CIVIC DUTY SPEECH

The purpose of the "civic duty" speech is to educate delinquent jurors about the importance of jury duty, their legal obligation, and the reason the court is making them comply with their obligation and to motivate them to cooperate without complaint. The speech is essential to the education component of the program.

Greeting and History

Good morning.

(Typically, very few people will respond to your greeting. To move things along, try again.)

Well, that was a below-average response. I know you are not happy to be here, but let's try that again. Good morning!

That's better. Welcome to superior court. My name is _____. I'm a superior court judge. You folks have been previously summoned for jury service.

(The following history is based on information the jury commissioner staff provides the judge.)

Actually, you were sent a summons to appear during the week of _____. And for whatever reason, we did not hear from you.

(Don't be judgmental at this stage about why they did not respond. Sometimes significant issues come up that prevent people from complying. Also, occasionally the court makes mistakes.)

We then sent you a postcard on _____. The postcard told you to contact the jury commissioner to rearrange your jury service or give a legal reason why you should not have to serve. For whatever reason, we did not hear from you.

We then sent you a letter dated _____, telling you to come in this morning. Or as an alternative, you could have contacted the jury commissioner by last Friday to rearrange your jury service or give a legal reason why you should be excused. And for whatever reason, you decided to come in today instead of contacting the jury commissioner.

(Usually the reason is nothing more than procrastination)

For most of you, the summons and postcard were both sent to the exact same address as the letter that brought you here today.

(This statement usually makes them think twice about claiming they did not get the summons or postcard.)

Civic Duty Discussion

I'll bet it is an inconvenience for you to be here today, right?

But it is also inconvenient for the thousands of people who appear for jury duty every year. In fact, last year _____ people actually appeared for jury duty, and I dare say it was inconvenient for most of them, or their families, or their employers.

(By telling the delinquent jurors how many people appeared for jury service, you imply that the inconvenience is shared and that their inconvenience is not more important than that experienced by other people.)

But I think most of them understood how important it was for them to appear. We have a system of justice in this country, in this state, and in this county that depends on people like you showing up when summoned for jury service.

Our system of justice is the best in the world. It's not perfect, and I'm not going to claim that it is. I don't think we can ever have a perfect system of justice because human beings make the decisions, and as we all know, none of us is perfect. But in other systems of justice around the world only one person or a small panel of government officials make the decisions. In fact, in some of these countries, the judge or official making the decision is actually part of that country's prosecution agency.

Our system does not depend on one human being or a small panel of human beings, all of whom are subject to human frailties. Our system of justice depends on 12 people making the decision—12 regular folks just like you. These people go through the selection process, listen to the evidence, collectively discuss the evidence at the end of the trial, and apply the rules of law the judge gives them for the case. It is through this process that a verdict is reached. In a criminal case, the verdict has to be unanimous. That means all 12 jurors have to agree. So, as you can see, that is a fair and impartial justice system. And we can't have that system of justice without people like you coming in to participate in the process.

Think for a moment about what you would want if you had a case in our courthouse. That's not so farfetched by the way. You might have to sue somebody one day, or you might be sued, or you might have a business involved in litigation. One thing you would want is people like yourself to be available to be selected as jurors.

In fact, one of the most important components of the constitutional right to jury trial we enjoy in this country is the right to have the pool of people available to be selected as

jurors look like the community and include all different kinds of people, including people like the litigants. Every litigant who has a jury trial is entitled to have the pool of potential jurors in their case represent a fair cross-section of the community. This means people from all walks of life, all ethnic backgrounds, various ages, both genders, and different geographic parts of the county should be represented in the pool of people available to be selected as jurors in some fair proportion to that of the general population. In other words, on any day we have a jury call, the jury assembly room should look like _____ County.

