



Juries

Court Manager “Jury News” Research Services

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Implementing Jury Trial Innovations

There are 31 states that have or are in the process of examining their jury systems. Whether called a Task Force, Jury Project, Improvement Committee or Reform Commission these groups of judges, attorneys, administrators and most important, former jurors, examine the whole of the jury process from selection to trial to dismissal. Concerns range from source lists, juror use, non-response, orientation, fees and financial hardship to the many in-court innovations. The in-court changes include pre-instructing the jury, letting jurors take notes, jurors submitting questions via the judge to the witnesses, mini-openings, interim summations, etc. In previous columns I have gone into greater detail on many of these. See for instance Volume 11, No. 2 Spring 1996 of the *Court Manager* and our publication *Jury Trial Innovations*.

The in-court innovations are in use in some courts across the country and have been for many years. The Arizona Committee on More Effective Use of Juries recommended the adoption of a number of these innovations. After receiving public comments on the proposal, they were adopted by the Arizona Supreme Court in 1996 as Rule 39 of the Rules of Civil Procedure. This rule mandated that the judges in Arizona were to tell the jurors that they may take notes, submit questions etc. This “top down” implementation is certainly one way to see that the procedures are followed. However, the use of the in-court innovations is, in almost all states, at the discretion of the trial judge. Therefore the implementation can be immediate for those interested judges. In many states the adoption by individual judges is producing a “bottoms up” approach. If these adoption efforts can be monitored and the results disseminated to the rest of the bench we have a classic pilot study or pilot implementation. In the following paragraphs several notable efforts in pilot implementations are presented.

In Hawaii based on the recommendations of Committee on Jury Innovations for the 21st Century, six judges agreed to try seven procedures. They were:

- Mini-opening statements to the entire panel before jury selection
- Reschedule experts so that their testimony would be successive
- Pre-instruct the jury to the extent possible before the evidence is presented.
- Permit jurors to take notes.
- Permit jurors to submit questions to the witnesses
- Instruct the jury before the parties closing arguments
- Provide copies of the instructions to each juror

The use of the procedures in a pilot program was sanctioned by the Supreme Court, which gave the judges the discretion to impose them. They were used in 77 criminal trials and 10 civil trials. The judges, attorneys and the jurors completed questionnaires. The Administrative Office of the Courts provided assistance in the tabulation and analysis of the questionnaires. The results were very positive and based on the recommendations of the Committee, the Supreme Court amended their rules effective July 1, 2000 to permit and in some cases mandate that the innovations be used. The results of the pilot program are given in the Supplemental Report of the Hawaii’s Committee Jury Innovations for the 21st Century, November 1999.

A different approach was used in Massachusetts. There the Flaschner Judicial Institute and the National Center for Citizen Participation in the Administration of Justice established the Massachusetts Project on

Innovative Jury Practices. The State Justice Institute and the Massachusetts Bar Foundation provided project funding.

The project selected 16 procedures to try. Since many of the procedures had been used by a number of the judges, a request was sent to all the judges in Massachusetts asking for volunteers to participate in the program. Twenty Four judges from across the courts were selected and they attended a two-day workshop to discuss the techniques and their experience in their use. The judges then proceeded to use the procedures at their discretion. Monitoring was via questionnaires, which were completed by the judges, attorneys and the jurors. Staff at the Supreme Judicial Court input the data. Paula Hannaford of the NCSC analyzed the results and prepared a report for the Project. Every few months during the project the participating judges met to discuss their results and Paula briefed them on what the analysis was showing. These interim meetings helped refine the procedures and provided encouragement to the judges who had not tried some of the procedures.

