

## 35 No. 3 Judges' J. 36

Judges' Journal

Summer, 1996

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# LOW-TECH AUTOMATED JURY INSTRUCTIONS

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### COA -- **Court** Automation: Computer Hardware & Software

When we talk about **court** technology, we usually think of high-tech computers. However, too often judges and administrators ignore the capabilities of relatively “low-tech” solutions. **Courts** can both improve their methods of operations, and obtain significant savings in time and money, by making better use of the technology they already have.

For example, Philadelphia a few years ago introduced a low-tech innovation, a standardized questionnaire and videotape to explain the jury process to prospective jurors.<sup>1</sup> This simple innovation resulted in a significant savings of time and money for the **court**--and for the litigators involved.

By using a common technology in a new way in Philadelphia, we made several improvements in our jury system. Philadelphia juries now are selected using a standardized questionnaire for prospective jurors and are given detailed explanations of the questions on an introductory videotape.

In doing this project, one of our objectives was to save the **court** time. The judge no longer has to ask the questions and wait for **court** officers to record the juror's name and jury number. With every jury panel selected, this has saved 20 minutes of scarce, expensive judicial time and other **court** employees' time as well. Multiplied out by the number of panels selected in Philadelphia each year and by the costs of running a courtroom, we estimate that the dollar value of the saved time is well in excess of \$500,000 each year.

Also, we were able to accommodate the bar by assuring that the same, basic questions would be posed to prospective jurors in every trial, that “standard” explanations would be given, and that they would have ready access to this basic information by looking at a completed pre-printed form.

As a result, today when the 300 to 400 prospective jurors enter our jury assembly room, they are all seated at school-type chairs, which have arms for writing. They are given pencils and the questionnaires. (Originally, we used clipboards, but when we moved to new jury selection facilities, the chairs with arms were requisitioned.) Jurors are told not to fill anything out until they receive the explanations on the tape. Many of them listen to this. Some do not.

They next view a 25-minute videotape, which first welcomes them to jury duty and tells them the importance of their service. Then they are told to take out the questionnaires. The pre-printed questionnaires have built-in carbon and make three copies as well as the original. The jurors are given detailed explanations in lay language of the various questions on the form. When the jurors go to the various courtrooms, the forms are split up and copies are given to the judge and counsel on both sides. The jurors keep a copy, so if they are not selected they can easily complete a new form back in the jury assembly room. In this way, every Philadelphia lawyer knows what “standard” questions have been asked. They do not need to submit a stack of requests for the general questions, but only questions specific to the case. There is a guarantee that no matter which judge conducts the voir dire a certain number of questions will have been answered.

The use of videotape solves many problems that would be missed by the use of a questionnaire alone. Many jurors have difficulty reading; also, the concepts themselves are complicated for some lay persons. With a little bit of explanation on the tape, the questions are clarified.

The form is divided into several sections. The first is a general questionnaire, asking name, where in the city the prospective juror lives, occupation, and occupation of the juror's spouse, and number and age of children.

There also is a question about race, designed for statistical purposes and to guard against the use of race as a factor in jury selection. While this question might raise questions if merely asked on a form, the commentator on the videotape explains the reasons behind it.

One question asks whether a potential juror has any physical or psychological problems or is taking any medication. They then are asked if they ever served on a jury before, and if they were ever on a hung jury.

Other questions relate to criminal trials. Potential jurors are asked whether they have been a victim of, or charged with, a crime, whether they are related to a police officer, and whether they would follow various instructions on the law--such as the right of a defendant not to take the stand and guilt beyond a reasonable doubt.

Another section relates only to civil trials. The questions include whether the potential jurors or someone close to them have ever been a party to litigation or a witness to some event that led to litigation. They are asked if they or anyone close to them are involved in either legal or medical fields. The “legal related” question is expanded on the tape to include being involved

in the processing \*37 of claims in any way, referring to experience with the insurance industry without overly highlighting it.

Jurors are asked whether they could follow the law. To ensure fairness, they are asked balanced questions. They are first asked if they can put aside sympathy for the plaintiff, and then asked if they could award damages for intangibles.

A separate page of the form has questions to be answered in the courtroom. These include familiarity with the judge, lawyers, parties, witnesses, or incident. They also include a question as to whether jury service would create a hardship, which is not on the tape. The reason for this is that the judge, in person, can better stress the importance of jury duty to discourage jurors from shirking their responsibility as well as estimating the expected length of the trial.

We provided a form to have prospective jurors check off answers to case-specific questions as to whether they know any of the parties or attorneys, whether service would be a hardship (after explaining the length of the trial), and several “other” questions that would be asked orally by whomever is conducting the voir dire, be it a judge, **court** official, or counsel. However, most of the time these questions are just asked orally. The jurors raise their hands in response and their names and number are recorded for follow-up.

After the video was produced, judges received a copy of the script of the videotape and, of course, were given an opportunity to view it. A memorandum accompanied the script. Several of the general instructions on tape were highlighted, so the judges could shorten their general remarks to the jurors. The judges were told the videotape was not intended to replace follow-up questioning. They were asked to make sure that all prospective jurors were asked some questions even if they did not check off anything on the form. In this way, the lawyers could get some feel for how the jurors respond.