The way we summon people for jury service ensures we will achieve a fair cross-section as long as people show up. The summoning process is not done by a human being. It's done by a computer that runs a program used in most California counties and used in many states around the country. The computer randomly selects people from two databases, the list of registered voters and the list of people in DMV's database that have either a driver's license or a California identification card. We get a fresh list from the Registrar of Voters and DMV every six months, so the list is up to date. The computer identifies the people who are on both lists, so they are only counted once. Then, using a mathematical formula, it randomly selects people for jury service. If everyone who received a summons actually showed up, we would have no problem fulfilling the constitutional promise of including people like the litigants in the pool of people available to be selected as jurors. But when you did not show up, whatever segment of the community you could be said to represent was not fully represented in the pool of people available to be selected as jurors on the day we needed you. Hopefully, you are now starting to get the picture of why it is important for you to appear for jury service.

(This part of the speech informs jurors that the process is not arbitrary and it is not rigged to exclude certain groups. It puts the onus on them by pointing out they failed to represent their segment of the community when they did not appear for jury service.)

Some people who are more cynical might also think of jury service a little like paying taxes. How many people like to pay taxes? Nobody, but we do it anyway. And when we do, we get the roads and highways you traveled on to get here today, the schools we send our kids to, and some of the hospitals we go to when we are sick; we also get the police and the fire department and the military to protect us if somebody is paying the bill. Jury service is a little like that. You are paying the bill, not by giving up tax dollars, but by giving up your time to ensure that this part of your democracy works the way it is intended to work and the way you would want it to work for you.

Responding to a jury service summons is an obligation of citizenship. It's a little like the old military draft. Well, it's not nearly as hazardous as the military draft. But being summoned for jury service is a form of drafting citizens to participate in our democracy and protect the rights we have in our country.

If you were living in some other countries around the world, the obligations of citizenship would be a lot more onerous. For example, many of you might be subject to the military draft.

We don't have a military draft in this country anymore. Jury service is the only form of drafting people to assist their government that we have. And it is simply not that imposing compared to the obligations citizens have in other countries.

There is one other way of looking at this, and I think most people have not thought about it in this way before. Throughout history, every war this country has fought has been fought because our way of life, many of which I think we take for granted, needed to be protected, the interests of this country's citizens needed to be protected, and our constitutional rights needed to be protected. Whether the political people were right or wrong in the decision to go to war is not important for our discussion. What is important is the historical fact that people have laid their lives on the line based on that notion.

Maybe we're talking about somebody you know—family member, a close friend, a former classmate, someone you grew up with in the neighborhood, a coworker. As we sit here today in the relative comfort of this courtroom, representatives of our county are doing that very thing right now. They are laying their lives on the line to protect the constitutional rights we have in this country. And if those rights are worth fighting and dying for, then surely you can hold up your end of this country's citizenship bargain and appear for jury service when summoned. If you believe you should not have to appear because it is inconvenient for you, think of the sacrifice that is being made right now on your behalf by the men and women in our military.

Now hopefully you understand why appearing for jury service is so important. And this is why we have you here today.

The court has an obligation to make sure that everyone who is eligible to serve actually does serve. The court also has an obligation to make sure that the litigants are provided a fair cross-section of the community in the pool of people available to be selected as jurors in their cases.

Did everyone get a copy of the handout, *Laws Pertaining to Jury Service*? Let's take a look at section number one, called "Jurors' Obligations."

Code of Civil Procedure section 191 states: "The Legislature recognizes that trial by jury is a cherished constitutional right, and that jury service is an obligation of citizenship. It is the policy of the State of California that all persons have…an obligation to serve as jurors when summoned for that purpose…." That's the law that says you have to do jury service. It's kind of like the law that says you have to pay taxes.

California Rules of Court, rule 2.1008(a) states: "Jury service, unless excused by law, is a responsibility of citizenship. The court and its staff must employ all necessary and appropriate means to ensure that citizens fulfill this important civic responsibility." That's another law. It's a rule established by the constitutional policymaking body for our courts, the California Judicial Council. The council establishes rules that all California courts have to follow.

That's why we have you folks here today.

