

Jury News

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Printer to place

WHAT CAN WE SAY IN JUROR ORIENTATIONS?

Readers of *Jur-E Bulletin*, the weekly electronic newsletter from the National Center for State Courts, may remember the recent Connecticut case in which the trial court ruled that two jury orientation videotapes should not be shown to potential jurors because statements made in the videotape were inconsistent with Connecticut law and thus jeopardize the rights of criminal defendants, particularly with respect to the presumption of innocence. The ruling was issued in response to the defendant's motion in the case of *Connecticut v. L'Heureaux** and applied only to that case. But the Connecticut judiciary has since edited the videotapes to remove the incorrect statements and the tapes are now back in use statewide.

Both of the videotapes were produced by the Connecticut judiciary and are used throughout the state. The first one, *Pursuit of Justice*, is a general introduction to the role of the jury and describes the Connecticut judicial branch. The court held that two "well-intentioned statements incorrectly state the law and could potentially dilute the defendant's constitutional presumption of innocence." I have not viewed the Connecticut tapes myself, however the statements quoted in the court's opinion are ones that are quite commonly used in juror orientation materials.

The second videotape, *Voir Dire*, contains detailed information about the selection process. The court's opinion quotes one statement in the videotape in which "a judge remarks that 'It is the duty of the attorneys in a trial to present to the jury their client's side of the case in the most favorable light; our system of justice is based on the belief that truth can best be determined when both sides in a trial present their respective positions effectively and vigorously.'" The court found that these words "may inadvertently tend to dilute a defendant's constitutional right to rely totally on the presumption of innocence and the state's burden of proof, and to elect not to testify or present any evidence at trial." The opinion then refers to the jury instruction, which covers these points.

Many courts use prepared juror orientation of some kind. While not intended to supplant a live greeting, they are used for several reasons. They can be more informative, more inspirational, more consistent, and can be reviewed, as was the case in Connecticut. The format of these juror orientations have evolved from 16mm films to narrated slide presentations to videotapes and now to DVDs. The intended audiences have also evolved from generic presentations intended for a national audience to ones that are specific to local jurisdictions. One of the first jury orientation presentations was funded by the Ford Foundation for use in the New York courts and was narrated by E. G. Marshall, one of the actors in the MGM classic film *12 Angry Men*. This film, like many early films, ended just as the jury foreman was about to deliver the verdict. That cliff-hanging device is still used with good effect. More recently, courts have adopted an approach to juror orientation that is more inspirational and focused on the positive aspects of the consideration of citizen's time and contribution to the administration of justice.

We now recognize that these orientations have many different purposes, including

- Providing perspective about the history of trial by jury
- Instilling pride in the jury trial and its place in a democracy
- Establishing a sense of reality versus how juries are portrayed in the media and novels
- Reminding jurors of the value of being a juror
- Allaying jurors' fears of not being up to the task of being a juror
- Introducing jurors to judges and court personnel

- Introducing jurors to the court facilities
- Informing jurors about the steps of the trial
- Alerting jurors to problems of bias
- Informing jurors of proper conduct inside and outside the courtroom
- Informing jurors about how to get help if needed, including how to respond to instances of juror misconduct or tampering
- Telling jurors about improvements that have been made in the jury system and in the justice system generally
- Asking jurors for suggestions about how the system can be improved

There are probably many more purposes, but the point is that we need to know just how much we can accomplish in a reasonable time and how to do it effectively. The National Center for State Courts maintains a collection of these videotapes in our library. Many orientation presentations are now available online. New York's excellent orientation is available at www.nyjuror.gov. Cobb County, Georgia, and Orange County, Florida, have presentations on the Internet with information specific to pre-reporting. The Internet addresses for these are provided below. Fairfax County, Virginia, originated the idea of a juror orientation on the community cable channel.

However we provide information to potential jurors, we should remain concerned that it is accurate and consistent with the jury instructions that jurors will hear before deliberating. This concept of the continuity of the information from first introduction to jury service through the dismissal of the person after the verdict has been delivered, is one of the many contributions of the *ABA Standards Relating to Juror Use and Management*, first published in 1983 and now adopted in many states and local jurisdictions. As the Connecticut decision points out, juror orientation tapes are preliminary instructions to the jury. Although the production of orientation tapes is usually handled carefully, with the scripts and final edits cleared by the courts and by representatives of the prosecution and defense, I doubt that all attorneys have seen these tapes. The Connecticut case is a reminder to us that we should be very careful as to the contents of these tapes.

This caution should also extend to live presentations to prospective jurors. For example, I recall attending a juror orientation several years ago during which the jury clerk explained to the jurors that the delay that morning was due to the fact that "they are working on a plea bargain." This clerk was doing a fine job in showing concern for the persons who were waiting. But have we ever considered the implications of these types of comments as a preliminary instruction? Fortunately, the plea was accepted in that case, the prospective jurors went home, and the jury clerk's comments did not prejudice the defendant. That court had a one day/one trial term of service, so those jurors also would not be returning the next day. Nevertheless, the Connecticut case prompted me to think again about the training we give to jury staff to ensure that their comments to prospective jurors provide a consistent message about the role and duties of jurors.

State of New York
www.nyjuror.gov.

Cobb County, Georgia
http://www.cobbcounty.org/judicial/superior_admin/sca_index.htm

Orange County, Florida
<http://www.ninja9.org/>

*State v. L'Heureaux, Superior Court, judicial district of Tolland,
 Docket Nos. MV 02 345555, CR 03 80373, (Jan. 7, 2004).

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