JURORS: THE POWER OF 12

REPORT OF:

The Arizona Supreme Court Committee On
More Effective Use of Juries

November 1994

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INTRODUCTION

In all criminal prosecutions, the accused shall enjoy the right to . . . trial by an impartial jury . . . .

Sixth Amendment to the U.S. Constitution

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved . . . .

Seventh Amendment to the U.S. Constitution

The right of trial by jury shall remain inviolate.

Article 2, Section 23, Arizona Constitution

The right to trial by jury remains one of our most valued liberties. In addition to serving as a needed buffer between government and the individual, juries put a human face on the law, help legitimate case outcomes and contribute to the finality of criminal cases and civil disputes.

However hallowed the right and institution of trial by jury, increasing criticism is being leveled at jury decisions in many high profile cases. Jury trial procedures, which have not changed substantially over the past 200 years, and the role played by the jury during trial also have recently come under serious empirical study by leading legal and social science institutions and authorities, all of whom call for major reforms in the

way our legal system utilizes and affects jurors.[1] Principal among the concerns are the lack of jury representativeness in an increasingly diverse society, enforced juror passivity during trials and unacceptably low levels of juror comprehension of the evidence and of the court's instructions.

Mindful of these concerns and desiring a thorough review of Arizona's jury system and jury trial procedures in light of contemporary knowledge and experience, the Arizona Supreme Court, on April 14, 1993, established the Committee on More Effective Use of Juries. This statewide committee was composed of a cross-section of former jurors, jury administrators, academicians, civil and criminal attorneys and trial and appellate judges, who were commissioned to examine jury service and jury trial practices. Among other things, the court directed us to recommend specific changes in procedures, rules and statutes that would improve jury service, jury trials and jury verdicts. The Supreme Court's order and a list of committee members are found in immediately following this Introduction at page 5-8.

The committee held eleven four-hour meetings in the year and a half that followed. About 20 subcommittees were established to examine particular subjects or issues and to report back to the full committee, which acted upon the subcommittees' recommendations.

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[1]*See, e.g., S. Adler, The Jury: Trial and Error in the American Courtroom (1994); S. Kassim & L. Wrightsman, The American Jury on Trial: Psychological Perspective (1988); Symposium, Communicating with Juries 68 Ind. L. J. 1033 (Annenburg Washington Program)(1993); Charting a Future for the Civil Jury System, American Bar Association/Brookings Institution (1992); American Judicature Society, Toward More Active Juries: Taking Notes and Asking Questions (1991); Symposium, The Role of the Jury in Civil Dispute Resolution, 1990 U. Chi. Legal F. 1; Jury Comprehension in Complex Cases, 1989 A.B.A. Litig. Sec. Rep.*

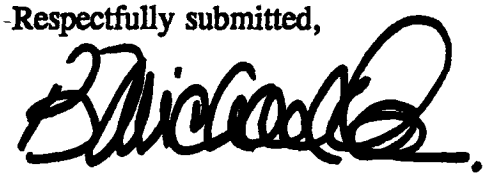
As chair, I wish to acknowledge the contributions made by all of the committee members. A special note of thanks is owed to the several members from the private sector, particularly those who served at considerable personal sacrifice. The five former jurors, including Jim Calvin, who passed away during the period of the committee's work, made an especially valuable contribution, due not only to their considerable recent jury experience but also to the fact that they were not constrained by legal and judicial traditions and assumptions. The three educators--professors of law, law and psychology and cultural anthropology--also added immeasurably to the committee's efforts and to this report, given their respective fields of expertise, research and writing. The Administrative Office of the Courts was very supportive by assigning excellent staff.

The report that follows takes the form of 55 specific recommendations touching upon the entire process in which jurors are involved, beginning with the subject of source lists from which potential jurors' names are taken and ending with the need for post-verdict debriefings of jurors following unusually stressful trials. We looked at the process and issues through the eyes of jurors, asking ourselves what we would need or like to have in order to understand the evidence, the legal instructions and to decide a case. We also asked how we would like to be treated as jurors and what we would expect from the judges, attorneys and court before, during and after trial.

The committee's report calls for trials that allow for a more democratic juror experience, ones that are more educational and less adversarial. Judges and trial attorneys are summoned to be open to doing some old things in new ways, to be more receptive to the jurors' needs to learn better and to actively participate to a greater degree in the fact-finding process.

Finally, we encourage the Supreme Court to approve and publish a "Bill of Rights for Arizona Jurors," a document that enumerates the more important juror rights, ones that all trial participants are expected to honor. The committee's recommended Bill of Rights for Arizona Jurors is found on page 9.

Respectfully submitted,



B. Michael Dann, Chairman

IN THE SUPREME COURT OF THE STATE OF ARIZONA

ARIZONA JUDICIAL COUNCIL
COMMITTEE ON MORE EFFECTIVE USE OF JURIES

Administrative Order No. 93 - 20

Whereas:

1. The right to trial by jury in criminal and civil cases is fundamental to our system of justice and is enshrined in the Sixth and Seventh Amendments to the Constitution of the United States and in Article 2, Section 23, of the Constitution of the State of Arizona;

2. In the past few years, juries and jury trials have come under increasing scrutiny, study and criticism relating to issues of representativeness, preparation for jury service, jury selection, juror comprehension of complex facts and of the law, use of technology in jury trials and, in general, judge and lawyer responsiveness to the needs of juries;

3. Recent reports from respected legal organizations document many of the above concerns and recommend concrete ways to address them; and

4. With a view to strengthening the institution of the jury in Arizona, it is deemed necessary and important to establish a statewide committee whose members shall include, among others, trial and appellate judges, the bar, professors of law and the social sciences, court personnel, and former jurors.

In accordance with Administrative Order No. 90-13 which provides that the Chief Justice may establish advisory committees to the Arizona Judicial Council to assist the Council in carrying out its responsibilities, and the Arizona Judicial Council having approved the information of an advisory committee on juries, now therefore,

IT IS ORDERED THAT an advisory committee on more effective use of juries is hereby established and shall be known as the Committee on More Effective Use of Juries.

Purposes: The Committee on More Effective Use of Juries shall:

1. Study and evaluate the utilization of juries and the conduct of jury trials in Arizona in light of available studies, reports and other published scholarship that bear on the issues referred to in this order.

2 Recommend specific ways to improve jury trials, the effectiveness of juries and the quality of jury verdicts.

3. Propose rule and other changes that would implement the recommended changes.

4. Suggest educational and training programs for the bench, the bar, jurors and the public concerning the changes.

5. Monitor implementation and utilization of the new rules and procedures to determine their effects and propose modifications when necessary.

Recommendations: The Committee shall submit its recommendations to the Arizona Supreme Court and the Arizona Judicial Council by October 1, 1994.

Organization: Committee membership and leadership shall be appointed by the Chief Justice. The Committee chairperson may appoint subcommittees to assist the Committee in carrying out its responsibilities.

Meetings: All meetings shall comply with Administrative Order No. 90-41 regarding public meeting requirements.

Staff: Under the direction of the Chief Justice, the Administrative Office of the Courts shall provide staff for the Committee and may conduct or coordinate research as recommended by the Committee.

Funding: The Committee, with the assistance of the Arizona Judicial Council, may seek grant funding from local, state and national organizations for its expenses of operation, including expert advice and consultations. Supreme Court funds may also be used to partially or fully fund the Committee's expenses.

DATED AND ENTERED this 14th day of April 1993.

STANLEY G. FELDMAN
Chief Justice

COMMITTEE ON MORE EFFECTIVE USE OF JURIES

MEMBERSHIP LIST

Robert Bartels, Professor of Law, ASU, Tempe

Hon. Richard M. Bilby, Judge, U.S. District Court, Tucson

Michael V. Black, Criminal Defense Attorney, Phoenix

Hon. Michael J. Brown, Judge, Superior Court in Pima County, Tucson

Jim Calvin, Public Member and Former Juror, Phoenix, Deceased

Alma Castro, Public Member and Former Juror, AZ Department of Education, Phoenix

Hon. B. Michael Dann, Judge, Superior Court in Maricopa County, Phoenix, Chairman

Richard Davis, Civil Trial Attorney, Tucson

Hugh Gallagher, Jury Administrator, Superior Court in Maricopa County, Phoenix

Peter A. Guerrero, Civil Trial Attorney, Phoenix

Cindy Kelly Jorgenson, Assistant U.S. Attorney, Tucson

Hon. Michael A. Lester, Judge, Phoenix City Court, Phoenix

William J. Maledon, Civil Trial Attorney, Phoenix

Hon. Leslie Miller, Judge, Superior Court in Pima County, Tucson

Hon. Allen G. Minker, Judge, Superior Court in Greenlee County, Clifton

Judith Montcalm, Public Member and Former Juror, Founder of *We the People*, Tucson

Hon. Robert D. Myers, Judge, Superior Court in Maricopa County, Phoenix

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Susan U. Philips, Professor of Linguistic Anthropology, U of A, Tucson

Bruce D. Sales, Professor of Law and Psychology, U of A, Tucson

Hon. Barry C. Schneider, Judge, Superior Court in Maricopa County, Phoenix

Mara J. Siegel, Attorney, Maricopa County Public Defender's Office, Phoenix

Daniel J. Stoops, Civil Trial Attorney, Flagstaff

Hon. Philip E. Toci, Judge, Court of Appeals, Division 1, Phoenix

Cheryl L. White, Public Member and Former Juror, Businesswoman, Peoria

Staff: Administrative Office of the Courts:
George Logan, Attorney
Pat Hernandez, Administrative Secretary

Maricopa County Superior Court
Lori A. Hughey, Judicial Assistant to Chairman

A PROPOSED BILL OF RIGHTS FOR ARIZONA JURORS

JUDGES, ATTORNEYS AND COURT STAFF SHALL MAKE EVERY EFFORT TO ASSURE THAT ARIZONA JURORS ARE:

1. Treated with courtesy and respect and with regard for their privacy.

2. Randomly selected for jury service, free from discrimination on the basis of race, ethnicity, gender, age, religion, economic status or physical disability.

3. Provided with comfortable and convenient facilities, with special attention to the needs of jurors with physical disabilities.

4. Informed of trial schedules that are then kept.

5. Informed of the trial process and of the applicable law in plain and clear language.

6. Able to take notes during trial and to ask questions of witnesses or the judge and to have them answered as permitted by law.

7. Told of the circumstances under which they may discuss the evidence during the trial among themselves in the jury room, while all are present, as long as they keep an open mind on guilt or innocence or who should win.

8. Entitled to have questions and requests that arise or are made during deliberations as fully answered and met as allowed by law.

9. Offered appropriate assistance from the court when they experience serious anxieties or stress, or any trauma, as a result of jury service.

10. Able to express concerns, complaints and recommendations to courthouse authorities.

11. Fairly compensated for jury service.

LIST

OF

RECOMMENDATIONS

ARIZONA SUPREME COURT
COMMITTEE ON MORE EFFECTIVE USE OF JURIES

LIST OF RECOMMENDATIONS

SUMMARY

OF

RECOMMENDATIONS

ARIZONA SUPREME COURT
COMMITTEE ON MORE EFFECTIVE USE OF JURIES

SUMMARY OF RECOMMENDATIONS

A. PUBLIC AWARENESS:

1. **Undertake Programs of Public Education About Juries and Jury Trials**

New and innovative programs by bench, bar, schools and others are needed to better acquaint the adult and youth populations with the institution of the jury, with jury service and with jury trials so that public attitudes toward all three will improve.

B. SUMMONING JURORS:

2. **Improve Current Juror Source Lists**

Current source lists should be updated and improved by obtaining current mailing addresses and social security numbers of eligible citizens.

3. **Use Additional Juror Source Lists**

New and additional source lists should be added to the two currently used (voter registration and driver's license rolls) to provide a master list that is more representative of the adult population.

4. **Improve Jury Diversity through "Random Stratified Selection"**

Juror representativeness can and should be improved by the use of "random stratified selection" from the master lists, i.e., random selection for jury duty from separate lists in proportion to the racial and ethnic mix of each county's population.

5. **Study Summoning Jurors on Regional Basis**

The feasibility of summoning jurors on a regional or weighted basis as a way of improving the diversity of juries should be studied.

6. **Striking of Grossly Unrepresentative Jury Panels**

Trial judges should be educated in the use of their power to strike grossly unrepresentative jury panels and juries where failure to do so might result in an injustice.

7. **Obtain More Demographic Information from Jurors**

In order to facilitate "random stratified selection," more demographic information should be collected from persons summoned for jury duty than is obtained now.

8. **Supply More Information to Persons Summoned**

More information concerning jury service should be communicated and made available to persons summoned for jury duty and it should be done earlier than it is now. For example, information about the summoning, deferral, excusal, jury selection and jury trial phases of their service should accompany the initial summons and could be broadcast by media as a public service.

9. **Limit Potential Juror Report Dates**

In fairness to potential jurors and others, report dates should be limited by law to two in counties where the term of service is one day-one trial. After having been told to report on a given date, many persons receiving summons who are not needed that day are told by court staff to phone in the next day and up to as many as five court days total. This uncertainty about future service results in substantial inconvenience and frustration for persons summoned and their employers.

10. **Deal with Failures to Respond to Jury Summons**

The follow-up procedures provided by statute for those who fail to respond to jury summons should be uniformly complied with, preferably with the aid of automation, but manually if necessary.

11. **Handling and Monitoring Requests for Deferral and for Excusal of Service**

Administratively granted deferrals and excusals from service should continue, but under increased judicial oversight.

12. **Update and Expand Initial Courthouse Orientation**

Current juror orientation videos and other materials should be updated and expanded to include new procedures adopted following this report.

13. **Improve Rate of Utilization of Potential Jurors**

Judicial and administrative policies and procedures should be initiated or improved so that the rate of utilization of persons called to the courthouse for duty can be improved. If a higher percentage of persons summoned actually serve, fewer persons will have to be called.

14. **Show Appreciation to Potential Jurors Not Needed for Juries**

Trial courts, through judges and public awareness programs, should do more to inform the public in general and all jurors in particular of the efforts of the court to minimize juror inconvenience. Those who reported but who were not selected for a jury should always be thanked.

15. **The Needs of Jurors who are Disabled Should be Met**

To ensure maximum possible participation of disabled persons in jury service, and to fully comply with the Americans With Disabilities Act (ADA), two needs must be addressed: (A) The Supreme Court should require that the trial courts promptly comply with the ADA, especially where jurors are concerned, and (B) Educational programs on these subjects should be conducted for judges and court staff.

16. **Reform and Improve Juror Pay and Mileage**

Statutory provisions for juror pay should be revised to increase public participation in jury service in general, to facilitate efforts to create more representative juries and out of consideration for those who do sit on trial juries. Jurors should receive fifty dollars for each day of service. Employers should be required to pay for the first three days of service; the court for the fourth day and thereafter. The court should pay all of the fees for unemployed persons. Reimbursement for mileage should be limited to those persons required to travel long distances to court.

17. **Juror-Supplied Locating Information Should Remain Confidential During Jury Selection and Thereafter**

Given legitimate concerns about juror privacy and safety if juror locating information (addresses, phone numbers, business names) is given to the parties and their attorneys, such detailed information should be withheld from both. Instead, only reasonably specific information concerning the location of residence and work place should be disclosed for purposes of jury selection. However, the jury commissioner would need to continue to collect specific locating information.

C. JURY SELECTION:

18. **Encourage Mini-Opening Statements Before Voir Dire**

To make examination of the jury panel more meaningful to the parties, the court and the jurors themselves, judges should have counsel give a brief, non-argumentative opening statement about their cases before questioning.

19. **Allow Judges to Choose Between the "Struck" and the "Strike and Replace" Methods of Jury Selection**

Civil and criminal rules should be revised to allow trial judges to choose between jury selection methods, using either the "struck" system (all panel members participate in voir dire) or the "strike and replace" procedure (only the minimum number of jurors needed for strikes participate), depending on the judge's preference.

20. **Assure Lawyers the Right to Voir Dire in All Cases**

Lawyers for the parties ought to be entitled to examine prospective jurors in both civil and criminal cases. Trial judges should monitor lawyer voir dire to ensure that interrogation by counsel remains consistent with the purposes of voir dire and to safeguard juror privacy.

21. **Judges Should Receive Training in Voir Dire**

All judges, but especially new judges, should receive mandatory training and education in the conduct of voir dire.

22. **Protect Juror Privacy During Voir Dire**

In addition to monitoring lawyer questions to prevent unreasonable and unnecessary intrusions into the privacy of jurors' lives, the trial judge should provide alternatives for jurors who do not wish to answer particular questions in open court. The jury panel should be informed of these options prior to questioning.

23. **Continue Peremptory Strikes in Present Form and Number**

Peremptory strikes should be retained in their present number, as they are necessary for the selection of a fair jury.

24. **Vigorously Enforce Batson Safeguards**

In order to protect the rights of the parties and of potential jurors, trial judges should be vigilant and, where necessary, take the initiative to assure that there is an objective and verifiable race, ethnic and gender-neutral basis for every peremptory strike of a potential juror.

D. TRIAL:

25. **Set and Enforce Time Limits for Trials**

Given the benefits to the parties, jurors and the court system of trials that are as short as fairness permits, judges ought to be given express authority, by rule, to impose reasonable time limits on trials or portions of trials.

26. **Guidelines for Severance in Complex Cases are Needed**

Existing authority to sever parties or claims for trial purposes ought to be utilized more often, at least in especially lengthy trials or trials in complex cases, to keep trial time to a minimum and to reduce juror overload and confusion. The Supreme Court should promulgate guidelines for severance for the benefit of trial judges.

27. **Jury Trial Time Should be Maximized**

Jurors and attorneys should be surveyed to determine whether there is a preference for trials lasting full days (6 hours) and full weeks (5 days) or trials lasting only half days (3 hours) and 4 days a week. A study should be undertaken of the relative advantages and disadvantages of various options for hours for trial.

28. **Trial Interruptions Should be Minimized**

The conduct of a jury trial ought to take precedence over all other trial court business except emergencies. Trial judges should receive training in the effective use of specific trial management techniques that would reduce unnecessary disruption and delay. When in a jury trial, the judge should allow no more than one hour for lunch, absent special circumstances.

29. **Juror Notebooks Should be Provided in Some Cases**

In all lengthy trials and trials of complex cases jurors should be supplied with juror notebooks for the keeping of documents or information, e.g., juror notes; preliminary and, eventually, final instructions; lists of witness names (and possibly photos); copies of key exhibits; and, where helpful, a glossary of terms.

30. **Expand Use of Preliminary Jury Instructions**

Preliminary jury instructions should be expanded in scope to include elements of the charge or claim and any known defenses. They should be case-specific where possible and always in plain English. In complex or technical cases, definitions of terms and other information that would help orient the jury to the case should be included.

31. **Ensure Notetaking by Jurors in Civil Cases**

For over 20 years, jurors in criminal trials in Arizona have had the right to take notes. Experience has shown that the obvious benefits of the practice (aid to memory, increased attention to the trial, etc.) outweigh any supposed drawbacks. The civil rules should be amended to grant jurors the same right in trials of civil cases. All jurors should be able to review their own notes during any recess.

32. **Improve Management of Trial Exhibits**

The trial judge should control the number of exhibits, have relevant portions of documents that are admitted highlighted for the jury and provide copies of key documents to the jurors. In document-intensive cases, the judge should provide an index or retrieval system for the jury's use during deliberations. For the control and safeguarding of documents in an especially paper-intensive trial, a document depository should be considered.

33. **Deposition Summaries Should be Used**

To reduce the tedium of reading the contents of a deposition to the jury, and in order to improve juror comprehension of the relevant deposition testimony, counsel should be encouraged, and in some cases, required to prepare concise written summaries of depositions for reading at trial. Copies of the summaries should be provided to the jurors before they are read.

34. **Allow Jurors to Ask Questions**

Jurors should be allowed to ask questions during trials of civil and criminal cases, subject to careful judicial supervision. At a minimum the safeguards should include: telling the jurors in advance of trial of the procedures to be followed; having questions put in writing and left unsigned; discussing the question with the attorneys and allowing them to object to the question out of the jury's presence; the asking of the question of the witness by the judge; and telling the jurors that the law may prevent some of their questions from being asked.

35. **Educate Attorneys and Judges Concerning Interim Summaries During Trial**

Trial judges and attorneys should be made more aware of the advantages of interim summaries for the jury after discrete segments of especially long trials or trials in unusually complex cases.

36. **Use Modern Information Technology More Often in Trials**

Trial lawyers and judges should become more aware of the availability, advantages and costs of the technologies, present and future, that can aid the parties in case presentation and the jury in understanding and recalling the evidence.

37. **Allow Jurors to Discuss the Evidence Among Themselves During the Trial**

After being admonished not to decide the case until they have heard all the evidence, instructions of law and arguments of counsel, jurors should also

be told, at the trial's outset, that they are permitted to discuss the evidence among themselves in the jury room during recesses.

38. **Use Only Plain English in Trials, Especially in Legal Instructions**

Judges and lawyers should keep legalese and other technical terms to an absolute minimum at trial. Instructions on the law should be in clear and understandable language.

39. **Do not Keep Jurors Waiting While Instructions are Settled**

The trial judge and counsel should have the final jury instructions substantially ready by the close of evidence. If additional preparation is needed following the close of evidence, the jurors should be released, overnight if necessary, in order to avoid keeping them waiting.

40. **Make Jury Instructions Understandable and Case-Specific and Give Guidance Regarding Deliberations**

In addition to couching jury instructions in plain English, they should be case-specific where possible (e.g., use of parties' names) and should give the jury some suggestions regarding the deliberation process.

41. **Do not Instruct Juries on Jury Nullification; However, the Rules of Evidence Ought to be Expanded in Recognition of the Jury's Power to Nullify**

Except in extraordinary situations or where required by the Arizona Constitution, juries should not be instructed on the subject of jury nullification. However, relevancy rules should be amended or interpreted to permit greater latitude in evidence in recognition of the jury's undoubted power to nullify the law. For example, evidence of the defendant's intent and motive ought to be received.

42. **Give Jurors Copies of the Jury Instructions**

The judge's preliminary and final instructions should be in writing. Each juror should be given copies of both. The jurors should be able to take their copies of the jury instructions with them to the jury room, especially during deliberations.

43. **Read the Final Instructions Before Closing Arguments of Counsel, Not After**

To increase juror understanding of the law and its relation to the case, and their understanding of closing arguments, and to facilitate the arguments, the final instructions ought to be read before closing arguments by counsel.

44. **Alternate Jurors Should Not Be Released From Service in Criminal Cases Until a Verdict is Announced or the Jury is Discharged**

Because of the ever-present risk of losing a deliberating juror to illness or other personal emergency, which would reduce the jury in a criminal case below the minimum number required for a verdict, alternate jurors should be admonished that they might be needed for deliberations and to continue to observe all the rules governing jurors' conduct until notified of a verdict. If an alternate is substituted, the jurors should be instructed to begin deliberations anew.

45. **Allow All Jurors Remaining at the End of a Civil Trial to Deliberate and Vote**

No juror should be designated an alternate and excused at the end of civil cases. All jurors who remain at the close of arguments should deliberate upon and decide the case. The number of jurors' votes needed for a verdict should be determined by the trial judge to assure that the requirement of three-fourths vote is met.

E. JURY DELIBERATIONS:

46. **The Trial Judge Should Decide on a Schedule for Jury Deliberations and Inform Jurors in Advance**

The scheduling of days and times for jury deliberations should be left to the discretion of the trial judge, taking into account individual case and other local requirements. Jurors should be informed of the schedule in advance.

47. **Encourage Juror Questions About the Final Instructions**

Judges should solicit questions from jurors about the final instructions before and during deliberations by, among other things, telling them in the written charge that such questions are welcome and by soliciting their questions, if any, after a reasonable period of deliberations has passed.

48. **Fully Answer Deliberating Jurors' Questions and Meet Their Requests**

The trial judge should fully and fairly respond to all questions asked and requests made by deliberating jurors concerning the instructions and the evidence, recognizing that the jurors are capable of defining their needs in deciding the case.

49. **Offer the Assistance of the Judge and Counsel to Deliberating Jurors who Report an Impasse**

After hearing from deliberating jurors that they feel they are at an impasse, the trial judge should invite the jurors to list the issues that divide them in the event that the judge and counsel can be of assistance, e.g., by clarifying instructions or rearguing certain points.

50. **When Juries Reported to be at Impasse are Returned for Further Deliberations They Should Not Be Instructed Any Further**

If the judge and trial attorneys are unable to be of further assistance after dialoguing with a jury at impasse, or if after those further proceedings the jurors are returned for additional deliberations, no further instructions should be given asking or encouraging them to reach a verdict, at least in criminal cases.

F. POST-VERDICT STAGE:

51. **Become Proactive in Detecting and Treating Juror Stress**

After trials likely to cause unusual stress or trauma for jurors, the judge should conduct an immediate jury debriefing with the help of a mental health professional. One follow-up visit with the professional ought to be provided at no cost. Any juror needing further assistance should be referred to community resources.

52. **Assist Jurors in Coping with Fears of Contact or Retaliation**

When jurors express what appear to be reasonable concerns about the dangers of being contacted or made the target of retaliation during or following trial, the court should, after notice to the parties, conduct a debriefing and make referrals to law enforcement authorities as necessary.

53. **Solicit Jurors' Reactions to their Courthouse Experience**

The jury commissioner and trial judge should conduct regular surveys of juror responses to jury service in general and to the trial in particular. Survey results should be tallied and reviewed by judges, jury commissioners and court policy makers.

54. **Advise Jurors Concerning Post-Verdict Conversations with the Judge, Attorneys and the Media**

When trial jurors are discharged, the judge should advise them that they are free to discuss the case with the attorneys and parties, the judge, media and the public if they wish, but that they are free not to do so if they choose. The judge should offer to meet with any jurors who wish to do so, to thank them personally and to answer questions of a general nature.

G. JURORS' BILL OF RIGHTS

55. Promulgate A Proposed Bill of Rights for Arizona Jurors

A Jurors' Bill of Rights listing the more important rights and expectations of jurors, both those presently existing and those created as a result of this report, should be promulgated to aid in educating all concerned and to better assure that the rights are observed.

