

A Lesson in Diversity and Inclusion

The Great American Jury

By John H. Martin, DRI President



All good trial lawyers have learned many important lessons from the jurors who have decided our cases. While some of those lessons can be painful, all of them are valuable. Of course, preserving the right to trial by jury in civil cases is one of the core values of DRI, but how many of us have stopped to think about why we revere this time-honored method of resolving disputes? Although receiving a jury's verdict and visiting with jurors afterwards is instructive, I have learned much more about the jury deliberation process by participating in mock trials and focus groups, and by observing shadow juries deliberate after they watched actual trials. Observing mock and shadow jury deliberations can teach us much about the incredible power of group decision-making, and can cause us to appreciate why we should have more confidence in the wisdom of factual determinations made by juries than in those made by an individual judge.

Group decision-making by a jury, whether real or mock, is especially powerful, because a typical jury contains people of different races, genders, and life experiences. Many social scientists and legal commentators have written that groups comprised of diverse individuals make better decisions than homogenous groups. The U.S. Supreme Court in *Batson v. Kentucky* even elevated jury diversity to a constitutional mandate based on the Equal Protection Clause. The power of group decision-making is one of the cornerstones of successful diversity programs.

DRI has had an exemplary diversity program for many years, but our increasing awareness of the value of decision-making by groups of diverse people has re-emphasized the continuing need to increase diversity in our leadership at all levels of the organization. We have begun to understand that a great diversity program must also focus on inclusion, so that we must look not only at the numbers that measure diversity, but also at whether we are fostering a culture that truly respects and values the opinions and perspectives of every individual.

Like many law firms and other legal organizations, DRI still has a long road to travel before we can be satisfied. I am pleased to report, though, that we have taken some positive steps over the past few months. First, at its meeting in October 2007, your Board of Directors approved the conversion of the Diversity Committee from a special committee to a substantive law committee open to all DRI members. Under the leadership of

Chair Ray Williams and Vice Chair Toyja Kelley, the Diversity Committee is emphasizing the importance of diversity and inclusion, not only in our membership but also in our leadership. Second, at the May 2008 meeting, your Board of Directors adopted the following Statement of Principle, which replaces our previous Statement that focused on diversity in the membership, but not on inclusion and the need for diversity in leadership:

DRI is the largest international membership organization of attorneys defending the interests of business and individuals in civil litigation.

Diversity is a core value at DRI. Indeed, diversity is fundamental to the success of the organization, and we seek out and embrace the innumerable benefits and contributions that the perspectives, backgrounds, cultures, and life experiences a diverse membership provides.

Inclusiveness is the chief means to increase the diversity of DRI's membership and leadership positions. DRI's members and potential leaders are often also members and leaders of other defense organizations. Accordingly, DRI encourages all national, state, and local defense organizations to promote diversity and inclusion in their membership and leadership.

As we diversify our membership and make it more inclusive, we must place increased emphasis on increasing diversity and inclusion among the leadership of the entire defense community. As Ray Williams states on the Diversity Committee home page on www.dri.org, "To truly represent the voice of the defense bar on diversity issues, we need the input of the entire community." Ray goes on to implore us all: "Include your voice."

When I watch mock and shadow juries deliberate, I marvel at the respect most jurors display towards one another, and I have also been impressed about their process of selecting a presiding juror. I have seen predominantly white juries select a minority presiding juror, a predominantly ethnic minority jury select a white person as presiding juror, and a jury composed primarily of one gender select a person of the opposite gender as a presiding juror. Watching juries deliberate always causes me to be upbeat and positive about our civil justice system. Those experiences also convince me that since juries made up of diverse individuals usually make good decisions, then as our membership becomes more diverse and inclusive, so will the people selected

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as DRI's leaders. That may seem obvious,
but I submit the converse is also true: as we
work to make our leadership more diverse

and inclusive, our entire membership will
become more representative of our profes-
sion and our society. In other words, as DRI
becomes a more diverse and inclusive orga-

nization, it will become a better organiza-
tion, and everyone wins. This is just one
more lesson that the American jury has
taught us. 