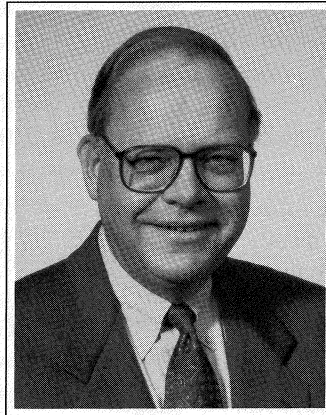


# JURY NEWS

G. THOMAS MUNSTERMAN



And there is a great deal of jury news. State reform efforts continue with Maryland and Washington appointing task forces and members. The Tennessee Bar has released its report on recommended jury system changes. Minnesota is about to start a reform effort. I think at least half the states have had or are in the process of jury reform.

The results are mixed. In-court reforms such as permitting jurors to submit questions are being tried. Caselaw is developing on these ideas while administrative changes continue. California courts must now use a one day/one trial term of jury service effective January 1, 2000, unless they receive a waiver from the judicial council. New York has released its study of grand juries. Two law reviews have issues devoted to jury trials. Minnesota was the first state to pass legislation to reimburse specific jurors who suffered financial hardship. The American Judicature Society has published two reports of interest: *Enhancing the Jury System: A Guidebook for Jury Reform* and *Behind Closed Doors: A Resource Manual to Improve Jury Deliberations*. The nineteen ABA Standards Relating to Juror Use and Management now have a twentieth standard, on juror privacy. These and other jury happenings make for interesting jury times.

## Juror Hardship Gets Legislative Relief

During the trial of *Minnesota v. Philip Morris et al.*, No. C1-95-1325, three jurors experienced severe financial hardship (bankruptcy, foreclosure) as a result of their jury service. David Phelps and Deborah Caulfield Dyback have told the story of the trial in *Smoked: the Inside Story of the Minnesota Tobacco Trial* (1998). It makes fascinating reading as a case study of a notorious trial with some very interesting twists, both inside and outside the courtroom. Although all three jurors indicated during jury selection that service in a lengthy trial would cause them financial hardship, they were not excused from service as requested, and the trial judge made no appar-

ent accommodation for their growing financial hardship as the trial progressed. The Minnesota legislature reimbursed these jurors a total of \$40,000 for the losses they incurred as a result of jury service. Ch. 169-S.F. No. 2052(5)(1).

## New York's Grand Jury Project

Following on the heels of New York's Jury Project, which produced great improvements in New York's petit juries, is the final report on its Grand Jury Project, which focused on ways to improve the administration of the grand jury system. The project did not attempt to alter or abolish the grand jury system but to strengthen it. Just as New York used the ABA *Standards Relating to Juror Use and Management* as the starting basis to examine the petit jury, it used the same standards to examine the grand jury.

This is truly a pioneering effort; I don't know of any other state or federal courts that have systematically examined the grand jury system. Compared to the changes that have taken place in petit jury systems and processes, grand jury systems are virtually unchanged. About the only real change has come from concerns for community representation among grand jurors, which has resulted in having them selected in the same way as petit jurors. Of particular horror to citizens called are the long terms of grand jury service: six months to a year in many states.

Following the organization used in many states, New York established three subcommittees: Selection and Summoning, Juror Utilization and Term of Service, and the Grand Jury Experience. The project also used public hearings and the administrative office provided data on the operation of the grand juries to help inform the subcommittees' deliberations. Stephen Kaufman, a former prosecutor, was the chair of the project, and Judge Robert Keating served as vice chair. The report is in two volumes. The first contains the "Findings and Recommendations"; the second contains the survey data and

forms used to collect that data, which included county by county grand jury procedures, grand juror exit questionnaire results, and utilization data. Copies of the reports may be requested from New York Office of Court Administration at 1-800-NYJUROR.

Among the recommendations (I have paraphrased some) are:

1. Use the same source list as for petit jurors.
2. Reduce the term of service so that fewer people need to be excused. Many of the reasons given against reduced terms sound familiar. The report recommended a pilot project to test reduced terms of service.
3. Provide information on the term of service expected, the number of days a person can expect to report, and procedures for requesting a postponement or excuse in the summons.
4. Let the court or jury commissioner, not the prosecutor, handle requests to be excused from grand jury service.
5. Improve the orientation received by grand jurors. (Based on the details found in this recommendation, this was obviously an area of great interest and perceived need.)
6. Reexamine administrative procedures that are thought to be necessary as "official duties" of the grand jury.
7. The court should administer the grand jury system.
8. Increase the \$40 per day pay for jurors to \$60/day for service from eleven to twenty days and to \$80/day for service over twenty days.
9. Allow grand jurors to submit questions to witnesses and to take notes.

## Valuable Additions to the Jury Bookshelf

This quarter has seen the publication of four works of interest to jury managers and scholars. The first two are products of research by the American Judicature Society and the other two are law reviews dedicated to contemporary jury topics. All should be on your jury bookshelf.

