

Washington State Jury Commission

Report to the Board for Judicial Administration

July 2000

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Introduction from the Chair

“The American system of trial by jury is unique. No other nation relies so heavily on ordinary citizens to make its most important decisions about law, business practice, and personal liberty—even death. Ideally, Americans take their participation seriously lest they someday stand before their peers seeking justice.”

Stephen J. Adler

Courts in Washington State report that it has become more and more difficult to find prospective jurors. Citizens appear to be less willing to give their time to perform the crucial civic duty of serving on a jury. Like other states before us, we decided to look for ways to encourage more participation from our citizenry.

The Board of Judicial Administration resolved that a committee be formed to “conduct a broad inquiry into the jury system and examine issues including ... juror responsiveness, citizen satisfaction from jury service, adequacy of juror reimbursement, and improving juror participation in trials.” Members were to include trial court judges; trial court administrators; county clerks; jury managers; attorneys; citizens who have served as jurors; legislators; representatives of labor unions and businesses; state, county, and municipal officials; media representatives; educators; and experts in jury management.

After a variety of organizations and associations were asked to nominate representatives, the Washington State Jury Commission was formed and met for the first time on June 18, 1999. We were fortunate to have members with a wealth of experience, enthusiasm, and diverse opinions. We began our task armed with excellent advice and direction from two leading national jury experts, Mr. Tom Munsterman and Judge Michael Dann, the reports of various jury commissions, and judicial and juror surveys recently conducted by Washington State University.

The results of our efforts are contained in this report. The focus of these recommendations is to improve the jury process while maintaining access to justice and a fair trial within realistic fiscal and administrative constraints.

The Commission has given the highest priority to increasing juror fees, although all of its recommendations are important steps towards improving jury service. Increased fees will not only address the current inequity in juror compensation, but will also contribute to more economically and ethnically diverse juries by enabling a broader segment of the population to serve.

I thank the Commission members and staff for their dedication to the improvement of jury service for the citizens of our state.

Respectfully Submitted,

Daniel J. Berschauer, Chair

Process Overview

To assure that the Commission completed its Report in one year, three subcommittees were established: Citizen Participation in the Jury System, Jury Process Improvement, and Enhancing Services for Jurors. The committees selected the issues to be pursued. A final list of issues was decided upon by the full Commission before the committees began discussing, investigating, and drafting recommendations.

Citizen Participation in the Jury System, Dr. Oscar Soule, Chair

This committee examined the broad issue of how to encourage and improve citizen participation in the jury system. In the course of its inquiry, the committee addressed such questions as: What are the best ways to promote public awareness of our jury system? How can citizens be encouraged to participate? Are our juries representative of the population? How can we improve communication between the courts and those called for jury duty?

Jury Process Improvement, Honorable Sharon Armstrong, Chair

The goal of this committee was to enhance the jury experience and to increase efficiency from the juror's standpoint. Members examined juror-related activities that take place once citizens arrive in the courthouse, with particular emphasis on how to reduce the time jurors spend waiting, improvements to juror selection, ways to increase juror participation and comprehension in the courtroom, and ways to improve the jury deliberation process.

Enhancing Services for Jurors, Honorable Heather Van Nuys, Chair

This committee explored ways to reduce the burden of service on citizens called for jury duty. Members were charged with investigating issues that represent a financial burden for jurors and their employers, such as the adequacy of juror fees; how to assist jurors with child care, commuting, and parking costs; and the feasibility of reducing the frequency and terms of service. They considered ways to provide for citizens' needs during their time at the courthouse, including emotional support to jurors during and after stressful trials.

