

WHY EVERY CHIEF JUDGE SHOULD SEE *12 ANGRY MEN*

JUDITH S. KAYE\*

Many times over the past fifty years—as a college student, a law student, a lawyer, and a judge—I have seen, and loved, the American classic *12 Angry Men*. Never has it impressed me more than as New York’s Chief Judge.

Putting aside the Hollywood touches (like bringing two knives into the deliberations), what moved me even as a college student is the genius of our jury system. Imagine: twelve anonymous citizens from all walks of life, bonded together for a moment in time to pass critical judgment on a fellow human being. My friends who have had the privilege of sitting to verdict as jurors—for example, general counsel of a major media corporation, my rabbi, a federal appeals judge, a major law firm litigation partner—describe their experience as positively life altering.

I know no more powerful depiction of the genius of the American jury system than *12 Angry Men*, starting with its stark simplicity, dramatically escalating story and outstanding cast, especially Juror #8, my hero Henry Fonda. Who among us does not want to be Juror #8, Champion of Justice? So cool. So skilled. I marvel at how he enhanced his credibility at the outset by offering to go along with the others if no one else had a reasonable doubt. How many people have been led to careers in the law by this great film? Why, in half a century, has none rivaled it in its portrayal of our justice system? Today, we seem to need deceit, corruption, or at least violence in our books and movies about courts (and everything else). In *12 Angry Men* there is none of that—only artistry in the script, direction, and cast.

The film does, however, raise several concerns for today’s Chief Judges.

## I. AMENITIES

For me, the first concern—loosely described as “amenities”—has particular resonance. After all, the film is set in our own Manhattan courthouse, constructed in (gulp) 1927. Eighty years later, the facility is an aged,

\* Judith S. Kaye is Chief Judge of the State of New York and Chief Judge of the Court of Appeals of the State of New York.

but still beautiful, beehive of motions, trials, and other court business, with daily traffic in the thousands. It is even regularly featured in *Law and Order* and other television and movie dramas. The fact is, the courthouse scenes that open *12 Angry Men* are little changed today. As I watch the film, I feel that I am walking those corridors. The view from the jury room windows—the New York City Municipal Building—is the same. And while we now have air conditioning, no ashtrays (or smoking anywhere in the building), and better space, lighting, and furniture, the jury deliberating room shown in the film feels familiar.

As CEOs of their court systems, most Chief Judges have some responsibility for the condition of the courthouses, and jury facilities deserve a place at the top of the list. Clean, decent, well-lit, comfortable jury facilities are important. This is where we bring the public to perform what is not only a treasured right but also a sometimes onerous duty of citizenship. The task is difficult and stressful enough—we should not exacerbate the tensions with cramped, shabby, poorly ventilated deliberating rooms.

Here in New York, by delegation and by personal follow-up, we try to assure that the jury facilities are well maintained; every now and then I even check the restrooms. It is a good message. I place into this same category the attention of our jury staff: “public awareness” matters—meaning awareness both of the public’s needs and our need to provide quality service. Through courteous, informed jury staff, a prize-winning fifteen-minute juror orientation film, and written materials, we try to welcome and introduce jurors to their role and to the neighborhood. All around, I think that in these “atmospheric” respects court systems today are doing a lot better in attitudes toward jurors than we did fifty years ago. Today we recognize that jurors are not fungible objects. Rather, jurors are a valued part of our justice system, and they offer us a unique opportunity to show the court system at its best, juror-by-juror winning public confidence in what we do.

## II. DIVERSITY

While the film is not outdated in any serious way, in one way the difference is stark: you would no longer expect to find a jury of twelve white men, certainly not in Manhattan. We know all too well the struggles for equality of women and minorities in our nation’s history. Remarkably, in this enlightened state, women’s automatic exemption from jury service was not repealed until 1975—special concern for our sensibilities, as we

learned, was no favor.<sup>1</sup> The discriminatory use of peremptory challenges was not recognized by the United States Supreme Court until 1986.<sup>2</sup> Today, we know that diversity matters in so many things, including juries. Imagine if the rich diversity of life experience of the twelve angry white men had been enlarged by the life experience of women and minorities!

I am forever grateful to the New York State Legislature, back in 1994, for adopting a brand-new Chief Judge's proposal to abolish all of New York's automatic exemptions, which had long given two dozen privileged categories of citizens the chance to remove themselves from jury service—no questions asked.<sup>3</sup> We all need to be attentive to diversity in juror qualification, summoning, follow-up, community education, and for-cause and peremptory challenges. Chief Judges in particular must be concerned about assuring diversity in juries, and throughout a system that calls itself “justice.”

