trials, which in turn reduces opportunities for gaining that experience.  
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25 [Shari S. Diamond & Jessica Salerno, Reasons for the Disappearing Jury Trial, 81 LA. L. REV. 119 \(2020\).](#)

26 [Tracy W. McCormack & Christopher J. Bodner, \*Honesty is the Best Policy: It's Time to Disclose Lack of Jury Trial Experience\*, U. TEXAS LAW PUBLIC LAW RESEARCH PAPER No. 151 \(Apr. 8, 2009\).](#)

27 [The System: The Truth About Trials | The Marshall Project](#)



	Plea Offer	Trial Penalty	Correct Decision	Uncertainty
1	20 years	0 years	Go to Trial	Low
2	15 years	5 years	Leaning Against Plea	Medium
3	10 years	10 years	Ambivalent	High
4	5 years	15 years	Leaning for Plea	Medium
5	Probation	20 years	Take Plea	Low

Table illustrating the potential impact of different plea offers in a hypothetical murder prosecution with a mandatory 20-year sentence. Reprinted with permission from Jeffrey Bellin, *Plea Bargaining's Uncertainty Problem*, 101 Tex. L. Rev. 539, 579 (2023).

In criminal cases, the disincentives for pursuing a jury trial are even more stark. Defendants who choose to go to trial often face the prospect of much harsher sentences if convicted—a phenomenon known as the “trial penalty.” This can be a powerful deterrent, particularly when coupled with the financial burdens associated with a trial, such as court fees, fines, and the costs of legal representation. For many defendants, pleading guilty to a lesser charge, even if they believe themselves to be innocent, is seen as the safer option.<sup>28</sup>

Addressing this critical vulnerability requires a multifaceted approach. Law schools, bar associations, and the courts must work together to ensure that future generations of lawyers are equipped with the skills and experience

necessary to conduct jury trials. This includes not only enhancing trial advocacy training and clinical trial opportunities as well as externships with trial opportunities in law schools, but also creating more opportunities for young lawyers to gain trial experience early in their careers.

Structural reforms and additional funding are also needed to reduce the disincentives for pursuing jury trials.<sup>29</sup> This could involve increasing the number of judgeships, providing greater financial support for public defenders and legal aid organizations, increasing funding for trial preparation, and addressing the trial penalty in sentencing that disproportionately penalizes those who exercise their right to a jury trial.

28 Diamond & Salerno, *supra* note 25, at 126; National Association of Criminal Defense Lawyers, *supra* note 23.

29 [Jury trials are disappearing. Here's why. | Injustice Watch](#)



## Strategies to Address the Vulnerability

1. **Enhance Legal Education:** Law schools should prioritize trial advocacy as a core component of the curriculum, as well as expand trial opportunities in clinics and externships, ensuring that all graduates have basic trial skills before entering the profession.
2. **Adopt Best Practices:** Stephen Susman, the former executive director of the Civil Jury Project at New York University School of Law, offered several [recommendations](#) for how judges can reduce the expense and increase the reliability of jury trials.
3. **Create Opportunities for Trial Experience:** Courts and law firms should collaborate to provide young lawyers with more opportunities to participate in jury trials, such as through partnerships between large firms and public defenders' offices.
4. **Encourage Trial Judges to Exercise Discretion in Sentencing:** Trial judges have a great deal of discretion in sentencing. Judicial education programs should include information on the impact of harsher sentences on defendants who might otherwise choose trial by jury and encourage judges to exercise their discretion to avoid penalizing defendants for exercising their right to a jury trial.
5. **Reform Sentencing Guidelines:** Address the trial penalty by revising sentencing guidelines to reduce the disparity between sentences for those who plead guilty and those who are convicted at trial.
6. **Increase Support for Legal Representation:** Provide additional funding for public defenders and legal aid organizations to ensure that defendants have access to quality representation and are not pressured into plea deals due to financial constraints.

