

JURY NEWS

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Jury Pool News

If you are tired of reading about innovations in New York State, I apologize, but courts there continue to do very interesting things as part of their ongoing jury reform efforts. The latest is a newsletter for jurors. The quarterly publication is beautifully done, as are all their publications. It is available to the approximately 10,000 jurors who report for jury duty each day in courts across the state. The *Jury Pool News* carries stories about the jury system and tells this wonderful and sometimes waiting audience about other court initiatives. A review of the first three issues found the following items:

- A message from the chief judge about jury reform.
- A story comparing the recent jury experience of a CBS News producer with her prior calls to serve.
- A report on the attitudes of jurors based on 118,000 responses received. Among the findings: the percent age of first-time jurors rose from 32, when the program started, to 53, indicating that more people are now coming to the courts as jurors.
- The Road to Reform, a listing of the various milestones achieved in the jury reform effort's four years, including adding more source lists, eliminating exemptions, raising the daily fee to \$40 a day, and reducing the term of jury service.
- A description of how the additional source lists are used.
- A discussion of Juror Appreciation Week, including pictures from last year's kickoff ceremony, which included former jurors Liza Minnelli and Dan Rather.
- Jury Service for the Disabled and what the courts are doing to make jury service feasible for all persons.
- A description of "Court Help," a series of programs to help self-represented persons.
- A description of a "Courtroom of the Future."
- A report on this year's Juror Appreciation Week festivities hosted by Ed Bradley, which included such former jurors as Mayor Giuliani, actress Marisa Tomei, retired Giants coach Allie Sherman, and Dr. Ruth Westheimer, who characteristically suggested that jurors "Get some paper and a pen and write a letter to someone you love" while waiting.
- A story about the Children's Centers located in many New York courts.
- A story and pictures of the new Housing Court facilities in the Bronx.
- Programs that supply jurors with books from a jurors library while serving in Queens and a program to make mammograms available to



jurors in Nassau County by coordinating their visit with the mobile screening unit.

- A report on improved court facilities.
- A story on efforts to speed foster care adoptions.
- A story on the public's cynicism toward lawyers and some reforms to improve this situation.
- And finally a jury update section that notes ongoing jury activities including the gem of an idea to form a "Committee of Lawyers to Enhance the Jury Process."

These volunteer lawyers have all been jurors. Copies are available from the Office of Court Administration, 25 Beaver St., New York, New York, 10004

Understandable Jury Instructions— No Longer an Oxymoron?

"Not So Plain English," an article in the June 1998 ABA *Journal*, quoted me. In an exaggerated paraphrase about understandable jury instructions, I said, "everyone is talking about them but nobody is doing anything about it." Letters from Delaware and Ontario proved me wrong. I knew of efforts in Michigan and, in fact, steered the ABA reporter to them. In Michigan, they tested jurors' comprehension and surveyed judges to identify the instructions most in need of improvement. The state civil instructions committee chaired by Judge William Caprathe drafted improved criminal jury instructions with help from an editor familiar with "Plain English" techniques. This use of someone familiar with plain English is a recurring theme in the state's efforts. All that remains in Michigan is to repeat the tests to see if the comprehension improved.

Mr. Thomas P. Leff, reporter for the Delaware civil instructions committee, sent a diskette containing the instructions and explained:

"A small committee composed of prominent Delaware attorneys representing the plaintiff and defense bars, Judge Susan C. Del Pesco who chaired the committee, and myself as Reporter, reviewed and refined some 370 instructions. In anticipation of the committee's review, I assembled draft instructions and then updated and annotated them to reflect current law. After conducting its review, the committee sent the material to Mr. Brian Garner (LawProse, Inc., Dallas Texas) who then recast the instructions into plainer English. The committee then reviewed Mr. Garner's edits to ensure that the statements of law remained accurate. The entire process took about twelve months and was generously supported by the Delaware Supreme Court."