Public Input:

In addition to the initial judicial and juror surveys conducted by Washington State University (WSU), public input was sought in a variety of ways. Several committee members participated in a public forum sponsored by WSU in Spokane. We used modern technology to provide convenient public access to the Commission's work. A Washington State Jury Commission web page was created listing the draft recommendations as they were completed. The web page provided an e-mail link allowing immediate public feedback to the Commission. During Juror Appreciation Week in May, an advertisement thanking jurors and promoting jury service was published at no cost in several daily newspapers across the state. The advertisement included traditional and electronic mail addresses for the Commission to which comments could be addressed. Means for contacting the Commission were also included in a press release and in letters to county clerks, presiding judges, and court administrators at all court levels. The Commission's final report will be published on the web page.

Proposed Implementation Committee:

After receiving the Commission's report, the Board of Judicial Administration (BJA) will appoint a committee to implement the recommendations it adopts. Committee members will propose ways of funding these recommendations, draft any legislative proposals and court rule changes necessary to their implementation, and oversee and coordinate any recommended research or educational projects. The Commission's recommendations will also be part of judicial education programs for trial judges.

Acknowledgments

The Commission acknowledges the debt we owe to the commissions who paved the way for our jury reform efforts, particularly those in Arizona, California, Colorado, the District of Columbia, and New York. We were fortunate in having respected jury reform experts, Judge B. Michael Dann of the Superior Court of Arizona, and Mr. G. Thomas Munsterman, Director of the Center for Jury Studies, as the featured presenters at our inaugural meeting. The information they imparted to our members based on their experiences provided us with invaluable groundwork for our efforts. We were fortunate in being able to refer to current research provided by Washington State University, including surveys of judges and jurors in our state completed just as the Commission began its work. We would like to compliment the District of Columbia Jury Project for its clear and concise reporting format. We liked it so much that we adopted a similar format for our own report.

The Chair also thanks Ms. Julia Appel, Mr. Robert Henderson, and Mr. Richard Neidhardt from the Office of the Administrator for the Courts for their excellent staff work. The structure and focus they provided for the Commission's work, as well as their technical input and background research, were exemplary.

Preamble

Citizens called to jury duty perform a vital service to the community. The justice system cannot function without citizens willing to serve as jurors. Citizen jurors should always be treated with respect.

Accordingly, in making these recommendations, the Commission has been guided by the following principles:

1. Jurors are entitled to be fairly compensated for their service;
2. Jurors are entitled to be treated with courtesy, respect, and consideration;
3. Jurors are entitled to freedom from discrimination;
4. Jurors are entitled to have their privacy interests carefully considered;
5. Jurors are entitled to comfortable, convenient, and legally compliant facilities;
6. Jurors are entitled to be fully informed of trial schedules;
7. Jurors are entitled to be informed of the trial process and the applicable law in plain and clear language;
8. Jurors are entitled to take notes during trial, ask questions, and have them answered as permitted by law.
9. Jurors are entitled to have questions and requests that arise or are made during deliberations fully answered and met as allowed by law.
10. Jurors are entitled to be offered appropriate assistance from the court when they experience serious anxieties or stress as a result of jury service.
11. Jurors are entitled to express concerns, complaints, and recommendations to court authorities.

Summary List of Recommendations

Increasing Summons Response:

- 1** A variety of procedures should be developed to address the concerns of those citizens unwilling to participate in jury service. Follow-up procedures should be developed for courts to use where there is no response to a jury summons.
- 2** Every opportunity should be taken to educate the public on the importance of jury service and to increase diversity on juries by extensive outreach to targeted communities. The implementation committee should coordinate efforts to accomplish this.
- 3** The format of the addresses in the jury source list databases should be standardized before the databases are combined. The correct county code should be assigned to the licensing data.
- 4** The combined list should be processed through a National Change of Address program in order to obtain updated address information before mailing.
- 5** The rules of general application relating to jury source lists should be modified to eliminate license and identocard holder records that have been expired for more than 90 days and to specify that only “active” registered voter records be considered for use in jury source lists.
- 6** The timing of the jury source list process should be re-examined to enable jurisdictions to perform their annual draw while the list data is still current.
- 7** All undeliverable and changed address information gathered by the courts should be delivered to the Department of Licensing as well as to county election departments for processing. The Department of Licensing and county auditors should use this information for database corrections. County clerks should be encouraged to create suspense files for chronic non-deliverable addresses.