A PROPOSED BILL OF RIGHTS FOR ARIZONA JURORS

JUDGES, ATTORNEYS AND COURT STAFF SHALL MAKE EVERY EFFORT TO ASSURE THAT ARIZONA JURORS ARE:

1. Treated with courtesy and respect and with regard for their privacy.

2. Randomly selected for jury service, free from discrimination on the basis of race, ethnicity, gender, age, religion, economic status or physical disability.

3. Provided with comfortable and convenient facilities, with special attention to the needs of jurors with physical disabilities.

4. Informed of trial schedules that are then kept.

5. Informed of the trial process and of the applicable law in plain and clear language.

6. Able to take notes during trial and to ask questions of witnesses or the judge and to have them answered as permitted by law.

7. Told of the circumstances under which they may discuss the evidence during the trial among themselves in the jury room, while all are present, as long as they keep an open mind on guilt or innocence or who should win.

8. Entitled to have questions and requests that arise or are made during deliberations as fully answered and met as allowed by law.

9. Offered appropriate assistance from the court when they experience serious anxieties or stress, or any trauma, as a result of jury service.

10. Able to express concerns, complaints and recommendations to courthouse authorities.

11. Fairly compensated for jury service.

Committee on More Effective Use of Juries

REPORT

September 1994

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A. PUBLIC AWARENESS

1. **Undertake Programs of Public Education About Juries and Jury Trials**

> New and innovative programs by bench, bar, schools and others are needed to better acquaint the adult and youth populations with the institution of the jury, with jury service and with jury trials so that public attitudes toward all three will improve.

When asked, most trial jurors admit that upon receiving the jury summons their attitude was strongly negative. As a result of this kind of reaction, many people fail to respond or report as directed. Of those who do appear at the courthouse, many bring their negative attitudes with them and share them with other jurors. However, after serving through a jury trial and reaching a verdict, cynicism is usually replaced by reports of gratitude for their experiences and of newfound appreciation for jury service in particular and the justice system in general.

Unfortunately, only a small percentage of the adult population will have the opportunity for such a positive experience. Many, if not most, of the great majority who never serve on a jury will continue in their negativism if nothing else is done. As a result, compliance with jury summonses will

continue to suffer, jury representativeness will remain less than desired and the jury as a democratic institution will suffer.

The committee recommends a broad array of public, bar and other private educational programs for the adult community, which aim to inculcate values in the jury and jury service. Specifically, the following informational and educational activities are recommended:

a. An annual "Jury Appreciation Week" preceded by extensive publicity and marked by a variety of appreciation programs for citizen-jurors and education programs concerning the jury system.[2]

b. Media articles and programs, through public service spots, participation in news programs and submission of op-ed and other pieces for newspapers and magazines.

c. Live presentation by judges welcoming each day's new array of jurors.

d. Publication and distribution of easy-to-read brochures and guides about the justice and jury systems and jurors' duties and rights.

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[2]The Washington, D.C., Superior Court and Bar celebrate an annual "Jury Appreciation Week" which has proven successful. Theirs could serve as a model for ours.

e. Construction of two multi-media displays about the role of the jury in history and today. One display should be installed in the jury assembly room; the other as a traveling program for schools, libraries, etc.

f. Outreach programs by lawyers and judges for adult groups, especially for new citizens and those working toward citizenship, and for employers.

g. Encourage and facilitate adult public attendance at court for tours and as observers at jury trials.

An effective program of public education must also include children, beginning in the elementary grades. The committee believes the following efforts and programs, among others, should be made and conducted for children:

a. Working through the state and local district boards of education, ensure that a portion of the required hours of social studies instruction be devoted to the jury system and to jury service. To be successful, bench-bar committees, assisted by professional educators, should develop teaching materials for use at different levels.

b. Workshops should be conducted for teachers and administrative personnel about juries and teaching about juries. Bench-bar representatives, in collaboration with educators, should design and conduct the programs.

c. Existing bench-bar programs involving visits to classrooms by attorneys and judges should be expanded to increase coverage and impact.

d. Visits to courts by school children should be encouraged and increased, so that students can view actual trials, participate in mock trials and hear from lawyers, judges and jurors.

e. Use of existing professionally produced educational videos and tailored teaching materials[3] by school teachers should be encouraged.

f. The bench and bar should assist school officials in establishing "Kids' Court Programs," where students serve as judges and jurors in administering discipline to their fellow students.

[3]*E.g., "Guilty or Not Guilty, You Decide," produced by Council for Court Excellence.*

B. SUMMONING JURORS

2. **Improve Current Juror Source Lists**

> Current source lists should be updated and improved by obtaining current mailing addresses and social security numbers of eligible citizens.

Existing juror "source lists"[4]--drivers' license and voter registration rolls--are so lacking in current mailing addresses that low income and poor persons, who are thought to change residences more often than average, fail to receive summonses in disproportionate numbers. Between March of 1993, and May, 1994, between 12 and 33% of the jury summonses mailed in Maricopa County proved to be undeliverable. The national average for undeliverables is 15%. A Wisconsin study revealed that "undeliverables" affected minorities at a 40% rate, but whites at only a 14% rate.

Until the state finds a better way to require its citizens to report changes of address on a more timely basis, the committee recommends regular updating of information in these two source lists by jury commissioners with the aid of appropriate state agencies (e.g., DOR and DES) or by private vendors that can provide such services. This improvement can be implemented administratively, without rule change or new legislation, through an order of the Supreme Court, inter-governmental agreements or contracts with vendors, where necessary.

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[4]*See A.R.S. §21-301(B).*

In addition, state or federal legislation ought to require that every applicant for a driver's license or voter registration supply his or her social security number, so that jury commissioners will be able to eliminate duplicate names by using common identifiers when merging the two lists. This would improve the accuracy of the master jury lists and enhance the chances of the jury summons reaching more citizens, especially minority citizens, on a more regular basis. This approach would likely require a change in state or federal statute or regulation. It is one the committee recommends be pursued by the judiciary.

3. Use Additional Juror Source Lists

> New and additional source lists should be added to the two lists currently used (voter registration and driver's license rolls) to provide a master list that is more representative of the adult population.

The committee was of the view that supplementing the existing source lists would enhance the diversity of the pool of potential jurors. Currently, jurors are drawn from drivers' license and voter registration records. Of the two, the drivers' license list is thought to produce the better cross-section of the adult population. Voter registration rolls exclude non-voters and negatively impact minorities in a disproportionate way. Both lists suffer from a high percentage of out-of-date addresses.

Pursuant to A.R.S. §21-301(B), the Supreme Court may prescribe additional source lists for potential jurors. Other sources considered by the committee include lists from the following: Department of Revenue, utility hook-ups, telephone directory, vehicle registration, Department of Economic Security and city directories. However, some of this information is non-discloseable under state or federal law. In addition, some of these lists contain actual or potential biases.

The committee concluded that with an exemption from the state and federal limitations on use of otherwise confidential data from state income tax rolls and federal welfare and assistance programs (DES), solely for state use for summoning jurors, existing lists could be supplemented in ways that would result in a more representative master jury list for each county.

We recommend that new legislation be sought to accomplish that end.

4. Improve Jury Diversity through "Random Stratified Selection"

> Jury representativeness can and should be improved by the use of "random stratified selection" from the master lists, i.e., random selection for jury duty from separate lists in proportion to the racial and ethnic mix of each county's population.

Juries should represent the entire community. Chronically unrepresentative juries raise serious, sometimes constitutional questions, about justice

in fact and the appearance of justice. Minorities not fairly represented on juries miss out on opportunities to exercise an important duty and privilege of citizenship.

The committee was disturbed upon hearing reports that, despite the best efforts at making diverse jury panels available for trials, far too often the panels do not fairly approximate the racial and ethnic demographics of the community. For example, a report on jurors called in Maricopa County in 1993 reveals that Hispanics were 61% underrepresented, African-Americans 30% underrepresented and Caucasians about 10% overrepresented.[5]

A substantial majority of the committee recommends that the serious and pervasive problem of lack of jury representativeness be recognized and dealt with head-on by utilizing the following simple procedure designed to ensure that persons of color will be seen in our jury assembly rooms in at least rough proportion to the major racial and ethnic groups' numbers in the two urban counties' population:

a. The initial mailing by the jury commissioners to persons whose names appear on the master jury list requests that the person declare on the return mailing his or her racial or ethnic status.

[5] *Jury Commission Annual Report 1993, Superior Court of Arizona in Maricopa County.*

(Jurors are currently asked this information, but only after arriving at the courthouse.)

b. Using the information supplied, the jury commissioner should maintain separate lists of potential jurors, one list for each cognizable racial and ethnic population group whose numbers meet or exceed a predetermined minimum percentage of the county's total population.

c. When potential jurors are called to the courthouse for service, the jury commissioner should randomly select potential jurors from the separate lists in sufficient numbers so that the pool of jurors directed to report reflects proportionately the racial and ethnic mix of the county's population, as determined by the most recent census.

d. After arriving at the courthouse, jury panels for individual courtrooms and trials would be selected at random from the larger pool, as is now done.

This procedure, known as "random stratified selection," solves the representation problem by an affirmative compensation.[6] At least two

[6]*King, Racial Jurymandering: Cancer or Cure? A Contemporary Review of Affirmative Action Jury Selection, 68 N. Y. U. L. Rev. 707 (1993); Munsterman & Munsterman, The Search for Jury Representativeness, 11 Just. Sys. J. 59, 74 (1986).*

other jurisdictions have used this selection method to ensure that major racial minorities are fairly represented.[7] We propose an amendment to A.R.S. §21-322 that calls upon the Supreme Court to devise a plan to implement this goal. Copies of the plans and procedures followed by these two jurisdictions are attached to this report.[8]

The committee members supporting this change in procedure acknowledge that it compromises to some extent the principle of random selection. Actually, the proposal allows some manipulation of just one of four steps in selecting jurors. To begin with, the source lists, derived from lists of registered voters and from driver's license lists, are randomized to a large extent when obtained by each jury commissioner.[9] Second, names are pulled from the master jury list[10] in a random manner to form the qualified juror box or wheel.[11] Only when the jury commissioner selects names from the box or wheel of qualified jurors would the process vary to assure fair representation by the county's major minority populations. However, names from the two or three lists of population subsets would be selected in random fashion. Fourth, the calling of jurors out of the

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[7] *Id., at 75-76; Mossing, Changes in the Eastern District of Michigan's Jury System, 1984 Michigan Bar Journal 33; Jury Selection Plan of the United States District Court for the Eastern District of Michigan, April 1, 1992; Implementation of Unified Appeal, 246 Georgia, promulgated by Supreme Court of Georgia, August 25, 1980.*

[8] *See App. D-1 and D-2.*

[9] *A.R.S. §21-301(B).*

[10] *A.R.S. §21-301(A).*

[11] *A.R.S. §21-312.*

jury pools to form panels that report to the courtrooms would continue to be done randomly.[12] This one change in an otherwise totally randomized process is necessary, the majority reasoned, if the greater values served by representative juries are to be realized. The minority felt that the compromise was too great and was unnecessary.

Adoption of this remedial measure would require amendments to A.R.S. §§21-322 and 323 along the lines of the attached.[13]

5. **Study Summoning Jurors on Regional Basis**

> The feasibility of summoning jurors on a regional or weighted basis as a way of improving the diversity of juries should be studied.

The committee recommends that a study be undertaken of the legal and practical feasibility of summoning jurors from within the county, on a regional basis, or with a heavier call of jurors from one region than others--depending on factors such as the location of the alleged crime, cause of action or residence of the defendant or other party--so that the chances that the jury panel will be more representative will be improved.

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[12] *A.R.S. §21-324.*

[13] *See App. B-1.*

The committee did not take a position on the merits of the underlying substantive proposal. It was considered worthwhile enough to warrant future study.

6. **Striking of Grossly Unrepresentative Jury Panels**

> Trial judges should be educated in the use of their power to strike grossly unrepresentative jury panels and juries where failure to do so might result in an injustice.

Even after the changes and improvements discussed above have taken effect, unrepresentative jury panels will continue to reach courtrooms.

The committee recommends, as a final safeguard or remedy, that the striking of a jury panel by a trial judge be sanctioned, especially in a criminal proceeding, where minorities are grossly underrepresented and where failure to obtain a new panel might result in an injustice.

Although trial judges currently have the power to strike jury panels,[14] it is the committee's sense that this power is very seldom used. Through programs of training and education, judges could be made more aware of this power. By affirming such action in appropriate cases, appellate courts can announce standards or guidelines for the exercise of this remedy.

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[14]*Criminal Rule 18.4(a); Coca Cola Bottling Company of Flagstaff v. Jones, 74 Ariz. 393, 250 P.2d 586 (1952); and State v. Acosta, 125 Ariz. 146, 608 P.2d 83 (App. 1980).*

7. **Obtain More Demographic Information From Jurors**

> In order to facilitate "random stratified selection," more demographic information should be collected from persons summoned for jury duty than is obtained now.

Given the committee's recommendation that random stratified selection be used to call summoned jurors to the courthouse for service (Recommendation 4), persons receiving a summons should be required to indicate their racial or ethnic identity on the juror questionnaire that is returned to the court. Jury commissioners obtain this information now, but only after the jurors report to the courthouse. Stratified random selection, which is intended to enhance jury representativeness, can occur only if court staff is aware of the racial and ethnic mix of the pool of potential jurors in advance of the daily or other call for potential jurors thought to be needed.

Adoption of this recommendation would require only a minor modification of the existing form summoned persons are presently asked to complete and return.

8. **Supply More Information to Persons Summoned**

> More information concerning jury service should be communicated and made available to persons summoned for jury duty and it should be done earlier than it is now. For example, information about the summoning, deferral, excusal, jury selection and jury trial phases of their service should accompany the initial summons and could be broadcast by media as a public service.

Persons who are summoned need more information about the jury system and the courtroom experience facing them than they are now receiving. Lack of sufficient information creates confusion, frustration and needless inquiries of the jury commissioner's office.

Recognizing the importance of comprehensive juror orientation before panels are sent to courtrooms for jury selection, the committee recommends that orientation commence upon receipt of the jury summons, continue by various new and innovative means prior to the reporting date and conclude with improved and updated materials supplied in the jury assembly room.

Orientation materials and information should be made available to prospective jurors before arrival at the courthouse by the following means:

a. The juror summons should contain initial and basic orientation information and point the recipient toward the additional materials referred to below.

b. Additional orientation materials should be made available at no cost through public television and public access cable television programming, literature available at libraries and supermarkets, and videos obtainable from public libraries and video stores.

c. Computerized call-in telephone lines should be designed and operated by the jury commissioner, ones capable of supplying commonly requested information and answering frequently-asked questions.

Giving citizens who are summoned more and earlier information about the summoning, deferral, excusal, jury selection and jury trial phases of their service will go a long way toward relieving anxieties and improving their experiences with the court.

9. **Limit Potential Juror Report Dates**

> In fairness to potential jurors and others, report dates should be limited by law to two in counties where the term of service is one day-one trial. After having been told to report on a given date, many persons receiving summons who are not needed that day are told by court staff to phone in the next day and up to as many as five court days total. This results in substantial inconvenience and frustration for persons summoned and their employers.

Currently, in Maricopa County, where the term of jury service is "one day-one trial," summonses require that potential jurors report for service on a specific date. They are also told to phone in the day prior to learn if they are still needed on that date or if they have been "rolled over" to another day. This procedure sometimes continues for up to five days. The jurors are not told until the day prior to the report date whether they might be required to serve on subsequent days.

The members of the committee, especially the public members, were of the opinion that the existing practice ought to be modified by informing persons summoned, at the outset, that they might be required to report on the day after the date of service found in the summons, but only on that next court day. This change is thought necessary so jurors can plan their personal and family affairs and work schedules to include the possibility of having to report for jury duty on either of two successive court days, but no more.

Limiting the summoned person's exposure to two days, as contrasted with up to five, was thought workable by the committee member who supervises the jury commissioner in Maricopa County. The public members felt that this was a fair compromise, given trial courts' ever changing needs for jurors on a given day.

10. **Deal With Failures to Respond to Jury Summons**

> The follow-up procedures provided by statute for those who fail to respond to jury summons should be uniformly complied with, preferably with the aid of automation, but manually if necessary.

It is estimated that at least 10% of persons actually served with jury summons fail to respond and appear. For example, in 1992 the jury commissioner in Maricopa County mailed over 345,000 summonses. About two-thirds of those were delivered. The number of persons served,

but who failed to respond, was about 23,000. Given time and cost considerations, court officials do not resummon by a second mailing as required by A.R.S. §21-331(B). Pima County does send the second mailing. Neither county attempts any further enforcement action, such as attachment for contempt and imposition of a fine of up to one hundred dollars, as permitted by A.R.S. §21-334.

In order to increase both compliance with jury summonses and the diversity of jury pools, and out of consideration for the majority of persons who do comply, the committee recommends that, at a minimum, the trial courts in all counties comply with the statute requiring follow-up mailings. Using automated tracking systems will facilitate compliance at a long term cost less than current manual operations.

No further enforcement action is recommended by the committee, at least in the usual cases. It was felt that the public education efforts suggested in Recommendation 1, coupled with considerate and efficient treatment and utilization of jurors called to service, will, in the long term, produce a higher level of compliance with the summons.

11. **Handling and Monitoring Requests for Deferral of Service and for Excusal**

> Administratively granted deferrals of service and excusals from service should continue, but under increased judicial oversight.

Most people's concerns about the date of service and the prospects of serving on a trial jury are resolved by deferring or postponing their service to a future date, which can be as far off as three months. Those whose scheduling problems cannot be resolved in this manner are told to take the matter up with the trial judge when they report to a courtroom. If they are not called to the courtroom the first day and selected for a jury, their service is at an end.

Excusals are granted administratively by the jury commissioner for reasons of undue financial hardship, medical problems and inability to speak or read English.[15] Although some members of the committee felt that the current practice vests too much discretion in administrators whose decisions were not reviewable, and that judges ought to be involved at this stage to a much greater extent than they are now, the majority favored leaving the administrative excusal procedure as it is. A majority also concluded and recommends that administrators make regular reports to the presiding judge and court administrator, if any, concerning the excusal process, guidelines followed and the results.

It was thought impracticable and prohibitively expensive to furnish interpreters to non-English speaking persons otherwise qualified to sit.

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[15]*See A.R.S. §21-314(A).*

12. **Update and Expand Initial Courthouse Orientation**

> Current juror orientation videos and other materials should be updated and expanded to include new procedures adopted following this report.

After arriving at the courthouse, potential jurors should continue to receive orientation through use of videos, jurors' handbooks and live presentations by the jury commissioner, or another staff persons effective in public speaking, and by a judge or commissioner. Existing videos and handbooks should be updated to feature current judicial branch leadership and the changes in procedures and policies made as a result of this report. The committee endorses the current efforts of the Maricopa County Jury Administrator to redesign the juror handbook to make it more inviting and easier to read.[16]

13. **Improve Rate of Utilization of Potential Jurors**

> Judicial and administrative policies and procedures should be initiated or improved so that the rate of utilization of persons called to the courthouse for duty can be improved.

A Maricopa County juror utilization report reveals that approximately 25 percent of the jurors who reported for service in 1993 were not used.[17] The National Center for State Courts' recommended standard for juror

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[16]*See App. E.*

[17]*Jury Commission Annual Report 1993, Superior Court of Arizona for Maricopa County.*

utilization is 90 percent. More persons are called to the courthouse than are actually needed. Not only are jurors' lives disrupted and needless costs incurred by the court and county, but when jurors go unused in such large numbers, the credibility of the jury summons process and the court itself is called into question.

The committee urges that management systems and checks be employed by judges, their staffs, court and jury administrators to minimize, to the greatest extent practicable, this wasteful practice. In addition, appropriate training and education of the same groups are needed regarding both the problems and intended solutions. Reasonable but firm settlement and plea deadlines ought to be put in place and enforced.

14. **Show Appreciation to Potential Jurors Not Needed for Juries**

> Trial courts, through judges and public education programs, should do more to inform the public in general and unused jurors in particular of the efforts of the court to minimize juror inconvenience. Those who reported but who were not selected for a jury should always be thanked.

Education and public relations programs referred to earlier in this report[18] should include efforts to inform the public at large, summoned jurors and trial lawyers of the problems inherent in projecting the number of jurors needed by the court on a given day, of the attempts made by the

[18]*See Recommendation 1.*

court to minimize the number of excess jurors brought to court, and of the value attached to the service of the potential jurors who are not called to the courtrooms or, if called, are not seated on juries.

In addition, trial judges should be encouraged and expected to express the judge's and the court's appreciation to those jurors whose services were not needed and to explain to them why their presence was important, despite the fact that they were not chosen for a jury.

15. **The Needs of Jurors who are Disabled Should be Met**

> To ensure maximum possible participation of disabled persons in jury service, and to fully comply with the Americans With Disabilities Act (ADA), two needs must be addressed: (A) The Supreme Court should require that the trial courts promptly comply with the ADA, especially where jurors are concerned, and (B) Educational programs on these subjects should be conducted for judges and court staff.

Including otherwise qualified people with disabilities on juries is a worthwhile objective in and of itself. However, with the passage by Congress in 1990 of the Americans with Disabilities Act ("ADA"),[19] it became imperative that state courts address functional limitations in and around courthouses that might impede persons with disabilities--whether

[19] *42 U.S.C.A. §§12111, et seq. The Supreme Court has required Arizona courts to comply with the ADA. Administrative Order # 92-32 (Access to Court Services by Persons with Disabilities, October 19, 1992).*

they be physical, sensory, communicative or cognitive--from fully participating as a juror.

The committee recommends that the Supreme Court, through either the Arizona Judicial Council, the Administrative Office of the Courts, or a special committee or task force, immediately address two needs--compliance and education.

a. **Compliance**: The committee's sense is that while courts have recently made considerable improvements in providing physical access to court and jury facilities, much remains to be done if full participation in court processes by disabled Arizonans is to be ensured. The Supreme Court should require and monitor compliance by all courts in the state.

b. **Education**: Judges, court staff, lawyers and jurors (potential and actual) could benefit from programs of training and education designed to make them more aware of the differing needs of jurors with various disabilities, and that potential jurors ought not be excluded from service just because of their disability. In addition, such programs could identify creative, affordable and practical measures that can and should be implemented that would meet the needs of disabled jurors.

Checklists and guidelines have been developed for courts' use in moving toward compliance with the Act.[20] Use of these and other publications in combination should greatly assist the judicial branch in discharging its legal and moral responsibilities to citizens with disabilities, who should have equal opportunities to serve as jurors.

16. **Reform and Improve Juror Pay and Mileage**

> Statutory provisions for juror pay should be revised to increase public participation in jury service in general, to facilitate efforts to create more representative juries and out of consideration for those who do sit on trial juries. Jurors should receive fifty dollars for each day of service. Employers should be required to pay for the first three days of service; the court for the fourth day and thereafter. The court should pay all of the fees for unemployed persons. Reimbursement for mileage should be limited to those persons required to travel long distances to court.

Pursuant to statute, jurors in Arizona are paid twelve dollars for each day of service after the first day. They are not paid a fee for the first day, whether or not chosen as a trial juror.[21] In addition, all persons summoned are paid round-trip mileage each day at the rate of 29 cents per mile. Unlike the jurors' fee, mileage is paid for every day of service, including the first.[22] A.R.S. §21-221. Jurors in federal court are

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[20] *E.g., ADA Checklist for Courts, National Center for State Court (1992); and "Opening the Courthouse Door," An ADA Access Guide for State Courts, American Bar Association (1992).*

[21] *A.R.S. §21-221.*

[22] *Id.*

currently paid forty dollars per day for the first 30 days, fifty dollars each day thereafter.[23]

The committee concluded that jurors ought to be fairly compensated for their service and for the inevitable expenses associated with jury service. At present, juror pay is so low as to be unfair. It is especially unfair to jurors who have no or only modest incomes. Low juror pay also contributes to jury underrepresentativeness by discouraging low income persons from serving, too many of whom are excused due to financial hardship. Many parents of young children have to pay for child care to serve. Other jurors are not required to incur similar expenses. Low juror pay to impacts minority members of the community in a disproportionate way.

In the past few years a number of states, including Colorado,[24] Massachusetts,[25] Florida[26] and Connecticut,[27] have enacted legislation to pay jurors at a higher and fairer rate without materially increasing costs to the public. Similar legislation has recently been proposed in New

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[23]*28 U.S.C.A. §1871.*

[24]*Colo. Rev. Stat. §§13-71-125 to 134.*

[25]*Mass. Ann. Laws, Ch. 234, §47 to 61.*

[26]*Fla. Stat. Ann. §40.24.*

[27]*Conn. Gen. Stat. §§51-247.*

York.[28] Those states' laws call for all employers to pay employees called to jury service their regular wages or thirty to fifty dollars a day for between three and five days, after which the court pays the daily fee for the remaining days of trial. The court pays unemployed persons for each day of attendance, including the first three days.

Experience in Maricopa County shows that about 75% of persons called to the courthouse are excused the first day. Only 25% return for one or more additional days of service. The average length of a trial is three to four days. Nationally, about 85% of employed persons called to jury service are compensated by their employers. For these reasons, and given the favorable experiences in other states that have tried this plan and the local cost projections using all applicable data, the committee does not anticipate that the total public outlay for jury fees will increase to the point that a new substantial burden will result if an approach to juror compensation similar to the one described above is adopted. A.R.S. §21-221 should be amended to incorporate these juror compensation features.[29]

The committee also concluded that with the increase in juror fees, economies in payments for mileage could be realized. Reimbursement for

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[28] *"The Jury Project,"* Report to the Chief Judge of the State of New York *97-99 (1994).*

[29] *See App. B-1.*

mileage should continue, but only for those jurors who are required to drive more than 25 miles from their residence to court, round-trip, payment being made only for the miles travelled in excess of 25. This will greatly reduce the number of mileage claims requiring administrative processing and payment.[30]

17. **Juror-Supplied Locating Information Should Remain Confidential During Jury Selection and Thereafter**

> Given legitimate concerns about juror privacy and safety if juror locating information (addresses, phone numbers, business names) is given to the parties and their attorneys, such detailed information should be withheld from both. Instead, only reasonably specific information concerning the location of residence and work place should be disclosed for purposes of jury selection. The jury commissioner would need to continue to collect specific locating information, however.