Many jurors who served under the old system and the new system said how much they preferred the new. Not only did they appreciate the saving in time, but they also felt more comfortable with the full explanations given on tape. While some “live” judges had a practice of giving jurors detailed explanations, others did not.

The videotape plus questionnaire had another benefit. Because of the standardization, **court** staff often supervise the voir dire with the lawyers in civil cases, giving the judges the opportunity to carry out other duties, such as conducting conferences for other cases, working on opinions, etc.

It would be nice to say that this innovation was the result of a carefully thought out plan to improve the **court** system, but that is not so. The videotape and jury questionnaire just evolved.

This is how it came about. In 1986, I had been assigned as calendar judge to administer Philadelphia's inventory of 6,000 asbestos personal injury cases. To keep things moving, we inaugurated mandatory nonbinding, nonjury trials and mandatory prerecorded video-tape trials,

requiring all testimony to be presented on videotape. I was often caught trying to pick a jury for these trials, when I had other nonjury trials scheduled.

I thought that because I had required the lawyers to present all the testimony on videotape, I should also ask the voir dire questions on videotape. I took a standard set of asbestos voir dire questions home, closed the curtains in my bedroom, and set up my home video camera. I set up a mike, turned on the camera, and Philadelphia's videotaped voir dire questions were born. I photocopied an “answer sheet,” for the written section. We had the jury selection room personnel supervise the taking of the preliminary voir dire questions while I was trying nonjury asbestos cases. When my stint as supervising judge of the asbestos program came to an end, I went back to my bedroom and videotaped the standard questions for general civil cases.

At the same time, our old general “welcome” tape shown to all prospective jurors was badly out of date. One of the judges on the tape had died many years before, and another was completing his first ten-year term on the state supreme **court**. In fact, the production was not an actual videotape, but a videotape of an old slide show.

At this time, because of budgetary problems, the **Pennsylvania** Supreme **Court** had taken an active role in overseeing Philadelphia's **court** operations. Judge Nelson A. Diaz was named administrative judge of the Trial Division of Philadelphia, with a mandate to effect cost savings and efficiencies in the system.<sup>2</sup> When Judge Diaz heard about the suggestions for a new videotape that would incorporate a standardized questionnaire to save jury selection time, he asked to have it implemented immediately. He asked me to incorporate criminal questions as well.

Fortunately, “standard” criminal voir dire questions already existed. Judge Carolyn Engel Temin edited a state-wide criminal bench book that contained these questions, and she was drafted into the project. Together, we went over the questions and the script, making sure the narrative on the tape was in plain English that would be comprehensible to our jurors.

Judge Diaz said he did not want to have sitting judges appear on the videotape, since some might leave the bench and he did not want to single out any specific judges. We used members of the Philadelphia Bar Association's theater wing as “judges” for the videotape. These lawyers all had extensive acting experience and did an excellent job-- without charging their normal hourly rate.

Judge Temin called together a committee of judges interested in the jury selection process to refine the questions and the script. We added to the committee our **\*38** new jury commissioner, Mike McAllister, a former trial lawyer with many years of experience.

We were fortunate to have the use of the district attorney's training office. The facility, used for training sessions for new assistant district attorneys, was set up as a courtroom, with professional lighting, cameras, videotape equipment, and a control board. Even more important, it came with an excellent director, Hank Harrington.

The new system was implemented by what deputy **court** administrator David Lawrence dubbed “I.S.P.” or “Inverse Strategic Planning.” I.S.P. means you put something in effect and then do the planning. We followed the philosophy of the Nike ad, “Just Do It,” and then waited to see what the response would be. As lawyers walked in to select a jury, they were suddenly confronted with the new forms and heard about the videotape.

A hue and cry greeted the new system. There were several meetings. Of course, most of the explanations and questions were based on what judges and lawyers had been doing for years. Finally, we solicited our 14,000 member bar for comments. We received eleven letters, three from the same law firm. We made some minor modifications to the questionnaire and reshot the tape. Using “I.S.P.” we moved from concept to final product in three months, rather than the three or four years it usually takes to make changes under a committee system. There have been few criticisms of the new method. What now would really create an outpouring of complaints from the bar would be any effort to go back to the old way.

### Footnotes

Note

1. **Richard B. Klein** has been a trial judge on the **Court** of Common Pleas in Philadelphia for over 20 years and has taught at Temple Law School. He is the vice-chair of the National Association of State Trial Judges' Technology Committee. Judge Klein also serves as vice-chair of the **Pennsylvania** Supreme **Court's** Futures Commission on Justice in the Twenty-First Century.

1 This type of trial was pioneered by Judge James McCrystal of Sandusky, Ohio.

2 Judge Diaz has resigned from the bench and is now serving as general counsel to the United States Department of Housing and Urban Affairs. While serving on the bench, he was awarded a national award from the Foundation for Improvement of Justice, Inc. for his accomplishments in the 18 months he served as administrative judge.

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