Accommodating Citizens Called to Jury Service:

- 8** Courts should require jury service for the shortest period possible. Therefore, the statute should be amended to shorten the jury term to a maximum of one week and jury service to a maximum of two days or one trial.
- 9** Jurors should be provided with full and complete information about jury service from the time they are summoned.

10 In order to promote broad citizen participation and to send a message that courts respect the time commitments of citizens, a state-wide policy should be established to enforce and strictly limit the granting of jury excuses while liberally granting requests for postponement.

11 RCW 2.36.070 should be amended to include a pilot project allowing non-English-speaking citizens to serve on a jury with the aid of a certified interpreter.

12 The Commission views a fee increase as its highest priority. Citizens required to perform jury service should be compensated fairly and appropriately. Legislation should be drafted requiring that current fees be raised, with the increase funded by the state. Local jurisdictions are encouraged to provide or pay for transportation and parking. Jurors could donate their fees and expenses to a court jury improvement fund.

13 Courts should make every effort to utilize jurors efficiently. They should avoid calling more citizens to the court facility for jury service than needed.

14 Each court should maintain adequate facilities for jurors with the appropriate seating, work space, rest rooms, light, and temperature control necessary to facilitate jury selection and deliberations. Special consideration should be given to jurors with disabilities or other special needs. Courts must make every effort to provide the appropriate facilities to accommodate these needs.

15 Amenities to improve the experience of jury service should be provided wherever possible.

16 At the start of a jury trial, the judge should inform the jurors of the court's normal working hours, as well as the working hours that could be expected during deliberations. The judge should determine whether the jurors have any special needs that justify setting different times.

17 Judges and court personnel should assist jurors to handle the stress that may be caused by jury service.

Protecting Juror Privacy:

18 Judges should have discretion to balance a party's interest or right to know any particular information about a juror with the juror's privacy interest. Judges must exercise discretion to balance jurors' privacy interests with those of the general public.

19 The juror summons should provide useful information to the potential juror and require of the juror only that information mandated by statute. A standardized summons form should be created for use and modification by any jurisdiction.

20 The court should try to protect jurors from unreasonable and unnecessary intrusions into their privacy during jury selection. In appropriate cases, the trial court should submit written questionnaires to potential jurors regarding information that they may be embarrassed to disclose before other jurors. Before dismissing jurors from service on a trial, the court should inform jurors of their rights to discuss or refrain from discussing the case.

Improving Jury Selection Procedures:

21 Trial courts should make available to attorneys a written statement of the court's standard practices for jury selection. The court's standard practices should ensure that the parties have a full opportunity to select a fair jury while avoiding undue and unreasonable juror discomfort and embarrassment.

22 The judge should give prospective jurors a brief and neutral description of the case after consulting with the parties and before jury selection. The description should be sufficiently detailed to assist jurors in answering questions during jury selection and while performing their duties. The judge should advise the jury that the description represents the contentions of the parties and does not imply the court's view on the merits of the case.

23 A party should raise any *Batson* objections to the opposing party's peremptory challenges before the jury is impaneled. The court should exercise its discretionary power to raise *Batson* objections on its own motion. *Batson* challenges, and objections to these challenges, should be handled outside the jurors' presence.

24 Alternate jurors should be told that they are alternates at the beginning of the trial.

Improving the Trial Process for Jurors:

25 Trial judges should set reasonable overall time limits for each party at trial. To set time limits, the court should consider among other factors: the number of witnesses; the number and complexity of issues; the respective evidentiary burdens of the parties; the nature of evidence to be presented; the feasibility of shortening trial by stipulations; and pre-admitting exhibits.

26 Judges should encourage all trial participants to use plain language likely to be understood by the jury. Judges should also take steps to minimize juror confusion.