Explanation of the Discussion With Jury Commissioner Staff

Today's procedure is relatively painless. When I'm done, you will talk to _____ (jury commissioner staff person) about your individual situations.

Most people who make it to this stage gain a better appreciation of why it is important for them to serve and are willing to fulfill their responsibility. Some of you may serve today. If you can't serve today, you will be told to come back on another day. _____ will tell you when to report. Whatever date and time he/she gives you to report for service is the same as an order of the court for that day. If you fail to show up when he/she tells you to appear, that will be further grounds for contempt of court. If you show up but leave before you are excused, that will also be further grounds for contempt of court.

Some of you will have a legal reason why you cannot serve and you will be excused. Legal reasons justifying excusal are divided into two categories, ineligibility and hardships. _____ will tell you about the eligibility rules, but he/she will not tell you what might be a legal hardship. He/she will excuse those people who have legitimate legal hardship excuses. If you had simply told us about your situation after we sent you the summons, we would not have had to take you through this process. We try to work with people when they contact us. Please remember that for future reference.

_____ will not excuse anyone who does not have a legal hardship, and you will have to appear for jury service on the date and time he/she gives you.

After _____ is done, if there is someone who has not been excused who thinks they should be excused, I'll come back out on the bench and talk to you. You and I will discuss your situation.

I probably don't need to mention what I'm about to say to anyone who is here today, but every once in a while, someone will come in with a chip on their shoulder. We have been running this program since 1999. For the first several years, we held these hearings every Wednesday. Now we hold them every other Wednesday. In that entire time, I've only had to come back out on the bench a total of 10 times. On almost each of those occasions, the conversation usually evolved into what is in section three of the handout sheet.

(Contempt punishment is discussed in section three. This warning usually brings around recalcitrant jurors.)

Okay, are we on the same page?

(Usually, you'll get some affirmative head nods.)

Does anybody have any questions about the process this morning? _____ will talk to you about your individual situations. But if anyone has any general questions about the process, I'm happy to answer them for you.

Okay, we'll turn this over to _____.

(Judge leaves the bench.)

COME SEE THE JUDGE HEARING CONTEMPT SCRIPT

If there is a delinquent juror who believes he or she should be excused and the jury commissioner staff has not excused him or her, the jury staff will brief the judge in chambers. The judge should then come back on the bench and listen to the juror's excuse on the record. If the judge determines that the explanation does not amount to a legal excuse, the judge should tell them so and give them a date and time to report for jury service. It is helpful if the judge lets the juror select the date within whatever parameters are relevant in the particular court. Juror buy-in enhances compliance.

There has never been a situation in San Joaquin County where a juror has openly refused to appear for jury service after having been ordered to do so by the judge.

The judge can use the following script to address a recalcitrant juror who informs the court he or she will not appear for service:

- You are ordered to appear for jury service by reporting to the jury assembly room on _____. The jury assembly room is located _____.
- You are further ordered to participate in the jury selection process and serve if selected.
- Do you understand the court's orders?
- Are you refusing to report as ordered, participate in the selection process as ordered, and serve if selected as ordered?
- Do you understand that your refusal to abide by these orders is contempt of court?
- Do you understand that the penalty for contempt of court can be as much as $1,000?
- Do you understand that the failure to pay the fine will also be further grounds for contempt of court?
- Do you still refuse to abide by the court's orders?
- The court finds that you are in direct contempt of court for willfully refusing to obey the court's lawful orders in the presence of the court.
- One last chance: Will you comply with the court's order?

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Civic Duty Speech and Come See the Judge Hearing Script

- Juror _____, you are in contempt of court for your willful refusal to obey the court's lawful order to report for jury, participate in the jury selection process, and serve if selected.

- Your refusal is an act of contempt that has occurred in my presence.

- The court finds that you are guilty of direct contempt of court.

- Under Code of Civil Procedure section 1218(a), the court imposes a fine of $_____.

