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How Experience Changed My Practice On Juror Note Taking

BY JUDGE MICHAEL F. MCKEON

As a trial judge in a local criminal court, like many of my colleagues on the bench and despite a court rule (22 NYCRR 220.10) allowing the practice, I forbade trial jurors from taking notes. I thought it was too difficult to take notes and at the same time look at a witness and fully comprehend and appreciate what the witness was saying and how the witness was saying it.

Since jurors are the finders of fact in a jury trial, they are responsible for evaluating the believability, credibility and accuracy of a witness' testimony and therefore it is critical that jurors are able to fully comprehend what a witness is saying and how the witness is saying it.

I now believe I was mistaken. What changed my view was my participation in the Jury Trial Project of 2003. As one of 50 judges from New York selected by Judge Judith Kaye, chief judge of the Court of Appeals, to study innovative jury practices, I agreed to experiment with several innovations, including note taking by jurors. As a result of my experience, I am convinced that it is a much better practice to allow jurors to take notes than not.

Much to my surprise, my opinion changed not because the data from the 91 jury trials which allowed note taking seemed to prove that jurors can take notes and pay attention at the same time, but rather because of a comment made to me by one juror.

After one criminal trial, while handing out juror questionnaires designed to record the thoughts and comments on innovations used during the trial, one juror thanked me for allowing her to take notes. She went on to say that in order for her to process, understand and retain information, it was necessary for her to take notes.

She further related that had she not been able to take notes, her effectiveness as a juror would have been seriously compromised in that she would have been put in a position to make a decision on guilt or innocence based on an incomplete recollection of the facts and the law to be applied in the case.

We in the court system have a tendency to treat jurors as a single entity, rather than as individuals — and I was no exception. As an adjunct professor at my local community college for more than 20 years, I should have realized that people learn, process and understand information differently.

Indeed, I only had to examine my classroom experience to realize that when it comes to taking notes, there are three types of students; those who do not take any notes, those who occasionally take notes and those who take voluminous notes. All three types learn, process and retain information differently.

Jurors are no different. To expect all jurors to process information in the same manner is not only ludicrous but in some respects dangerous.

If one of our goals in jury trials is to send into a jury room a jury well equipped to render a fair and impartial verdict, then in my view, we are shortchanging all litigants if we are not providing our jurors with all the necessary aids and tools to enable them to perform the critical tasks we ask them to undertake.

Significantly, the thoughts and comments of my single juror are clearly supported by the preliminary data from those 91 trials. Approximately 75 percent of all jurors given the opportunity to take notes believed note taking assisted them in recalling the evidence, understanding the law and reaching a decision — the very three tasks we ask jurors to perform in reaching verdicts in both civil and criminal trials.

A court rule exists authorizing all judges in civil and criminal trials to permit note taking. I urge all judges to exercise their discretion and try it. You may find the experience worthwhile and it may change, as it did mine, your opinion about juror note taking.

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