

Lake Legal Views Article (May 2003)

**By Judge Eugene A. Lucci
Lake County Common Pleas Court**

JURY INNOVATIONS PILOT PROJECT

My court is participating in the pilot project of the Ohio Supreme Court’s Jury Service Task Force, initiated by Chief Justice Thomas J. Moyer. The task force is chaired by Fairfield County Common Pleas Judge Joseph Clark. The mission of the task force is to study and evaluate the jury system and make recommendations to broaden citizen participation, improve the trial process, enhance the quality of justice, and promote greater public confidence in the Ohio jury system. Lake County Prosecuting Attorney Charles E. Coulson is a member of the task force.

There are fifty common pleas, county, and municipal court judges in 32 counties participating in the project. Each participating judge has been asked to conduct his or her jury trials utilizing as many of the jury trial innovations as they feel comfortable using, in both civil and criminal cases.

I have used almost all of these innovations ever since I took office. My participation in this pilot project will allow me to conduct a survey of the attorneys and jurors, and provide these surveys to the task force, which will issue a report on the use of such innovations.

The following jury trial procedure order is or will be entered for each jury trial in my court.

IN THE COURT OF COMMON PLEAS, LAKE COUNTY, OHIO

Plaintiff)	CASE NO.
)	
vs.)	
)	<u>ORDER OF JURY</u>
Defendant)	<u>TRIAL PROCEDURE</u>

{1} In the interest of the most economical and efficient use of the court’s time during trial and to speed the case to conclusion, the following order is hereby made in this cause and shall be binding on all parties.

Juror Questionnaires

{2} When the court’s prospective jurors are summoned, they are provided an extensive questionnaire to fill out and return. The questionnaire asks about 70 questions, including

approximately 20 questions pertaining to the juror's social preferences, which the prospective jurors may answer. Many lawyers find this information useful, but may be reluctant to ask about a juror's social preferences because they do not want to be perceived as wasting time, intruding on the juror's privacy, or asking what might seem to be irrelevant questions. To assist counsel as they prepare for voir dire, the court will make the completed juror questionnaires available to them several days before the trial. Counsel shall not ask a juror the same questions that the juror answered on his or her questionnaire; however, counsel may ask jurors to explain their answers and may follow-up with additional questions.

Orientation Videotape

{3} On the first day of trial, prior to the commencement of the jurors' service, the court will show them an up-to-date jury orientation videotape. The video gives the jurors a lesson in civics, with an emphasis on the court system and juror duties.

Mini-Opening Statements

{4} Counsel may give a mini-opening statement to the prospective jurors after the introduction of the trial participants. The mini-opening statement should be a short statement of what the case is about, that is, each side's claims and/or defenses, limiting themselves to the basic facts of the case, without becoming argumentative. Each counsel's statement should take no more than a couple of minutes. The purpose of the mini-opening statement is to allow the prospective jurors to have a better appreciation or understanding of counsel's questions, to alleviate the possibility of juror discomfort or a juror challenging the necessity for a question when counsel's questions are perceived by jurors to be too personal or embarrassing to answer publicly. Counsel will give a full opening statement after the jury is seated.

Jury Selection Method

{5} The jury will be selected using the "struck" method, as opposed to the "strike and replace" method. In the "struck" method, all prospective jurors are questioned, and challenges are made outside the presence of the jurors, with the first nine (civil) or thirteen (criminal), including one alternate, remaining persons in sequential order being the jury. After questioning by the court and counsel, the challenges are exercised out of the presence of the jurors. First, the court will entertain challenges for cause. Then in alternating order, counsel exercise their three (civil) or four (criminal)

peremptory challenges plus one challenge for each alternate expected to be seated. If a party “passes” on the exercise of a peremptory challenge, that challenge is waived.

Alternate Selection

{6} The alternate will be selected at random from the panel of jurors seated in the case immediately prior to the jury retiring to deliberate. The court will use a random procedure for selection of the alternate: plaintiff’s counsel shuffles a set of playing cards, and defense counsel selects one, which corresponds to the number of the juror who will serve as the alternate. The court will not discharge any alternate, as Criminal Rule 24 and Civil Rule 47 provide, but rather, the court will sequester the alternate juror in the courthouse while the jury is deliberating. If one of the regular jurors cannot complete his or her service, the court will put the alternate into the jury room, and the jury will then recommence its deliberations.