- You are ordered to pay this fine to the clerk of the court within _____ days.

- Failure to pay the fine will be a separate ground for contempt.

- You are ordered to stay in this courtroom while a formal judgment of contempt is prepared.

- Failure to abide by this order will be separate grounds for contempt of court.

- Do you understand?

- You are not excused from your original failure to appear as required by the original summons.

- You are ordered to return to this courtroom on _____ at _____ a.m./.p.m.

- At that time you will be arraigned on an order to show cause why you should not be held in contempt for your failure to respond to the original summons.

- Failure to appear at the arraignment will be separate grounds for contempt and will also result in the issuance of a warrant for your arrest.

- Do you understand?

The judge should then fill in the blanks on the following boilerplate contempt judgment for this situation, give it to the clerk to copy and file, and have the bailiff personally serve the recalcitrant juror with a copy.

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Civic Duty Speech and Come See the Judge Hearing Script

Judgment for Direct Contempt at the Come See the Judge Hearing

SUPERIOR COURT OF CALIFORNIA, COUNTY OF _____

In the Matter of:

Case No. _____

ORDER AND JUDGMENT OF CONTEMPT (CODE OF CIVIL PROCEDURE SECTION 209, 1209(a)(5)/(10)

ORDER TO REPORT FOR JURY SERVICE

Respondent.

_____/

1. Respondent was mailed a summons requiring [him][her] to report for jury service the week of _____. The summons was mailed by first-class mail. The summons was not returned by the United States Postal Service as undeliverable.

2. Respondent failed to report for jury service as directed in the summons.

3. Respondent's appearance was not excused by the court or the office of the jury commissioner.

4. On _____, respondent was mailed a postcard. In the postcard, respondent was told to contact the office of the jury commissioner or return the postcard with a written explanation indicating a legal justification to be excused from jury service. The postcard was not returned by the United States Postal Service as undeliverable.

5. Respondent did not respond to the postcard.

6. By letter dated _____, respondent was ordered to appear in Department _____ of the Superior Court on _____ at_____ a.m./p.m. As an alternative, respondent was given the opportunity to contact the office of the jury commissioner to arrange a date to appear for jury service. That letter was mailed to respondent by first-class mail and was not returned by the United States Postal Service as undeliverable.

7. Respondent did not contact the jury commissioner's office but did appear in Department _____ of the superior court on _____ as ordered in the letter.

8. The court heard respondent's reasons for not serving. The court found respondent's reasons did not amount to a legal excuse or a valid hardship.

9. The court ordered respondent to report for jury service, participate in the jury selection process, and serve as a juror if selected.

10. The court warned respondent that failure to comply with the court's order could be punished as contempt of court and carries a fine of up to $1,000.

11. In the presence of the court, respondent refused to report for jury service, participate in the jury selection process, and serve as a juror if selected.

12. The court cited respondent for contempt of court and offered respondent an opportunity to comply with the court's order.

13. Respondent again refused to comply with the court's order.

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THE COURT HEREBY MAKES THE FOLLOWING FINDING, ENTERS THE FOLLOWING JUDGMENT, AND MAKES THE FOLLOWING ORDER:

1. The court finds that respondent is guilty of direct contempt of court for willful refusal in the court's presence to comply with the court's lawful order to report for jury service, participate in the jury selection process, and serve if selected.

2. Under Code of Civil Procedure section 1218(a), the court imposes a fine of $_____.

3. Respondent is ordered to pay this fine to the clerk of the superior court, at _____. Respondent may pay in equal monthly installments until the fine is paid in full. The fine must be paid in full by _____. Failure to pay the fine will be further grounds for contempt of court.

4. Respondent is further ordered to appear at an arraignment and hearing in Department _____ of this court on _____ at _____ a.m./p.m. This hearing will concern allegations of indirect contempt of court based on [his][her] failure to appear on the original summons.

5. The clerk of this court is ordered to immediately file this order, enter the contempt on the minutes, and have the bailiff hand respondent a copy of this order.