Understanding that the parties' lawyers have a strong need to know a considerable amount of information about potential jurors in order to challenge panel members for cause and exercise their peremptory strikes, the committee is aware of strong fears and concerns on the part of many trial jurors of contact with and, in some cases, retaliation by, parties, relatives or associates following trial.

The committee concluded that these competing needs and concerns can and should be accommodated by withholding from the parties and their

[30]*See App. B-4 for the suggested amendment to A.R.S. §21-231.*

attorneys all juror information that might be used for contact purposes, e.g., residence and business addresses and phone numbers. The appropriate Arizona Jury Standard should be revised to ensure that these safeguards are followed.[31] In certain cases, the trial judge might also decide to withhold the name of a small business, where the name could be used to locate the individual juror. All of this information should continue to be collected, held and used by court staff.

In lieu of such specific information the attorneys could receive, via the juror's biographical form, a listing of the major cross streets nearest the juror's residence and business and a description of the nature of the business. That ought to suffice for jury selection purposes.

C. JURY SELECTION

18. Encourage Mini-Opening Statements Before Voir Dire

> To make examination of the jury panel more meaningful to the parties, the court and the jurors themselves, judges should have counsel give a brief, non-argumentative opening statement about their cases before questioning.

Though rarely utilized, having counsel give mini-opening statements about their cases to the entire jury panel before voir dire would have value in

[31] *See App. C-9.*

many cases.[32] For one, examination of the panel following brief non-argumentative factual statements should result in a better test of juror bias, since the potential jurors would know more about the case, its facts and the issues. In other words, they would have a better frame of reference from which to respond to questions by court and counsel. Second, having heard the statements by counsel, the prospective jurors would better understand the reasons why certain questions were being asked. Juror satisfaction with the jury selection process would be enhanced. Mini-openings would not, however, substitute for the usual, full-blown opening statements by counsel following jury selection.

The committee recommends that this innovative technique be utilized by court and counsel on a more frequent basis since it appears to hold promise for improved jury selection. Whether the technique is employed in a particular case should be left to the trial judge's discretion.

To encourage greater use of mini-openings prior to voir dire, the committee recommends that the Arizona Jury Management Standards be amended by adding Standard 7(b), which would read as follows:

7(b) Judges may call on the attorneys to present condensed opening statements prior to voir dire examination in order

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[32]*Strawn & Munsterman, Helping Juries Handle Complex Cases, in In the Jury Box, 180, 184 (L. Wrightman, S. Kassim & C. Willis eds 1987).*

to make voir dire more meaningful to the parties and jurors.

Although trial judges may well have present authority to require that mini-openings be given,[33] to remove any question the committee suggests that Civil Rule 47(b)(2) and Criminal Rule 18.5(c) be amended by adding the following language:

The parties may, with the court's approval, present brief opening statements to the entire jury panel, prior to voir dire. On its own motion the court may require counsel to do so. Following such statements, if any, the court shall conduct a thorough examination of prospective jurors.

19. **Allow Judges to Choose Between the "Struck" and the "Strike and Replace" Methods of Jury Selection**

> Civil and criminal rules should be revised to allow trial judges to choose between jury selection methods, using either the "struck" system (all panel members participate in voir dire) or the "strike and replace" procedure (only the minimum number of jurors needed for strikes participate), depending on the judge's preference.

[33] *See Civil Rule 39 (b) and Criminal Rule 19.1 (a).*

There are two basic methods of jury selection in use, the "strike and replace" system and the "struck" jury method. The more traditional method, "strike and replace," is the one required by Arizona's rules.[34]

The "strike and replace" system generally works as follows: A number of jurors equal to the size of the trial jury, including any alternates, plus the number of peremptory challenges allowed by law are called into the "box." Only those jurors are examined by the judge and counsel. Requests to excuse jurors for cause and hardship are made, heard and ruled upon while the jurors are present. Peremptories are taken in the presence of jurors also. When a juror is removed for cause or hardship or is peremptorily removed by one of the parties, the juror is excused in front of the other jurors. Another juror is called forward to replace the departing juror. The replacement is then asked for his or her answers to all previous questions. The replacement must also read answers to questions on an easel. This process continues until all challenges for cause and peremptory challenges have been exhausted and the required number of jurors plus alternates remain. The extra jurors not called upon to participate are thanked and excused.

The "struck" method calls for all of the members of the panel to be sworn and to answer voir dire and easel questions. After voir dire, the panel is

[34]*See Civil Rule 47 and Criminal Rule 18.5.*

excused. With the jurors absent, the judge rules upon requests for excusal due to undue hardship and hears and rules upon requests for excusal for cause. Strikes are taken from the randomized list of jurors starting with the first juror whose name remains and ending with the last juror needed for the jury trial, alternates and the number of peremptory challenges allowed by law. After the peremptory strikes have been taken, the judge resolves any Batson issues. The panel then returns to the courtroom. The names remaining on the "strike list" constitute the trial jury plus alternates. The remaining jurors who were stricken by the parties and whose names did not make the "strike list" are then thanked and excused.

A number of authorities express a preference for the "struck" method of jury selection,[35] citing the following advantages:

a. It increases juror participation, since all members of the panel respond to voir dire;

b. It is capable of producing less bias in a jury than the alternative;

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[35]*See Munsterman, Strand and Hart, The Best Method of Selecting Jurors, The Judges Journal 9 (Summer 1990); A.B.A. Standards Relating to Juror Use and Management, Standard 7, at 68-74 (1983); and "The Jury Project," Report to the Chief Judge of the State of New York 58-60 (1994).*

c. Challenges for cause and use of peremptories occur outside the jurors' presence, eliminating the embarrassment to a juror when excused in front of the other panel members;

d. The "struck" method avoids having to call upon replacement jurors to give answers to questions that might have been asked much earlier in the process and expecting them to remember all the questions and their answers;

e. There is no reason to hold back on use of peremptories, given full knowledge of counsel of who will remain on the panel;

f. Remedying a Batson violation is easier, since court and counsel can view all the strikes and a ruling can be made before any juror is excused; under the "strike and replace" system voir dire must being anew if a Batson violation is found; and

g. Overall, it can take no more time than the older "strike and replace" method.

Advocates of the "strike and replace" method contend that it is less time consuming than the "struck" method since only a portion of the jury panel is questioned. In addition, they say that this traditional method is the one most judges and lawyers are familiar with.

The committee recommends that Civil Rule 47 and Criminal Rule 18.5 be revised to permit the trial judge to use either the "struck" or the "strike and replace" jury selection method, in the judge's discretion.[36]

20. Assure Lawyers the Right to Voir Dire in All Cases

> Lawyers for the parties ought to be entitled to examine prospective jurors in both civil and criminal cases. Trial judges should monitor lawyer voir dire to ensure that interrogation by counsel remains consistent with the purposes of voir dire and to safeguard juror privacy.

After discussing and weighing the advantages and disadvantages of lawyer voir dire, the committee members voted overwhelmingly to recommend that the Supreme Court amend the rules to create the right to lawyer voir dire in criminal cases. The principal reason for the committee's position is that lawyer participation in voir dire is more likely to result in a fair and impartial jury than if voir dire is conducted by the judge alone.

Civil Rule 47(b)(2) was amended in 1991 to assure lawyer voir dire in civil cases. The committee suggests that Criminal Rule 18.5(d) be conformed to its civil counterpart.

The suggested revision also reflects the committee's belief that the initial examination of the panel by the judge ought to be "thorough" rather than

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[36]*The proposed text of the amendments to the rules is found at App. A.*

merely "preliminary" and that the rules ought to make clear that use of written jury questionnaires is permitted.

Suggested change to Criminal Rule 18.5(d) and Civil Rule 47(b)2:

> The court shall conduct a thorough oral examination of prospective jurors. Upon the request of any party, the court shall permit that party a reasonable time to conduct a further oral examination of the prospective jurors. The court may impose reasonable limitations with respect to questions allowed during a party's examination of the prospective jurors, giving due regard to the purpose of such examination. Nothing in this Rule shall preclude the use of written questionnaires to be completed by the prospective jurors, in addition to oral examination.

21. **Judges Should Receive Training in Voir Dire**

> All judges, but especially new judges, should receive mandatory training and education in the conduct of voir dire.

At present, only a few minutes of a new judge's training are devoted to examination of the jury panel.

Given the importance of voir dire to a fair trial, all trial judges, but especially new ones, should be required to attend educational programs devoted to voir dire and the judge's role in it.

22. **Protect Juror Privacy During Voir Dire**

> In addition to monitoring lawyer questions to prevent unreasonable and unnecessary intrusions into the privacy of jurors' lives, the trial judge should provide alternatives for jurors who do not wish to answer particular questions in open court. The jury panel should be informed of these options prior to questioning.

Given the parties' needs to acquire considerable information about prospective jurors during voir dire, the jurors' rights to privacy and the need to accommodate these competing interests, the committee recommends the following:

a. That Standard 7(d) of the Arizona Jury Management Standards be amended to read as follows:

> The judge should ensure that the privacy of prospective jurors is reasonably protected, and that the questioning <u>of jurors</u> is consistent with the purpose of the voir dire process.

b. An official comment should be added following Standard 7(d) to read as follows:

> A juror's right to privacy must be balanced with a party's right to be aware of a juror's relevant background and qualifications. Reasonable inquiry of jurors is mandatory. However, every juror ought to be given the opportunity to answer questions of a sensitive or embarrassing nature by written questionnaire or in private, with only the judge, the parties, counsel and the court reporter present.

c. Protecting juror privacy during voir dire should be included among the subjects in the educational program on voir dire recommended for judges.[37]

23. **Continue Peremptory Strikes in Present Form and Number**

> Peremptory strikes should be retained in their present number, as they are necessary for the selection of a fair jury.

Following considerable discussion concerning the need for and fairness of peremptory strikes as part of the jury selection process, a substantial majority of the committee favored retaining peremptories in their present

[37]*See Recommendation 22.*

form. The availability of automatic strikes was thought essential to the seating of a fair and impartial jury. A minority would abolish peremptories as being inherently discriminatory and arbitrary and not needed for a fair trial. As an alternative, it was suggested that the peremptory strike be retained, but supported by a Batson-type statement of objective, verifiable and non-arbitrary grounds. The committee rejected the proposed modification.

There was virtually no support for increasing or decreasing the number of peremptory challenges presently allocated to the parties by the civil and criminal rules.

24. Vigorously Enforce Batson Safeguards

> In order to protect the rights of the parties and of potential jurors, trial judges should be vigilant and, where necessary, take the initiative to assure that there is an objective and verifiable race, ethnic and gender-neutral basis for every peremptory strike of a potential juror.

Peremptory strikes can not be used to remove potential jurors on the basis of race, ethnicity or gender.[38] The committee discussed whether to recommend to the Supreme Court that Batson protection be extended administratively to potential jurors who are members of groups defined by factors such as age, religion, income and disability.

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[38] *Batson v. Kentucky, 476 U.S. 79 (1986); J.E.B., Petitioner v. Alabama, ex rel. T.B., 114 S.Ct. 1419 (1994) State v. Cruz, 175 Ariz. 395, 857 P.2d 1249 (1993).*

The committee concluded that disabled persons called for jury duty, are now entitled to Batson-like protection under the Americans with Disabilities Act,[39] which forbids public and some forms of private discrimination against disabled persons solely on account of their disability.

Although committee members agree with the holding in Batson and its progeny, a majority of the committee decided not to make any recommendation that Batson protection be expanded to these other groups. It was felt that any expansion should and will be considered in the context of cases that will come before the appellate courts. Therefore, any such recommendation by the committee might be viewed as intruding upon the judicial function. In addition, some members believe that the Supreme Court has already extended Batson protection to such groups by promulgating Jury Standard 1 in 1992.[40] The committee hopes the Court will address Jury Standard 1 in this context.

The committee does recommend that trial judges take an active role in enforcing Batson by requiring, for example, on the court's own initiative if necessary, that the party using a peremptory strike to remove a person accorded Batson protection be required to make the required showing,

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[39] *42 U.S.C.A. §§12111 et seq.*

[40] *"Standard 1: Opportunity for Jury Service. The opportunity for jury service should not be denied or limited on the basis of race, national origin, gender, age, religious belief, income, occupation, or any other factor that discriminates against a distinctive group in the jurisdiction." See App. C-1.*

i.e., that there is an objective, verifiable and race, ethnic or gender-neutral basis for the strike. Such action may be necessary to safeguard potential jurors' rights not to be removed from the panel for discriminatory reasons.

Accordingly, the committee recommends that Arizona Jury Management Standard 9 be amended as follows:

STANDARD 9: Peremptory Challenges

The number and procedure for exercising peremptory challenges should be in compliance with existing Arizona Law. The trial judge shall assure that peremptory challenges are not used to discriminatorily remove potential jurors.

D. TRIAL

25. Set and Enforce Time Limits for Trials

> Given the benefits to the parties, jurors and the court system of trials that are as short as fairness permits, judges ought to be given express authority, by rule, to impose reasonable time limits on trials or portions of trials.

The setting of reasonable time limits for trials in appropriate cases is thought to have a number of benefits: the shorter the trial, the better for all participants, including jurors, and for parties awaiting trials in other cases; everyone, including jurors, benefits from greater predictability

regarding the length of trial; and counsel may well prepare better and improve their presentations having limitations in mind.[41]

After conferring with counsel, trial judges would do well to consider a pretrial direction or order imposing one or more of the following types of limitations:

a. Limitation on the total amount of time for the entire trial;

b. The amount of time each side will have to present its case;

c. Time limits on discrete portions of the trial, e.g., how long each side will be allowed for opening statements; and

d. Limitations on how--and how much--evidence may be presented.[42]

Existing rules appear to give trial judges the discretionary authority to impose these kinds of limitations.[43] Nonetheless, the committee recommends that language be added to the appropriate rules in order to

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[41]*Rumel, The Hourglass and Due Process: The Propriety of Time Limits on Civil Trials, 26 U.S.F.L. Rev. 237 (1992); Cabot, Breaking the Siege: Protecting the System Through Rule 611, Ariz. Atty. 18, 21 (May 1991).*

[42]*See Rule 26(b)(4)(D), Rules of Civil Procedure (each side restricted to one independent expert per issue).*

[43]*See, e.g., Evidence Rules 403 and 611; Civil Rules 1 and 16; and Criminal Rules 1.2 and 16.3.*

make explicit what is now only implicit. For example, language along the following lines should be added to Evidence Rule 611, Civil Rule 16 and Criminal Rule 16.3:

> The court may impose reasonable time limits on the trial proceedings or portions thereof.

26. **Guidelines for Severance in Complex Cases are Needed**

> Existing authority to sever parties or claims for trial purposes ought to be utilized more often, at least in especially lengthy trials or trials in complex cases, to keep trial time to a minimum and to reduce juror overload and confusion. The Supreme Court should promulgate guidelines for severance for the benefit of trial judges.

Severance of multiple claims or counts, parties or issues for purposes of trial before the same jury or two or more juries could well shorten the overall time needed for trial and contribute to jury comprehension.

Clear authority exists for severance of parties, claims and defenses for trial purposes.[44] However, the committee concluded that severance for trial ought to be considered in more cases, if only for purposes of reducing time and confusion. For example, many complex, multi-party criminal cases are candidates for severance of counts and/or defendants.

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[44]*Civil Rules 20(b), 21 and 42(b) and Criminal Rule 13.4.*

On the civil side the trial court should at least consider bifurcation of liability and damages in more cases than is presently done.

The Supreme Court could facilitate this kind of intelligent trial management by trial judges by promulgating guidelines for severance of parties and issues, either in the form of official comments to existing rules, additions to the Uniform Rules of Procedure for the Superior Court or as an addition to the Arizona Jury Management Standards.[45]

27. **Jury Trial Time Should be Maximized**

> Jurors and attorneys should be surveyed to determine whether there is a preference for trials lasting full days (6 hours) and full weeks (5 days) or trials lasting only half days (3 hours) and 4 days a week. A study should be undertaken of the relative advantages and disadvantages of various options for hours of trial.

In Maricopa County, at least, only three to four hours per day are devoted to jury trials, especially in the criminal divisions. Since most judges reserve at least one day for motions and hearings (Rule 32 matters, suppression hearings and the like), many juries in criminal cases are utilized only twelve to fourteen hours per week. On the face of it, a serious question exists whether we are frittering away juror time and unduly extending the length of trials.

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[45] *An example of severance guidelines can be found in United States v. Casamenta, 887 F.2d 1141 (2nd Cir. 1989).*

On the other hand, many jurors react positively to the "short day-short week" format, as it leaves them free to tend to their personal and family concerns and to their employment. Others are critical of the court due to the perceived waste of time. Another concern is whether the average juror's attention span and ability to comprehend trial information is exceeded by trial proceedings longer than three or four hours a day. Trial counsel may be divided over the wisdom of substantially longer trial days, given their needs to prepare in advance for each trial session and to tend to other cases. Longer trial days may test attorneys' endurance, resulting in possible inefficiencies. Lastly, judges and their staffs almost always have other cases to tend to each day.

Rather than propose solutions to this dilemma by recommending changes in practice involving trial hours and organization of judges' calendars, the committee suggests that additional information be gathered and that pilot programs be conducted so that, whatever changes are made, the preferences and needs of jurors and lawyers can be considered.

With respect to these issues, then, the committee recommends as follows:

a. That a study be commissioned to attempt to determine whether jurors and attorneys tend to prefer the half-day or the full-day trial option.

b. That the administrative feasibility of assigning jurors and attorneys to half-day or full-day trials, based on their preferences, be investigated.

c. That a comparative study of the advantages and disadvantages of the following options for daily trial times be undertaken:

(1) half-day (3 hours)[46]

(2) full-day (5 to 6 hours)

(3) 10:30 a.m. - 4:30 p.m. (4 1/2 hours)

(4) 8:30 a.m. - 1:30 p.m. (5 hours)

Such a study could involve selected quadrants or divisions of the criminal courts in Maricopa and/or Pima counties.

The practice of utilizing "special assignment" judges for lengthy trials helps minimize the number of days needed for such trials. This wise use of judicial resources and jurors' time ought to be encouraged.

28. **Trial Interruptions Should be Minimized**

> The conduct of a jury trial ought to take precedence over all other trial court business except emergencies. Trial judges should receive training in the effective use of

[46]*Whether jury trials are conducted under the half-day or the full-day system also may affect the amount of juror pay that is appropriate.*

specific trial management techniques that would reduce unnecessary disruption and delay. When in a jury trial, the judge should allow no more than one hour for lunch, absent special circumstances.

Among the major complaints of trial jurors is that there are too many unscheduled interruptions of the trial and that too many of them, as well as scheduled recesses, last too long. Acknowledging that some interruption and delay is unavoidable, it is felt that trial judges should be more vigilant in preventing unnecessarily frequent and lengthy trial interruptions and recesses.

To assist trial judges in minimizing interruptions and delay during jury trials, the committee recommends the following:

a. Standard 13 (Juror Use), of the Arizona Jury Management Standards, should be amended to add a declaration that jury trial time takes precedence over every other proceeding or activity except those of an emergency nature. A new subdivision of Standard 13 should read as follows:

> (d) The conduct of jury trials takes precedence over all other proceedings except those of an emergency nature.

b. Trial judges should reduce the customary ninety-minute lunch break to one hour when involved in jury trials, except in special situations (e.g., monthly judges' meetings).

c. More trial judges ought to give more attention to specific jury trial management techniques that would assist in minimizing unnecessary disruption and delay. For example, judges should:

(1) Schedule anticipated matters to be heard outside the presence of the jury before or after scheduled trial hours;

(2) Discourage side-bar discussions during trial; and

(3) Impress upon counsel the importance of starting on time with the jury at the beginning of the trial day, following periodic recesses and at the end of the lunch break.

d. This subject, along with these and other techniques, should be included in a required course or class in jury trial management.

29. **Juror Notebooks Should be Provided in Some Cases**

In all lengthy trials and trials of complex cases jurors should be supplied with juror notebooks for the keeping of documents or information, e.g., juror notes; preliminary and, eventually, final instructions; lists of witness names (and possibly photos); copies of key exhibits; and, where helpful, a glossary of terms.

In especially lengthy trials and in trials of complex cases, the creation and use of multi-purpose juror notebooks are seen as aids to juror understanding and recall of the evidence.[47]

Among the contents suggested for juror notebooks are:

a. A copy of the preliminary jury instructions,

b. Jurors' notes,

c. Witnesses' names, including photographs and/or biographies of witnesses where helpful,

d. Copies of key documents and an ongoing index of all exhibits,

e. A glossary of technical terms, and

f. A copy of the court's final instructions.

While recognizing that these aids are not advisable for routine trials of short or moderate duration, jury notebooks would be of considerable value to jurors in trials of complex cases and for unusually long trials. Whether they are used in a given trial and decisions regarding the contents of the notebooks ought to be left to the discretion of the individual trial judge.

To clarify the judge's authority in this regard and in order to encourage the use of juror notebooks in appropriate cases, the committee

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[47]*ABA Litigation Section Report, Jury Comprehension in Complex Cases, 36-37 (1989).*

recommends a modest addition of language to Civil Rule 47 and Criminal Rule 18.6:

> In its discretion, the court may authorize the use of notebooks for jurors during trials to aid the jurors in performing their duties.

30. **Expand Use of Preliminary Jury Instructions**

> **Preliminary jury instructions should be expanded in scope to include elements of the charge or claim and any known defenses. They should be case-specific where possible and always in plain English. In complex or technical cases, definitions of terms and other information that would help orient the jury to the case should be included.**

The committee strongly endorses the use of expanded preliminary jury instructions in both civil and criminal cases. Given before opening statements and the evidence, they ought to deal with more than procedural and housekeeping matters. Preliminary instructions should be both substantive and case-specific. At a minimum, the jury ought to be informed of what the plaintiff in a civil case must prove to win and what the State must prove before a defendant in a criminal case can be found guilty. In addition, definitions of technical terms and elements of the offenses or claims and anticipated defenses should be included. In technical or complex cases, the instructions could contain a glossary of terms or other information that would help orient the jury to the case.

The language of the preliminary jury instructions ought to be case-specific wherever possible, identifying the parties by name and referring to the incident or transaction in specific, descriptive terms.

Research shows that telling the juror more, rather than less, in advance of the evidence assists the jurors in understanding and organizing the evidence as they hear it, improves their recall of evidence, reduces the chances that the jurors will apply the wrong rules to the evidence and increases juror satisfaction.[48]

Arizona's civil rules neither require nor forbid the giving of substantive preliminary instructions.[49] Criminal Rule 18.6(c), on the other hand, appears to require something more than pro forma opening instructions. It reads:

> Immediately after the jury is sworn, the court shall instruct the jury concerning its duties, its conduct, the order of proceedings and the elementary legal principles that will govern the proceeding.

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[48]*E.g., ABA Litigation Section Report, Jury Comprehension in Complex Cases 614-17 (1989); Elwork, Sales & Alfini, Juridic Decisions: In Ignorance of the Law or in Light of It? 1 L. & Hum. Beh. 163 (1977).*

[49]*See Rules 39(b) and 51(a).*

To encourage greater use of substantive and case-specific preliminary jury instructions, the committee makes two recommendations:

a. That Civil Rules 39(b) or 51(a), or both, be amended to conform to Criminal Rule 18.6(c) (quoted above); and

b. That Standard 16(c)(i) of the Arizona Jury Management Standards be supplemented by adding the following language:

> Preliminary jury instructions shall comply with applicable rules and should inform the jury of the legal rules applicable to any charge, claim and anticipated defense. Where necessary or helpful, a glossary of terms should also be provided.

For reasons stated elsewhere in this report,[50] these instructions should be in plain English and copies should be provided to each juror and to counsel.

Some authorities have suggested case-specific orientations for juries in trials involving unusually complex or technical subjects.[51] Court-

[50]*Recommendation 39 (use of plain English in final instructions); Recommendation 43 (written copies of instructions for jurors).*

[51]*E.g., A. Austin, Complex Litigation Confronts the Jury System 18 (1984); Strawn & Munsterman, Helping Juries Handle Complex Cases, 65 Judicature 444, 446-47 (1982).*

appointed experts could be called upon to give the jury helpful background, definitions of terms and other information necessary to an understanding of what is to come. However, most committee members expressed reservations about this procedure. Among other things, it was felt that too much time would be consumed in resolving objections by the parties to the proposed orientation and by the presentation itself. The direct and indirect costs of case-specific orientations were also of concern. Finally, some form of orientation could be incorporated into the preliminary jury instructions, the juror notebooks (e.g., a glossary of terms), or both.

31. **Ensure Notetaking by Jurors in All Cases**

> For over 20 years, jurors in criminal trials in Arizona have had the right to take notes. Experience has shown that the obvious benefits of the practice (aid to memory, increased attention to the trial, etc.) outweigh any supposed drawbacks. The civil rules should be amended to grant jurors the same right in trials of civil cases. Jurors should be able to review their own notes during any recess.

Notetaking by jurors during trial is commonplace in Arizona, at least in criminal cases. This is due to Rule 18.6(d), Rules of Criminal Procedure, which requires judges in criminal cases to allow jurors to take notes and to supply them the materials with which to do it. Although there is no counterpart rule on the civil side, the sense of the committee is that the majority of Arizona judges permit jurors to take notes in trials of civil cases. Practice varies among judges concerning whether jurors are permitted to take their notes into the jury room during recesses.

Local experience with juror notetaking has proven successful. No material disadvantages have surfaced. While some trial courts elsewhere in the country do not permit the taking of notes by jurors, researchers and commentators tout the advantages of allowing notetaking by jurors.[52] Among the advantages found are these:

a. Increased attention to the trial by jurors;

b. Enhanced ability of jurors to refresh their memories from their notes, especially during deliberations;

c. Reduction in requests, during deliberations, for court reporter readbacks of testimony; and

d. Increased juror morale and satisfaction.

A recent American Judicature Society-sponsored study failed to document any material drawbacks to juror notetaking.[53]

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[52]*ABA Litigation Section Report, Jury Comprehension in Complex Cases, 602-06 (1989); Sand & Reiss, A Report on Seven Experiments Conducted by District Court Judges in the Second Circuit, 60 N. Y. U. L. Rev. 423, 448-49 (1985).*

[53]*American Judicature Society, Toward More Active Juries: Taking Notes and Asking Questions, 14 (1991).*

So that all jurors will have the right to take and use trial notes, the committee urges the court to promulgate a civil rule, identical to Rule 18.6(d) on the criminal side, assuring jurors in civil cases the same right to take notes that their counterparts have at trials in criminal cases.