## Examples of Strategies in Action

- Washburn University's School of Law's "[Third Year Anywhere](#)" Program permits eligible third-year students to complete their third year remotely while externing in a city of their choosing.
- In Virginia, a 2021 legislative change permitted criminal defendants who were convicted by jury to request sentencing by the trial judge rather than by the jury, which had historically been considerably more punitive than judges.<sup>30</sup> Since then, Virginia trial judges report substantial increases in the rate of defendants seeking jury trials.
- The University of Florida's Levin School of Law's "[Semester in Practice](#)" Program allows third-year students to participate in 6-10 credit placements, which lets them work 21-35 hours a week in the location of their choice.
- Some large law firms have begun "lending" new associates to local public defenders' offices for a period of two to three years, allowing these young lawyers to gain trial experience while helping to alleviate the workload in understaffed public defenders' offices.
- Recent discussions around sentencing reform have focused on reducing the trial penalty, with proposals to narrow the sentencing disparity between plea deals and trial convictions to make it less punitive for defendants to exercise their right to a jury trial. The [National Association of Criminal Defense Lawyers](#) and the Coalition to End the Trial Penalty [hyperlink to [endthetrialpenalty.org](#)] have resources and information on this topic.<sup>31</sup>

Ensuring that lawyers are well-equipped to handle trials and that defendants are not unduly penalized for seeking their day in court are essential steps in safeguarding the future of jury trials in America.

The phenomenon of insufficient capacity and disincentives for jury trials serves as a barrier to justice. The legal profession can help preserve the integrity of the jury system. Ensuring that lawyers are well-equipped to handle trials and that defendants are not unduly penalized for seeking their day in court are essential steps in safeguarding the future of jury trials in America.

Additional resources for addressing critical vulnerability #3 can be found in [Appendix C](#).

30 [Nancy J. King & Rosevelt L. Noble, \*Felony Jury Sentencing in Practices: A Three-State Study\* 57 VANDERBILT L. REV. 885 \(2004\).](#)

31 [See NAT'L ASSOC. CRIM. DEFENSE LAWYERS & NAT'L FOUND. FOR CRIM. JUST., ORGANIZING A NATIONAL MOVEMENT TO END THE TRIAL PENALTY: REPORT OF THE 2021 NACDL PRESIDENTIAL SUMMIT \(2004\).](#)

*When courts are unable to share  
data-driven stories that demonstrate  
their effectiveness ... [they risk  
losing] the public trust that is the  
foundation of the courts' legitimacy.*

JUST HORIZONS

# Critical Vulnerability #4:

## *Identify and Address Disparities Between Values and Practices*

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A significant and often overlooked vulnerability within the jury system is the disparity between the values that the system is supposed to uphold and the actual practices that take place in court. Misalignment between ideals and reality threatens the integrity of jury trials and, by extension, the broader justice system. Addressing this vulnerability is challenging because it requires a willingness to confront sometimes uncomfortable truths about how the system operates and the impact of these practices on both jurors and litigants.

At its core, the jury system serves several key functions. It acts as a bulwark against tyranny. It confers legitimacy on the law. It injects community values into the adjudicative process. It educates jurors and, by extension, the broader public, about the rule of law. It provides a baseline for judges, lawyers, and litigants to assess the costs and benefits of non-trial dispositions. And, ultimately, it resolves disputed issues of fact and decides cases that have resisted resolution by other means. In serving these functions, the jury embodies America's fundamental values of civic

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However, there is an historical and growing recognition that these ideals are not always realized in practice, particularly when it comes to ensuring that juries are representative of the communities they serve, that trial procedures facilitate jurors' ability to serve and foster their informed decision-making, and that the right to a jury trial is accessible to all.

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participation, due process, equal protection, promoting the common good, protecting individual liberty and dissenting voices, and holding wrongdoers accountable.<sup>32</sup> However, there is an historical and growing recognition that these ideals are not always realized in practice, particularly when it comes to ensuring that juries are representative of the communities they serve, that trial procedures facilitate jurors' ability to serve and foster their informed decision-making, and that the right to a jury trial is accessible to all.<sup>33</sup>

Like other areas of legal culture, jury operations and trial practices tend to become firmly entrenched over time. They are often designed to meet the needs of internal stakeholders who are generally reluctant to make changes to systems that they view as working “good enough,” especially when proposed improvements require adjustments in other areas of court operations or threaten to destabilize well-established power structures. Inertia is a powerful force that often prevents reform efforts from taking root unless external pressure such as legislation or technology compels change.