### III. EFFECTIVE DEFENSE

Effective representation of persons who cannot afford counsel is another major concern of today's Chief Judges. In New York, we recently received the report of the Commission on Indigent Defense—a group that was hard at work for more than two years.<sup>4</sup> We are heavily engaged in implementing the Commission's recommendations. The right to counsel, after all, is enshrined in our state and federal constitutions. It should be more than a paper promise. One cannot watch *12 Angry Men* without questioning the effectiveness—indeed the presence—of the defense lawyer, who Henry Fonda speculated was a poorly paid, overworked, appointed counsel. He did not mean that as a compliment. For starters, an effective defense lawyer at the very outset of the case, in *voir dire*, might have exposed some of the prejudices of the twelve angry men, which could have cost the defendant his life.<sup>5</sup>

1. See *Taylor v. Louisiana*, 419 U.S. 522 (1975); Act of Feb. 5, 1975, ch. 4, 1975 N.Y. Sess. Laws 4 (McKinney) (repealing provisions to the judiciary law exempting a woman from jury duty).

2. See *Batson v. Kentucky*, 476 U.S. 79 (1986).

3. See Judith S. Kaye, *My Life as Chief Judge: The Chapter on Juries*, N.Y. ST. B.A.J., Oct. 2006, at 10, 12, available at [http://www.nyjuryinnovations.org/materials/Kaye\\_LifeAsChiefJudge\\_ChapteronJuries.pdf](http://www.nyjuryinnovations.org/materials/Kaye_LifeAsChiefJudge_ChapteronJuries.pdf). As a consequence of the repeal of all automatic exemptions, I have been summoned to jury service three times, but regrettably dismissed on each occasion. Lawyers and judges regularly serve on our juries today.

4. COMM'N ON THE FUTURE OF INDIGENT DEF. SERVS., FINAL REPORT TO THE CHIEF JUDGE OF THE STATE OF NEW YORK (2006), available at [http://www.courts.state.ny.us/ip/indigentdefense-commission/IndigentDefenseCommission\\_report06.pdf](http://www.courts.state.ny.us/ip/indigentdefense-commission/IndigentDefenseCommission_report06.pdf).

5. See Phylis Skloot Bamberger, *Jury Voir Dire in Criminal Cases*, N.Y. ST. B.A.J., Oct. 2006, at 24, available at [http://www.nyjuryinnovations.org/materials/Bamberger\\_JuryVoirDire\\_Criminal-Case.pdf](http://www.nyjuryinnovations.org/materials/Bamberger_JuryVoirDire_Criminal-Case.pdf) (providing an overview of *voir dire* in New York).

Few are as fortunate as this defendant to have had such a persistent, persuasive advocate in the jury room arguing successfully on his behalf. But that is the role of effective defense counsel. Jurors are there to weigh the evidence and arguments, not manufacture them. Counsel with time, resources, and ability surely would have focused the jury on the discrepancies that ultimately won them over. Chief Judges definitely need to be concerned about an effective system for indigent defense.

#### IV. CHALLENGES OF THE TWENTY-FIRST CENTURY

A constant challenge for Chief Judges is assuring that, while remaining true to centuries-old core values and principles, the courts serve the needs and demands of a rapidly changing society. Take the substantive law for example. Only recently, New York courts were asked to apply the law of conversion (with roots in the seventeenth century) to the transplantation of human organs.<sup>6</sup> Then too, we need *physically* to fit today's technology into courthouses that may date back eighty or a hundred years, and *conceptually* to fit today's procedures like e-filing and e-discovery into our litigation habits, traditions, and codes.

Nowhere is the challenge greater than in the jury system. Even as recently as the early 1990s, for instance, our tradition in New York was to summon jurors from what we called a Permanent Qualified List (with huge juror needs and two dozen automatic exemptions, it became necessary to establish such lists), for a minimum of two weeks' service, every two years like clockwork. Unthinkable today! The rapid pace of modern-day life, the need for a representative jury pool, disdain for "privileged" automatic exemptions from jury service, and technology (like computers) to assist in summoning and assembling jury pools are but a few of the incidents of life in the twenty-first century that might well have changed the face, and temper, of the twelve angry men.