27 In both civil and criminal cases, after the jury is impaneled, the judge should instruct the jurors as to the basic elements of the claims, charges, and defenses. The judge must inform the jurors that the instructions are preliminary only and that their deliberations must be governed by the final instructions.

28 When the procedure will assist jurors, the court should distribute place cards, name tags, or seating charts identifying parties, witnesses, counsel, and other pertinent individuals in the courtroom.

29 Court rules should be amended to allow jurors to take notes in every case, regardless of the length or complexity of the trial. Jurors should be permitted to review their own notes in the jury room during recesses.

30 Juror notebooks should be provided in lengthy or complex cases and in other cases at the judge's discretion. The notebooks should contain information that will help jurors perform their duties, such as preliminary instructions, a summary of claims and defenses, and copies of key exhibits.

31 Exhibits and depositions should be marked and admitted to the greatest extent feasible before potential jurors are conducted to the courtroom for jury selection.

32 When a witness appears by written or videotaped deposition, the testimony proposed for admission should be identified and objections to admission resolved before potential jurors arrive at the courtroom. When deposition testimony is read to the jury, each juror should be provided, to the extent feasible, with a redacted transcript of the testimony for the juror's use during the reading. Redactions should not be apparent to the jury.

33 In every case, jurors should be permitted to submit written clarifying questions to witnesses, subject to careful judicial supervision. The decision of whether to permit a question rests with the judge, although counsel retain the right to object to the scope or content of any specific question. Jurors are not permitted to ask oral questions. The rules of civil procedure and criminal procedure should be amended accordingly.

34 In long trials, the court should consider allowing periodic mini-opening statements to improve juror understanding.

35 To the greatest extent feasible, each juror should be given a copy of the jury instructions before oral instruction by the court.

36 Jury instructions should be readily comprehensible by jurors. They should be case specific and stated in plain language. The number and length of instructions should be reduced to a minimum.

Improving the Deliberating Process:

37 Washington's Pattern Jury Instructions should provide jurors with suggested deliberation procedures. The suggested procedures should include selecting a presiding juror, organizing the discussion, encouraging full participation by all jurors, handling disagreements, and taking votes.

38 Trial judges should make every effort to respond fully and fairly to questions from deliberating jurors. Judges should not merely refer them to the instructions without further

comment or tell them to rely upon their memories of the evidence. In doing so, judges should be careful not to pressure the jury or state or imply any view of the case's merits.

39 The final jury instructions should explain the procedures for requesting clarification of instructions. The judge should advise the jury to submit any questions about instructions in writing to the bailiff.

40 When a jury question arises during deliberations regarding the evidence, the judge should notify the parties or their counsel of the question. The judge should read the question and solicit comments regarding the appropriate response. The response and any objections to it should be made a part of the record. This process should be mandated by court rule.

The judge should, after consulting with the parties or counsel, respond to all jury questions, even if the response is no more than a directive to rely upon their memories of the evidence. The court may allow the jury to review evidence (e.g., replaying audio or video tapes) if such review is not unfairly prejudicial to either party. The court may grant a jury's request to rehear or replay trial testimony, but should do so in a way that is least likely to constitute a comment on the evidence and that minimizes the possibility that jurors will give undue weight to the selected testimony.

41 When deliberating jurors in a civil case report that they cannot reach a verdict, the judge should take additional steps after confirming that the jury is, in fact, deadlocked. The judge should invite the jury to state, in writing, the points of law or evidence upon which it cannot agree and desires help. The judge should discuss the jury's response with counsel before deciding how to proceed. The judge can provide additional instructions, permit additional closing arguments, reread or replay testimony, reopen the trial for more evidence, or allow a combination of these. In communicating with jurors, the judge must avoid any appearance of coercing a verdict.

After the Trial:

42 The trial judge may specially schedule the time for the verdict announcement in cases in which the judge is concerned about security or widespread public reaction to the verdict.