DATED: _____

_____
(Name of Judge)
Judge of the Superior Court

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Civic Duty Speech and Come See the Judge Hearing Script

JURY COMMISSIONER STAFF
COME SEE THE JUDGE HEARING SCRIPT

Good morning.

I'm (Name of Jury Commissioner), (Job title).

Before I talk to you about your individual situations, I would like to tell you about jury duty in _____ County.

When you appear for jury service, you serve either one day or on one trial. We call this the one-day or one-trial rule. For example, if you appeared for jury service today, and we did not send you to a courtroom, that would be your one day and you would be excused at some point during the day. You would not have to come back tomorrow or be on call or anything like that. If we sent you to a courtroom and you were excused during the jury selection process today or on a subsequent day, that would be your one trial, and you would then be excused from jury service. (Some courts may send jurors to more than one courtroom on the first day.) If you were selected to serve, that would be your one trial and you would serve throughout that trial, however long it might last. You would be excused at the end of that trial. Once you are excused from jury service, you are excused for the rest of this year, plus one additional calendar year. This is a longer exemption than people get in most counties. Most counties provide only the mandatory minimum exemption of one year.

If you get another summons before your period of exemption expires, it could be because the information for you in Department of Motor Vehicles' records and the Registrar of Voters' records does not match. For example, if you moved and told DMV that you moved but forgot to change your address with the Registrar of Voters, our computer will see you as two separate people with the same name living at different addresses. If you get another summons before your period of exemption expires, don't ignore it. Contact us at the phone number on the summons. We will be able to clear the summons when you call.

Some of you may not be legally eligible to serve. Under the law, the following people are not eligible to serve.

- People who have moved from our county and no longer live here.
- People who are not United States citizens.
- People who do not speak English.
- People who are less than 18 years old.

- People who have been convicted of a felony and who have not had their rights restored.
- People who are currently the subject of a conservatorship.

Does anybody fall into any of these categories?

(Jury commissioner staff then talks to those who raise their hands and excuses anyone who is not eligible.)

How many people would like to serve today?

(Take names and send jurors who can serve today to the jury assembly room.)

How many people can't serve today but can serve on another day?

(Try to set a report date the juror agrees on within whatever parameters you have in your court. Juror buy-in to the new date enhances compliance. It is advisable to allow at least two weeks unless the juror is agreeable to an earlier date and believes they have enough time to give their employer notice. Labor Code section 230 does not protect employees unless they give their employer "reasonable notice.")

(As with all proceedings, these proceedings should be reported by the court reporter. A transcript of the proceedings may be used in a future contempt hearing if the juror fails to report as ordered.)

I'm assuming everyone who is left feels they have a legal reason why they cannot serve. Like the judge said, I'm not going to tell you the various reasons that might be legal reasons to be excused, but I will excuse those who explain circumstances that amount to a legal hardship. If I do not excuse you, then you will have to report to jury duty. We'll try to make the date convenient for you.

(Call each delinquent juror up one by one to discuss the situation.)

****

In most Come See the Judge Hearings, the jury commissioner staff should be able to resolve all matters without the judge. In the rare situation where a delinquent juror refuses to accept the order to serve, staff should brief the judge in chambers off the record. The judge should then resume the bench and discusses the juror's concerns with the juror on the record. The judge will either order the juror to serve or excuse the juror.

Once the session is adjourned, the disposition for each juror is entered into the court's jury management system. Staff should make a weekly check of those jurors who were postponed at the Come See the Judge hearing for that week. On the relatively rare occasion when a juror fails to appear as ordered, an order to show cause is prepared for service by the sheriff as well as a declaration in support of the order to show cause (OSC) (see Appendix J for a sample jury commissioner declaration for this situation). OSC service is automatically attempted for each of these delinquent jurors. Only personal service is attempted; knock and nail OSCs are not forwarded to the sheriff's office for these individuals.