Beyond that, we know that people learn differently today. Our "Courtroom of the Twentieth Century," with "white boards" for automated visual displays and computer screens in the jury box, needs constant updating. Allowing note-taking and written juror questions of witnesses during trial, permitting preliminary and interim instructions by the court to clarify and ease the decision-making process (including a direction to jurors not to research any fact or issue related to the case), and protecting juror privacy during and after trial are but a few of the innumerable new issues on Chief

6. Colavito v. N.Y. Organ Donor Network, 860 N.E.2d 713 (N.Y. 2006).

Judges' front burners that have a profound impact on today's jury experience.

Among the greatest differences from 1957 is the explosion of jury research by lawyers, judges, and jury managers, as well as by scholars and practitioners of other disciplines who have explored the sociological, demographic, and psychological aspects of the subject.<sup>7</sup> A jury-consulting industry has developed, using social science research to assist attorneys in trial preparation and jury selection. Significantly, in August 2005, the American Bar Association entered the picture in a major way, promulgating *Principles for Juries and Jury Trials* intended to "define our fundamental aspirations for the management of the jury system."<sup>8</sup> In New York, the 1983 ABA jury standards served as our template for serious jury reform.<sup>9</sup> Unquestionably, the new ABA standards will continue to ignite efforts across the nation to bring the jury system "ever closer to the principles to which we aspire."<sup>10</sup>

Most recently, I watched *12 Angry Men* in the company of about a dozen lawyers—all familiar with modern juries and modern jury reform efforts, all born since 1957, all first-time viewers—and they were as enthralled by the film as I was. So much has changed, but the essence of the film has not. I have little doubt that even at its centennial, *12 Angry Men* will continue to excite audiences because, whatever the latest challenges of a new world for Chief Judges and others, the quest for justice is timeless.

7. For recent surveys of jury-related research, see B. Michael Dann & Valerie P. Hans, *Recent Evaluative Research on Jury Trial Innovations*, CT. REV., Spring 2004, at 12; Shari Seidman Diamond & Mary R. Rose, *Real Juries*, 1 ANN. REV. L. & SOC. SCI. 255 (2005); Edith Greene, Sonia R. Chopra, Margaret Bull Kovera, Steven D. Penrod, V. Gordon Rose, Regina Schuller & Christina A. Studebaker, *Jurors and Juries: A Review of the Field*, in TAKING PSYCHOLOGY AND LAW INTO THE 21ST CENTURY 225 (James R.P. Ogloff ed., 2002); Elissa Krauss, *The Latest in Juries: What's Happening Around the Country That's of Interest to New York Lawyers and Judges?*, N.Y. ST. B.A.J., Oct. 2006, at 16, available at [http://www.nyjuryinnovations.org/materials/Krauss\\_LatestinJuries\\_2006.pdf](http://www.nyjuryinnovations.org/materials/Krauss_LatestinJuries_2006.pdf) (focusing on the 2005 ABA Jury Principles concerned with enhancing juror understanding of law and evidence); Nancy S. Marder, *Bringing Jury Instructions into the Twenty-First Century*, 81 NOTRE DAME L. REV. 449 (2006) (reviewing thirty years of empirical research on comprehension of jury instructions). Additionally, The National Center for State Courts' website contains a wide range of resources on jury-related research at its Center for Jury Studies (<http://www.ncsconline.org/Juries/home.htm>) and at its Jury Resource Center (<http://www.ncsconline.org/wc/CourTopics/ResourceCenter.asp?id=13>). The American Judicature Society's Jury Center website has a 58-page bibliography of jury-related articles in legal periodicals since 2000. See Am. Judicature Soc'y, *A Bibliography of Jury-Related Information for the New Millennium: Legal Periodical Articles, Since 2000*, [http://www.ajs.org/jc/bibliography/jc\\_bibl\\_index.asp](http://www.ajs.org/jc/bibliography/jc_bibl_index.asp) (last visited May 2, 2007).

8. AM. BAR ASS'N, *PRINCIPLES FOR JURIES AND JURY TRIALS* 2 (2005), available at <http://www.abanet.org/juryprojectstandards/principles.pdf>.

9. The Jury Project, a blue-ribbon group appointed to examine the state's jury system, used the ABA *Standards Relating to Juror Use and Management* as "organizing principles." THE JURY PROJECT, REPORT TO THE CHIEF JUDGE OF THE STATE OF NEW YORK, at iii (1994), available at <http://www.nycourts.gov/reports/thejuryproject.pdf>.

10. *PRINCIPLES FOR JURIES AND JURY TRIALS*, *supra* note 8, at 2.