43 Courts should administer an anonymous questionnaire to a representative sample of people called for jury service to monitor juror reaction to jury service and to identify areas of juror dissatisfaction.

Declaration of Principles for Jury Service:

44 A Declaration of Principles for Jury Service should be posted in each court facility as a reminder of the importance of the jury's role in the judicial system and to ensure that jurors are treated with respect.

WASHINGTON STATE JURY COMMISSION MEMBERS

Commission Chair:

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Honorable Sharon Armstrong, *King County Superior Court Judge*

Dr. Oscar Soule, *Professor, The Evergreen State College, Former Juror*

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Washington State Jury Commission

Recommendations

Increasing Summons Response

1

THE WASHINGTON STATE JURY COMMISSION RECOMMENDS THAT A VARIETY OF PROCEDURES BE DEVELOPED TO ADDRESS THE CONCERNS OF THOSE CITIZENS UNWILLING TO PARTICIPATE IN JURY SERVICE. FOLLOW-UP PROCEDURES SHOULD BE DEVELOPED FOR COURTS TO USE WHERE THERE IS NO RESPONSE TO A JURY SUMMONS.

**Jury Summons
Non-Response**

According to a recent American Judicature Society report, the average jury summons non-response rate in state courts is 20.1 percent. King County Superior Court participated in the study and has a non-response rate of approximately 20%.

**Undeliverable
Summons**

The AJS report also estimates that 24.7 percent of non-respondents were unlikely to have received their summonses. A recent article by Richard Seltzer suggests that possibly more than one-third of jury summonses are undeliverable by the U.S. Postal Service. This will be an ongoing problem with a highly mobile populace. Recommendations 3-7 discuss methods for improving the quality of the address data on the jury source lists.

**Reasons for
Non-Response**

There are many reasons why people sent a jury summons do not respond:

1. economic issues,
2. dependent care,
3. time constraints,
4. distrust of the judicial system,
5. dislike of the mechanics of the jury system,
6. religious issues,
7. not wishing to judge others, and
8. the understanding that failing to respond will go unpunished.

Points 1 through 5 are addressed in the Commission's recommendations: the development of an education program (Recommendation 2); a proposed increase in juror compensation (Recommendation 12); better use of a juror's time (Recommendations 8, 13, 15, 16, 25, 31, and 32), and allowing jurors to defer service to a more convenient time (Recommendation 10).

**Alternative Kind
of Jury Duty**

Points 6 and 7 can be addressed by asking those whose beliefs prevent them from serving as a juror to perform an alternative kind of jury duty, such as preparing summons forms for mailing.

Follow-up Process

Point 8 can be addressed by courts using a follow-up procedure if no response is received within two weeks (or an appropriate period for a particular court) of mailing the summons:

- Reminder notice.
- Certified letter signed by presiding judge.
- Second notice signed by presiding judge.
- Show cause order for a hearing resulting in sanction.

Follow-up procedures instituted by many New York counties resulted in a significantly higher response rate.

Failure to Appear Penalty

Many citizens are aware that there is a lack of enforcement of the jury service summons. The Commission recommends that the courts be encouraged to enforce the penalty for non-response (RCW 2.36.170).

References:

- Boatright, Robert G., *Improving Citizen Response to Jury Summonses, A Report with Recommendations*, American Judicature Society pp. ix, xi, 103, 205 (1998).
- Seltzer, Richard, "The Vanishing Juror; Why Are there Not Enough Available Jurors", 20/3 *The Justice System Journal*, pp. 211-212 (1999).
- New York State Unified Court System, *Jury Reform in New York State: A Progress Report on a Continuing Initiative* (1996).

2

EVERY OPPORTUNITY SHOULD BE TAKEN TO EDUCATE THE PUBLIC ON THE IMPORTANCE OF JURY SERVICE AND TO INCREASE DIVERSITY ON JURIES BY EXTENSIVE OUTREACH TO TARGETED COMMUNITIES. THE IMPLEMENTATION COMMITTEE SHOULD COORDINATE EFFORTS TO ACCOMPLISH THIS.