{6b} In the alternative, if the parties request, the court will designate the alternate during jury selection, known only to the court and counsel, to be the ninth (civil) or thirteenth (criminal) juror selected. The alternate juror will not be told that he or she is the alternate; the panel will be told that the alternate has not yet been selected; that all jurors must pay attention as if they were a regular juror; and that the alternate will be named just before the jury retires to deliberation. In this method, the parties exercise three (civil) or four (criminal) peremptory challenges each to seat the first eight (civil) or twelve (criminal) jurors, and then exercise one peremptory challenge for each alternate after the first set of regular jurors are determined.

Rules on Voir Dire Questioning

{7} The case may not be argued in any way while questioning the jurors. Counsel may not engage in efforts to indoctrinate jurors. Jurors may not be questioned concerning anticipated instructions or theories of law. This does not prevent general questions concerning the validity and philosophy of reasonable doubt or the presumption of innocence. Jurors may not be asked what kind of verdict they might return under any circumstance. Questions are to be asked collectively of the entire panel whenever possible.

Jury Instructions

{8} The court will provide the jury with both preliminary (substantive) and final instructions in writing, prior to the judge reading the instructions to the jury. The parties shall submit preliminary instructions sufficient to apprise the jury of the relevant legal and factual issues two weeks in

advance of trial. Final instructions shall be submitted to the court at least two days prior to the commencement of final arguments. The jurors will be told that the final instructions control their deliberations and verdict, regardless of what they were told in the preliminary instructions. The court will charge the jury after closing arguments. If the parties request, the court will charge the jury before closing arguments, to enhance the jurors' ability to apply the applicable law to the facts, better evaluate the arguments of counsel, and make counsel's use of the court's instructions during closing arguments flow smoother. If the jury is charged before arguments, the court will instruct the jury on how to conduct their deliberations and other housekeeping matters after closing arguments, and if necessary, correct any misstatements of the law by counsel during final arguments.

Juror Note Taking

{9} Jurors will be permitted to take notes during trial. The jurors will be informed that no juror is required to take notes; the fact that the notes taken by a juror support his or her recollection in no way makes his or her memory more reliable than that of the jurors who do not take notes. The court further will caution the jurors to not let the taking of notes divert their attention from what is being said or is happening in the courtroom during the trial. All notes are a confidential matter for the consideration of the jury only. Each note taker will leave his or her notes on his or her chair during all recesses and until deliberations begin. At that time, the jurors will be allowed to take their notes to the jury room. All notes will be returned to the bailiff for destruction at the time the jury is discharged.

Juror Questions

{10a} In civil cases, jurors are permitted to submit written questions to witnesses through the court. The court will decide whether all witnesses may be questioned by jurors or only those witnesses whose testimony is complex or confusing to a jury. Prior to opening statements, the jurors will be informed that they may ask questions of witnesses. The court will also explain the procedure for asking questions, that the court may not ask certain questions because of evidentiary rules, that the judge is the "gatekeeper" over which questions may be asked of a witness, and that they should not speculate on what answer might have been given nor should they speculate why the court chose not to ask a particular question. After counsels' examination of the witnesses, the jurors write down their questions and submit them to the judge through the bailiff. If the question is one that obviously should be asked, the court will ask the question in a non-leading fashion. Otherwise, the court will

provide counsel an opportunity to review and object to any juror question, out of the hearing of the jury. After completion of the juror questions of a witness, trial counsel may then ask follow-up questions of the witness on matters raised by the juror questions.

{10b} In criminal cases, jurors are not permitted to submit questions to witnesses.