32 ANDREW G. FERGUSON, WHY JURY DUTY MATTERS: A CITIZEN'S GUIDE TO CONSTITUTIONAL ACTION (2013).

33 [Mary R. Rose, Raul S. Casarez, and Carmen Gutierrez, Jury Pool Underrepresentation in the Modern Era: Evidence from Federal Courts, 15\(2\) Journal of Empirical Legal Studies 1 \(2018\).](#)

In the example of representative jury pools, many of the “easy fixes” for underrepresentation, such as replacing key-man systems with random selection from broad-based master jury lists, were accomplished decades ago. Today’s reforms, including increased juror compensation, shorter terms of service, and especially more effective public education and outreach, will require a sustained commitment to invest in concrete resources and in behavioral and attitudinal change. Similar dynamics affect reform initiatives related to supporting informed juror decision-making and preserving litigants’ meaningful right to trial by jury.

Addressing the disparity between values and practices requires a concerted effort from all stakeholders in the justice system—courts, bar organizations, law schools, and business and community organizations—to acknowledge shortfalls where they exist. It should begin by identifying objective performance measures related to the vulnerabilities identified in this report. As noted business management guru Peter Drucker observed, “If you can’t measure it, you can’t improve it.” At a very high level, juror response and appearance rates might serve

as reasonable measures of public engagement with jury service while the proportion of requests from jurors to be excused from service due to hardship might do so as a measure of how well the justice system reduces barriers to service. Similarly, trial rates might measure the extent to which litigants feel comfortable taking their disputes to trial while the length of time from filing to trial could measure the jurisdiction’s capacity for conducting jury trials. Appendix D suggests other measures relevant to these vulnerabilities. For each of these measures, it will be important to collect and analyze data on juror demographic characteristics to identify disparities and inform targeted interventions that promote fairness and equity. Of course, justice system stakeholders must then be scrupulously transparent about the findings with each other and with the broader public. This is how we can hold ourselves accountable for addressing the gap between values and practices.

## *Strategies to Address the Vulnerability*

- 1. Identify Relevant Performance Measures:** For each vulnerability, identify a range of objective performance measures related to key vulnerabilities.
- 2. Improve Data Collection and Methods:** Use a variety of data and methods to assess current performance, including data extracted from case management and jury automation systems, public opinion surveys, juror exit surveys, and stakeholder focus groups. Participatory research methods, in which research subjects (prospective jurors, litigants, attorneys) are invited to assist in the design of projects, can enhance the quality and validity of data collection and ensure more accurate interpretation and dissemination of results.
- 3. Disseminate Findings Often and Widely:** Keep the topic of jury system improvement efforts as a priority in judicial and bar education programs, in reports to state and local executive and legislative bodies, through regular media updates, and in meetings with community stakeholder organizations including local business leaders. Use the fullest possible range of communication strategies, including video and audio clips on social media.
- 4. Foster Community Engagement:** Engage deeply with local communities by holding public forums and discussions to better understand and address the concerns of underrepresented groups.

“

When there is disparity between the values underscoring the right to trial by jury and the actual practices employed to conduct jury trials, stakeholders should work towards a jury system that is equally accessible by all who wish to utilize it, whether as a juror or as an individual exercising their jury trial right.

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## Examples of Strategies in Action

- Some states, such as California, have implemented pilot programs to increase juror compensation and mileage reimbursement, making it more feasible for individuals from diverse backgrounds to serve on juries.
- Harris County, Texas, has conducted studies on jury pool representation and has used the findings to inform policies aimed at increasing diversity within its juries, thereby improving the perceived legitimacy of the court's decisions.
- Efforts to reduce the financial and legal pressures that coerce defendants to accept plea offers, such as those advocated by the Fines and Fees Justice Center, promote greater access to jury trials.

When there is disparity between the values underscoring the right to trial by jury and the actual practices employed to conduct jury trials, stakeholders should work towards a jury system that is equally accessible by all who wish to utilize it, whether as a juror or as an individual exercising their jury trial right. This involves not only implementing specific strategies to improve the representativeness and fairness of jury trials but also fostering a broader cultural shift within the justice system that prioritizes transparency, accountability, and community engagement.

Additional resources for addressing critical vulnerability #4 can be found in [Appendix D](#).



