

# Concurrent Jurors

## A Reflection on Successful Cooperation Between Courts

By Jerry Celmer Jr. and Barbara A. Menear



“Courts should conduct jury trials in the venue required by applicable law or in the interests of justice.”<sup>1</sup>

What does this mean? It sounds like a catechism question, and it gets to the heart of the right to jury trial that we cherish. In the 2005 report of the American Jury Project, the American Bar Association identified the above as one of 19 principles defining the fundamental aspirations for the management of our jury system.

In criminal cases, the ABA principle states that “a change of venue or continuance should be granted whenever there is a substantial likelihood that...a fair trial by an impartial jury cannot be had.”<sup>2</sup> The principle goes further to suggest that “[c]ourts should consider the option of trying the case in the original venue but *selecting the jury from a new venue*.”<sup>3</sup>

In addition to all other considerations relevant to the selection of the new venue, consideration should be given to whether the

original venue would be a better location to conduct the trial because of facilities, security, and the convenience of the victims, court staff, and parties. This should be balanced against the possible inconvenience to the jurors.

### How is this accomplished?

In 2012, a murder trial in the Genesee County Circuit Court provided an opportunity to put this principle to a practical test in Michigan. *People v Brandon Hayes* generated more than a year of intense media scrutiny, routine “tweets” from the prosecutor, a Facebook page, and more than 50 YouTube links. The case involved accusations of child abuse and the death of a four-year-old.

The intense pretrial publicity in this case was further evidenced by the introduction and passing of legislation that became known as “Dominick’s Law,” which increases penalties for child abuse and the failure to report child abuse.<sup>4</sup>

The child’s mother was separately charged in the incident and pleaded guilty to child abuse and second-degree murder. Her testimony was critical to the prosecution. Other incarcerated witnesses were expected based on the nature of the anticipated testimony. Specialized medical testimony was also involved, as the victim died at the hospital after being removed from life support. After the Genesee County Circuit Court scheduled the case for trial and spent five days in jury selection without success, the need for a different approach was apparent.

Initially, a discussion between chief judges and court administrators focused on the idea of a venue change, with the Genesee County judge conducting the entire trial in St. Clair County. The St. Clair County Circuit Court was willing to set aside courtroom space and summon citizens for jury duty. Despite the pretrial publicity in Genesee County, the St. Clair County media markets were different; its residents weren’t as familiar with the case.

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### FAST FACT

A change of venue forges a new partnership between courts, ensuring constitutional rights while conserving resources.

As planning proceeded, considerations of cost and convenience for other trial participants came to the forefront. The solution that evolved was to only conduct jury selection, closing arguments, and jury deliberations in St. Clair County. The jury would be transported to Genesee County for the testimonial portion of the trial. Genesee County Circuit Court Chief Judge Richard B. Yuille presided over the unique endeavor and cited several advantages in proposing this alternative:

- Retaining the testimonial portion of the trial in Genesee County minimized the inconvenience to the St. Clair County Circuit Court.
- Security for the defendant and incarcerated witnesses was ideal in Genesee County, where the courthouse and jail are connected.
- The victim’s family members, witnesses, attorneys, and other interested parties didn’t have to travel.
- Costs would be contained since transportation expenses were required only for jurors.

Despite some initial skepticism, the plan proceeded. Trial dates were set and logistics and details considered. Jury transportation was arranged by the Genesee County Circuit Court, which transported jurors and a Genesee County deputy sheriff to and from St. Clair County via a rental van.

Judge Yuille visited the St. Clair County Circuit Court before the trial to get the lay of the land. St. Clair County Circuit Court Chief Judge Daniel J. Kelly provided his courtroom for the trial and the county supplied judicial chambers, security, a court reporter, and jury staff. The judges worked together, forging a professional bond that continues today.

The St. Clair County prosecuting attorney assisted with office space and audio-visual support. Sheriffs from both counties were involved in advance planning for prisoner transport. Administrators from both courts handled media arrangements and on-site logistics. Cameras were authorized in the courtroom under a pooling arrangement, restricted only to closing arguments. From jury selection to the final verdict, the trial was conducted over eight days in January 2012.

Despite the unsettling nature of the events that were revealed during the trial, it was a positive experience for both courts and a successful approach to case management for everyone involved in the effort.

## What did we learn from this experience?

Change of venue is a relatively rare event in most jurisdictions and usually the result of intense pretrial publicity. We can expect an increasing number of cases where change of venue will be considered given the increasing use of social media and media technology in general. When change of venue occurs, it tends to be an all-or-nothing proposition with the entire court process moved to another jurisdiction. In Michigan, where it has been otherwise, it has been a consequence of unplanned trial events.<sup>5</sup>

In the Genesee County case, planning for the details involved in a change of venue and consideration of creative options led to a better result in terms of efficiency and an effective, customized process. In this case, planning enabled cost containment.

Security issues and expectations of participants—including jurors, witnesses, parties, the media, and the public—in the context of the high-profile case environment were better managed. Cooperation was easily achieved both within and between jurisdictions thanks to preplanning. A pretrial conference by the presiding judge cemented the relationship between jurisdictions and enhanced the coordination of issues such as media access and scheduling during the trial. Attention to transportation and parking minimized inconveniences to jurors and strengthened the commitment to their role. The strengths and constraints of each jurisdiction were best utilized to resolve this case.

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Flexibility, innovative thinking, and broad-based cooperation are possible and necessary in the age of reduced court resources. Most importantly, the Genesee County example illustrates we can accomplish this even while faithfully adhering to cherished principles such as those outlined in the ABA vision for our American jury system. ■

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## ENDNOTES

1. ABA American Jury Project, *Principles for Juries and Jury Trials* (2005), p. 10 <<http://www.americanbar.org/content/dam/aba/migrated/juryprojectstandards/principles.authcheckdam.pdf>> [accessed December 12, 2014].
2. *Id.*
3. *Id.*
4. See 2012 PA 194.
5. A 2010 criminal case in the St. Joseph County Circuit Court was moved to the Kalamazoo County Circuit Court for trial and moved back to complete jury deliberations because of space constraints, after testimony was taken and the jury had deliberated four days.