In addition, and so that jurors can derive maximum value from their notes as the trial progresses, the committee recommends that both the criminal and civil rules on notetaking be supplemented by a provision giving jurors the right to take their notes with them into the jury room during recesses of trial. The following language would suffice: "During recesses of the trial jurors shall be permitted to have access to their notes in the jury room."

32. **Improve Management of Trial Exhibits**

> The trial judge should control the number of exhibits, have relevant portions of documents that are admitted highlighted for the jury and provide copies of key documents to the jurors. In document-intensive cases, the judge should provide an index or retrieval system for the jury's use during deliberations. For the control and safeguarding of documents in an especially paper-intensive trial, a document depository should be considered.

The proliferation of exhibits at trial, the significance of which is too often lost on jurors, has been shown to be a significant cause of juror confusion and decreased juror comprehension.[54] Jury researchers observe, and

[54] *ABA Report, supra, at 29-31; A. Austin, Complex Litigation Confronts the Jury System 100 (1984).*

jurors themselves often complain, that there are too many exhibits, that the jury is not told which ones are important and why, and that the task of finding particular exhibits during deliberations was often difficult to impossible.[55]

Concluding that these complaints are well-taken in too many cases, the committee recommends that the following language be incorporated into the Official Comment to Evidence Rule 611.

Document Control:

a. The trial judge should become involved as soon as possible, and no later than the pretrial conference, in controlling the number of documents to be used at trial.

b. For purposes of trial, only one number should be applied to a document whenever referred to.

c. Copies of key trial exhibits should be provided to jurors for temporary viewing or for keeping in juror notebooks.

[55] *Id.*

d. Exhibits with text should and, on order of the court, shall be highlighted to direct jurors' attention to important language. Where necessary to an understanding of the document, that language should be explained.

e. At the close of evidence in a trial involving numerous exhibits, the trial judge shall ensure that a simple and clear retrieval system, or index, is provided to the jurors to assist them in finding exhibits during deliberations.

Document Depository: In complex, multi-party and document-intensive cases, document control can begin after the pleading stage and before disclosure or discovery commences. By assuring that a "document depository" is established early on, the trial judge enhances the chances of effective document control at trial and saves counsel and the parties substantial time and costs.

In such cases, the attorneys can by agreement establish and operate a joint depository for all case-related documents. Absent a voluntary arrangement, the court should order the establishment and operation of a depository and appoint someone to be responsible for its operation. Costs should be shared among the parties, either by agreement or by order.

All documents disclosed or discovered are required to be deposited in the single depository. There would be no need to serve copies on other parties; a simple notice of filing should suffice. Each document received by the depository should be separately numbered. Duplicates can be eliminated. Parties wishing to read or copy any document could do so under the supervision of the depository custodian. For trial purposes, custody of all documents, an index and other important depository records could be maintained by the depository or transferred to the clerk of the court. The document numbers assigned by the depository, and uniformly used by counsel prior to trial, would provide the basis for exhibit numbers at trial.

33. **Deposition Summaries Should be Used**

> To reduce the tedium of reading the contents of a deposition to the jury, and in order to improve juror comprehension of the relevant deposition testimony, counsel should be encouraged and, in some cases, required to prepare concise written summaries of depositions for reading at trial. Copies of the summaries should be provided to the jurors before they are read.

The reading of depositions at trial, question and answer by question and answer, is a tedious exercise that often drives the most committed jurors to distraction. Deposition reading also unduly prolongs many civil trials. Although no empirical data could be found on the subject, an assumption was made that juror comprehension of a witness' testimony is negatively affected by having the deposition contents read verbatim.

Encouraging or requiring lawyers to prepare and read concise summaries of depositions is by far the preferable practice. Where the attorneys are unable to agree upon part of a summary (or separate summaries of direct and cross-examination), the court should offer to settle any differences. Copies of the written summaries should be provided to the jurors prior to their being read. Once the summary is read, the jurors' copies could be collected or left with the jurors.

Although the actual words used in some deposition testimony might be so important to a party's case that a word-for-word reading would be warranted, if summaries are used for most depositions, trial time will be saved and juror attention and comprehension will be enhanced.

To accomplish this goal, the committee recommends that Rule 32 of the civil rules be amended by adding the following:

> Rule 32(a)(5): In its discretion, and in lieu of a reading of a deposition's text or a portion thereof, the court may require the reading of a concise written summary of a deposition sought to be used at any hearing or trial.

We also suggest that the following language be added to the Official Comments to Civil Rule 32 and Evidence Rule 611.

> **Deposition summaries.** In order to improve jury attention to and comprehension of the contents of depositions used at trial pursuant to this rule [Rule 32, Arizona Rules of Civil Procedure], this addition to the rule sanctions the use of concise written summaries of depositions in lieu of reading the text or portions thereof. The trial judge is given the power to compel the use of summaries when thought necessary.

Naturally, it is expected that trial judges shall encourage the use of deposition summaries and facilitate the task where necessary.

34. Allow Jurors to Ask Questions

> Jurors should be allowed to ask questions during trials of civil and criminal cases, subject to careful judicial supervision. At a minimum the safeguards should include: telling the jurors in advance of trial of the procedures to be followed; having questions put in writing and left unsigned; discussing the question with the attorneys and allowing them to object to the question out of the jury's presence; the asking of the question of the witness by the judge; and telling the jurors that the law may prevent some of their questions from being asked.

The practice of permitting jurors to ask questions during trial is not new to Arizona.[56] Only a few judges allow questions by jurors, however.

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[56]*See State v. LeMaster, 137 Ariz. 159, 669 P.2d 592 (App. 1983) (approved as long as "scrupulously controlled" by trial judge); State v. Taylor, 25 Ariz. App. 497, 544 P.2d 714 (1976) (same; in dictum). Evidence Rules 611(a) and 614(b) are thought by some to constitute additional authority for the procedure.*

The committee favors changes in both the civil and criminal trial rules to guarantee jurors the opportunity to ask questions, as long as necessary safeguards are followed.

We agree with the many authorities which have concluded that carefully controlled juror questioning enhances active participation by jurors in the fact-finding process and improves juror comprehension.[57] Among the advantages of juror questioning are: it assists in clarifying information and avoiding confusion; jurors remain more alert and better focused; jurors seem more satisfied concerning their roles at trial; and their questions may reveal juror confusion or misconduct. If proper safeguards are announced and carefully followed, no substantial risks are incurred.

We recommend that the following language be added to Civil Rule 39(b) and Criminal Rule 18.6 to assure jurors the right to ask questions in both civil and criminal trials:

> **Juror Questions.** The jurors shall be permitted to submit written questions of witnesses to the court.

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[57] *E.g., American Judicature Society, Toward More Active Juries: Taking Notes and Asking Questions (1991); Report by the Committee on Federal Courts of the New York Bar Association, 62 St. Johns L. Rev. 549, 558-61 (1988); Comment, Jurors Questions: A Survey of Theory and Use, 55 Mo. L. Rev. 817 (1990).*

Since juror questioning will be new to many judges and attorneys, the committee also suggests that the official comment to these rules contain the procedural safeguards thought necessary by the Arizona cases and other authorities cited.

OFFICIAL COMMENT

The following procedures are suggested for juror questioning:

The jurors should be instructed about the procedures for juror questions in advance of the taking of evidence. Jurors' questions must be in writing and left unsigned. Jurors should be instructed to give their questions to the bailiff. If a juror has a question for a witness about to leave the witness stand, the juror should communicate that fact to the court. After receiving the question, the judge must allow counsel an opportunity to object to it out of the presence of the jury.

If found to call for admissible evidence, the question should be asked or answered by stipulation or other appropriate means. If a jury question calls for inadmissible evidence, the question shall not be read, and the jury should be told that trial rules do not permit some questions to be asked and that the jurors should not attach any significance to the failure of having their question asked.

A suggested preliminary jury instruction implementing the procedure which has been used with good results in civil and criminal trials in Arizona is attached to this report.[58]

[58]*See App. F.*

35. Educate Attorneys and Judges Concerning Interim Summaries During Trial

> Trial judges and attorneys should be made more aware of the advantages of interim summaries for the jury after discrete segments of especially long trials or trials in unusually complex cases.

Interim summaries or arguments by counsel after the conclusion of discrete segments of protracted or complex cases have been found to be advantageous.[59] Interim summaries can enhance jury comprehension, aid juror recall of the evidence and help jurors avoid making premature judgments in the case.[60]

The committee recommends that lawyers and judges consider utilizing interim summaries in lengthy and complex civil cases.[61] It was not thought necessary to recommend a rule recognizing the technique or to give the trial judge the authority to compel interim summaries.[62]

However, and because of the potential for assisting juries in at least a limited number of cases, the committee recommends that trial judges and

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[59] *ABA Litigation Section Report, Jury Comprehension in Complex Cases, 621-22 (1989); New York State Bar Report, supra, at 555-58.*

[60] *ABA Litigation Section Report, supra; New York State Bar Report, supra; Higginbotham, Juries and Complex Cases: Observations About the Current Debate, in The Jury in American, 70, 78 (Guinther ed. 1987).*

[61] *A majority concluded that use of interim summaries in criminal cases would not be productive or wise.*

[62] *A minority of members felt that current trial rules give the judge such authority, albeit by implication. See Civil Rule 39(b) and Criminal Rule 19.1(a).*

attorneys become educated in the effective use of interim summaries in appropriate situations, given the understandable needs of the jurors for "help along the way" in unusually long trials or in trials of unusually complex cases.

36. Use Modern Information Technology More Often in Trials

> Trial lawyers and judges should become more aware of the availability, advantages and costs of the technologies, present and future, that can aid the parties in case presentation and the jury in understanding and recalling the evidence.

Courtroom technology can improve juror understanding and makes trials more interesting by simplifying, clarifying and demonstrating large amounts of information, by increasing juror attention to and memory of the evidence as they are given greater opportunity to visualize the material, and by facilitating instantaneous recall of evidence. However, use of technology at jury trials poses risks too. For example, new and greater opportunities are presented for the manipulation of data. The inability of some parties, especially in criminal cases, to afford such trial aids can raise serious policy and constitutional problems.

Technologies now available for use at trial in "hi-tech" or "multi-media" courtrooms include videotaped testimony; use of videophone for live long distance testimony; computer generated CD-ROM-driven graphs, charts, simulated reenactments, and other informative graphics; electronic recall

of documents; and bar codes and touch-screens that allow juror interaction with stored information to recall past evidence. In the near future laser and other technologies will create even more opportunities for lawyers and jurors.

Unfortunately, utilization of currently available technology in trials is very low. Among the apparent reasons is a lack of information about availability, advantages and costs for lawyers, their clients and judges. Some judges are reluctant to encourage, or even permit, use of some new technologies.

The committee recommends that the judiciary and the Bar address these issues and facilitate greater and appropriate use of current and future technology by undertaking the following:

a. Conduct education and training programs for lawyers and judges regarding the nature, use and value of such innovations;

b. Encourage trial and appellate judges to be more receptive to the use of these and other technologies in trials;

c. Provide technical assistance in the utilization of courtroom technology for lawyers and judges and their staffs (possibly as an

adjunct to the present computer staffs of trial courts in the urban courts); and

d. Assign to the Supreme Court Committee on Technology the ongoing tasks of evaluating and reporting on existing and future technologies, proposing safeguards against abuse of these trial tools and suggesting subjects for future training and education for trial participants.

37. **Allow Jurors to Discuss the Evidence Among Themselves During the Trial**

> After being admonished not to decide the case until they have heard all the evidence, instructions of law and arguments of counsel, jurors should also be told, at the trial's outset, that they are permitted to discuss the evidence among themselves in the jury room during recesses.

The traditional admonition that forbids any and all discussions about the case among jurors until deliberations commence[63] is a corollary of the "passive juror" model. Through enforced passivity, jurors are expected to merely store all evidence for later use and to suspend all judgments until the trial is over. The assumption is that pre-deliberation discussions of the evidence by jurors will inevitably lead to premature judgments about the case.

[63] *See Criminal Rule 19.4; Civil Rule 39(f).*

The committee concluded that this limitation of all discussions among trial jurors and the accompanying assumption that jurors can and do suspend all judgments about the case are unnatural, unrealistic, mistaken and unwise. Behavioral researchers agree that the juror's natural tendency is to actively process information as and after it is received, forming at least tentative preferences or judgments about the evidence as they do.[64] By their own admissions to jury researchers, at least 11 to 44% of jurors discuss the evidence among themselves before deliberations.[65]

We agree with those who favor permitting structured or regulated discussions of the evidence among jurors during trial as long as they are told that it is important to reserve final judgment until all the case has been presented and why it is important to do so. These authorities conclude that the traditional rule forbidding all discussions is anti-educational, nondemocratic and not necessary to ensure a fair trial.[66]

Structured jury discussions of the evidence during trial will benefit the jurors and the trial a number of ways:

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[64]*E.g., R. Hastie, S. Penrod & N. Pennington, Inside the Jury, 24 (1983) and Forston, Sense and Non-Sense: Jury Trial Communication, 1975 B. Y. U. L. Rev. 601, 612.*

[65]*Loftus & Leber, Do Jurors Talk?, 22 Trial 59, 60 (Jan. 1986); Note, Jurors Judge Justice: A Survey of Criminal Jurors, 3 N. Mex. L. Rev. 352, 358 (1973).*

[66]*A. Austin, Complex Litigation Confronts the Jury System, 103-04 (1984); Schwarzer, Reforming Jury Trials, 1990 U. Chi. L. Forum 119, 142-43; Friedland, The Competency and Responsibility of Jurors in Deciding Cases, 85 Nw. L. Rev. 190, 199, 208-09 (1990); and Austin, "Why Jurors Don't Heed Trials," National Law Journal, 15, 18 (Aug. 12, 1985).*

a. Juror comprehension will be enhanced, given the benefits of interactive communication;

b. Questions can be asked and impressions shared on a timely basis rather than held until deliberations or forgotten;

c. A juror's tentative or preliminary judgments might surface and be tested by the group's knowledge; and

d. Divisive "fugitive" conversations and cliques might be reduced, given the opportunities for "venting" in the presence of the entire jury in the jury room.

Civil Rule 39(f) and Criminal Rule 19.4 should be amended to provide that:

> Trial jurors shall be instructed that they are permitted to discuss the evidence among themselves in the jury room during recesses from trial, when all are present, as long as they reserve judgment about the outcome of the case until deliberations commence.

Arizona's Jury Standards should be revised to incorporate this important change in practice.[67]

[67]*See App. C-10.*

A suggested preliminary jury instruction, one that accommodates jurors' natural tendencies, but which discourages premature decisions on the ultimate issues, is appended to this report.[68]

38. Use Only Plain English in Trials, Especially in Legal Instructions

> Judges and lawyers should keep legalese and other technical terms to an absolute minimum at trial. Instructions on the law should be in clear and understandable language.

The legalese and other technical jargon frequently used by attorneys and judges during trial is lost on most jurors and is a major source of confusion and frustration for them. For example, the high rate of failure of jurors to fully understand legal instructions is specially documented.[69] Although Arizona's pattern jury instructions, Recommended Arizona Jury Instructions (RAJI's), were prepared and later revised with one eye to juror comprehension, much remains to be done. Instructions should be written for the jury, with their needs in mind, not for the appellate court. They should be understandable to an adult with a sixth grade reading level.

To maximize the jury's understanding of the law they are required to follow in deciding the case, all form instructions should be carefully

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[68]*See App. G.*

[69]*See A.B.A. Litigation Section Report, supra at 43-49 and 610-13; Steele & Thornburg, Jury Instructions: A Persistent Failure to Communicate, 74 Judicature 249, 250 nn. 10-17 (1991).*

reviewed by expanded bench-bar committees, ones that include psycholinguists and former jurors, among other non-lawyers, to ensure that they are as simple and clear as possible.[70]

The committee also recognized that remarks between and among lawyers and judges and those made by them to the jurors during trial must often sound like a foreign language to the jurors. Technical legal terminology is used too often, when plain English will do. Sometimes judges and trial lawyers even lapse into Latin or Law French in front of the jury. Too often jurors are spoken down to. At the same time, communications intended for their consumption go right past them.

The language of trials should be demystified for the jury. To begin this process the committee makes the following recommendations:

a. A plain English rewrite of all R.A.J.I.'s should be undertaken by existing jury instruction committees aided by the addition of social scientists, including psycholinguists, and non-lawyer former jurors, to ensure that all legal instructions are made as understandable as possible.

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[70]*See* Steele & Thornburg, supra *at 254; Austin, "Why Jurors Don't Heed Trials," National Law Journal 15, 18 (1985).*

b. Since many jury instructions find their source in substantive law, namely statutes and appellate decisions, they too should be in plain English. Legislators, appeals judges and their staffs should be encouraged to write in ways that are understandable to the average person. Consideration should also be given to the enactment of a "Plain English Law" that requires that the laws and other official communications of the state and all county and city governments which are intended for public consumption, be in clear, simple English.

c. Trial attorneys and judges should receive education and training in the need for simple and effective communication during trial and when instructing juries. Judges should explain courtroom rulings for the jury's benefit and should provide the jury with a glossary of technical and legal terms, where complex terms are used frequently at trial.

d. Law schools should consider the role of legal education in changing the current culture that includes too much use of legalese at trial to one where juror comprehension and satisfaction are enhanced because plain English is used instead.

39. Do not Keep Jurors Waiting While Instructions are Settled

> The trial judge and counsel should have the final jury instructions substantially ready by the close of evidence. If additional preparation is needed following the close of evidence, the jurors should be released, overnight if necessary, in order to avoid keeping them waiting.

Frequently, juries are kept waiting for long periods of time while instructions are being settled by the judge and attorneys. Recognizing that the nature of the case may require a significant delay between the close of evidence and instructing the jury, the committee suggests that trial judges receive training on effective ways to settle instructions quickly and accurately.

For example, the existing requirement of Uniform Rule VIII that proposed instructions be submitted no later than the start of trial ought to be uniformly enforced. With those requests and the Arizona RAJI's in hand, the trial judge, in most cases at least, should have a tentative set of instructions and a proposed form of verdict available for review by counsel just before or immediately after the close of evidence. It should take only a few minutes to listen to the objections and comments of counsel. A record of objections could be made while staff is making copies of the instructions for all the trial participants, including the jurors.

Even in those few cases where it is not practicable to seriously consider final instructions until the close of evidence, the jury ought to be sent

home, or at least given a long break, while the instructions are discussed, settled and a record and copies made.

These and other techniques are available to reduce, if not eliminate, unnecessary delay and waiting by the jurors near the end of the trial.

40. Make Jury Instructions Understandable and Case-Specific and Give Guidance Regarding Deliberations

> In addition to couching jury instructions in plain English, they should be case-specific where possible (e.g., use of parties' names) and should give the jury some suggestions regarding the deliberation process.

The need to rewrite current pattern instructions in plain English has been addressed.[71] Reliance on such generic forms creates other problems in understanding. Experts tell us that jury instructions should be as case-specific as possible, utilizing parties' names and actual fact issues in more complex cases. The more closely tailored the law to the case the higher the level of comprehension.[72]

In addition, the more instructions there are, the greater the task in understanding them. Accordingly, the volume should be reduced to the absolute minimum.[73]

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[71] *See Recommendation 39.*

[72] *A.B.A. Report, supra at 47-48; Schwarzer, Communicating with Juries: Problems and Remedies, 69 Cal. L. Rev. 731, 732-36 (1981).*

[73] *Schwarzer, supra at 747-55.*

Finally, many jury experts stress the need for the jury to hear from the judge at least a brief discussion about the deliberation and group decision-making processes.[74] An example of a jury instruction that addresses both subjects is attached to this report.[75]

To summarize, in addition to putting instructions into clear and simple English, the committee encourages the use of as few instructions as possible, ones that are case-specific in their references, and ones that give the jurors some guidance regarding the deliberations process.

41. **Do not Instruct Juries on Jury Nullification; However the Rules of Evidence Ought to be Expanded in Recognition of the Jury's Power to Nullify**

> Except in extraordinary situations or where required by the Arizona Constitution, juries should not be instructed on the subject of jury nullification. However, relevancy rules should be amended or interpreted to permit greater latitude in evidence in recognition of the jury's undoubted power to nullify the law. For example, evidence of the defendant's intent and motive ought to be received in most cases.

Inherent in the jury's return of a general verdict in criminal cases is the power to nullify the law. The exercise of this power to acquit a criminal defendant despite the law is unreviewable, given the constitutional prohibition against double jeopardy.

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[74] *S. Kassim & L. Wrightsman, The American Jury On Trial, Psychological Perspectives, 131 (1988); Hastie, Penrod & Pennington, Inside the Jury, 230 (1988).*

[75] *See App. H.*

Most authorities state that this is a power of the jury outside the law about which they should not be told in the instructions.[76] Others claim that it is a right deeply rooted in the notion that juries must be able to decide the law as well as the facts and ignore or nullify the law where its application would result in an injustice, a right about which the jury ought to be instructed.[77] During the past few legislative sessions, the Arizona legislature has considered, but not passed, a so-called "Fully Informed Jury Act," which would require the judge to inform juries in criminal cases of their right to nullify the law.[78] Courthouses in Pima and Maricopa Counties have been picketed from time to time in recent years by citizens who favor telling jurors of their right to nullify the law.[79]

The committee agrees with the traditional view that while juries in criminal cases have the unreviewable power to acquit despite the law, there is no "right" to jury nullification on the part of the jury or either party and that the jury ought not be instructed on the subject. At the same time, however, the committee also feels that evidence rules ought to be expanded somewhat in recognition of the jury's power to nullify.

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[76]*See e.g., Sparf v. United States, 156 U.S. 51 (1895); United States v. Powell, 936 F.2d 1056 (9th Cir. 1991).*

[77]*United States v. Dougherty, 473 F.2d 1113, 1142 (D.C. Cir. 1972) (Bazelon, J., dissenting); Heumann & Cassak, Not-So-Blissful Ignorance: Informing Jurors About Punishment in Mandatory Sentencing Cases, 20 Am. Crim. L. Rev. 343 (1983). Compare Weinstein, Considering Jury "Nullification": When, May and Should a Jury Reject the Law to do Justice, 30 Am. Crim. L. Rev. 239 (1993).*

[78]*See App. I-1, SCR 1010, 41st Legislature, Second Regular Session (1994).*

[79]*See App. I-2 for example of flyer handed out.*

Given the ongoing debate, the committee recommends that the subject of nullification be handled as follows at jury trials:

a. Except in extraordinary cases, the jury should not be instructed one way or the other regarding jury nullification in criminal cases. Rather, they should be instructed that they are bound by the juror's oath to follow and apply the law that is read and given to them in the final instructions.

b. In civil jury trials, jurors should be instructed that they must follow the law in the instructions, and that they are not permitted to nullify the law. The only exception is the law on contributory negligence and assumption of the risk.[80]

c. Attorneys in criminal and civil trials should not be permitted to argue jury nullification. However, attorneys in criminal cases should be allowed to request and argue for a "just" result or verdict.

d. Rules of relevancy in criminal cases ought to be amended or interpreted to permit greater latitude to the defendant in presenting proof of the defendant's motive and intent along with any other

[80]*Art. 18, Sec. 5, Arizona Constitution.*

evidence that bears upon the jury's power to nullify and acquit despite the law. Of course, once these subjects are opened by the defendant, the prosecutor may rebut.

There was substantial sentiment among committee members for a recommendation that juries in criminal cases be informed of the range of sentence. The argument went that the jury cannot do justice in the case without knowing the punishment. Of all the factors that might persuade a jury to exercise its power to nullify in criminal cases, the fact that the defendant stands to receive what in the jurors' judgment is a grossly unfair sentence appears to be one of the most rational. Still, we do not tell them. After considerable discussion, the committee agreed to forego any recommendation and defer to the development of the law on this and related subjects in the courts and in the legislature.

42. Give Jurors Copies of the Jury Instructions

> The judge's preliminary and final instructions should be in writing. Each juror should be given copies of both. The jurors should be able to take their copies of the jury instructions with them to the jury room, especially during deliberations.

Studies of the practice of furnishing individual jurors with written copies of the judge's legal instructions attest to its advantages. They are: increased understanding of the instructions; facilitation of deliberations;

reduction in the number of questions about the instructions during deliberations; and increased confidence of the jurors in their verdict.[81]

Despite the rather obvious advantages of furnishing copies to all jurors, many Arizona judges do not do so. Some who do give copies to jurors when the instructions are read do not permit more than one copy to be taken into deliberations.

The committee was of the unanimous view that a copy of the instructions ought to be given to each juror. We also recommend that jurors be able to take their individual copies with them into deliberations.

To assure jurors these rights in every case, the following rules should be amended in the manner shown:

Criminal Rule 21.3, RULINGS ON INSTRUCTIONS, etc.

d. **Jurors' Copies.** The court's preliminary and final instructions on the law shall be in written form and a copy of the instructions shall be furnished to each juror before being read by the court.

Criminal Rule 22.2, MATERIALS USED DURING DELIBERATIONS

Upon retiring for deliberations the jurors shall take with them:

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[81] *ABA Report, supra at 51-52 and 622-26; New York State Bar Report, supra at 565; Sands & Reiss, A Report on Seven Experiments Conducted by District Court Judges in the Second Circuit, 60 N. Y. U. L. Rev. 423 (1985).*

* * *

b. All jurors' copies of written instructions.

Civil Rule 51, INSTRUCTIONS TO JURIES, etc.

(b) Instructions to Jury; etc.

(3) The court's preliminary and final instructions on the law shall be in written form and a copy of the instructions shall be furnished to each juror before being read by the court. Upon retiring for deliberations the jurors shall take with them all jurors' copies of written instructions given by the court.

43. Read the Final Instructions Before Closing Arguments of Counsel, Not After

> To increase juror understanding of the law and its relation to the case, their understanding of closing arguments, and to facilitate the arguments, the final instructions ought to be read before closing arguments by counsel.

The traditional method of instructing juries following closing argument is suggested, but not required, by an existing criminal rule.[82] The civil counterpart[83] permits the judge to charge the jury before or after arguments, or both.