# Appendices

# Appendix A

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## *Stakeholder Resources to Support Public Engagement and Education About the Jury System (Vulnerability #1)*

### **COURTS**

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- NCSC guidance on creating an effective juror orientation video can be found [here](#).
- [2023 - Justice for All: Orientation to Jury Service \(youtube.com\)](#)
- [NYS Unified Court System \(nycourts.gov\)](#)
- [Oregon Judicial Department : Online Jury Orientation : Jury Duty : State of Oregon](#)

### **BUSINESSES**

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- [The Chamber of Commerce](#) has developed several programs and initiatives aimed at strengthening civic society that businesses may find useful when considering how they can promote jury service among their employees and how they can contribute to an active, informed citizenry.
  - » [The Civic Trust](#) is a nonpartisan, educational initiative dedicated to enhancing civic literacy, skills, and participation across schools, workplaces, and communities.
  - » The [National Civics Bee](#) is an annual competition among 6<sup>th</sup>, 7<sup>th</sup>, and 8<sup>th</sup> grade students to encourage civic engagement and community service.
- [The Business Alliance for Effective Democracy](#) is an initiative of the Bipartisan Policy Center's Democracy Program. The Alliance is a select group of major U.S. corporations seeking improvements to democracy. The Bipartisan Policy Center's Democracy Program provides member companies with analysis and insight to help them navigate new policy and political developments.
- [Brands for Democracy](#) is a nonpartisan initiative that brings companies together and supports their efforts to empower employees and customers to take civic action.

- [Business for America](#) is a coalition of civic-minded business leaders and purpose-driven companies who seek to promote government that works for all Americans. BFA held a [webinar](#) -- “America’s Civic Education Gap: What Can Business Do?” -- on how the private sector can make an impact by supporting K-12 civics education in their state and communities.
- [Civic Alliance](#) is a nonpartisan coalition of businesses aiming to empower US employees with resources and workplace policies that enable civic participation. Some examples of initiatives organized by the Civic Alliance include the [Election Day of Service](#), which is an ongoing effort by companies to recruit poll workers, offer physical spaces for voting centers, and provide legal support for election workers who come under threat.
- [Civics at Work](#) is an initiative of the Center for Strategic and International Studies. Civics at Work brings together civics groups and business leaders to reinvigorate civics literacy as a national and economic security imperative. Some of the resources the initiative provides includes “[Civics at Work: Implementation Guide for Businesses](#)” and “[Civics for Adults: A Guide for Civics Content Providers](#).”

## EDUCATORS

- [iCivics](#) U.S. Supreme Court Justice Sandra Day O’Conner founded this nonprofit organization in 2009 to advance civic learning by providing educators and students with the knowledge, skills, and resources needed to embrace and engage in civic life.
- [JuryServiceLesson.pdf \(annenbergclassroom.org\)](#) Provided by the Leonore Annenberg Institute for Civics at the University of Pennsylvania, this 3-4-day civics/government lesson day plan is for middle school and high school students and includes selected readings.
- [We the Jury. complete program | Iowa Judicial Branch \(iowacourts.gov\)](#) Public service project for high schools by the Young Lawyers Division of the Iowa State Bar Association. This one hour and 20-minute video was produced to help students learn about the evolution of the jury system, how the system works, and how the right to trial by jury was guaranteed to all Americans through the Bill of Rights to the U.S. Constitution.
- [Judicial Learning Center – Lesson Plan](#) “Understanding Trial By Jury” lesson plan designed for grades 6 through 12.
- Lesson on the [Colorado Jury System](#) that provides students with a basic understanding of the jury selection process in Colorado, and the rights and responsibilities of individuals who are summoned to jury duty.