*Enhancing the Jury System: A Guidebook for Jury Reform.* With funding from the Good Samaritan Foundation, the American Judicature Society examined the work of jury reform commissions in Arizona, California, Colorado, New York, and Washington, D.C., in terms of their structure, operations, and recommendations. This included formation, sponsorship, composition, scheduling, staff support, funding for the process, recommended formulation and adoption procedures, and the implementation of the proposed reforms. The third section may be the most valuable for states interested in jury reform, for it gives eight recommendations for establishing a statewide jury reform effort. The last section lists the recommendations of the five commissions studied.

The 48-page document is available for \$25 from The American Judicature Society, 180 N. Michigan Ave., Suite 600, Chicago, IL 60601; phone (312)-558-6900 or check the AJS web site at [www.ajs.org](http://www.ajs.org)

*Behind Closed Doors: A Resource Manual to Improve Jury Deliberations* focuses on the practical aspects of improving jury functionality. While jury instructions can go on for pages or maybe hours, these instructions are on the law the jury is to apply given the facts as they find them. Very little, if anything, is said to help the jurors get organized and conduct their deliberations. Courts are usually fearful of doing anything to intrude on the sanctity of the deliberation room.

The idea for this project came to AJS director Sandra Ratcliff Daffron while watching the program *CBS Reports*, which included the videotape of four deliberating juries in Phoenix, Arizona. They spent much time trying to get organized and each juror seemed to have his or her own idea of what needed to be done and no one seemed to be able to organize them. Sandy felt some guidance could be given to help these jurors.

AJS began the study, funded by the Bureau of Justice Assistance, by conducting focus groups of jurors and asking them about how they went about deliberating. They then surveyed experts and professionals in the field. With help from an advisory committee, they drafted a handbook for jurors and tested

it in five courts. The jurors received the handbook when they left the courtroom to begin their deliberations. The jurors and judges using the handbook provided additional ideas. Judges and jurors completed questionnaires in those trials and in a comparable number of control cases in which the handbook was not used. The jurors who used the handbook were very positive and reported it was a great help. The report includes, as Chapter 2, the text for the suggested guide for jury deliberations. Courts are free to borrow and adapt the materials for their use. The materials are available from AJS at the address given above.

*Symposium: The American Civil Jury: Illusion and Reality*, 48 DePaul Law Review (Winter 1998). DePaul University College of Law hosted a symposium in the fall of 1998 to examine the civil jury. This issue of the law review contains the nine papers presented and comments on those papers by other leading authorities. For the serious student of civil juries this is a treasure of the latest research. A bonus is a paper, "Movie Juries," by U.C. Berkeley Professor Carol J. Clover in which she examines how juries are portrayed in the movies. Yes, she discusses *Twelve Angry Men*, and shows how unique it really is.

*Symposium: Jury Reform: Making Juries Work*, 32 University of Michigan Journal of Law Reform (Winter, 1999). This symposium also brought together judges, lawyers, legal academics, social scientists, and even jurors for this examination of civil and criminal jury issues. Here the emphasis was more on reform or jury improvement techniques such as problems of trying complex cases to juries or efforts to ensure a representative venire of prospective jurors. Here the bonus is a wonderful piece by juror Annie Kay Phillips, "Creating a Seamless Transition for Jury Box to Jury Room for More Effective Decision Making."

## **Standard 20 of the ABA Standards Relating to Juror Use and Management**

The original nineteen standards were adopted by the American Bar Association in 1983. Many states adopted their own versions of these and they have served as the basis for many studies of the jury system. The commentary for the standards was updated in 1993 but the standards were not changed. The ABA Committee on Jury Standards felt that a separate stan-

dard on juror privacy was needed, although other standards contained privacy related provisions. Below is the new standard as adopted in 1998. The commentary to the Standard can be found on the NCSC Web site, [www.ncsc.dni.us](http://www.ncsc.dni.us)

### **Standard 20: Juror Privacy**

- (a) Juror questionnaires should differentiate between information collected for the purpose of juror qualification, jury administration, and voir dire and provide a means for jurors to respond privately to sensitive questions.
- (b) The method of conducting voir dire should be that best suited to protect the privacy of potential jurors given the nature of information sought and the rights involved.
- (c) After jury selection is complete, the court should make inaccessible to the public, the parties, and their attorneys any information collected in connection or revealed during voir dire about individuals called for jury duty but not selected for the jury. Record retention requirements should specify how this information will be made inaccessible. Information retained for sworn jurors should only be that required by statute.
- (d) Before dismissing jurors from jury duty, the court should inform jurors of their rights to discuss or to refrain from discussing the case.
- (e) Jurors should have the continuing protection of the court in the event that individuals persist in questioning the jurors over their objection about their jury service.

Ideas and materials for Jury News are always welcome. Please call me at (703) 841-5620 or e-mail at [tmunsterman@ncsc.dni.us](mailto:tmunsterman@ncsc.dni.us). I am still looking for the ultimate Internet jury Web site. Thanks to those that have responded so far. CM