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[82] *Criminal Rule 19.1(a)(7) and (8).*

[83] *Civil Rule 51(a).*

The committee found that the great majority of Arizona judges follow tradition by instructing after the attorneys argue despite the obvious appeal in reversing that order so the jurors can learn of the law they are to apply before hearing counsel sum up. Studies of instructing juries before argument, as opposed to after, suggest a number of advantages. For one, jurors are better equipped to evaluate the arguments generally. When they have heard the law first, jurors are at an advantage when they attempt to integrate the attorneys' summations of the facts with the instructions. Finally, since the jury has already been instructed, counsel are relieved of the awkward, if not unseemly, tasks of "predicting" for the jury what the instructions will be and of explaining legal concepts they may not have heard yet.[84] The experience of some of the committee members who routinely instruct before closing arguments is consistent with the studies' results.

Because jury comprehension will benefit, among other things, the committee proposes a rule change to require that jury instructions precede closing arguments, not follow. However, to avoid the possibility of allowing the last attorney to argue to gain an unfair advantage, given the principle of recency, we also suggest that following the arguments the

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[84] *New York State Bar Report, supra at 563; Schwarzer, Reforming Jury Trials, 1990 U. Chi. L. Forum 119, 131-32; and Singleton & Kass, Helping the Jury Understand Complex Cases, 12 Litigation 11, 12 (Spring 1986).*

judge take the jury back for the necessary procedural and housekeeping matters.

These rule changes are proposed:

Civil Rule 51(a), Instructions to Jury, etc.

* * *

Before argument the court shall instruct the jury regarding the applicable substantive law. Following argument the court shall designate the alternates, if any, and instruct the jury concerning its deliberations, questions during deliberations, and return of verdict, among other things.

Criminal Rule 19.1(a), Order of Proceedings

The trial shall proceed in the following order unless otherwise directed by the court:

* * *

(7) The judge shall then instruct the jury regarding the applicable substantive law.

(8) The parties may present arguments, the prosecutor having the opening and closing.

(9) Following argument the court shall designate the alternates, if any, and instruct the jury concerning its deliberations, questions during deliberations, and return of verdict, among other things.

44. **Alternate Jurors Should Not Be Released From Service in Criminal Cases Until a Verdict is Announced or the Jury is Discharged**

Because of the ever-present risk of losing a deliberating juror to illness or other personal emergency, which would reduce the jury in a criminal case below the minimum number required for a verdict, alternate jurors should be admonished that they might be needed for deliberations and to continue to observe all the rules governing jurors'

> conduct until notified of a verdict. If an alternate is substituted, the jurors should be instructed to begin deliberations anew.

According to rule and practice, alternates are released from the admonitions governing their conduct during the trial, are discharged and released.[85] The jury then begins its deliberations with only the minimum required by law, at least in criminal cases.[86]

In many criminal cases, deliberations last longer than one or two hours. In some cases, it takes the jury days to reach its verdict. If, during deliberations, a juror dies, becomes seriously ill or must be excused on account of a grave personal or family emergency, a mistrial results since the size of the jury has been reduced below that required by law for a verdict.

In order to avoid automatic mistrials in these cases, the committee recommends that jurors chosen as alternates in criminal cases be instructed to continue to observe all the admonitions until notified that a verdict has been returned or the jury discharged, as one or more of the alternates might be needed to join deliberations and to vote on the result. If a

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[85] *Civil Rule 47(f) and Criminal Rule 18.5(h).*

[86] *For civil cases, the committee is recommending that all of the jurors remaining at the end of the trial, even though more than eight, deliberate and decide the case. (See Recommendation 46.) If this latter recommendation is not implemented, then this recommendation that alternates be retained for possible future use during deliberations should be taken to apply to civil trials and Civil Rule 47(f).*

deliberating juror is lost, the trial judge can replace the juror with an alternate. If such a substitution is made, the jury should be told that deliberations must begin anew because of the substitution. Whether an alternate is substituted during deliberations should be left to the sound discretion of the trial judge, taking into account such factors as the nature and complexity of the case, the length of deliberations already had and whether the alternate has carefully followed the court's admonitions since being physically excused.

Given the present rule language about the choosing and disposition of alternates in criminal cases, additions to the rule are required to implement this recommendation. The following amendment would suffice:

Criminal Rule 18.5(h) Selection of Jury

The persons remaining shall constitute the jurors for the trial. Just before the jury retires to begin deliberations, the clerk shall, by lot, determine the juror or jurors to be designated as alternates. The alternate, or alternates, upon being physically excused by the court, shall be instructed to continue to observe the admonitions to jurors until they are informed that a verdict has been returned or the jury discharged. In the event a deliberating juror is excused due to inability or disqualification to perform required duties, the court may substitute an alternate juror, choosing from among the

alternates in the order previously designated, unless disqualified, to join in the deliberations. If an alternate joins the deliberations, the jury shall be instructed to begin deliberations anew.

45. **Allow all Jurors Remaining at the End of a Civil Trial to Deliberate and Vote**

> No juror should be designated an alternate and excused at the end of civil cases. All jurors who remain at the close of arguments should deliberate upon and decide the case. The number of jurors' votes needed for a verdict should be determined by the trial judge to assure that the requirement of three-fourths vote is met.

Civil Rule 47(f) provides for alternate jurors in civil trials. It requires that all alternates not needed to replace a regular, or original, juror be discharged.

Other parties have previously petitioned the Supreme Court to amend Rule 47(f) to require that all jurors remaining at the end of trial participate in deliberations and in the reaching of a verdict.[87]

The committee strongly supports these proposals and urges Supreme Court and legislative[88] approval. Among other things it was felt that allowing those civil jurors we now designate and excuse as alternates to fulfill their

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[87]*See App. A-7.*

[88]*A simultaneous amendment to A.R.S. §21-102(c), to prescribe the minimum number of jurors needed for a verdict, depending on the total number of jurors that deliberate, is also needed and has previously been prepared.*

roles as jurors by joining in deliberations and in reaching a verdict will reduce the frustration felt by the alternates, reward all jurors' commitment to service and will be seen to be fairer.

E. JURY DELIBERATIONS

46. The Trial Judge Should Decide on a Schedule for Jury Deliberations and Inform Jurors in Advance

> The scheduling of days and times for jury deliberations should be left to the discretion of the trial judge, taking into account individual case and other local requirements. Jurors should be informed of the schedule in advance.

After discussing the considerations involved--including fairness to the parties and to the jurors themselves and the problems faced by some trial courts in accommodating deliberating juries outside normal court hours, 8:00 a.m. through 5:00 p.m., Monday through Friday--the committee recommends that there be no mandates concerning the hours a jury is permitted to deliberate, on the first day of deliberations or otherwise. Rather, the matter of scheduling deliberations ought to be left to the discretion of the trial judge, who, whenever possible, should advise the jury of the schedule in advance.

Among the sometimes competing considerations involved are:

a. The understandable desires of the jurors to discuss the case and, if possible, decide it with the evidence, instructions and arguments fresh in their minds; and to reach a verdict the same day they begin deliberations so they won't have to return;

b. The interests of the court and parties in avoiding a verdict that is the product of fatigue or pressure resulting from a belief on the part of the jurors that they have to decide the case to gain their release from the jury room;

c. After normal business hours, security and public transportation for jurors and court staff become important concerns, at least in the urban counties; and

d. Requiring court staff to stay after their regular eight-hour day, often with little or no notice, because a jury is deliberating, often negatively impacts them and their families' lives and results in overtime pay requirements for counties already financially hard-pressed.

The judges and lawyers on the committee reported no significant problems confining jury deliberations to between 8:00 a.m. and 5:00 p.m. on weekdays.

The scheduling of times for jury deliberations ought to be left up to the individual judges in the different counties, where circumstances vary, and on a case-by-case basis.

47. Encourage Juror Questions About the Final Instructions

> Judges should solicit questions from jurors about the final instructions before and during deliberations by, among other things, telling them in the written charge that such questions are welcome and by soliciting their questions, if any, after a reasonable period of deliberations has passed.

Given the high level of juror confusion regarding instructions and the fact that a majority of questions from deliberating jurors concern the instructions, the committee concluded that judges ought to be more active in anticipating, if not soliciting, questions. The benefits of responding to questions sooner rather than later outweigh any risks.[89]

To help ensure that juror questions about the law are dealt with on a timely basis, we propose that:

a. At a minimum, and as part of the charge, the judge should encourage the jurors to ask the judge, in writing, any questions they might have about the instructions during deliberations.

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[89] *See Strawn & Munsterman, Helping Juries Handle Complex Cases, in In the Jury Box 180 (1987).*

b. If deliberations last longer than two or three hours in a routine case, or after a reasonable period of time following a lengthy trial or trial of a complex case, the judge ought to renew the invitation for the jury to submit in writing any questions any of them might have about the instructions.

c. While we do not recommend use of this remaining technique without further testing and experience, a suggestion was made for the judge to turn to the jurors, immediately after finishing the reading of the instructions, and ask if there are any questions. While this procedure has drawbacks relating to timing and form, it should be considered in addition to the two measures mentioned above.

48. **Fully Answer Deliberating Jurors' Questions and Meet Their Requests**

The trial judge should fully and fairly respond to all questions asked and requests made by deliberating jurors concerning the instructions and the evidence, recognizing that the jurors are capable of defining their needs in deciding the case.

The failure of too many judges to fully and fairly respond to questions and requests from deliberating juries is well documented and is another major source of "static" in jury comprehension.[90]

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[90] *A.B.A. Study, supra at 52-53; Severance & Loftus, Improving the Ability of Jurors to Comprehend and Apply Criminal Jury Instructions, 17 Law & Soc. Rev. 153, 172-73 (1982); see, O'Neil, Famous Last Words: Responding to Requests and Questions of Deliberating Jurors in Criminal Cases, 11 Crim. Jus. J. 381 (1989).*

We recognize that the trial judge, when presented with jury questions or requests, is constrained by a number of rules and considerations. Principal among them is the need to avoid influencing the jury on the merits and or pressuring the jury to reach any verdict at all. Many such questions and requests are difficult to respond to without risking error. As a result, many judges and trial lawyers view such communications from jurors as inconveniences or worse.

However, some authorities on jury behavior take the view that the jury's questions and requests should be looked on as opportunities rather than problems--opportunities to learn of jurors' thinking, including possible confusion, and to take needed corrective action where possible.[91]

Among the things the committee believes ought to be done are:

a. As part of education and training programs in conducting jury trials, judges should receive instruction regarding the techniques of responding fully and fairly to deliberating jurors' questions and requests.

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[91]*Meyer & Rosenberg, Questions Juries Ask: Untapped Springs of Insight, 55 Judicature 105 (1971); Severance & Loftus, supra at 163.*

b. Where jurors' questions or requests cannot be fully answered or satisfied for some cogent legal or practical reason, a full and understandable explanation ought to be given to them.

c. Requests for particular exhibits or partial readbacks of transcripts generally ought to be met. Since the jurors are the decision-makers, they ought to have the right to decide what evidence they need to rehear, and that decision ought to be respected. However, the judge should inform the jurors that the meeting of their request does not mean the judge feels one way or the other about the exhibit or particular testimony, and that they should consider all of the evidence in the case in making their decision.

49. Offer the Assistance of the Judge and Counsel to Deliberating Jurors who Report an Impasse

> After hearing from deliberating jurors that they are at an impasse, the trial judge should invite the jurors to list the issues that divide them in the event that the judge and counsel can be of assistance, e.g., by clarifying instructions or rearguing certain points.

Many juries, after reporting to the judge that they have reached an impasse in their deliberations, are needlessly discharged very soon thereafter and a mistrial declared when it would be appropriate and might be helpful for the judge to offer some assistance in hopes of improving the chances for a verdict. The judge's offer would be designed and intended

to address the issues that divide the jurors, if it is legally and practically possible to do so. The invitation to dialogue would not be coercive, suggestive or unduly intrusive.

The judge's response to the jurors' report of impasse could take the following form:

> This instruction is offered to help your deliberations, not to force you to reach a verdict.
>
> You may wish to identify areas of agreement and areas of disagreement. You may then wish to discuss the law and the evidence as they relate to areas of disagreement.
>
> If you still have disagreement, you may wish to identify for the court and counsel which issues or questions of law or fact you would like counsel or court to assist you with. If you elect this option, please list in writing the issues where further assistance might help bring about a verdict.
>
> I do not wish or intend to force a verdict. We are merely trying to be responsive to your apparent need for help. If it is reasonably probable that you could reach a verdict as a result of this procedure, it would be wise to give it a try.

If the jury responds with one or more issues that divide them, the judge, with the help of the attorneys, can decide whether and how the issues can be addressed. Among the obvious options are the following: the giving of additional instructions; the clarifying of earlier instructions; directing the attorneys to make additional closing argument; reopening the evidence for limited purposes; or a combination of these measures. Of course, the judge could decide that it is not legally or practically possible to respond to the jury's concerns.

Whether to reopen the case during deliberations for read-backs of testimony or additional instructions, arguments or evidence has always been discretionary with the trial judge.[92] In the sound exercise of that discretion a trial judge ought to be permitted to assist a jury thought to be heading toward deadlock so that chances for a verdict can be maximized and a needless mistrial and additional trial avoided.

If an addition to the rules of procedure is thought necessary, language along the following lines should be placed in Civil Rule 39 and Criminal Rule 22.

> If the jury advises the court that it has reached an impasse in its deliberations, the court may inquire of the jurors to determine whether and how court and counsel can assist them in their deliberative process. After receiving the jurors' response, if any, the judge may direct that further proceedings occur.

50. **When Juries Reported to be at Impasse are Returned for Further Deliberations They Should Not be Instructed Any Further**

> If the judge and trial attorneys are unable to be of further assistance after dialoguing with a jury at impasse, or if after those further proceedings the jurors are returned for additional deliberations, no further instructions should be

[92] *See United States v. Burger, 419 F.2d 1293 (5th Cir. 1969); Fernandez v. United States, 329 F.2d 899 (9th Cir. 1964); and People v. Scott, 465 N. Y. S.2d 819 (Cty. Ct. 1983).*

given asking or encouraging them to reach a verdict, at least in criminal cases.

If the trial judge follows the procedure recommended immediately above and opens a dialogue with the jury reported to be at an impasse, and, as a result, a deadlock is avoided and a verdict is returned, the need to instruct further is obviated. However, the circumstances may not permit court and counsel to be of such assistance, and it may become necessary to bring the jury back into the courtroom for further instructions.

Reinstructing at this juncture is fraught with peril, given the Supreme Court's frequent disapproval of instructions which stress the importance of reaching a verdict by encouraging jurors to reconsider their positions and then return the jury to deliberate further, despite their prior announcement of having reached an impasse.[93] Care must be taken to avoid coercing jurors into agreeing upon a verdict and, of course, avoiding any indication what the verdict should be.[94] Some instructions now in use appear to meet those criteria.[95] Some judges prefer to send a jury back for more deliberations without any instruction at all.

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[93]*E.g.*, State v. Thomas, *86 Ariz. 161, 342 P.2d 197 (1959) (disapproving "dynamite" instruction from* State v. Voeckell, *69 Ariz. 145, 210 P.2d 972 (1949)) (text of disapproved instruction, App. L-1);* See also State v. Smith, *108 Ariz. 121, 493 P.2d 904 (1972).*

[94]*See* State v. McCutcheon, *162 Ariz. 54, 781 P.2d 31 (1989).*

[95]*See App. J-2.*

Given the often competing values we attach to the independence of the jury and to finality through verdict, the committee recommends that the following procedures be employed:

a. In its final instructions, the judge ought to discuss the process of deliberations and make some general suggestions.[96]

b. Once a deliberating jury has signaled an impasse, the judge ought to first discover if court and counsel can be of further help by employing the procedure recommended in Recommendation 50.

c. Whether or not further proceedings are had after dialoguing with the jury, and if the jury is asked to deliberate further, no further instructions should be given.

d. If it is thought necessary to instruct a possibly deadlocked jury prior to returning them for additional deliberations, it must be done in a non-coercive manner that respects the views and independence of all jurors and in a way that does not suggest what the verdict should be.

[96]*See recommendation 40; see App. H for a sample instruction.*

F. POST-VERDICT STAGE

51. Become Proactive in Detecting and Treating Juror Stress

> After trials likely to cause unusual stress or trauma for jurors, the judge should conduct an immediate jury debriefing with the help of a mental health professional. One follow-up visit with the professional ought to be provided at no cost. Any juror needing further aid should be referred to community resources.

Jurors falling victim to stress and trauma during or after their service in certain types of cases is being reported and discussed with ever-increasing frequency. The literature on this subject documents symptoms ranging from anxiety and headaches to full-blown post-traumatic stress syndrome.[97] It is self-evident that many jurors would be emotionally moved by what they observe at trial and by the nature of the decision they have to make. Trials involving particularly violent, brutal or other perverted behavior could well produce unacceptable levels of stress in many jurors.

Both the literature and this committee suggest that courts become proactive in detecting and dealing with juror stress. Specifically, we recommend the following:

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[97] *See, e.g., Biener, Helping Jurors Out: Post-Verdict Debriefing for Jurors in Emotionally Disturbing Trials, 68 Ind. L. J. 1333 (1993); Hafemeister, Juror Stress, 8 Violence and Victims 177 (1993); Feldmann & Bell, Crisis Debriefing of a Jury After a Murder Trial, 42 Hosp. & Commun. Psy. 79 (1991).*

a. That the trial judge and other court personnel remain alert to signs of juror stress during trial and deliberations and after the jury is discharged.

b. That following verdicts in trials of extremely high profile cases, or cases exposing the jurors to extreme violence, perversion or other evidence that could likely induce substantial juror stress, the court should conduct an immediate jury debriefing. The judge and at least one mental health professional should be involved. Among other things, the jurors should be invited to discuss their shared experience and their individual reactions and feelings. After being provided an opportunity to vent, the jurors should be advised of the signs and symptoms of juror stress. They should also be furnished information on court and other community resources and how to contact other jurors should they feel a need for either.

c. After the debriefing session, a publicly paid mental health professional should be available for a one-time visit by any juror who feels in need of further assistance. If additional counseling or therapy is indicated, the juror should be referred to and given information about community mental health resources, both public and private.

52. Assist Jurors in Coping with Fears of Contact or Retaliation

> When jurors express what appear to be reasonable concerns about the dangers of being contacted or made the target of retaliation during or following trial, the court should, after notice to the parties, conduct a debriefing and make referrals to law enforcement authorities as necessary.

Given the nature of many of the cases being tried today it is normal to expect that some jurors will become anxious, if not fearful, that one of the parties or their family members or friends will attempt to contact them during or after trial. Fears of possible contact or retaliation involving a juror, or a family member, may or may not be justified. These concerns may be expressed as early as voir dire. If they are, they require special and careful handling by the trial judge to avoid prejudicing potential jurors.

When it is reasonable to expect such concerns on the part of jurors, or when they are actually voiced and appear to have a basis, during or following trial, the committee recommends that the following procedures be followed:

a. Whenever it appears appropriate to do so, and with notice to the parties, the court should contact local law enforcement for handling as deemed appropriate.

b. After the verdict, the jurors should be provided information about and an opportunity to participate in a program established for jurors who experience unusual stress.[98]

53. **Solicit Jurors' Reactions to Their Courthouse Experiences**

> The jury commissioner and trial judge should conduct regular surveys of juror responses to jury service in general and to the trial in particular. Survey results should be tallied and reviewed by judges, jury commissioners and court policy makers.

Courts, as institutions, and judges and lawyers, personally, rarely receive meaningful information from the public about jury service. It is unusual for courts to solicit such feedback in any systematic way.

The experience of many judges, lawyers and jurors is that jurors constitute a rich source of opinions and other information concerning the conduct of jury trials and the administration of the jury system. The committee recommends that the jury commissioners in the state, or court clerks in counties that do not have jury commissioners, periodically administer exit questionnaires to persons called to jury duty, but not chosen for a jury trial, to inquire of the potential juror's attitudes toward their experience and to invite suggestions for improvement. The same information could be elicited of trial jurors by a questionnaire given to them following trial

[98]*See Recommendation 50.*

by the trial judge or the judge's staff. In addition, the trial judge's exit questionnaire should inquire into the trial jurors' reactions to their experiences after reaching the courtroom, including their impressions about the conduct of the trial by the judge, staff and attorneys. Information gathered by the trial judge's questionnaire that is not unique to the jurors' experiences in trial should be forwarded to the jury commissioner or clerk.

The results of the questionnaires administered to all persons summoned for jury duty ought to be collected and tabulated for reports to the presiding judge at a minimum (preferably all judges in the court) and to the jury commissioner or clerk. The results of individual judge's questionnaires ought to be considered by that judge and the presiding judge of the court.

A juror exit questionnaire recommended by the committee is appended to this report.[99]

54. **Advise Jurors Concerning Post-Verdict Conversations with the Judge, Attorneys and the Media**

> When trial jurors are discharged, the judge should advise them that they are free to discuss the case with the attorneys and parties, the judge, media and the public if they wish, but that they are free not to do so if they choose. The judge should offer to meet with any jurors who wish to do so, to thank them personally and to answer questions of a general nature.

[99]See App. K.

When discharging the jurors and releasing them from the admonitions previously imposed, the trial judge should advise the jurors that while they are now free to discuss the case with anyone they choose, including the attorneys and news reporters, they are not compelled to do so.

Following their release, the judge should meet with the jurors who wish to meet, either in the jury room or in chambers, to thank them personally in a more relaxed setting, to take comments about their experiences as jurors and to answer questions about the trial to the extent the judge is permitted. This meeting could occur before or after allowing jurors the opportunity to visit with counsel in the courtroom or jury room.

G. JURORS' BILL OF RIGHTS

55. Promulgate a Proposed Bill of Rights for Arizona Jurors

> A Jurors' Bill of Rights listing the more important rights and expectations of jurors, both those presently existing and those created as a result of this report, should be promulgated to aid in educating all concerned and to better assure that the rights are observed.

Jurors are called upon to make important decisions involving life, liberty and property, some of the most important public decisions of all. They do not volunteer for this difficult work; they are "drafted." Being representatives of the public, they are expected to reflect and exercise the conscience of the community. Their participation in our system of justice

legitimates what otherwise might be viewed as arbitrary and dictatorial governmental decisions.

Jurors are decision-makers who deserve respect; respect not only for them as persons with responsibilities but also as major participants in our justice system. Among other things, they need to learn, to remember, to ask legitimate questions and to receive answers. To accomplish all this, and more, they need to become more active participants in the trial.

Certain juror rights and expectations, present and future--created as a result of this report or otherwise--are so important that they ought to receive special recognition. The committee recommends that a "Jurors' Bill of Rights" be promulgated by the Supreme Court, one that lists certain fundamental rights and legitimate expectations of jurors that judges, attorneys and court staff are expected to honor.

The proposed "Jurors' Bill of Rights" follows:

A PROPOSED BILL OF RIGHTS FOR ARIZONA JURORS

JUDGES, ATTORNEYS AND COURT STAFF SHALL MAKE EVERY EFFORT TO ASSURE THAT ARIZONA JURORS ARE:

1. Treated with courtesy and respect and with regard for their privacy.

2. Randomly selected for jury service, free from discrimination on the basis of race, ethnicity, gender, age, religion, economic status or physical disability.

3. Provided with comfortable and convenient facilities, with special attention to the needs of jurors with physical disabilities.

4. Informed of trial schedules that are then kept.

5. Informed of the trial process and of the applicable law in plain and clear language.

6. Able to take notes during trial and to ask questions of witnesses or the judge and to have them answered as permitted by law.

7. Told of the circumstances under which they may discuss the evidence during the trial among themselves in the jury room, while all are present, as long as they keep an open mind on guilt or innocence or who should win.

8. Entitled to have questions and requests that arise or are made during deliberations as fully answered and met as allowed by law.

9. Offered appropriate assistance from the court when they experience serious anxieties or stress, or any trauma, as a result of jury service.

10. Able to express concerns, complaints and recommendations to courthouse authorities.

11. Fairly compensated for jury service.

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Copy of the **Juror's Evaluation Form** (Suggested Exit Questionnaire for Jurors)

APPENDIX A

PROPOSED

RULE

CHANGES

PROPOSED RULE CHANGES

A. RECOMMENDATION 18: **Encourage Mini-Opening Statements Before Voir Dire**

Civil Rule 47(b)(2) and Criminal Rule 18.5(c):

> The parties may, with the court's consent, present brief opening statements to the entire jury panel, prior to voir dire. On its own motion the court may require counsel to do so. Following such statements, if any, the court shall conduct a thorough examination of prospective jurors.

B. RECOMMENDATION 19: **Allow Judges to Choose Between the "Struck" and the "Strike and Replace" Methods of Jury Selection**

Civil Rule 47(a):

1. When an action is called for trial by jury, the clerk shall prepare and deposit in a box ballots containing the names of the jurors summoned who have appeared and have not been excused. The clerk shall then draw from the box as many names of jurors as the court directs ~~eight names, and in addition thereto as many more as equal the number of peremptory challenges to which the parties are entitled~~. If the ballots are exhausted before the jury is completed, the court shall order to be forthwith drawn in the manner provided for other drawings of jurors, but without notice and without the attendance of officers other than the clerk, as many qualified persons as necessary to complete the jury.

Criminal Rule 18.5:

b. Calling Jurors for Examination ~~a Full Jury Box~~.

The court or clerk shall then call to the jury box a number of jurors equal to the number to serve plus the number of alternates plus the number of peremptory challenges allowed the parties. Alternatively, and at the court's discretion, all prospective jurors may be examined by court and counsel.

f. Challenge for Cause.

At any time that cause for disqualifying a juror appears, the court shall excuse the juror before the parties are called upon to exercise their

peremptory challenges. Such a juror shall be excused and another member of the panel shall be called to take the excused juror's place in the jury box and on the clerk's list of jurors when fewer than all of the members of the jury panel have been examined. ~~and call another member of the panel to take the~~ Challenges for cause shall ~~may~~ be made out of the hearing of the jurors, but shall be of record.

h. Selection of Jury.

The persons remaining in the jury box or on the list of the panel of prospective jurors shall constitute the jurors for the trial. Just before the jury retires to begin deliberations, the clerk shall, by lot, determine the juror or jurors to be designated as alternates.