# Appendix B

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## *Stakeholder Resources to Support a Juror-Centered Jury Experience (Vulnerability #2)*

### **COURTS**

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#### ***Juror Utilization***

- [Jury Managers' Toolbox: Best Practices for Effective Juror Utilization](#)
- [NCSC CourTools Trial Court Performance Measures Effective Use of Jurors](#)

#### ***Juror Trauma/Stress***

- [Trauma-Informed-Practices-and-Jurors.pdf \(ncsc.org\)](#)
- [Through The Eyes of the Juror \(NCSC\)](#)

#### ***Juror Privacy***

- [Hannaford \(ncsc-jurystudies.org\)](#) "Safeguarding Juror Privacy – A New Framework for Court Policies and Procedures," by Paula L. Hannaford-Agor
- ["Juror Privacy versus the Need to Know: What Should be Given, When, and to Whom?"](#) by G. Thomas Munsterman

#### ***Jury Instructions***

- [Communicating with Juries: How to Draft More Understandable Jury Instructions \(2008\)](#)
- [Am. Coll. Trial Lawyers, Improving Jury Deliberations Through Jury Instructions Based on Cognitive Science \(Oct. 15, 2024\)](#)
- [Massachusetts Superior Court Guidelines for Drafting Model Jury Instructions \(2021\)](#)

### ***Juror Notetaking***

- [Layout 1 \(nycourts.gov\)](#) “Jury Trial Innovations in New York State: Enhancing the Trial Process for All Participants,” pp. 4; 16-17.
- [Jury Innovations Book 2006.indd \(ncsc-jurystudies.org\)](#) *Jury Trial Innovations*, Second Ed., G. Thomas Munsterman, Paula L. Hannaford-Agor, and G. March Whitehead, p. 126

### ***Juror discussions of evidence during trial***

- [Jury Innovations Book 2006.indd \(ncsc-jurystudies.org\)](#) *Jury Trial Innovations*, Second Ed., G. Thomas Munsterman, Paula L. Hannaford-Agor, and G. March Whitehead, p. 124
- [Permitting-jury-discussions-during-trial.pdf \(ncsc-jurystudies.org\)](#) “Permitting Jury Discussions During Trial: Impact of the Arizona Reform,” by Paula L. Hannaford-Agor, Valerie P. Hans, and G. Thomas Munsterman
- [Hannaford\\_M-A \(ncsc-jurystudies.org\)](#) “Speaking rights”: Evaluating Juror Discussions During Civil Trials

### ***Juror Compensation***

- [Juror Compensation | Maricopa County Superior Court](#) Arizona has implemented a Jury Fund designed to replace unpaid earnings for a juror who serves on a trial that lasts one day or more. Paid Time Off (PTO) or use of vacation pay is not considered a loss of income and does not qualify.
- [AB1981 Public FAQ Brochure generic print.pdf \(ca.gov\)](#) California has implemented a two-year pilot program being conducted by the Judicial Council of California to explore whether increases in juror compensation and mileage reimbursement rates increase juror diversity and participation. The new juror compensation rates increased from \$15 to \$100 per day, and juror mileage reimbursement increased from \$.34 to \$.67 per mile roundtrip.

## **BUSINESSES AND COMMUNITY ORGANIZATIONS**

- [The Juror Project](#) is a nonprofit organization that engages local communities to discuss the importance of jury service.
- Several employer consulting firms have sample jury service leave policies, including [namely.com](#), [workable.com](#), and [workstream](#).

# Appendix C

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## Stakeholder Resources to Support Jury Trials (Vulnerability #3)

### COURTS

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#### ***Managing Jury Selection Effectively***

- [Jury Trial Management \(icmelearning.com\)](https://icmelearning.com)

#### ***Remote Jury Selection: Technology and Staffing***

- [Joint Tech. Comm. Remote Jury Selection: Technology and Staffing \(Apr. 2023\)](#)

#### ***Voir Dire***

- [Gregory E. Mize & Paula Hannaford-Agor, \*Building a Better Voir Dire Process\*, 47 Judges' J. 4 \(2008\)](#)
- [Stephen Susman, \*What Judges Can Do to Preserve Jury Trials\*, 57 Judges' J. 22 \(2018\)](#)
- [Remote, Case Specific Questionnaires](#)

#### ***Training New Lawyers***

- [Litigation Academy](#), a week-long trial technique training program, run by the United States District Court in Rhode Island in partnership with a local law school and bar association for lawyers starting to try cases in that court.

### BAR ASSOCIATIONS

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- [ABA Commission on the American Jury](#)
- [Trial Academy Provides New Lawyers With a Boot Camp Experience - New York State Bar Association \(nysba.org\)](#) The New York State Bar Association's Trial Academy is a five-day trial techniques program tailored for new and young attorneys. Highlights include hands-on learning, expert faculty, comprehensive curriculum, small group breakouts, fact pattern-based learning, and personalized feedback.