Juror Notebooks

{11} The jurors will receive a three-ring notebook prior to opening statements by counsel, which will contain the preliminary instructions of the court, blank paper for taking notes and for juror questions, suggestions for conducting deliberations, and the final instructions at the proper time. Counsel can decide what other items should be included, such as photographs, exhibits, documents, or a glossary of technical terms. If counsel cannot agree on the contents of the notebook, the court will make the final determination. The bailiff will collect the notebooks at the day's adjournment, to be secured and returned to each juror when court reconvenes. If documents are not stipulated for admission prior to trial, then as the exhibits are identified, offered, and admitted, they can be given to each of the jurors for inclusion in their notebooks. If counsel will provide copies of admitted exhibits to each juror, the exhibit should be on 8-1/2 by 11 inch, three-hole punched paper. At the time of the distribution of the notebooks to each juror, the court will instruct the jurors concerning the purpose and use of the notebooks. The notebooks shall be available to the jurors during deliberations.

“Plain English”

{12} Counsel are urged to use “plain English” during trial and to avoid “legalese” vocabulary when they communicate with the jury. In cases of legal, medical, expert, or complex terminology, counsel should use everyday language and keep things as simple and straightforward as possible. Even terms that lawyers take for granted, such as “plaintiff,” “defendant,” “cause of action,” or “indictment,” should be replaced with or explained by more familiar words. In addition, counsel are urged to submit proposed jury instructions in plain English.

Trial Motions and Objections

{13} Motions or objections to evidence or procedure shall not be accompanied by explanation or reason for the motion or objection in the jury's hearing.

Exhibits

{14} All documents and exhibits shall be marked for identification purposes, together with an index, and shall be shared with opposing counsel at least two working days prior to trial, and a copy of the index shall be provided to the judge's office. The plaintiff shall mark exhibits using numbers and the defendant shall mark exhibits using letters. The parties shall not copy the court with trial exhibits, especially medical records, prior to trial.

Trial Briefs & Proposed Instructions

{15} No later than two weeks prior to the trial, the parties shall file their trial briefs; proposed jury instructions and jury interrogatories, which are to be submitted on a 3-1/2 inch floppy disc or CD-ROM, or via e-mail to CommonPleasIV@lakecountyohio.org, in WordPerfect or Word format, together with a hard copy; any motions *in limine*; and any videotape depositions, to allow time for proper editing on any objections to testimony.

Interim Commentary

{16} In lengthy or complex litigation, the court will allow for interim commentary by counsel as it sees fit during the course of the trial, especially before a lengthy expert is about to take the stand. At periodic intervals during the trial, counsel will be given a chance to explain to the jury the significance of the evidence or testimony presented to them. Opposing counsel will have the opportunity to respond to any interim commentary. The court may limit any such interim comment to a total amount of time to be divided as counsel chooses, or allow a few minutes after pre-designated segments or days of trial. Counsel may use this time to explain to the jury the significance of testimony or evidence that it has presented, or is about to present. The purpose of such commentary is to enhance juror understanding of the evidence, assisting jurors in recalling the evidence, and allowing counsel to clarify, organize and place evidence in the proper context.

Suggestions for Conducting Deliberations

{17} The court will provide jurors guidance regarding how to conduct their deliberations – which they may accept or reject. The suggestions will include the appointment of a foreperson; avoidance of an early vote; providing all jurors an opportunity to present opinions and comments; procedure for asking questions regarding the instructions, the law, or the evidence; procedure for handling exhibits; procedure for filling out jury interrogatories and verdict forms, including the number of jurors needed to properly reach a verdict; and handling disagreements among jurors.

Post Verdict Meeting and Surveys

{18} After the jury has been dismissed, the judge will meet with the jurors to give them an opportunity to ask questions about the trial or post-trial procedure. The court may invite the jurors to talk to the attorneys for the purpose of providing the attorneys an opportunity to improve their advocacy skills and receive constructive feedback on their trial techniques. The court will inform the jurors that this is voluntary on their part; they have no duty to talk to the attorneys or anyone about their experience as jurors. Counsel shall not criticize or argue with jurors about their verdict. Because this court is participating in the pilot project of the Ohio Supreme Court's Jury Service Task Force, the jurors will complete juror surveys provided by the task force before leaving the courthouse. Counsel shall also complete attorney surveys provided by the task force and return them to the court within three days of the conclusion of the trial.

IT IS SO ORDERED.

JUDGE EUGENE A. LUCCI

c: Attorney for Plaintiff(s)
Attorney for Defendant(s)