- The procedures used were:
- Permitting jurors to take notes
- Giving jurors preliminary instructions on the law
- Using plain English during the trial
- Post-verdict meetings with the judge and jurors
- Using plain English jury instructions
- Giving jurors suggestions for conducting deliberations
- Permitting jurors to submit questions to witnesses
- Debriefing jurors after stressful trials
- Responding to juror questions about final instructions
- Providing jurors with written or taped jury instructions
- Providing juror notebooks
- Giving jurors final instructions before closing arguments
- Post-verdict meetings with judge, jurors and attorneys
- Placing time limits on attorneys
- Mini-opening statements/interim commentary
- Permitting juror discussions during trial

Some of the procedures were widely used such as and note-taking, providing preliminary instructions, providing deliberation assistance and post verdict meetings with the jurors. Others such as mini-openings, interim commentary and juror discussion of evidence during the trial were seldom used, but when used, were found to be a positive improvement by the jurors.

The project results were presented in April to the entire judiciary at a one-day conference in Randolph, Mass. Chief Justice Margaret Marshall opened the conference with words of encouragement and support. The results of the analysis were then given. Such as the median number of questions submitted by the jurors (7) per trial and the median number permitted (5). Notable was the reduction in the number of jury questions asked during deliberations when the jurors were given copies of the judge's instructions. Juries asked questions in 75% of the trials where copies were not used as compared to 42% in trials where a copy was given to the jurors. Juror reactions were universally positive to the use of the techniques. Since not all techniques were used in each trial the difference in the opinions of the judges and attorneys were interesting to see if actual use increased the acceptance. This was true for all of the techniques used. The Conference continued with a panel of jurors gave their views of the techniques and several trial attorneys who had experience in using the techniques provided comments to their reactions. At lunch Chief Justice for Administrative and Management Barbara Dortch-Okara gave further encouragement to the participants and noted the relationship of the concern for public trust and confidence and the jury system improvements being discussed. The afternoon was spent in small groups with the Project judges leading discussions about the procedures. Illustrating the procedures was a video produced by the Flaschner Institute.

The Flaschner Institute has published *Jury Trial Innovations in Massachusetts* edited by the project leader Judge Peter Lauriat of the Massachusetts Superior Court the sixteen procedures are detailed using

sections from *Jury Trial Innovations* and the *ABA Civil Trial Practice Standards*. Each procedure is then discussed with a Massachusetts judicial commentary and authority to make the procedures more readily usable by the judges. The commentary includes the findings from the judges who participated in the project. In June the first of three CLE programs was given to acquaint more members of the Bar to the procedures. Copies of the documents may be obtained from the Public Information Office at the Supreme Judicial Court, Room 210, New Courthouse, and Boston, MA. 02108 or by calling (617) 557-1114.

In the next issues of this column I will present jury trial innovations pilot work from California and New Jersey.

Celebrities on Jury Duty: A reminder to us all

In this column in Volume 14, No. 3, 1999, I wrote about celebrities on jury duty. My enthusiasm for this demonstration was to show that everyone should and can serve on jury duty. The belief that the privileged are excused could be corrected by showing that the rich and famous are coming forward and participating. My request for other examples of “Jury Lifestyles of the Rich and Famous” was met with a stern reminder from John Montgomery, Executive Officer, Marin County Superior Court, California.

I quote a portion of his response.

“What special right do we, as court officials, have to publicize the fact that any citizen, famous, anonymous or infamous, has fulfilled a civic obligation? In Marin County, California, we have had many celebrities over the years who have quietly completed their jury service. I would consider it an invasion of any citizen’s privacy to go out of my way to publish that fact to the world, especially without specific authorization. I realize that some of the “rich & famous” may want such information broadcast to the world, but that is why they hire publicists. I believe that every juror is entitled to privacy and that right should not be set aside in a cavalier manner by a bragging court official.

I do not think it appropriate for court administrators to comment upon anyone’s jury service without obtaining advance authorization. Now, if you are suggesting that court officials may want to solicit support from celebrities to promote jury service, then I think your idea is both creative and innovative. I just think that we first have an obligation to ask a person before we enlist him/her in a promotional campaign, notwithstanding his/her status within the community—as defined in our pop culture—as “celebrity.”

He is, of course, absolutely correct. In all the examples I cited the approval from the juror was always obtained. Thanks John for the reminder.

As always, I am interested in your reactions and stories. Contact [Tom Munsterman](#).

Inquiries regarding **Juries** or to obtain copies of any of these resources
may be directed to the Research Division Office

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