- [A Young Trial Lawyer's Guide to Gaining Experience Through Mock Exercises \(americanbar.org\)](#)
- [Training Trial Lawyers \(americanbar.org\)](#)

## **LAW SCHOOLS**

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- [About – The Civil Jury Project at NYU School of Law](#) The Civil Jury Project undertakes research related to the role of the jury in the civil justice system; evaluates ways in which juries are constituted and jury trials are conducted; creates education programs for studies and policy proposals on jury trials; convenes state and federal judicial workshops dedicated to improving civil jury trials; and provides a network of scholars studying civil jury trials.
- [Trial Advocacy College \(trialadcollege.org\)](#) This one-week, trial advocacy program held at the University of Virginia is for practicing lawyers who aspire to improve their courtroom advocacy skills and competency.

## **CRIMINAL AND CIVIL BAR ORGANIZATIONS**

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- [ABOTA – National Trial Academy](#)
- [American College of Trial Lawyers](#)
- [Association of Prosecuting Attorneys](#)
- [National Association of Attorneys General](#)
- [National Association of Criminal Defense Lawyers](#)
- [National Criminal Defense College Trial Practice Institute](#)
- [National District Attorneys Association](#)
- [The Gault Center - Trial Manual for Defense Attorneys in Juvenile Delinquency Cases](#)

# Appendix D

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## *Stakeholder Resources to Support Reconciliation of Judicial Values and Practices (Vulnerability #4)*

### **COURTS**

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- American Bar Association's [Principles for Juries and Jury Trials](#)
- "[Assessing and Achieving Jury Pool Representativeness](#)," *The Judges' Journal*
- "[Cultural Competence in the Courtroom: A Judge's Insight](#)" by Hon. Gail S. Tusan & Sharon Obialo, UNC School of Government
- "[How to Make Civil Courts More Open, Effective, and Equitable](#)," Pew Research Center Report

## *Suggested Value Indicators for Stakeholders to Identify Existing Gaps*

To support the reconciliation of values and practices related to juries and jury trials, stakeholders may look to the following value indicators to determine what components of a critical vulnerability may require further action. These value indicators are intended to serve as a starting point for stakeholders looking to bridge the gap between principle and practice.

### **1. PUBLIC EDUCATION AND ENGAGEMENT**

- Analyze response and appearance rates to jury summonses and juror qualification questionnaires.
- Determine *where* civic education is occurring within the community – i.e., the workplace, public gathering places such as the local library or YMCA, government offices, etc.



- Determine *who* is administering civic education within the community – i.e., employers, municipal officials, local media representatives, etc.
- Identify the impact and measuring the effectiveness of public outreach activities on public education and engagement with the jury trial system.
- Explore potential collaboration points between local law schools and law students' experience and education about the jury trial system and public education and engagement efforts.

## 2. JUROR-CENTERED EXPERIENCE

- Identify how the term of jury trial service impacts excusal rates for prospective jurors.
- Identify how the local compensation rate for jurors impacts excusal rates for jury service.
- Measure the distance to/from the courthouse from jurors' homes.
- Assess the availability of parking/public transportation to/from the courthouse, including fares, accessibility for jurors, and travel duration.
- Consider ways to measure the business community's support for jury service – i.e., employers providing paid "civic days" for employees to utilize for jury service.
- Identify how many jurors are requesting excusal from service for reasons related to childcare/eldercare.
- Determine juror utilization, especially the percentage to *voir dire* and the percentage of panel used.
- Measure the average length of jury trials, both by days and by hours per day.
- Measure the average length of *voir dire*.
- Identify the percentage of jurors excused for hardship/cause without appearing in person.
- Assess the availability of public work stations within courthouse facilities for use by prospective jurors without internet access, etc.
- Evaluate the practical comfort of jury service, such as seating arrangements, room temperatures, breaks during trial, water/snacks.
- Inquire whether there are mental health services available to jurors and whether information on those services is provided to jurors.

