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# A SUPERIOR COURT PERSPECTIVE

Margaret J. Kravchuk\*

The Maine Superior Court is a general jurisdiction trial court with sixteen full-time justices who travel throughout the State to provide coverage to seventeen courthouses from Caribou to Alfred.<sup>1</sup> Presiding on the Maine Superior Court presents a variety of unique challenges, but perhaps the most rewarding of those various challenges is the opportunity to work directly with the citizens of Maine who are called for jury service. While the O.J. Simpson trial and other high profile media events have caused many to question the efficacy of trial by jury, a few years spent on the Maine Superior Court bench dispels any such doubts. The Framers of the Maine Constitution determined that the right to trial by jury "shall be held indispensable."<sup>2</sup> To understand why, sit through over a hundred jury trials from start to finish.

Maine Superior Court justices preside at approximately thirty-seven jury trials every year.<sup>3</sup> From those figures it can be concluded that the average justice hears approximately 260 jury trials during a seven-year term. That perspective provides not only a wealth of knowledge about the level of trial practice in Maine, it also provides a wealth of firsthand experience about how juries go about their business. Those justices who speak regularly with jurors at the conclusion of their service are most often asked the question, "Did we do the right thing?" Of course, a justice is forbidden from commenting upon the correctness of the jury's verdict,<sup>4</sup> but justices routinely express to the jurors appreciation for the hard work and diligence they have observed. The *Code of Judicial Conduct* clearly states that "a judge shall not commend or criticize jurors for their verdict other than in a court order or opinion in a proceeding, but may express appreciation to jurors for their service to the judicial system and the community."<sup>5</sup> The fact that so often jurors express their concern about having "done the right thing" belies the pollsters and pundits who suggest that jurors are motivated by personal agendas and public opinion.

A Maine Superior Court justice has the opportunity to observe the collective common sense of our citizens in action. While verdicts, especially the size of damage awards in civil cases, can occasionally be a shock, on the whole, juries breathe life into the concept of "justice." Civil damage awards might be inflated,

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\* Justice, Superior Court

1. See ME. REV. STAT. ANN. tit.4, §101 (West 1989). While the term "judge" is commonly used to refer to members of the bench sitting at trial, the term "trial justice" is an ancient one in Maine, dating at least to 1860. See Herbert T. Silsby, II, *History of the Maine Superior Court*, 14 ME. BAR BULL. 109, 134 (1980)(citing P.L. 1860, ch. 164).

2. ME. CONST. art. I, § 7.

3. In fiscal year 1997, there were 396 criminal jury trials and 202 civil jury trials held throughout the State. See 1997 ME. JUDICIAL BRANCH ANN. REP. If those numbers are divided equally among the 16 full-time Superior Court justices, the average justice presides at 37.3 jury trials per year. In fiscal year 1998, there were 404 criminal jury trials and 166 civil jury trials, yielding an average 35.6 jury trials per year for each justice. See 1998 ME. JUDICIAL BRANCH ANN. REP.

4. See MAINE CODE OF JUDICIAL CONDUCT Canon 3(b)(10) (1993).

5. *Id.*

or more often, deflated, based upon the attorney's performance, the plaintiff's demeanor, the defendant's "deep pockets" or bad reputation within the community, or simply the jury's own inexperience with the amounts awarded in similar cases throughout the State. However, with this caveat pertaining to the size of civil damage awards, most often a jury's verdict is a wonderful amalgamation of a little learning in the law, a bit of New England common sense, and a lot of hard work. Their efforts deserve respect. Rather than making headlines with the occasional jury verdict gone awry, someone should tell the stories behind the hundreds of verdicts that make perfect sense to anyone who sat through the actual trial and heard the actual evidence.

Unfortunately, those very citizens who are willing to engage themselves in the process of jury duty are sometimes shortchanged because the court doesn't provide jurors with the tools they need. One of the most difficult tasks facing trial judges throughout the country, including justices on the Maine Superior Court, is how to conduct trials wherein jurors receive the information they need in a form which allows them to process that information in a rational way. High technology with video gimmicks and laser pointers may be entertaining, but it does not always improve the quality of the information jurors receive. In some states, trial judges have even tried preparing an instructional sheet on how to conduct jury deliberations and distributing those sheets in the jury room to assist the jurors. Maine's superior court justices are constantly evaluating these sorts of proposals to ascertain if they can be adapted to our court procedure.

The Maine Superior Court justices have undertaken a concerted effort to improve jury management. Those efforts have ranged from participation in a quality management team with clerks, administrators, and others, to actual field research concerning which jury rooms have refrigerators and microwaves for juror use. There is a strong professional commitment on the Maine Superior Court bench to improve the jury service experience. Justice Donald Alexander, now a member of the Supreme Judicial Court, literally wrote the book on jury practice in Maine while he was a trial justice.<sup>6</sup> A trial justice truly does "feel the pain" of a jury that is unable to reach a decision because it does not have the information it needs. The goal of each trial justice is always to conduct a trial from voir dire to instructions which is responsive to juror needs and concerns.

More and more trial justices have come to recognize that juror note-taking can be a way to improve juror comprehension. Maine law, as announced in *State v. Fuller*,<sup>7</sup> and as promulgated through Rule 24(f) of the Maine Rules of Criminal Procedure and Rule 47(e) of the Maine Rules of Civil Procedure, now clearly authorizes note-taking under the court's instruction.<sup>8</sup> In the *Fuller* case, the Maine

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6. See HON. DONALD ALEXANDER, MAINE JURY INSTRUCTION MANUAL (2d ed. 1990).