Judge Richard Cooch, the chair of the Superior Court Advisory Committee on Criminal Pattern Jury Instructions, also wrote to say that the criminal instructions committee will pattern, his pun not mine, their work after the civil committee's efforts. He anticipates an 800-page document when their work is completed this year. Thomas Leff, who is working on the criminal instructions well, can be reached at (302) 577-2400, ext. 232, or tleff@state.de.us

Ontario's efforts have been part of a larger jury reform effort. Mr. David Butt, counsel to the Jury Trial Project of the Ontario Court of Justice, wrote about their progress. They used a process similar to Delaware's. Their plain English expert is Professor Jim Raymond of the University of Alabama. Mr. Butt reported one obvious and ingenious technique. "We have found it particularly helpful at the draft review stage to use the projector technology that allows a computer screen to be projected directly onto a film screen set up at one end of the boardroom. This allows everyone in the room to look at each specimen change in WordPerfect, Word, or whatever word processing program is being used. Suggested changes can be made before everyone's eyes, and everyone is always looking at a clean draft. This technique encourages constructive tinkering, and allows everyone to see the result instantly. We can try out different drafting options, and choose from among them. The result is relatively quick consensus on how the specimen instructions read best, because everybody is convinced by how the instruction looks."

Anyone who has ever served on a drafting committee can see the benefit of this technique. The usual method is for someone to propose a change, which is followed by a chorus of "repeat that again" or "how was that" and then eventually someone leaves the room to get hardcopy for everyone and the process is repeated.

Improved instructions in Ontario are just one reform being introduced. Others include allowing jurors to take notes and submit questions to the judge, interim commentary, permitting discussion of the evidence before deliberations and extensive pretrial instructions, and providing written copies of the instructions to jury. They are also providing the jury with a decision tree to guide their deliberations, decision by decision. The questions are blocked out like a logic flow diagram. Each question is given and the yes or no response guides the jury to the next decision or a verdict. These "process" instructions were tried in Florida many years ago and while upheld were not encouraged. David can be reached at 416-327-9997 or buttd@gov.on.ca

Defending Your Jury Source List

The Research and Information Technology Office of the Minnesota Supreme Court generates the source list for jurors' names by merging the voter registration list and the list of licensed drivers and ID card holders. Several other state-level offices perform this function for the trial courts as a service so that each court or county does not need to perform the merging and duplicate removal process. What Minnesota has now done as further assistance is produce a document "De-

fending Your Jury System." The document is approved by the Minnesota Jury Commissioners and the Minnesota Conference of Chief Judges. The first section gives the answers to nine commonly asked questions that arise during source list challenges. The second section describes the process used to generate the combined source list including the process used to randomize the list and the proof of randomness report that is prepared for each county. The third section gives the legal requirements, the fourth the National Standards, and the last section details the "Aspirational Goals and Improvement Efforts," which led to the current process. Copies of *The Minnesota State Jury Source List: Creation, Questions, Standards, Aspirational Goals, Historical Background* are available by calling Lois McBride, Senior Systems Analyst, Research and Information Technology, Office of the Minnesota Supreme Court, at (651) 297-7609, or e-mailing her at lois.mcbride@courts.state.mn.us.

New Publications

The second edition of *Managing Notorious Trials* is now available from the National Center for State Courts (NCSC). This monograph, written for judges and court administrators facing an imminent media-jury-security trial nightmare, provides common-sense suggestions for managing all aspects of a notorious trial including pretrial matters, media relations, jury management, and court security. The first edition was published in 1992, well before *California v. O.J. Simpson* and *U.S. v. McVeigh*. New or modified materials include innovations in judicial assignments for notorious cases, use of "gag orders" on attorneys, the impact of victims' rights legislation, and new technology applications. The publication can be ordered by calling toll free 1-888-228-NCSC (1-888-228-6272).

Through the Eyes of the Juror: A Manual for Addressing Juror Stress, the long-awaited monograph on juror stress, is also now available from the NCSC. Funded by a grant from the State Justice Institute, this publication identifies key sources of stress for jurors and describes strategies for addressing them. It also describes the findings of an empirical study of juror stress conducted in six jurisdictions to determine the extent and sources of juror stress. The monograph is available from Lynn R. Grimes at (757) 259-1812 or E-mail at lgrimes@ncsc.dni.us. A \$5 charge for postage and handling is required.

Something Else Too Good to Miss

From time to time I have noted articles of particular importance to the jury community and now wish to call everyone's attention to an essay in the *New York University Law Review*, Vol. 68:185, April 1993, titled "The Law of Prime Numbers." Christopher May, one of its nineteen authors, called it to my attention. This wonderful satiric piece gives some background into prime numbers and then gives, via footnotes, where the occurrence of all the "legally relevant" prime numbers from 2 through 5,009,317 appear in the law. The nineteen authors, a group that would probably be dangerous if all together at one time, obviously had a wonderful time in this excursion and respite from usual legal scholarship.