- Determine the percentage of trials in which jurors are given decision-making aids and which kinds (bench/bar education):
  - » Note-taking
  - » Juror questions
  - » Written instructions, plain language
  - » Notebooks
  - » Pre-instructions about black-letter law
  - » Guidance on deliberations
- Use juror exit surveys to gauge juror satisfaction with their experience and understanding of their role.

### 3. CAPACITY AND INCENTIVES FOR JURY TRIALS

- Measure what percentage of cases (civil versus criminal) go to trial.
- Calculate the length of time from filing to trial.
- Evaluate efforts to streamline discovery and pretrial practices and identify associated bottlenecks.
- Determine the difference between sentences for defendants who plea versus defendants who go to trial.
- Determine the difference in monetary costs incurred (legal representation, witnesses, expert testimony) for defendants who plea vs go to trial.
- Examine how frequently *pro se* litigants plea and look at the availability of legal aid.
- Evaluate the impact of diversion programs on jury trials.
- Survey attorneys to calculate the percentage of young lawyers with trial experience or with law school trial advocacy experience.
- Gain insight into lawyer attitudes towards juries and jury trials.
- Calculate the percentage of new judges with jury trial experience.

# Appendix E

## Strategic Foresight Methods

The strategic foresight approach used in this report is based on methodologies outlined in the *Just Horizons* report. This approach is designed not to predict the future but to explore a range of possible future scenarios, enabling courts and stakeholders to prepare for a variety of potential challenges. The foresight process in *Preserving the Future of Juries and Jury Trials* involved four key steps:

1. **Consider Impact of Scenarios for the Future of Juries and Jury Trials:** Based on the societal trends involving data-driven public services and socio-political discord employed in *Just Horizons*, justice system stakeholders considered the potential impact of potential futures.

### Scenario 1: Happy Days Are Here Again

Juries and jury trials are marked by a transformative embrace of technology, collaboration, and civic engagement.

### Scenario 2: Isn't It Ironic

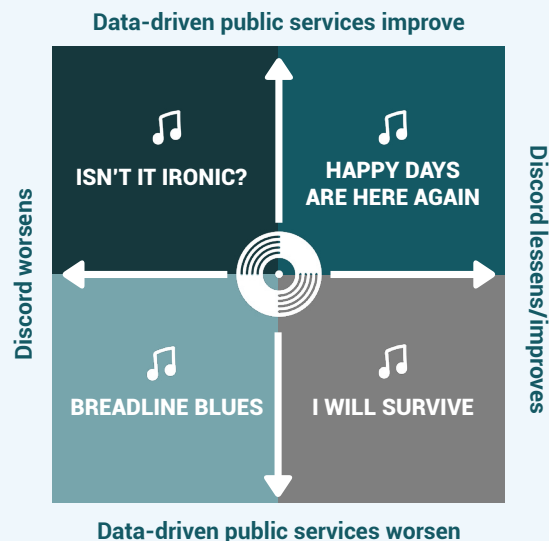
Juries and jury trials are buffeted by the tension between technological advancements and persistent challenges to fairness and public trust.

### Scenario 3: Breadline Blues

Economic hardships, logistical difficulties, and declining juror participation lead to smaller, less representative jury pools and a growing reliance on expedited or alternative trial methods.

### Scenario 4: I Will Survive

Privatization and community-specific justice systems replace traditional public adjudication, leading to diminished diversity, increased groupthink, and inconsistent notions of fairness as communities emphasize self-governance and reject broader legal frameworks.



2. **Identify Additional Key Drivers of Change:** Justice system stakeholders discussed whether drivers of change other than those identified in *Just Horizons* were more relevant to juries and jury trials.
3. **Identify Key Vulnerabilities:** Participants in the strategic foresight process were asked to consider how these scenarios could expose vulnerabilities in the jury trial system. These vulnerabilities were identified as potential weaknesses that, if not addressed, could undermine the effectiveness and fairness of jury trials.
4. **Propose Strategies to Address Key Vulnerabilities:** Participants developed strategies that courts and other stakeholders could implement to mitigate these vulnerabilities and strengthen the jury system.

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The information contained in this report is based on the best available data at the time of publication. However, given the rapidly changing landscape of the justice system, readers are encouraged to consider the potential need for updates or revisions as new challenges and opportunities emerge.

# Strengthening the **sixth** JUSTICE FOR ALL

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