7. 660 A.2d 915 (Me. 1994).

8. Rule 24(f) and Rule 47(e) provide:

Note-Taking by Jurors. The court in its discretion may allow jurors to take handwritten notes during the course of the trial. If note-taking is allowed, the court shall instruct the jury on the note-taking procedure and on the appropriate use of the notes. Unless the court determines that special circumstances exist that should preclude it, jurors should be allowed to take their notes into the jury room and use them during deliberations. Counsel may not request or suggest to a jury that jurors take notes or comment upon their note-taking. Upon the completion of jury deliberations, the notes shall be immediately collected and, without inspection, physically destroyed under the court's direction.

ME. R. CRIM. P. 24(f); ME. R. CIV. P. 47(e).

Supreme Judicial Court pointedly quoted one of the jurors who stated as follows: "And then, when I got home, in reference to the evening notes, again, just to orient my mind what was going on—I mean, the lawyers had their own notes. We had nothing to go by."<sup>9</sup> Trial justices understand this kind of frustration and can often see on the faces of the jurors their confusion or displeasure about the way material is presented to them.

Although the reality of jury service is slowly changing as attempts are being made in Maine to give jurors better tools, the ideal situation is far from realized. Many superior court justices like to give juries written copies of instructions. Unfortunately, not all courthouses are equipped with secretarial help or computer capabilities which would allow for the reproduction of written instructions. Jurors also might often be better served if counsel provided individual copies of exhibits for jurors to follow during testimony. Sometimes the resources to accomplish that task simply don't exist, but the alert trial justice constantly looks for ways to enhance the jury experience.

Of course, concern for and empathy with jurors is not without limitation. The trial justice must walk a careful line between being attentive to the jury's needs and having undue contact with the jurors. Any extraneous information received by jurors through unauthorized communications with the presiding justice or anyone else can create a presumption of prejudice which can only be rebutted by clear and convincing evidence that there was no prejudice.<sup>10</sup> While trial justices today may still find themselves in motel rooms far from home while presiding in courts from Caribou to Alfred, the days of playing cribbage in the motel's recreation room with the sequestered jurors are long gone.<sup>11</sup>

Trial justices recognize the importance of counsel maintaining a professional relationship toward the jurors. In most counties the monthly trial list contains the admonition: "[A]ttorneys are reminded that contact of any kind with jurors is prohibited until they are finally discharged from jury service."<sup>12</sup> It is considered unethical for attorneys to refer to individual jurors by name during the course of a trial.<sup>13</sup>

Trial justices experience the same tension in their courtroom relationships with jurors. They want to be friendly and helpful toward the individual jurors, but do not want to single out any one juror for special attention or praise. Furthermore, the trial justice is always concerned that his or her actions will be perceived by jurors as expressing some partiality toward one side or the other. This problem is most acutely felt in pro se jury trials when the justice is clearly ruling in favor of the represented party because his or her objections are well-founded. Post-verdict interviews suggest that some jurors perceive the justice's conduct to have been unfair toward the unrepresented litigant. The last thing any justice wants is for the jury to believe that the justice has "taken sides" during the course of the trial.

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9. *State v. Fuller*, 660 A.2d at 916.

10. *See State v. Royal*, 590 A.2d 523, 524-25 (Me. 1990).

11. *See, e.g., Reed v. State*, 270 A.2d 79 (Me. 1970).

12. *See, e.g., ME. BAR R. 3.7(f); ME. R. EVID. 606.*

13. *See ABA, STANDARDS FOR CRIMINAL JUSTICE*, 3-5.4 (1980); MYRON H. BRIGHT & RONALD L. CARSON, *MAINE OBJECTIONS AT TRIAL I* (1991) (citing *Pendleton v. Evetts*, 611 S.W.2d 607 (Tenn. App. 1981)).

A jury trial is a fragile human event which can rarely be fully understood by anyone who was not present in the courtroom. Even those who are present see, hear, and perceive it differently sometimes. The essence of the experience of a trial judge is to watch that event unfold at its own pace and in its own way. One must set the ground rules and referee the disputes, but a trial justice does not plan what will happen or set the agenda. The litigants bring their real human problems to the courthouse, the attorneys organize and present the evidence, and the jurors find the facts from that evidence and apply the law to the facts. It is a fascinating process to watch and integral to the rule of law. Efforts to strengthen the jury system and to accord to jurors the proper respect for their service are a paramount concern of each of Maine's trial justices.

Working with jurors throughout the State is what sets the experience of a superior court justice apart from that of other members of the bench in Maine. If one wishes to understand the experience of a Maine Superior Court justice and "get a feel for the job," one has to understand the jury trial process. The word "verdict" comes from the Latin, "to speak the truth" or more precisely it is defined as "a true declaration."<sup>14</sup> There is tremendous job satisfaction in overseeing an arduous trial and taking great pride in the jury's "true declaration." Life as a Maine Superior Court justice, with scarce resources, miles of traveling, and little time for reflection, is nonetheless rewarding when a jury does its job well.

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14. See BLACK'S LAW DICTIONARY 1559 (6th ed. 1990).