

WHY JURIES? LOOKING BACK, LOOKING AHEAD

*Judith S. Kaye**

With my term as New York State’s Chief Judge nearing an end, I am filled both with a passion for further reform and with the pleasure of reflection on the past 15 years in this truly extraordinary position. Whether looking forward, or back, jury innovation tops the list. Here are just three of my reasons.

“PR” in the Furtherance of Justice

Most heartening, invigorating, inspiring of all is the response of the public to efforts to make the jury experience less burdensome and more meaningful for them. It’s 10:30 a.m., I’ve just had effusive compliments from two nonlawyers who completed their first jury service (having for years successfully avoided it like the plague), and I’m flying. Three lawyer-friends (one big firm litigation partner, one global media company general counsel, one appellate judge) told me that it was the experience of their life—a positive one. What a relief!

In the courts we constantly search for ways to promote public understanding of our work and our role. The judicial branch needs the confidence and respect of an informed public, and we know that we cannot rely on the press, or the schools, to secure it. We also have to take a lead role in this endeavor. Across the state and nation, courts sponsor innumerable civic

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education programs, but the job is a difficult one and our success is spotty.

Jury service is an opportunity like no other to educate the public about the justice system. This will, for many people, be their only real-life encounter with the courts. Why not show them the courts at their best, with clean, dignified facilities, trained and attentive personnel, and efficient, effective procedures. Given the huge numbers of people called for jury service—650,000 every year just in New York State—obviously there is enormous potential here.

Public relations is, of course, only one side of my topmost reason for singling out jury innovation in my current ruminations. The corollary is that when the public is well served by a quality jury system, so are the litigants. And that is, after all, our prime objective.

Generating Energy Within

Having recently hosted a two-day statewide seminar in Albany for our jury commissioners, I'd also put way high on my list the effect *within* the court system of a statewide jury innovation program. Jury innovation engages judges and court staff at every level.

The Albany seminar featured our newest publication—“Best Practices for Jury System Operations”—which summarizes what we have learned works best, from qualifying and summoning to processing payroll. This practical operational tool is now on every commissioner's desk for routine use as a resource, and is also available on line. It was developed by our central Jury Support Office, which deserves much of the credit for our successes. For the past 15 years we have had a terrific group of innovators at the core of our statewide jury initiative—judges and others—each year developing a menu of brand new ideas—usually at least 12.

The most exciting part of the seminar for me as Chief Judge was spending time with nearly all of our 62 commissioners of jurors—some from rural upstate counties, some from bustling cities—as they exchanged views and learned new ideas they might take back home. I was reminded once again that the

enthusiastic personal commitment of judges and staff in the end is what *will* make the entire system work better.

So, whether viewed from within the court system or from the perspective of the public, jury innovation is ideal both for continuing dynamic action and for quiet reflection on what has already been achieved.

Nationwide Energy

Beyond New York State, I remain impressed and inspired by the nationwide movement for jury reform. No other subject has so easily crossed state and professional boundaries. I love the books and articles, whether by law-trained jury gurus, behavioral scientists, statisticians or jurors themselves. I read them all. There's always something new and wonderful afoot, something to try.

For me additionally there is this striking coincidence. When I became Chief Judge back in March 1993, my first subject of interest was the jury. Having been a trial lawyer for 21 years before ascending the bench, I thought we had nowhere to go but up. "The Jury Project," chaired by now-United States District Judge Colleen McMahon, was the first of many commissions I appointed, and within months it handed me its report—120 power-packed pages, with 10 appendices. I believe this was the first statewide, comprehensive blueprint for jury reform in the nation, the first of many. It remains a reference point for us here in New York.

That report was organized and structured around the then-current American Bar Association Standards Relating to Juror Use and Management, the product of years of painstaking effort by national panels of judges and lawyers, jury experts, scholars and research institutions. What a resource! The ABA Standards became the pivot of our efforts in New York, working within our own ranks (for example, on new court rules) and working with our partners in government on new legislation.

Still I remember our boundless joy when the mountain began to move: all automatic jury exemptions abolished, mandatory sequestration of all deliberating criminal juries abolished, two week terms of service reduced to one day/one trial

and on and on. At last, our jury system entered the twentieth century!

What a wonderful coincidence it is that, at the brink of the twenty-first century, once again we are led in this exciting national initiative by the American Bar Association's Principles for Juries and Jury Trials, another monumental effort by the very best in the field. Once again this is a visionary yet highly practical, well-researched document that will continue to fuel a whole new generation of jury innovation. Again we gather around the ABA's "gold standard" to learn from and inspire one another, comparing notes through periodic meetings with lawyers, judges and others.

Those meetings, and the literature, assure me that I am not alone in my prospective/retrospective enthusiasm for jury innovation. From every vantage point, this is a truly important subject. The day will never come when there is not a great deal more that the courts can, and must, do to improve the operation of the prized American jury system. (I swallow hard when I think that all five of my praise-filled friends were actually selected to sit on juries—not the common experience in New York State, where those called still are overwhelmingly excused without having been seated on a case. We need to change that picture.) The impact of modern technology on jurors, jury operations and trial procedures alone presents a brave new frontier. Every advance opens a world of new possibilities.

As we look back on more than a decade of jury innovation, we know that it is merely the preface for what lies just ahead.