Official Comment to Civil Rule 47(a)(1) and
Criminal Rule 18.5(b)

Prior to this amendment, Rule 47(a)(1) [Rule 18.5(b)] was read to require trial judges to use the traditional "strike and replace" method of jury selection, where only a portion of the jury panel is examined, the remaining jurors being called upon to participate in jury selection only upon excusal for cause of a juror in the initial group. Challenges for cause are heard and decided with the jurors being examined in the box. A juror excused for cause leaves the courtroom in the presence and view of the other panel members, after which the excused juror's position is filled by a panel member who responds to all previous and future questions of the potential jurors.

The purpose of this amendment is to allow the trial judge to use the "struck" method of selection if the judge chooses. This procedure is of more recent vintage and is thought by some to offer more advantages than the "strike and replace" method. See T. Munsterman, R. Strand and J. Hart, The Best Method of Selecting Jurors, The Judges Journal 9 (Summer 1990); A.B.A. Standards Relating to Juror Use and Management, Standard 7, at 68-74 (1983); and "The Jury Project," Report to the Chief Judge of the State of New York 58-60 (1994).

The "struck" method calls for all of the jury panel members to participate in voir dire examination by the judge and counsel. Although the judge may excuse jurors for cause in the presence of the panel, challenges for cause are usually reserved until the examination of the panel has been completed and a recess taken. Following disposition of the for cause challenges, the juror list is given to counsel for the exercise of their peremptory strikes. When all the peremptory strikes have been taken and all Batson issues resolved [See Recommendation 25 of this report], the clerk calls the first eight names remaining on the

list, plus the number of additional [alternate] jurors thought necessary by the judge, who shall be the trial jury.

C. RECOMMENDATION 20: **Assure Lawyers the Right to Voir Dire in All Cases**

Civil Rule 47(b)(2) and Criminal Rule 18.5(d):

The court shall conduct a thorough oral examination of prospective jurors. Upon the request of any party, the court shall permit that party a reasonable time to conduct a further oral examination of the prospective jurors. The court may impose reasonable limitations with respect to questions allowed during a party's examination of the prospective jurors, giving due regard to the purpose of such examination. Nothing in this Rule shall preclude the use of written questionnaires to be completed by the prospective jurors, in addition to oral examination.

D. RECOMMENDATION 25: **Set and Enforce Time Limits for Trials**

Evidence Rule 611, Civil Rule 16 and Criminal Rule 16.3:

The court may impose reasonable time limits on the trial proceedings or portions thereof.

E. RECOMMENDATION 29: **Juror Notebooks Should be Provided in Some Cases**

Civil Rule 47(g) and Criminal Rule 18.6(c):

In its discretion, the court may authorize the use of notebooks by jurors during trials to aid the jurors in performing their duties.

F. RECOMMENDATION 30: **Expand Use of Preliminary Jury Instructions**

Civil Rules 39(b) or 51(a):

Immediately after the jury is sworn, the court shall instruct the jury concerning its duties, its conduct, the order of proceedings and the elementary legal principles that will govern the proceeding.

G. RECOMMENDATION 31: **Ensure Notetaking by Jurors in All Cases**

Civil Rule 39(c) Notetaking by Jurors [new; redesignate remaining paragraphs]:

> The court shall instruct the jurors that they may take notes regarding the evidence and keep the notes for the purpose of refreshing their memory when they retire for deliberation. The court shall provide materials suitable for this purpose. During recesses of the trial the jurors shall be permitted to have access to their notes in the jury room. After the jury had rendered its verdict, the notes shall be collected by the bailiff or clerk who shall promptly destroy them.

Criminal Rule 18.6(d) Notetaking:

> The court shall instruct the jurors that they may take notes regarding the evidence and keep the notes for the purpose of refreshing their memory when they retire for deliberation. The court shall provide materials suitable for this purpose. During recesses of the trial the jurors shall be permitted to have access to their notes in the jury room. After the jury had rendered its verdict, the notes shall be collected by the bailiff or clerk who shall promptly destroy them.

H. RECOMMENDATION 32: **Improve Management of Trial Exhibits**

Official Comment to Evidence Rule 611:

Document Control:

1. The trial judge should become involved as soon as possible, and no later than the pretrial conference, in controlling the number of documents to be used at trial.

2. For purposes of trial, only one number should be applied to a document whenever referred to.

3. Copies of key trial exhibits should be provided to the jurors for temporary viewing or for keeping in juror notebooks.

4. Exhibits with text should and, on order of the court, shall be highlighted to direct jurors' attention to important language. Where important to an understanding of the document, that language should be explained.

5. At the close of evidence in a trial involving numerous exhibits, the trial judge shall ensure that a simple and clear retrieval system, e.g., an index, is provided to the jurors to assist them in finding exhibits during deliberations.

I. RECOMMENDATION 33: **Deposition Summaries Should be Used**

Civil Rule 32(a)(5):

> In its discretion, and in lieu of a reading of a deposition's text or a portion thereof, the court may require the reading of a concise written summary of a deposition sought to be used at any hearing or trial.

Official Comment to Civil Rule 32 and Evidence Rule 611:

> Deposition summaries. In order to improve jury attention to and comprehension of the contents of depositions used at trial pursuant to this rule, this addition to the rule sanctions the use of concise written summaries of depositions in lieu of reading the text or portions thereof. The trial judge is given the power to compel the use of summaries when thought necessary.

J. RECOMMENDATION 34: **Allow Jurors to Ask Questions**

Civil Rule 39(b) and Criminal Rule 18.6:

> Juror Questions. The jurors shall be permitted to submit written questions of witnesses or the court.

Official Comment to both rules:

> Minimum procedures for juror questioning:
>
> The jurors should be instructed about the procedures for juror questions in advance of the taking of evidence. Jurors' questions must be in writing and left unsigned. Jurors should be instructed to give their questions to the bailiff. If a juror has a question for a witness about to leave the witness stand, the juror should communicate that fact to the court. After receiving the question, the judge must allow counsel an opportunity to object to it out of the presence of the jury.
>
> If found to call for admissible evidence, the question should be asked or answered by stipulation or other appropriate means. If a jury question calls for inadmissible evidence, the question shall not be read, and the jury should be told that trial rules do not permit some questions to be asked and that the

jurors should not attach any significance to the failure of having their question asked.

K. RECOMMENDATION 37: **Allow Jurors to Discuss the Evidence Among Themselves During the Trial**

Civil Rule 39(f) and Criminal Rule 19.4:

> Trial jurors shall be instructed that they are permitted to discuss the evidence among themselves in the jury room during recesses from trial when all are present, as long as they reserve judgment about the outcome of the case until deliberations commence.

L. RECOMMENDATION 42: **Give Jurors Copies of the Jury Instructions**

Civil Rule 51, Instructions to Juries, etc.:

> (b) Instructions to Jury; etc.
>
> (3) The court's preliminary and final instructions on the law shall be in written form and a copy of the instructions shall be furnished to each juror before being read by the court. Upon retiring for deliberations the jurors shall take with them all jurors' copies of final written instructions given by the court.

Criminal Rule 21.3, Rulings on Instructions, etc.:

> d. **Jurors' Copies.** The court's preliminary and final instructions on the law shall be in written form and a copy of the instructions shall be furnished to each juror before being read by the court.

Criminal Rule 22.2, Materials Used During Deliberations:

> Upon retiring for deliberations the jurors shall take with them:
>
> * * *
>
> b. All jurors' copies of final written instructions given by the court.

M. RECOMMENDATION 43: **Read the Final Instructions Before Closing Arguments of Counsel, Not After**

Civil Rule 51(a), Instructions to Jury, etc.:

> * * *

The court shall instruct the jury regarding the applicable substantive law before final arguments of counsel. Following arguments the court shall designate the alternates, if any, and instruct the jury concerning its deliberations, questions during deliberations, and return of verdict, among other things.

Criminal Rule 19.1(a), Order of Proceedings:

The trial shall proceed in the following order unless otherwise directed by the court:

* * *

(7) The judge shall then instruct the jury regarding the applicable substantive law.

(8) The parties may present arguments, the prosecutor having the opening and closing.

(9) Following argument the court shall designate the alternates, if any, and instruct the jury concerning its deliberations, questions during deliberations, and return of verdict, among other things.

N. RECOMMENDATION 44: **Alternate Jurors Should Not Be Released From Service in Criminal Cases Until a Verdict is Announced or the Jury is Discharged**

Criminal Rule 18.5(h):

The persons remaining shall constitute the jurors for the trial. Just before the jury retires to begin deliberations, the clerk shall, by lot, determine the juror or jurors to be designated as alternates. The alternate, or alternates, upon being physically excused by the court, shall be instructed to continue to observe the admonitions to jurors until they are informed that a verdict has been returned or the jury discharged. In the event a deliberating juror is excused due to inability or disqualification to perform required duties, the court may substitute an alternate juror, choosing from among the alternates in the order previously designated, unless disqualified, to join in the deliberations. If an alternate joins the deliberations, the jury shall be instructed to being deliberations anew.

O. RECOMMENDATION 45: **Allow All Jurors Remaining at the End of a Civil Trial to Deliberate and Vote**

Civil Rule 47(f):

Rule 47(f) ~~Alternate~~ Additional Jurors. ~~The court may direct that not more than six jurors in addition to the regular jury be called and impanelled to sit as alternate jurors. Alternate jurors in the order in which they are called shall replace jurors who, prior to the time the jury retires to consider its verdict, become or are found to be unable or disqualified to perform their duties.~~ The court may qualify not more than six additional jurors as it deems necessary. ~~Alternate~~ Additional jurors shall be drawn in the same manner, shall have the same qualifications, shall be subject to the same examination and challenges, shall take the same oath, and shall have the same functions, powers, facilities, and privileges as the regular jurors. ~~An alternate juror who does not replace a regular juror shall be discharged after the jury retires to consider its verdict.~~ Each side is entitled to 1 peremptory challenge in addition to those otherwise allowed by law if 1 or 2 ~~alternate~~ additional jurors are to be impanelled, 2 peremptory challenges if 3 or 4 ~~alternate~~ additional jurors are to be impanelled, and 3 peremptory challenges if 5 or 6 ~~alternate~~ additional jurors are to be impanelled. ~~The additional peremptory challenges may be used against an alternate juror only, and the other peremptory challenges allowed by law shall not be used against an alternate juror.~~ Those jurors remaining when the panel retires to consider its vote shall render a verdict as provided in A.R.S. §21-102(c).

P. RECOMMENDATION 49: **Offer the Assistance of the Judge and Counsel to Deliberating Jurors who Report an Impasse**

Civil Rule 39(h) [redesignate present 39(h) and subsequent paragraphs] and Criminal Rule 22.4 [renumber present Rule 22.4]:

If the jury advises the court that it has reached an impasse in its deliberations, the court may inquire of the jurors to determine whether and how court and counsel can assist them in their deliberative process. After receiving the jurors' response, if any, the judge may direct that further proceedings occur.

APPENDIX B

RECOMMENDED STATUTORY CHANGES

RECOMMENDED STATUTORY CHANGES

A. RECOMMENDATION 4: **Improve Jury Diversity through "Random Stratified Selection"**

Proposed A.R.S. §21-322(D) [new]

D. The Supreme Court shall promulgate for counties with populations of five hundred thousand or more persons, and may do so for any other county if it appears to the Supreme Court necessary and practicable to do so, a plan for the selection of jurors from the qualified jury box or qualified jury wheel in a random fashion but in a manner that ensures that the number of jurors selected for the jury pools represent all identifiable groups in the county population. An "identifiable group" is any ethnic or racial subset of a county's total population that represents three percent or more of the county's population according to the most recent census of the United States. A jury pool shall be deemed to represent all identifiable groups in a county's population for purposes of this provision if it closely approximates the percentage share of the county's total population of each identifiable group in the county.

A.R.S. §21-323(A) [revised]

A. In drawing names from the qualified juror box or qualified juror wheel, the jury commissioner shall follow the procedures prescribed in §21-312 or, if applicable, in any plan promulgated by the Supreme Court pursuant to §21-322(D).

B. RECOMMENDATION 16: Reform and Improve Juror Pay and Mileage

[Proposed A.R.S. §§22-221 through 229 are based upon Colorado statutes, Colo. Rev. Stat. §§13-71-125 through 133.]

A.R.S. §21-221. **Compensation and reimbursement**

The compensation and reimbursement policy of this article shall be to prevent, insofar as possible, financial hardship for any juror because of the performance of juror service. Where financial hardship exists, the court shall attempt to place the juror in the same financial position as such juror would have been were it not for the performance of juror service.

§21-222. **Compensation of employed jurors during first three days of service**

All regularly employed trial or grand jurors shall be paid regular wages, but not to exceed fifty dollars per day unless by mutual agreement between the employee and employer, by their employers for the first three days of juror service or any part thereof. Regular employment shall include part-time, temporary, and casual employment if the employment hours may be determined by a schedule, custom, or practice established during the three-month period preceding the juror's term of service.

§21-223. **Financial hardship of employer or self-employed juror**

The court shall excuse an employer or a self-employed juror from the duty of compensation for trial or grand juror service upon a finding that it would cause financial hardship. When such a finding is made, a juror shall receive reasonable compensation in lieu of wages from the state for the first three days of juror service or any part thereof. Such award shall not exceed fifty dollars per day of juror service. A court hearing on an employer's extreme financial hardship shall occur no later than thirty days after the tender of the juror service certificate to the employer. The request for a court hearing shall be made in writing to the jury commissioner.

§21-224. **Reimbursement of unemployed jurors during first three days of service**

Each trial or grand juror who is unemployed may apply to the jury commissioner on the first day of juror service and shall be reimbursed by the state for reasonable travel, child care, and other necessary out-of-pocket expenses, except food, for the first three days of juror service or any part thereof. The state court administrator shall establish guidelines for the reimbursement of unemployed trial and grand jurors. No award for an unemployed juror shall exceed fifty dollars per day of juror service, and the court shall approve, prior to reimbursement, any award which is outside the guidelines. Any juror who is not regularly employed, including, but not limited to, retired persons, homemakers, students, unemployed persons, and persons receiving unemployment benefits, shall be entitled to reimbursement under this section. Juror service shall not cause a person to lose unemployment benefits.

§21-225. **Compensation of jurors after first three days of service**

The state shall pay each trial or grand juror who serves more than three days for the fourth day of service and each day thereafter at the rate of fifty dollars per day. A trial or grand juror receiving payment under this section shall not be entitled to additional reimbursement for travel or other out-of-pocket expenses.

§21-226. **Limitations on juror compensation**

The state shall compensate and credit each juror for only those days on which the juror appeared as directed to perform juror service. Holidays and business days on which a trial has been recessed are excluded.

§21-227. **Special awards of compensation and reimbursement**

Notwithstanding any other provisions of this article, the court is authorized to make special awards of compensation and reimbursement to any juror based upon unusual circumstances or to effect the purposes of this article. By appropriate order, the court may make special arrangements for physically impaired and elderly jurors and may provide for the other needs of jurors. The court shall provide for reasonable costs of jury sequestration.

§21-228. **Juror service certificate--presentation--payment**

(1) The juror service certificate shall contain the following information: The name and address of the juror; the name, address, and county of the court in which the juror service was performed; the week to which the certificate applies, and the number of days of juror service performed during that week and the dates thereof; the total compensation received by the juror from the state during the week; a declaration of the duty of the employer to compensate an employed juror for the first three days, or any part thereof, of juror service; the right of an employer to be excused from such duty by the court upon a showing of extreme financial hardship and any other information deemed appropriate by the jury commissioner. Each juror service certificate shall be completed in triplicate, and the juror, the juror's employer, and the jury commissioner each shall be given one copy. Juror service certificates shall be retained by the jury commissioner for eighteen months after the jurors have completed juror service.

(2) Upon discharging or releasing a juror from juror service, the jury commissioner, the judge, or the clerk shall either present the juror with the juror's completed juror service certificate or mail two copies of the certificate to the juror within one week after completion of juror service. Any juror seeking employer compensation for juror service shall tender the employer's copy to the juror's employer as soon as practical. This duty to tender shall appear prominently on the certificate.

(3) Trial and grand jurors shall receive payments due from the county or state for juror service by check on a weekly basis. Each check shall include all compensation for juror service and reimbursement for authorized expenses incurred by the juror during the previous week.

§21-229. **Enforcement of employer's duty to compensate jurors**

Any employer who fails to compensate an employed juror under the applicable provisions of this article and who has not been excused from such duty of compensation shall be liable to the employed juror. If the employer fails to compensate a juror within thirty days after tender of the juror service certificate, the juror may commence a civil action in any court having jurisdiction over the parties. Extreme financial hardship on the part of the employer shall not be a defense to such an action. The court may award treble damages and reasonable attorney fees to the juror upon a finding of willful misconduct by the employer.

§21-230. **Absence from employment for jury duty; vacation and seniority rights; violation; classification** (former A.R.S. §21-236 as revised)

A. An employer shall not refuse to permit an employee to take a leave of absence from employment for the purpose of serving as a juror. No employer may dismiss or in any way penalize or harass any employee because the employee serves as a trial or grand juror. ~~provided, however, that an employer shall not be required to compensate an employee when the employee is absent from his employment because of his jury service.~~ Any absences from employment shall not affect vacation rights which employees otherwise have.

B. An employee shall not lose seniority or precedence while absent from employment due to service as a member of a trial or grand jury. Upon return to employment the employee shall be returned to the employee's previous position, or to a higher position commensurate with the employee's ability and experience as seniority or precedence would ordinarily entitle the employee.

C. A person who violates any provision of this section is guilty of a class 3 misdemeanor and shall be liable to the employee as provided in Section 21-229 of this article.

§21-231. **Reimbursement for mileage** (former A.R.S. §21-221(2) as revised)

~~A.~~ Each juror shall be paid by the county for each mile in excess of 25 miles necessarily traveled from ~~his~~ the juror's residence to the court and back to ~~his~~ the juror's residence, an amount equal to the amount paid to state officers and employees pursuant to §38-623, subsection A. Reimbursement shall be at the computed mileage rate regardless of whether the travel is accomplished by private, rented or chartered motor vehicle. When a juror necessarily returns to ~~his~~ the juror's residence and travels back to court during the period of service because of a recess ordered by the court, ~~he~~ the juror shall be paid on the same basis for such travel.

~~1. For each day's attendance upon the superior court or justice court, twelve dollars.~~

~~2.~~

~~B. Attendance on the court shall include the first day a juror is required to attend and shall continue each day of actual attendance on the court thereafter, until the juror is either temporarily or permanently excused from jury service. Any juror who is excused from further attendance upon the first day of this appearance in obedience to a summons shall receive a mileage allowance only.~~

APPENDIX C

ARIZONA JURY MANAGEMENT STANDARDS

AND

PROPOSED CHANGES

SUPREME COURT OF ARIZONA

JURY MANAGEMENT STANDARDS

Administrative Order No. 92- 23

Pursuant to the authority granted the Supreme Court in Article VI, Section 3 of the Constitution of the State of Arizona,

IT IS ORDERED THAT the attached jury management standards are approved and shall be used for jury management in the municipal court, justice courts and superior courts.

DATED AND ENTERED this 4th day of August, 1992, at the Arizona State Courts Building in Phoenix, Arizona.

Stanley G. Feldman
Chief Justice

Jury Management Standards

Selection of Prospective Jurors.

STANDARD 1: OPPORTUNITY FOR JURY SERVICE

The opportunity for jury service should not be denied or limited on the basis of race, national origin, gender, age, religious belief, income, occupation, or any other factor that discriminates against a distinctive group in the jurisdiction.

STANDARD 2: JURY SOURCE LIST

(a) The names of potential jurors should be drawn from a jury source list compiled from one or more regularly maintained lists of persons residing in the court jurisdiction.

(b) The jury source list should be representative and should be as inclusive of the adult population in the jurisdiction as is feasible.

(c) The court should periodically review the jury source list for its representativeness and inclusiveness of the adult population in the jurisdiction.

(d) Should the court determine that improvement is needed in the representativeness or inclusiveness of the jury source list, appropriate corrective action should be taken.

STANDARD 3: RANDOM SELECTION PROCEDURES

(a) Random selection procedures should be used throughout the juror selection process. Any method may be used, manual or automated, that provides each eligible and available person with an equal probability of selection.

(b) Random selection procedures should be employed in:

(i) Selecting persons to be summoned for jury service;

(ii) Assigning prospective jurors to panels; and,

(iii) Calling prospective jurors for voir dire.

(c) Departures from the principle of random selection are appropriate:

(i) To exclude persons ineligible for service in accordance with Standard 4;

(ii) To excuse or defer prospective jurors in accordance with Standard 6;

(iii) To remove prospective jurors for cause or if challenged peremptorily in accordance with Standards 8 and 9.

STANDARD 4: ELIGIBILITY FOR JURY SERVICE

All persons should be eligible for jury service except those who:

(a) Are less than eighteen years of age, or

(b) Are not citizens of the United States, or

(c) Are not residents of the jurisdiction in which they have been summoned to serve, or

(d) Are currently adjudicated mentally incompetent or insane, or

(e) Have been convicted of a felony and have not had their civil rights restored.

STANDARD 5: TERM OF AND AVAILABILITY FOR JURY SERVICE

The time that persons are called upon to perform jury service and to be available therefore, should be the shortest period consistent with the needs of justice.

(a) Term of service of one day or the completion of one trial, whichever is longer, is recommended. However, a term of one week or the completion of one trial, whichever is longer, is acceptable.

(b) Persons should not be required to maintain a status of availability for jury service for longer than two weeks except when it may be appropriate for persons to be available for service over a longer period of time.

STANDARD 6: EXEMPTION, EXCUSE, AND DEFERRAL

(a) All automatic excuses or exemptions from jury service should be eliminated.

(b) Eligible persons shall, upon their timely application to the court or upon the court's own motion, be excused from service as a juror if:

(i) Their ability to receive and evaluate information is so impaired that they are unable to perform their duties as jurors and they are excused for this reason by a judge; or

(ii) Absence from their regular place of employment would, in the judgment of the court, tend materially and adversely to affect the public safety, health, welfare or interest; or

(iii) Service as a juror would, in the judgment of the court, impose an undue hardship.

(c) Eligible persons may, upon their timely application to the court, be excused from service as a juror, if they have been sworn as a juror during the two years preceding their summons and they are excused by a judge or duly authorized court official.

(d) Deferrals of jury service for reasonably short periods of time may be permitted by a judge or duly authorized court official.

(e) Requests for excuses and deferrals and their disposition should be written. Specific uniform guidelines for determining such requests should be adopted by the court.

Selection of a Particular Jury.

STANDARD 7: VOIR DIRE

Voir dire examination should be limited to matters relevant to determining whether to remove a juror for cause and to exercising peremptory challenges.

(a) To reduce the time required for voir dire, basic background information regarding panel members should be made available in writing to counsel for each party on the day on which jury selection is to begin.

(b) The trial judge should control the voir dire examination. Counsel may be permitted to question panel members for a reasonable period of time.

(c) Where appropriate to further the purposes of voir dire, the judge should permit written questionnaires to be submitted to the prospective jurors, in addition to oral examination.

(d) The judge should ensure that the privacy of prospective jurors is reasonably protected, and that the questioning by counsel is consistent with the purpose of the voir dire process.

(e) In criminal cases, the voir dire process should always be held on the record. In civil cases, the voir dire process should be held on the record unless waived on the record by the parties.

STANDARD 8: REMOVAL FROM THE JURY PANEL FOR CAUSE

If the judge determines during the voir dire process that any individual is unable or unwilling to hear the particular case at issue fairly and impartially, that individual should be removed from the panel. Such a determination may be made on motion of counsel or on the judge's own initiative.

STANDARD 9: PEREMPTORY CHALLENGES

The number of and procedure for exercising peremptory challenges should be in compliance with existing Arizona law.

Efficient Jury Management.

STANDARD 10: ADMINISTRATION OF THE JURY SYSTEM

The responsibility for administration of the jury system should be vested exclusively in the judicial branch of government. Responsibility for administering the jury system should be vested in a single administrator acting under the supervision of a presiding judge of the court.

STANDARD 11: NOTIFICATION AND SUMMONING PROCEDURES

(a) The notice summoning a person to jury service and the questionnaire eliciting essential information regarding that person should be phrased so as to be readily understood by an individual unfamiliar with the legal and jury systems.

(b) A summons should clearly explain how and when the recipient must respond and the consequences of a failure to respond.

(c) The questionnaire should be phrased and organized so as to facilitate quick and accurate screening, and should request only that information essential for:

  (i) Determining whether a person meets the criteria for eligibility;

  (ii) Providing basic background information ordinarily sought during voir dire examination; and,

  (iii) Efficiently managing the jury system.

(d) Policies and procedures should be established for enforcing a summons to report for jury service and for monitoring failures to respond to a summons.

STANDARD 12: MONITORING THE JURY SYSTEM

Courts should collect and analyze information regarding the performance of the jury system on a regular basis in order to ensure:

(a) The representativeness and inclusiveness of the jury source list;

(b) The effectiveness of qualification and summoning procedures;

(c) The responsiveness of individual citizens to jury duty summonses;

(d) The efficient use of jurors; and,

(e) The cost effectiveness of the jury system.

STANDARD 13: JUROR USE

(a) Courts should employ the services of prospective jurors so as to achieve optimum use with a minimum of inconvenience to jurors.

(b) Courts should determine the minimally sufficient number of jurors needed to accommodate trial activity. This information and appropriate management techniques should be used to adjust both the number of individuals summoned for jury duty and the number assigned to jury panels.

(c) Courts should coordinate jury management and calendar management to make effective use of jurors.

STANDARD 14: JURY FACILITIES

Courts should provide an adequate and suitable environment for jurors.

(a) The entrance and registration area should be clearly identified and appropriately designed to accommodate the daily flow of prospective jurors to the courthouse.

(b) Jurors should be accommodated in pleasant waiting facilities furnished with suitable amenities.

(c) Jury deliberation rooms must include space, furnishings and facilities conducive to reaching a fair verdict. The safety and security of the deliberation rooms should be ensured.

(d) To the extent feasible, juror facilities must be arranged to minimize contact between jurors, parties, counsel, and the public.

