



Nancy J. Diehl

Jury System in Japan?

In my May President's column, I wrote about our jury system and received a very interesting and informative response. It came from a Michigan lawyer who is a Commander in the U.S. Navy and Circuit Military Judge stationed in Japan. Hon. John A. Maksym said that he thought I would be intrigued to discover that in Japan the jury system is just now in the process of being formulated (nearly six decades after American occupation ceased). His main courtroom in Yokosuka is used as the training ground for Japanese prosecutors who fill the gallery each time the military has a contested members (jury) trial.

I was intrigued and wanted to share with you some of the comments that Judge Maksym made at the 2005 Law Enforcement Ball, where over 30 Japanese and American law enforcement agencies were present. His words speak not only of the jury system, but also of the importance of being honorable in our profession.

I address you on the precipice of a sea of change in the manner in which justice is delivered to the people of Japan. Over the course of the next several years throughout Japan, juries will begin to take their place in the Japanese Criminal Justice System. This will amount to nothing short of a dramatic change of affairs for Japanese police, investigators, lawyers and judges. For many of our Japanese allies in law enforcement and in the practice of law, this sea change will cause an understandable degree of consternation—even fear! I assure you that such feelings of angst are not without justification. Our Japanese allies are about to discover a fact, which we in Anglo-American jurisprudence have known for many years; namely, that a jury is a living creature, dynamic and ever changing. Convincing a jury of the merits of a particu-

lar parties case is truly a matter of hard fact mixed with proper deployment of the law and not a small degree of artistic statecraft. I am convinced beyond all doubt let alone a reasonable one that it is a change for good, the introduction of juries will forever change the way everyone in the room does their job.

Yet, we should bask in the introduction of the Japanese Jury System and in the vibrant health of its American counterpart. Even the most experienced judge, lawyer, or detective must always remind him or herself what they are about when they stride to work each day. Each of us are true foot soldiers of our respective Nations hallowed constitutions. We are the living embodiment of the majesty of the law. The majesty of the law is truly found in the honest police officer who recognizes like the true prosecutor that his or her duty is not to close a case but to ensure that justice is done. To whom are we accountable? In practical terms, quite often we are accountable only to ourselves. Yet within our systems, the majesty of the law is also protected by our citizens in the form of our juries. Ultimately, they pass judgment not only upon the accused in a criminal proceeding, but upon our conduct. We are, I think, in good conscience compelled to constantly inquire of ourselves. Are we satisfying the high bar set for our stewardship of the Criminal Justice System by the people we protect? Often times, the jury answers that question for us.

Yet what does the future hold for both the United States Jury System and the embryonic program being established by our Japanese friends? I recall when I was a little boy; policemen, lawyers and judges were giants in our society. Ethical misconduct was either non-existent or so rare as to fall below the radar screen. In our modern societies are we shocked anymore by the judge or police officer on the take, the prosecutor more interested in collecting conviction trophies than doing the right thing or by defense counsel

who have forgotten the noble role of defending the constitutional rights of their clients in favor of less honorable activity?

Sadly, we are not shocked in the least. No wonder citizens go to great effort to avoid jury service. They simply follow the example set by a minority of our respective peers. It is our duty to alter this decay, to inspire dedication to the ideals of the adversarial process enshrined in our constitutions and in our heritage. Prosecutors and defense counsel must work collegially when possible and dissent within the boundaries of the rules when required. Judges, like Caesar's wife, must behave in their personal and professional lives in a manner, which sets them beyond ethical speculation. Only then will our citizens respond—and respect for the majesty of the law be permanently secured. This is a challenge we must confront and satisfy each and every day. The rule of law is the glue, which keeps our respective democracies safe and unique.

Each day as I take the bench I realize that I am a legal high priest presiding over the cathedral of justice. The day I forget this fact will be the day I should figuratively hang up the robe for a final time.

Thank you, Judge Maksym, for allowing me to share your remarks with Michigan lawyers. And thank you for being the kind of lawyer who brings honor to our profession. ♦

John A. Maksym is the Circuit Judge for the Western Pacific Judicial Circuit, Navy-Marine Corps Trial Judiciary, based in Japan. His Circuit is responsible for the adjudication of all courts-martial west of Hawaii and east of Africa. Previously, he served as a military judge in the Southeast Judicial Circuit based in Pensacola, FL. Prior to his judicial assignments, Judge Maksym was the Deputy Director of Navy Litigation, where he headed up the DOD Anthrax Vaccine litigation effort. He holds the rank of Commander in the Navy's Judge Advocate General's Corps.