STANDARD 15: JUROR COMPENSATION

(a) Persons called for jury service should receive reasonable compensation (fees and/or mileage) pursuant to state statutes and court policy.

(b) Such amounts and fees should be paid promptly.

Juror Performance and Deliberations.

STANDARD 16: JUROR ORIENTATION AND INSTRUCTION

(a) Courts should provide some form of orientation or instructions to persons called for jury service:

(i) Upon initial contact prior to service;

(ii) Upon first appearance at the courthouse;

(iii) Upon reporting to a courtroom for voir dire;

(iv) Directly following empanelment;

(v) During the trial;

(vi) Prior to deliberations; and,

(vii) After the verdict has been rendered or when a proceeding is terminated without a verdict.

(b) Orientation programs should be:

(i) Designed to increase prospective jurors' understanding of the judicial system and prepare them to serve competently as jurors;

(ii) Presented in a uniform and efficient manner using a combination of written, oral, and audiovisual materials.

(c) The trial judge should:

(i) Give preliminary instructions directly following empanelment of the jury that explain the jury's role, the trial procedures including note-taking and questioning by jurors, the nature of evidence and its evaluation, the issues to be addressed, and the basic relevant legal principles.

(ii) Prior to the commencement of deliberations, instruct the jury on the law, on the appropriate procedures to be followed during deliberations, and on the appropriate method for reporting the results of its deliberations. Such instructions should be recorded or reduced to writing and made available to the jurors during deliberations.

(iii) Prepare and deliver instructions which are readily understood by individuals unfamiliar with the legal system.

(d) Before dismissing a jury at the conclusion of a case, the trial judge should:

(i) Release the jurors from their duty of confidentiality;

(ii) Explain their rights regarding inquiries from counsel or the press; and,

(iii) Either advise them that they are discharged from service or specify where they must report.

The judge should express appreciation to the jurors for their service, but ordinarily should not express disapproval of the result of the deliberations.

(e) All communications between the judge and members of the jury panel from the time of reporting to the courtroom for voir dire until dismissal should be in writing or on the record in open court. Counsel for each party should be informed of such communication and given the opportunity to be heard.

STANDARD 17: JURY SIZE AND UNANIMITY OF VERDICT

Jury size and number of jurors required to return a verdict in criminal and civil cases in all trial courts should comply with existing Arizona law.

STANDARD 18: JURY DELIBERATIONS

Jury deliberations should take place under conditions and pursuant to procedures that are designed to ensure impartiality and to enhance rational decision-making.

(a) The judge should instruct the jury concerning appropriate procedures to be followed during deliberations in accordance with Standard 16(c).

(b) The deliberation room should conform to the recommendations set forth in Standard 14(c).

(c) The jury should not be sequestered except under the circumstances and procedures set forth in Standard 19.

(d) A jury should not be required to deliberate after normal working hours unless the trial judge after consultation with counsel and the jury determines that evening or weekend deliberations would not impose an undue hardship upon the jurors and are required in the interests of justice.

(e) Training should be provided to personnel who escort and assist jurors during deliberation.

STANDARD 19: SEQUESTRATION OF JURORS

(a) A jury should be sequestered only for the purpose of insulating its members from improper information or influences.

(b) The trial judge should have the discretion to sequester a jury on the motion of counsel or on the judge's initiative, and the responsibility to oversee the conditions of sequestration.

(c) Standard procedures should be promulgated to make certain that:

(i) The purpose of sequestration is achieved; and,

(ii) The inconvenience and discomfort of the sequestered jurors is minimized.

(d) Training should be provided to personnel who escort and assist jurors during sequestration. Use of personnel actively engaged in law enforcement for escorting and assisting jurors during sequestration is discouraged.

8/4/92
JSSTNDRD

PROPOSED JURY STANDARD CHANGES

A. RECOMMENDATION 18: **Juror-Supplied Locating Information Should Remain Confidential During Jury Selection and Thereafter**

and

RECOMMENDATION 23: **Protect Juror Privacy During Voir Dire**

Standard 7(d): VOIR DIRE

The judge should ensure that the privacy of prospective jurors is reasonably protected, and that the questioning ~~by counsel~~ of jurors is consistent with the purposes of the voir dire process. Among other things, jurors should not be required to divulge specific locating information and shall be given an opportunity to answer potentially embarrassing questions out of the presence of other jurors.

Official Comment to Standard 7(d):

A juror's right to privacy must be balanced with a party's right to be aware of a juror's relevant background and qualifications. Reasonable inquiry of jurors is mandatory. However, every juror ought to be given the opportunity to answer questions of a sensitive or embarrassing nature by written questionnaire or in private, with only the judge, the parties, counsel and the court reporter present.

B. RECOMMENDATION 19: **Encourage Mini-Opening Statements Before Voir Dire**

Standard 7(b): VOIR DIRE

Judges may call on the attorneys to present condensed opening statements prior to voir dire examination in order to make voir dire more meaningful to the parties and jurors.

C. RECOMMENDATION 25: **Vigorously Enforce Batson Safeguards**

Standard 9: PEREMPTORY CHALLENGES

The number and procedure for exercising peremptory challenges should be in compliance with existing Arizona law. The trial judge shall assure that peremptory challenges are not used to discriminatorily remove potential jurors.

D. RECOMMENDATION 29: **Trial Interruptions Should be Minimized**

Standard 13(d): JURY USE

The conduct of jury trials should take precedence over all other proceedings except those of an emergency nature.

E. RECOMMENDATION 31: **Expand Use of Preliminary Jury Instructions**

Standard 16(c)(i): JUROR ORIENTATION AND INSTRUCTION

Preliminary jury instructions shall comply with applicable rules and should inform the jury of the legal rules applicable to any charge, claim and anticipated defense. Where necessary or helpful, a glossary of terms should also be provided.

F. RECOMMENDATION 38: **Allow Jurors to Discuss the Evidence Among Themselves During the Trial**

Standard 16(c)(iii): JUROR ORIENTATION AND INSTRUCTION

The jurors shall be instructed before trial that they are allowed to discuss the evidence during trial, but only among themselves in the jury room when all of the jurors are present. They should also be told to refrain from deciding guilt or innocence, or who should win a civil case, until deliberations have begun.

APPENDIX D-1

COPY OF THE

UNITED STATES

DISTRICT COURT, EASTERN

DISTRICT OF MICHIGAN

JURY SELECTION PLAN

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN

JURY SELECTION PLAN

Pursuant to the Jury Selection and Service Act of 1968 (28 U.S.C. § 1861 et seq.), the following Plan is hereby adopted by this Court to conform with revised Local Rules effective January 1, 1992 and to conform with such rules and regulations as have been adopted from time to time by the Judicial Conference of the United States.

I. Effective Date and Duration

This Plan for jury selection shall be placed in operation after approval by a reviewing panel of the United States Court of Appeals for the Sixth Circuit as provided in § 1863(a), and shall remain in force until modified by this Court with the approval of the reviewing panel. Selection of grand and petit jurors in accordance with this Plan shall be required in all jury cases in which trials begin after January 1, 1992 and for all grand juries summoned to appear after January 1, 1992.

II. Purpose of the Plan

A. It is the purpose of this Plan to implement the policy of the United States as declared in § 1861:

(1) that all litigants entitled to trial by jury shall have the right to grand and petit juries selected at random from a fair cross-section of the community served by each place of holding court as defined in Section III, and

(2) that all citizens shall have the opportunity to be considered for service on grand and petit juries, and shall have an obligation to serve as jurors when summoned for that purpose.

B. It is also the purpose of this Plan to implement § 1862 which provides that no citizen shall be excluded from service as a grand or petit juror in the district courts of the United States on account of race, color, religion, sex, national origin or economic status.

III. Applicability of the Plan

Pursuant to § 1869(e), the Eastern District of Michigan is divided for jury selection purposes as follows.

A. Grand and petit jurors serving in Detroit shall be selected from citizens residing in the counties of Jackson, Lenawee, Macomb, Monroe, Oakland, St. Clair, Sanilac, Washtenaw and Wayne.

B. Grand and petit jurors serving in Flint shall be selected from citizens residing in the counties of Genesee, Lapeer, Livingston, and Shiawassee.

C. Petit jurors serving in Port Huron shall be selected from citizens residing in the counties of Macomb, Oakland, St. Clair, Sanilac and Wayne. The names for the Port Huron jury wheel shall be selected from the counties within the Detroit wheel which serve the Port Huron place of holding court.

D. Petit jurors serving in Ann Arbor shall be selected from citizens residing in the counties of Jackson, Lenawee, Monroe, Oakland, Washtenaw and Wayne.

E. Grand and petit jurors serving in Bay City shall be selected from citizens residing in the counties of Alcona, Alpena, Arenac, Bay, Cheboygan, Clare, Crawford, Gladwin, Gratiot, Huron, Iosco, Isabella, Midland, Montmorency, Ogemaw, Oscoda, Otsego, Presque Isle, Roscommon, Saginaw and Tuscola.

IV. Management and Supervision of Jury Selection Process

The Clerk shall manage the jury selection process under the supervision and control of the Chief Judge or a judicial officer designated by the Chief Judge.

V. Source of Names of Prospective Jurors

A. Lists of registered voters shall be the primary source of names of prospective jurors in all places of holding court. Whenever local governments maintain separate lists of active and inactive voters, as defined by Michigan law, the list of active voters shall be used.

B. To foster the policy and protect the rights secured by §§ 1861 and 1862, lists of active voters shall be supplemented with lists of licensed drivers.

VI. Method of Random Selection

A. Selection of Names for Master Jury Wheels

(1) The master jury wheels for each place of holding court shall be emptied and refilled at least every four years in conformance with this Plan.

(2) The minimum number of names which make up the master jury wheels for the respective places of holding court are as follows:

Ann Arbor	5,000
Bay City	5,000
Detroit	30,000
Flint	5,000

(3) At least every four years, the Chief Judge shall determine the total number of names to be selected at random from the source lists and placed in the master jury wheels. The numbers are subject to change as economy and experience dictate, pursuant to § 1863(b)(4).

(4) All counties from which jurors are summoned for each place of holding court shall be proportionally represented in the master jury wheels. Pursuant to § 1863(b)(3), proportionality shall be determined by the number of registered voters appearing on the most recently available lists from the appropriate political subdivisions of the court.

B. Random Selection

(1) After determination of the total number of names needed, the Clerk shall collect the names from the respective counties using manual or automated systems or a combination of both. If an automated program is used to select names, the person responsible for the automated program shall make an affidavit that the method of selection authorized by the Court was used.

(2) References in this Plan to random selection shall mean that only the first name shall be chosen by lot. Each subsequent

name shall be taken at regular intervals throughout the remainder of the source lists. The random selection method shall provide that:

(a) the names selected shall proportionally represent all counties as defined in Section VI A (4);

(b) the mathematical odds of any single name being picked are substantially equal;

(c) the possibility of human discretion or choice affecting the selection of any name is eliminated.

C. Determination of Quotients and Starting Numbers

(1) A quotient shall be determined by dividing the number of names to be drawn for a master wheel from each county into the total number of names on the source list for that county. Names shall be chosen at intervals determined by the quotient until the entire list for the county has been counted through once.

(2) After determining a quotient for a master jury wheel, the Clerk shall establish the first name to be selected from the source lists by randomly drawing by lot a number between one and the quotient.

D. Manual Selection

When manual methods are used, the Clerk shall count down the entire in a logical sequence using the starting number and quotient formula as descri above.

E. Electronic Data Processing Methods

(1) The Court directs that automated methods may be used for any of the following tasks:

(a) Selecting and copying of names for the master wheels from lists of registered voters and lists of licensed drivers submitted by counties or by the State in machine-readable form;

(b) Recording in machine-readable form names that are initially selected manually from voter registration lists;

(c) Selecting and copying of names from the qualified jury wheels;

(d) Preparing documents necessary for the efficient administration of the jury system such as qualification questionnaires, summons, juror listings, pay vouchers, juror paychecks and management reports.

(2) Whenever the Court uses automated methods or a combination of automated and manual methods, the selection system for electronically drawing names from the source lists shall conform to the provisions of Section VI, B and C of this Plan.

F. Drawing of Names from the Master Jury Wheel

(1) The Clerk, a designated deputy clerk, or any other person authorized by the Court shall publicly draw at random from the master jury wheel or wheels the names of as many persons as may be required to maintain an adequate number of names in the qualified jury wheel or wheels as directed by the Court.

(2) The time and date of the drawing shall be advertised in advance in a legal periodical or general circulation newspaper and shall be posted in the Courthouse.

(3) The Clerk shall prepare lists of the names drawn. These lists shall not be disclosed to any person except as provided in this Plan and in §§ 1867 and 1868.

(4) The Clerk shall prepare and mail to every person whose name is drawn a juror qualification questionnaire, accompanied by instructions to complete and sign the questionnaire and return to the Clerk within ten days in accordance with § 1864(a).

VII. Qualifications for Service

A. Qualifications

In accordance with § 1865, a person shall be deemed qualified to serve on a grand or petit jury unless the person:

(1) is not a citizen of the United States who has resided within the judicial district for a period of one year,

(2) is unable to read, write and understand the English language sufficiently to fill out the juror qualification form,

(3) is unable to speak the English language,

(4) is incapable, by reason of mental or physical infirmity, of rendering satisfactory jury service,

(5) has a charge pending against him or her for the commission of, or has been convicted in a State or Federal court of record of, a crime punishable by imprisonment for more than one year and his or her civil rights have not been restored.

B. Exemption from Jury Service

In accordance with § 1863(b)(6), the members of the following groups shall be barred from jury service on the grounds that they are exempt:

(1) members in active service in the Armed Forces of the United States,

(2) members of the fire or police department of any state, district, territory, possession or subdivision thereof,

(3) public officials in the executive, legislative or judicial branches of the United States, or any State, district, territory or possession or subdivision thereof, who are actively engaged in the performance of official duties.

C. Excuses on Individual Request

(1) The Court finds that excuse from jury service of the following groups of persons or occupational classes is in the public interest and that jury service would entail undue hardship or extreme inconvenience to the members thereof, and the excuse of such members shall not be inconsistent with §§ 1861 and 1862, and shall be granted upon individual request:

(a) a person over the age of 70,

(b) a person who has served on a grand or petit jury in a federal court within the last two years,

(c) a person who is a volunteer fireman, a member of a rescue squad, or a member of an ambulance crew for a public agency.

(2) In addition to the members of classes or groups subject to excuse from jury service on request as provided above, the Chief Judge or another designated judge, upon recommendation of the Clerk and determined solely on the basis of information provided on the juror qualification questionnaire and other competent evidence, may determine whether a person is unqualified for, or exempt from, or to be excused from jury service. The Clerk shall enter such determination in the space provided on the juror qualification questionnaire.

(3) In any two-year period, no person shall be required to:

(a) serve or attend court for prospective service as a petit juror for a total of more than thirty days, except where necessary to complete service in a particular case, or

(b) serve on more than one grand jury, or

(c) serve as both a grand and petit juror.

VIII. Qualified Jury Wheel

A. The Clerk shall maintain a qualified jury wheel for each place of holding court and shall place in such wheels the names of all persons drawn from the master jury wheel who are determined to be qualified as jurors and are not exempt or excused pursuant to this Plan. The Clerk shall ensure that at all times at least 300 names are contained in each qualified jury wheel.

B. The qualified jury wheel shall be composed of persons who represent a fair cross-section of the area of each place of holding court as set forth in Section III of this Plan. To this end, if the Court determines that a cognizable group of persons is substantially overrepresented in the qualified jury wheel, the Chief Judge shall order the Clerk to remove randomly a specific number of names so that the population of each cognizable group in the qualified wheel closely approximates the percentage of the population of each group in the area of each place of holding court, according to the most recently published national census report. A quotient and a starting number shall be used in this process.

IX. Drawing of Names from Qualified Wheels

A. From time to time as directed by the Court, a public notice of the drawing of names assigned to petit and grand juries shall be posted in the courthouse. If the draw is done manually by the Clerk or assigned deputy, it shall be witnessed by the United States Attorney and United States Marshal or their representatives. If the draw is done by an automated system, it shall be a random selection based on a quotient number. The drawing of names by an automated system shall be done at a designated computer center. The location and approximate time of such drawings shall be publicly announced by notice on the Court's bulletin board in the courthouse.

B. The Clerk shall maintain a separate manual or computer list of names of persons assigned to grand or petit jury panels. When the Court orders a grand or petit jury drawn, the Clerk shall issue summonses for the required number of persons. Persons drawn for service shall be served summons by first class mail at their usual residence or business address.

C. Petit Jury Panels

(1) Petit jurors shall be drawn at random from the qualified jury wheels to serve for a period of two weeks in Detroit or one month in divisional offices and a standby period of an additional two weeks if an unanticipated shortage requires additional jurors.

(2) The Clerk shall randomly assign jurors to panels and shall issue a summons to persons so drawn to report on a particular date for petit jury service, with instructions to telephone the Clerk's Office the day prior to their appearance for additional information regarding their reporting date. This information may be provided by a recorded telephone message.

D. Postponement or Excuse after Selection

(1) The Clerk shall have the authority to postpone jurors temporarily for a period of up to five court days if a plausible reason is advanced. This may be a planned vacation, an important business meeting, health problems, weather conditions, or similar events that would cause undue hardship in reporting.

(2) A person requesting a postponement longer than five days shall write a brief statement or furnish documented proof for the postponement. All requests shall be submitted to the Chief Judge or designated judge with the recommendation of the Clerk for consideration. Court orders for long-term postponements or a permanent excuses from jury duty shall be maintained with the records of the particular panel.

E. Failure to Report for Jury Service

A person who fails to report for jury service shall be notified by letter demanding a written explanation for the failure. A person who responds with a reasonable explanation shall be given another date to report for service. If a person either a) fails to respond to the letter or b) fails to appear on the second assigned date, the Clerk shall provide the Chief Judge the name and address of the person who shall be subject to prosecution pursuant to § 1866(d) of the United States Code.

X. Maintenance and Inspection of Records

A. The Clerk shall maintain the juror qualification questionnaires and other relevant documents pertaining to the jury selection process and shall not disclose these except by order of the Court. A person requesting inspection or copying of juror qualification questionnaires or related documents for voir dire shall present a written order of the assigned judge to the Clerk prior to inspecting the records.

B. All records pertaining to the filling of any master jury wheel shall be retained for four years or longer as ordered by the Court to provide for public inspection for the purpose of determining the validity of any juror.

C. The Clerk shall retain and, when requested, provide public access to the following documents:

(1) the Jury Selection Plan;

(2) a written or graphic description of the program employed by the automated selection system, and

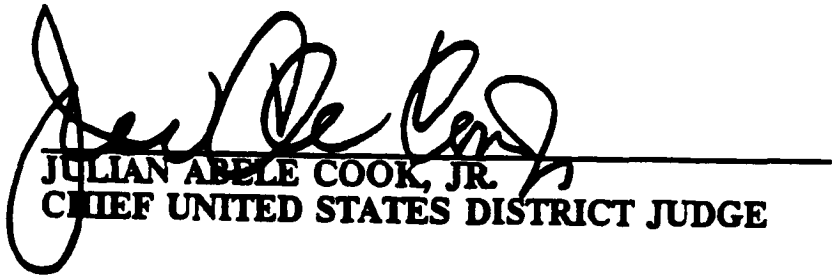
(3) a copy of the Court order or authorization and instruction to the person or computer service organization which carries out automated name selection for the Court.

XI. General Provisions

A. There is incorporated herein by reference as an integral part of this Plan, the provisions of §§ 1861-1871, together with all amendments of said sections which may hereafter be made, and all laws hereafter enacted relating to grand and petit juries and trial by jury in the United States.

B. This Plan supersedes all Jury Selection Plans heretofore adopted and shall be deemed an Order of this Court.

FOR THE COURT:



JULIAN ABELE COOK, JR.
CHIEF UNITED STATES DISTRICT JUDGE

APPENDIX D-2

COPY OF THE

WORKSHEET FOR THE

REMOVAL OF JURORS

FROM THE QUALIFIED

ANN ARBOR JURY WHEEL

WORKSHEET FOR THE REMOVAL OF JURORS
FROM THE QUALIFIED ANN ARBOR JURY WHEEL

JUNE 14, 1993

1. Total number of Qualified Jurors in the Ann Arbor Wheel as of June 14, 1993 before removing jurors:

Black Qualified Jurors	548
White and Other Qualified Jurors	3,366
Total Qualified Jurors	**3,914**

2. Percentage of Black population in the total population in all of the counties included in the Ann Arbor Wheel as of the 1990 census: **23.41%**

3. Percentage of White and all others in the total population in all of the counties included in the Ann Arbor Wheel as of the 1990 census: **74.04% White + .36% Am. Indian + 1.46% Asian + .73% Other = 76.59%**

4. Number of jurors needed in a wheel to yield 548 Black Qualified Jurors at 23.41%: **548/.2341 = 2,340**

5. Number of White and Other Qualified Jurors needed in a wheel of 2,340 to yield 76.59% jurors: **2,340 x .7659 = 1,792**

6. Number of White and Other Qualified Jurors whose names need to be removed from the June 14, 1993 Qualified Wheel to achieve the percentages in #2 and #3 above: **3,366 - 1,792 = 1,574**

7. Composition of Qualified Ann Arbor Jury Wheel after the removal of jurors:

Black Qualified Jurors	548	.2341
White and Other Qualified Jurors	1,792	.7659
Total Qualified Jurors	**2,340**	**100.00%**

8. Quotient to be used to select names for removal (total number of names in qualified wheel/number of names to be removed from qualified wheel) = 2

9. Starting number to be drawn shall be between 1 and 2.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN

ADMINISTRATIVE ORDER
NO. 93-AO-057

IN RE: Jury Selection 1993 Qualified Wheel - ANN ARBOR

ADMINISTRATIVE ORDER

IT APPEARING THAT the Black population as reported in the 1990 census in the 6 counties comprising the Ann Arbor Jury Wheel is 23.41%, and

IT FURTHER APPEARING THAT, as of June 14, 1993, the percentage of qualified Black jurors in the Ann Arbor Jury Wheel created in 1993 is 14.06%, NOW THEREFORE:

IT IS ORDERED THAT, based on the information on the attached "Worksheet for the Removal of Jurors' Names from the Qualified Ann Arbor Jury Wheel," the Clerk of the Court shall remove, by a random process, the names of 1,574 White and Other Qualified Jurors from the 3,914 total Qualified Jurors in the 1993 Ann Arbor Wheel to bring it into compliance with the cognizable group requirements of Section VIII.B. of the Jury Selection Plan, approved on April 1, 1992, and the policy of the Court. As a result of this procedure, the 1993 Qualified Ann Arbor Wheel shall be composed of 548 Black Qualified Jurors and 1,792 White and Other Qualified Jurors. A quotient of 2 and a starting number of 1 shall be used for the removal procedure.

FOR THE COURT:

Chief Judge Julian Abele Cook, Jr.

Dated:

APPENDIX D-3

COPY OF THE

GEORGIA

JURY COMMISSIONER'S

HANDBOOK

JURY COMMISSIONER'S HANDBOOK

JUDICIAL COUNCIL OF GEORGIA
ADMINISTRATIVE OFFICE OF THE COURTS

JURY COMMISSIONERS HANDBOOK

Seventh Printing:
February 22, 1994

names, addresses, and other data concerning persons already on the list stored on the computer[46] This can increase efficiency since it can improve the rate of appearance of persons legally qualified to serve who are summoned for duty. If names are deleted, a new balance test (as described in the next section of this manual) should be run and the certification forms must be completed.

No matter which method of selection is employed, the responsibility for the constitution of representative jury boxes remains with the Commission. The importance of having a well-constituted jury box cannot be stressed too much. A county with a poorly-constituted box will later spend needless time and money, not only defending its juror qualifying process from challenges to the array, but also attempting to summon persons unavailable for service because of ineligibility or because of outdated data such as new addresses.

V. Balancing The Box:

A representative box is of prime importance to the qualifying process. The jury box must be a fair cross-representation of the community, fairly representing any identifiable group in the county population.[47] Since blacks and females have been recognized by our highest state court as identifiable groups in Georgia, they must be fairly represented in the jury box.[48] Fair representation means that the percentage of each distinct group in the jury box must parallel the percentage of each group in the county's population of the eligible age.

The Georgia Supreme Court has established Unified Appeals Procedure Rules which apply to cases in which the state seeks to impose the death penalty. In these cases, the trial judge must certify in writing that the percentage of blacks and whites, females and males in the grand and trial jury boxes do not differ from the percentage each of these categories comprise of the most recent U.S. census population for the county 18 years and older by more than 5 percent. The Jury Commissioners are responsible for preparing the jury box so that the judge can certify the representativeness of the box at any time, and should assist the judge, when necessary, to complete the certification forms. The forms the judge must execute are shown in Appendix V.

Computer systems have an advantage over manual systems since the computer can perform mathematical processes rapidly so as to produce the sex and race breakdowns required by the certification forms. Additionally, should the initial list be out of balance, the computer can quickly calculate the numbers of persons necessary to correct any imbalance.

In a manual system, as the Jury Commissioners qualify individuals, each person's name can be placed in the proper group such as, black female, black male, white female, white male. At the end of the process, the names can be tallied for each group and compared to the county census figures.

When the Commission first convenes, the task of obtaining a copy of the latest census should be assigned to the clerk of the Commission or one of the Commission

members. A population breakdown by sex and race may be obtained. The following example shows the steps the Commission should take to make sure the jury boxes are balanced.

Step I: The Commission should first determine the number of persons eligible for jury duty, that is, the population of the county 18 years or older and the percentage each identifiable group is of the eligible population.

An example of the data necessary is shown below:

(1)	Total County Population		19,564
(2)	Total County Population Aged 18 & Over		16,521
(3)	Total Females		8,591
(4)	Total Males		7,930
(5)	Total Blacks (non-whites)		3,251
	Total Black Females	1,824	
	Total Black Males	1,427	
(6)	Total Whites		13,270
	Total White Females	6,767	
	Total White Males	6,503	

Step II: Then the percentage each of the identifiable groups comprise of the eligible county population should be calculated:

Number of females divided by total county population = 52%

Number of males divided by total county population = 48%

Number of blacks divided by total county population = 20%
black females = 11%
black males = 9%

Number of whites divided by total county population = 80%
white females = 41%
white males = 39%

Step III: Suppose in our example county about 65% of the eligible population (10,740) of the 16,521 persons are registered to vote. The court desires to have 3500 names in the trial jury box and 1000 names in the grand jury box. After qualifying the appropriate number of persons for each jury list (grand and trial), the number of persons in each of the identifiable groups should be totalled, and the percentage each group comprises should be computed. The percentage of each group should match as closely as is administratively feasible to the percentage of whites, blacks, females and males in the county population eighteen and older.

Therefore, in our example, we would want our grand jury box of 1000 persons to contain as nearly as possible:

Blacks	200 which is 1000 x .20
Whites	800 which is 1000 x .80
Females	520 which is 1000 x .52
Males	480 which is 1000 x .48
TOTAL	1000 Names in the Box

The percentage of the four groups in the box would then be the exact same percentage as the four groups are of the eligible county population. (See Step II Page 20).

The trial jury box should be composed in the same manner as the grand jury box.

Blacks	700 which is	3500 x .20
Whites	2800 which is	3500 x .80
Females	1820 which is	3500 x .52
Males	1680 which is	3500 x .48
TOTAL:	3500 Names in the Box	

Step IV: "Disparity" or "underrepresentation" are the terms used to describe the imbalance in the jury box. Disparity or underrepresentation is measured by the percent of the identifiable group in the eligible county population minus the percent of that group in the jury boxes. For example, if after qualification our example county's trial jury box had only 48% females or 1680 female names, then the underrepresentation of females would be 52% minus 48% which is 4%. Disparity is not measured by comparing the make-up of the registered voters list to the county population or by comparing the make-up of the jury panel who actually tries the case to the county population.[49]

Although case law has not required the percentage of each identifiable group in the jury boxes to exactly match the percentage of that group in the community, the Jury Commissioners should attempt to achieve as close a match as possible. Therefore, if there is a disparity for any identifiable group, the Jury Commissioners should supplement the list until the representation of that group parallels as closely as possible the members of the group in the community.

Step V: Although the certification forms for the Unified Appeals Procedure Rules do not require the judge to certify the representation of the subgroups black females, black males, white females and white males, it is good practice to make sure that none of these subgroups are underrepresented in the jury boxes.

Therefore, in our example:

Black females should compose 11% of the trial and grand jury boxes or 385 trial names and 110 grand jury names

Black males should comprise 9% or 315 trial names and 90 grand jury names

White females should comprise 41% or 1435 trial names and 410 grand jury names

White males should comprise 39% or 1365 trial names and 390 grand jury names

Additionally, although the U. S. Supreme Court and the Georgia Supreme Court have not recognized any particular age group as an identifiable group, it is wise to insure as broad a spectrum of the community in the jury boxes as possible. Therefore, the Jury Commission may wish to compare the age breakdown of the jury boxes to the county population and to correct any significant disparities.

This procedure may help to reduce the time spent by the state defending challenges to the array, since in the last few years many of the challenges filed have asserted this ground. A suggested age breakdown for comparison (which is compatible with available U.S. Census data) might be:

1. Eighteen through twenty-four years;
2. Twenty-five through thirty-four years;
3. Thirty-five through forty-four years;
4. Forty-five through sixty-four years; and
5. Sixty-five years and older.

On the following pages are examples of how the U.S. Census information might be formatted to provide for an age, sex and race breakdown. Note that in the 1980 U.S. Census race by age tables, race is classified into only two categories – white and non-white. If a county has a significant number of persons who are not black but included in the non-white category, it may be necessary to seek additional information from the U.S. Census to properly represent this group in the jury box. For example, in Texas, Mexican-Americans have been recognized as an identifiable group.[50]

Lastly, some counties may find it useful to assure that all voter precincts are fairly represented in the jury boxes. This assures equal geographical representation in the box. For example, if 5% of the eligible population are black females in the Whitehall Election District, then 5% of the number placed in the jury box should be black females of the Whitehall District. This sort of geographical representation is not required by the U.S. or Georgia Supreme Courts.

The more categories for which the Jury Commission desires to have a breakdown of the eligible population and upon which to check representation, the greater the workload, time and calculations necessary. Therefore, it is probably not wise to attempt a voting precinct breakdown unless computer services are available which can calculate the representativeness of each category and any necessary corrections that need to be made.

EXHIBIT I

COUNTY POPULATION FOR 1980
BY SEX, RACE AND AGE

	18		24		25		34		35		44		45		54		55		64		65+		TOTALS	
	#	%	#	%	#	%	#	%	#	%	#	%	#	%	#	%	#	%	#	%	#	%	#	%
ALL	3006	18.2	4164	25.2	3486	21.1	2561	15.5	1818	11.0	1487	9.0	16,521	100.0										
FEMALE	1569	9.5	2148	13.0	1735	10.5	1371	8.3	925	5.6	843	5.1	8,591	52.0										
MALE	1437	8.7	2016	12.2	1751	10.6	1190	7.2	892	5.4	644	3.9	7,930	48.0										
NON-WHITE	717	4.3	717	4.4	644	3.9	446	2.7	380	2.3	347	2.1	3,251	19.7										
NON-WHITE FEMALE	367	2.2	367	2.2	330	2.0	314	1.9	248	1.5	198	1.2	1,824	11.0										
NON-WHITE MALE	350	2.1	350	2.1	314	1.9	132	0.8	132	0.8	149	0.9	1,427	8.6										
WHITE	2709	16.4	3023	18.3	2346	14.2	2119	12.8	1603	9.7	1470	8.9	13,270	80.3										
WHITE FEMALE	1354	8.2	1520	9.2	1173	7.1	1101	6.7	843	5.1	776	4.7	6,767	41.0										
WHITE MALE	1355	8.2	1503	9.1	1173	7.1	1018	6.2	760	4.6	694	4.2	6,503	39.4										

EXHIBIT II

DESIRED COMPOSITION OF TRIAL JURY BOX
BY SEX, RACE AND AGE

COUNTY NAME	18		24		25		34		35		44		45		54		55		64		65+		TOTALS	
	#	%	#	%	#	%	#	%	#	%	#	%	#	%	#	%	#	%	#	%	#	%	#	%
EXAMPLE COUNTY																								
ALL	636	18.2	882	25.2	739	21.1	543	15.5	385	11.0	315	9.0	3,500	100.0										
FEMALE	331	9.5	455	13.0	368	10.5	291	8.3	196	5.6	179	5.1	1,820	52.0										
MALE	305	8.7	427	12.2	371	10.6	252	7.2	189	5.4	136	3.9	1,820	48.0										
NON-WHITE	150	4.3	152	4.4	137	3.9	95	2.7	81	2.3	74	2.1	689	19.7										
NON-WHITE FEMALE	77	2.2	78	2.2	70	2.0	67	1.9	53	1.5	42	1.2	387	11.1										
NON-WHITE MALE	73	2.1	74	2.1	67	1.9	28	0.8	28	0.8	32	0.9	302	8.6										
WHITE	574	16.4	641	18.3	497	14.2	449	12.8	340	9.7	312	8.9	2,814	80.4										
WHITE FEMALE	287	8.2	322	9.2	249	7.1	233	6.7	179	5.1	165	4.7	1,435	41.0										
WHITE MALE	287	8.2	319	9.1	249	7.1	216	6.2	161	4.6	147	4.2	1,379	39.4										

APPENDIX E

DRAFT

REVISED HANDBOOK
FOR JURORS

SUPERIOR COURT OF
ARIZONA

MARICOPA COUNTY

Handbook For Jurors

SUPERIOR COURT
OF ARIZONA

MARICOPA COUNTY

"Equal and exact justice ... freedom of religion, freedom of the press, freedom of person under protection of the habeas corpus, and trial by jurors impartially selected; these principles form the bright constellation which has gone before us and guided our steps through an age of revolution and reformation ..."

–Thomas Jefferson
from his first inaugural address

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WELCOME

In January 1993, the jury assembly room in the downtown Court complex was dedicated. It represents a substantial commitment from us that yo. visit be comfortable and pleasant.

The colors and seating situations are a big improvement from the "old " jury assembly room which had a 1970's decor with orange theater-style seats.

The space became available to the court when the County Treasurer's office moved in 1992 to the County Administration building across the street.

The downtown Court complex's new jury assembly room is also an indication of the increasing activity in Superior Court. The room holds 350 people. The "old" jury assembly room held 280. The Superior Court of Arizona in Maricopa County is the 9th largest trial court in the United States.

In April 1991, the Superior Court's Southeast branch opened. The jury room was designed to give the feeling of being in one's living room.

Whether you are in our downtown or Southeast jury assmbly room, we hope you enjoy your stay with us.

"The Superior Court in Maricopa County has one of the finest juror facilities in the United States. Phoenix has done a lot to make the jury system what it should be."

- Tom Munsterman, Director
Center for Jury Studies, Washington, D.C.
January 1993

MOST COMMONLY ASKED QUESTIONS

Q&A

Q - *How long will I be here?*
A - If you are not selected today to serve on a jury, you will be excused by the jury office by the end of today. If you are selected, you will serve for the duration of that trial. The average jury trial runs three to five days.

Q - *I brought a book today to read. May I bring it . the courtroom?*
A - Yes. Do not leave your belongings in the jury assembly room. Take everything with you to the courtroom. A bailiff will give you further instructions when you get to the courtroom.

Q - *How often can I be summoned for jury duty?*
A - If you are not selected today to serve, you will not be called again for at least one year. If you are selected on a jury, you do not have to serve again fc two years. If you should receive a summons within that time, just request to be excused.

Q - *Is my employer required to pay me for jury dun*
A - No. There is no legal requirement that employe must pay you while you are on jury service. Ask your employer what the company policy says, companies differ. Some employers ask you to supp proof that you were at Court on jury service. The original copy of your "Biographical Information" form, when signed by the Court, will be your verification.

Q - *Can I be fired for reporting for jury service?*
A - No. To fire you for fulfilling your civic duty as juror would be a violation of ARS § 21-236 which says in part, "No employer may dismiss or in any way penalize any employee because he se[illegible] as a juror..."

Q - *How much does the Court pay for jury duty?*
A - Jurors receive mileage for each day of service. (As of July, 1994 the amount is 25.5 cents per mile, amount set by the State). If you are not selected for service, you will only be reimbursed for mileage to the Court or from your home to a Park-N-Ride lot. If selected on the first day, you will receive $12.00 per day plus the daily mileage rate allowed by law. So, if you are here one day, you will receive mileage reimbursement only. If you are here 5 days, you will receive $60.00 (5 days times $12) plus mileage reimbursement for all 5 days. The jury office handles mileage reimbursements.

Q - *Does the court provide child care?*
A - No.

Q - *Am I required to wear a suit and tie?*
A - No. We do request that people avoid shorts, halter tops, tank tops and other such informal attire. We do however, require that you wear the juror badge you will receive today.

Q - *How can I find out about Phoenix Transit bus schedules and routes?*
A - Current information is available for you on the bulletin board in the Jury Assembly Room.

Q - *I live in Sun City. Why am I being summoned to the Southeast branch of Superior Court in Mesa?*
A - The law tells us we must draw jurors randomly from within all of Maricopa County. We realize this results in a long drive for some people. The Court initiated legislation which would allow us to create defined areas within the county so that jurors would be called to the branch of Court closest to their home, but the legislation did not survive all the steps by which a bill becomes law.

Q - *I am 70 years old. At what age am I exempt from jury duty?*
A - There is no exemption based on age provided for in Arizona law.

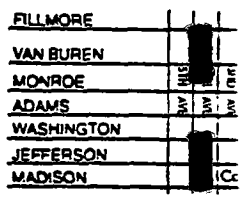
YOUR CURRENT ADDRESS

We must have your current address to mail you a check that will reimburse you for mileage and, if applicable, the daily $12 jury service reimburse[ment]. If your summons was sent to the wrong address, ple[ase] ask the jury staff for a Change of Address form.

If you are not a resident of Maricopa County or if y[ou] have legally changed your name, please notify [the] j[ury] staff immediately.

PARKING

Downtown



Parking is available at several uncovered lots within walking distance of the Jury Assembly Room in downtown Phoenix for between $1 and $1.75 a day. The cost is borne by the juror; it cannot be reimbursed by the Court.

Jurors who use wheelchairs may arrange for fre[e] parking in the Madison Street parking garage, which directly south of the Court complex.

Southeast

Free parking is available in the open parking lot on t[he] north side of the building.

LENGTH OF YOUR JUROR SERVIC[E]

The Superior Court uses a "One Trial, One Day" system.

This means if you are selected to be part of a jury, y[ou] will serve for the duration of that one trial. [If] one trial is over, your jury service is over.

If you are not selected to be part of a jury, your service is over at the end of today.

YOUR PAYMENT FOR JUROR SERVICE

If you are not selected on the first day, you will receive only mileage reimbursement and are released from further service. For each day, if selected on a trial, you will be paid $12.00 a day. The check will be sent to you automatically approximately two weeks after you appear for juror service.

YOUR MILEAGE REIMBURSEMENT

You will be reimbursed for mileage for each day you are required to be at the Court. The distance is automatically calculated as the distance from the center of your home zip code to the court building. If you need to correct your mileage because you live in a rural area, please talk to the jury staff.

APPROPRIATE CLOTHING

If you are going to serve as a juror, you will be acting as an "Officer of the Court." That is why we request you dress appropriately for the occasion. Shorts, tank tops, halter tops, and tee-shirts with profane language are not considered appropriate in the courtroom setting.

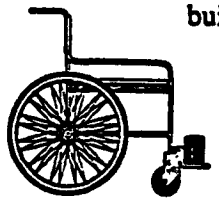
BADGES

When you enter the jury assembly room today, you will be asked to wear a badge that identifies you as a

juror. We require that you wear this at all times wh you are in the courthouse. This badge will identify you to other people and possibly prevent you from overhearing facts pertaining to a case in which you may become involved. Such chance conversations can cause a mistrial. We value your objectivity.

PHYSICALLY CHALLENGED JURORS

All courtrooms are accessible to people who use wheelchairs. Most restrooms are handicapped accessible; however, the East Court Building was built in the early 1960's and most of those bathrooms do not yet meet new ADA standards. Jurors wh use a wheelchair are provided with free parking in the Madis Street parking garage--ask the jury staff about it. If you have a hearing, sight, or mobility concern, the jury staff is here to help you.



HOW JURORS ARE SUMMONED

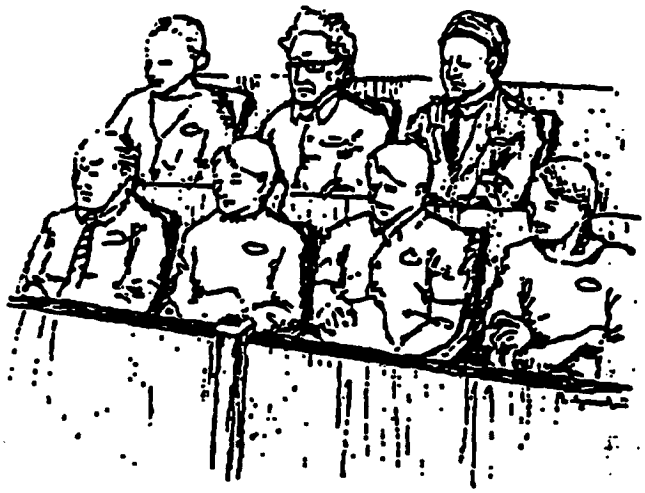
The list of names from which jurors are summoned comes from lists provided to us by the State of Arizona Motor Vehicle Department (driver's license and the Maricopa County Voter Registration department. The lists are merged in the jury compu and the computer program selects names randomly.

You received your summons for jury service about one month before the date you are asked to appear a Court. You were asked to return a questionnaire tha we use to double check that you are eligible to be a juror. (Eligibility is specified in Section 21-201 of t Arizona Revised Statutes.)

The day before you were summoned to appear at the Court, you were asked to call a telephone recording to find out if your group number is needed to report the following day. That is because trials can be cancelled up to the last minute. By asking you to call the day before, we can better gauge how many jurors are needed for trials that are expected to start the next day.

When you arrived, the jury staff checked you in along with the other potential jurors. The computer then records your presence and randomly selects names and assigns people to panels. When your name is called, you and your panel will be escorted to the correct courtroom.

Take everything with you--do not leave valuables in the jury assembly room.



TRIAL BY JURY

The right to trial by jury is deeply embedded in [illegible] history and culture of free societies.

In 1776, Thomas Jefferson penned the Declarati[illegible] o Independence, listing the colonies' grievances agains the King of England:

"He (the King) has combined with others to subject us to a jurisdiction foreign to our constit[illegible]io and unacknowledged in our laws, giving his ass[illegible] : their acts of pretended legislation... for depriving us in many cases of the benefit of trial by jury."

In 1789, the states debated the Constitution. Ratification efforts stalled until the Bill of Right[illegible]t first 10 Amendments) was introduced. The 6th Amendment says:

"In all criminal prosecutions, the accused sh[illegible] enjoy the right to a speedy and public trial by an impartial jury..."

As the U.S. expanded, people continued to reaffirm the right to trial by jury. Today, 49 of our states' constitutions specifically guarantee that right. T[illegible] Arizona State Constitution says,

"The right of trial by jury shall remain invio[illegible]e. Juries in criminal cases in which a sentence of death or imprisonment for thirty years or more is authorized by law shall consist of twelve persons. In all criminal cases the unanimous consent of the juro[illegible] shall be necessary to render a verdict. In all oth[illegible] cases, the number of jurors, not less than six, an[illegible]h[illegible] number required to render a verdict, shall be specified by law."

Article 2, Secti[illegible] 2

Even before Arizona became a state, people wanted to secure the right of trial by jury. In 1864, the people of the Territory of Arizona established a Bill of Rights for themselves. Article 8 said, "The right of trial by jury shall be secured to all, but a jury trial may be waived by parties in civil cases, in the manner prescribed by law."

Why have people throughout history placed such a high value on trial by jury? It is one of the fundamental values of our society. On a jury, people from all walks of life come together to enforce our society's beliefs, morality, and fairness. Juries are powerful. At times they decide the fate of a single human life. At other times they are charged with protecting thousands of people and their businesses.

Federal Judge George H. Boldt wrote, "Jury service honorably performed is as important in the defense of our country, its constitution and laws, and the ideas and standards for which they stand, as the service that is rendered by the soldier on the field of battle in time of war."

Arizona law today describing qualifications states a juror must be at least 18 years old, must be a U.S. citizen, must reside in the proper jurisdiction, must not have been convicted of a felony, and must not be currently judged by a court to be mentally incompetent or insane.

IN THE COURTROOM

Generally, you will be escorted to the audience benches in the back of the courtroom. When your name is called, you will take a seat in the jury "box." At some point, you will be sworn to truthfully answ all the questions asked of you about your qualifications to be a juror.

First the judge probably will ask questions of you; then the attorneys will ask questions of you. This questioning process is called "voir dire," which in French means "to speak the truth."

There are some reasons you may not be considered fair and impartial juror in a case. You might:

- Be closely related to one of the parties in the ca
- Have a business relationship with one of the lawyers or one of the parties in the case.
- Have some personal knowledge of the case.

If you think you should be disqualified for any reas even if the reason was not brought to light during questioning, raise your hand and the judge will call upon you. You might be excused from the jury "for cause."

In trial, attorneys have what is known as "peremptor challenges." This means attorneys can remove a certain number of jurors without any cause being stated. If this happens to you, do not take it personally. It is not a reflection upon you.

When the "voir dire" process is over, the required number of jurors will be seated or "impaneled" in th jury box and then sworn to try the case.

WAITING SERVES A PURPOSE

Sometimes the parties are still trying to negotiate a settlement when the trial begins. The matter may settle after a jury has been selected. A case that settles at any time before trial saves time and tax dollars in the end.

During trial, attorneys may talk with the judge out of the jury's hearing. Sometimes the judge will excuse the jury from the courtroom so a point of law may be argued. The Court uses this time to discuss and simplify issues. The reason for the delay may not always be explained to you.

KEY PEOPLE IN THE COURTROOM

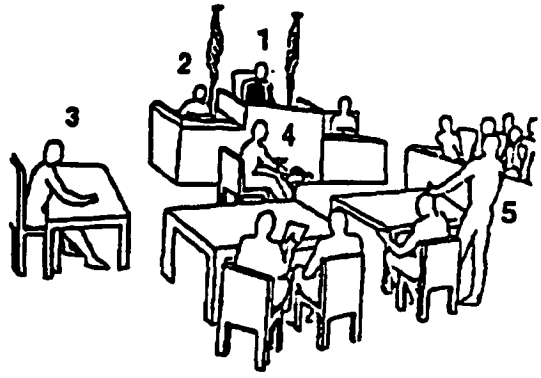
(1) *The judge.*
Briefly stated, the judge must see that the trial is conducted in an orderly manner according to the prescribed rules of law covering the selection of jurors, presentation of evidence, instructions to the jury, attorneys' objections during trial, and jurors' responsibilities during deliberations.

(2) *Courtroom clerk.*
Administers the oath or affirmation to jurors and witnesses, marks exhibits when received as evidence, and makes a brief summary of events in the case.

(3) *The bailiff.*
Keeps order in the courtroom during trial, attends to the needs of the jury and sits outside the deliberation room while the jury works to reach a verdict.

(4) *Court reporter.*
Takes down every word that is said during trial, usually on a "steno" machine.

(5) *Court interpreter.*
Provides unbiased oral interpretation of all spoken courtroom proceedings for the benefit of both the Court and the non-English speaker.



SIX MAIN STEPS OF A JURY TRIAL

(1) Selection of the jury
- Challenges
- Completed jury is impaneled
- Jurors take an oath, are sworn or affirmed to try the case

(2) Judge's admonitions to jurors during trial

Judge tells jurors not to:
- Discuss the case among themselves or with anyone else, including their family.
- Form or express an opinion until all the evidence has been presented and jurors begin formal deliberations.

(3) The trial
- Opening statements by attorneys

These summarize what the attorneys expect the evidence will show. This helps jurors understand and follow the case.
- Evidence

First the state or plaintiff presents its case. Then the defense presents its case. Then the state or plaintiff can rebut new material presented by the defense.
- Closing arguments by attorneys

After all the evidence has been presented, attorneys sum up facts that prove their case.

(4) The judge's instructions on the law

The judge instructs the jury on the law pertaining to the case. For example, this may include an explanation of the criteria necessary to return a verdict of premeditated murder.

(5) Jury deliberations.

The bailiff will escort the jury to the deliberation room. The first thing to do then is to select a jury foreman, someone to act as chairperson until a verdict is reached.

(6) The verdict

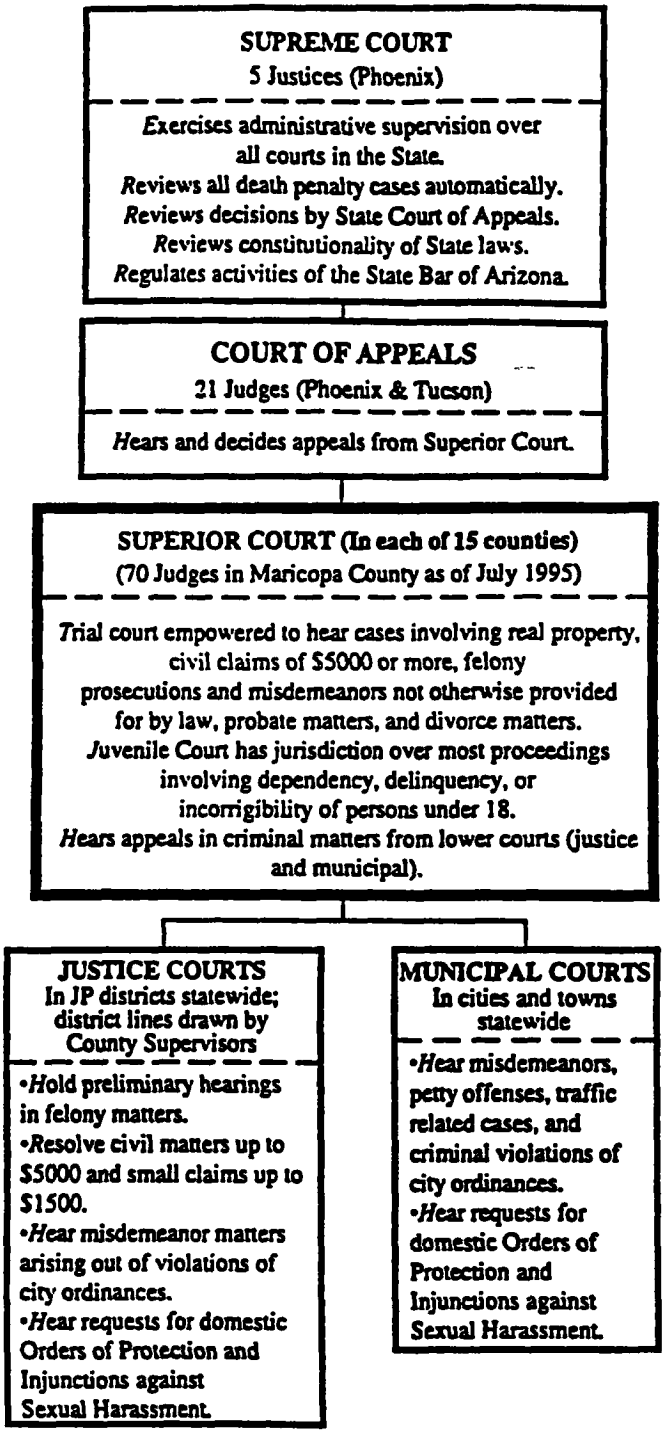
After the verdict is reached in the deliberation room, the jury foreman signs the verdict. The bailiff will escort jurors to the courtroom when the attorneys and judge have assembled to hear the verdict.

IN CASE OF EMERGENCY

If you are selected to serve on a jury, be on time. If an emergency arises, you need to call the court to avoid a possible contempt of court citation. Call the office of the judge to whom your case is assigned. If you do not have the number in your possession, call the Court's main switchboard at 506-3204 and ask to be transferred to the judge's office.

If you have any questions regarding juror conduct or the trial, talk to the judge. The judge is in charge during a trial. It is his or her job to determine all questions of law about the case being heard.

HOW ARIZONA COURTS ARE ORGANIZED



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