Misconceptions about Jury Duty

The arrival of a jury summons in the mailbox is rarely greeted with enthusiasm: jury duty is inconvenient; it interferes with work; it does not pay well and may cause a loss of income; and it sometimes means waiting in a less than congenial or comfortable environment. Surprisingly, however, citizens who have served on a jury in the past are rarely reluctant to serve again. Jurors are positive about their service and usually find the experience rewarding. They generally come away with a positive attitude towards the justice system.

Citizens who have not served before may lack this positive attitude due to a misunderstanding of what jury duty really entails. It is important, therefore, to reach out to the large percentage of the public that has never served on a jury and provide them with as much information as possible about the reality of jury duty.

Diversity in Jury Service

Every effort should be made to reach out to all segments of the population. Diversity in jury service increases the twin goals of recognizing that all citizens have equal rights and responsibilities and making the jury system as fair as possible. However, there is a perception that jury service has been reserved for certain segments of our society. This misperception both increases alienation of the excluded segments and increases resentment by those who believe they are summoned too many times. Accordingly, special efforts should be made to increase the participation in jury service by sectors of society that traditionally have not participated fully, particularly young people and minority communities.

Various strategies would include educational campaigns targeting high school students, new citizens, and minority communities. In addition to traditional educational methods, creative advertising campaigns would target media that cater to youth.

**Committee to
Create Jury-
Related Materials**

The Commission's implementation committee should oversee the development of a variety of jury-related materials. Those materials would augment the efforts of the many existing committees currently undertaking outreach and education programs, such as:

- The Council on Public Legal Education, a Washington Bar Association committee;
- Judges In The Classroom, a program which pairs judges with teachers to present lesson plans from grade school to high school;
- Law Week 2000, a program coordinated by the Washington State Bar Association to promote public legal education in Washington Schools;
- Public Legal Education Workgroup, an organization which is developing a comprehensive plan to educate and involve the people of Washington in the law and justice system;
- Public Trust and Confidence Committee, a group made up of legislators, the bar and the judiciary, which includes a subcommittee called Judiciary And The Media;
- State of Washington Minority and Justice Commission, a state commission that takes steps to overcome or prevent racial bias in the justice system;
- The Access to Justice Board, a state board established by the Washington State Supreme Court at the request of the Washington State Bar Association's board of governors;
- Washington State Supreme Court Gender and Justice Commission, a state committee to promote gender equality in the law and justice system;
- We The People, a national program from the Center for Civic Education teaching K-12 students about the Constitution and government;
- YMCA Mock Trial Competition, a program in which high school students portray a cast of courtroom characters.

In addition, jury service can be promoted in the following ways:

**Juror Appreciation
Week**

- Washington State's annual Juror Appreciation Week should be more extensively promoted. Not only should all courts take the opportunity to thank jurors for their service, but they should also organize a variety of events during that week to heighten public awareness.
- Public tours of the courts and public attendance at jury trials should be promoted and encouraged.

**Public Service
Campaigns**

- Public service campaigns should promote jury duty using a variety of media including radio, television, newspapers, and other means of public advertising, such as public transit, schools, court facilities, and local stores.
- Media partnerships should be encouraged to provide low-cost advertising space to publicize jury service. As an example, the publication of the Judicial Voter Pamphlet could alternate with the publication of a biennial tab educating the public about the justice system and including information concerning jury service.

**Business and Labor
Support**

- Business and labor support should be encouraged at every opportunity. The judiciary should work with local Chambers of Commerce to publish articles in their bulletins, and with labor unions to publish information on labor web pages and in local union halls. Local businesses who pay their employees during jury service should be publicly acknowledged and thanked by the courts. Certificates thanking local businesses could be provided for display on their bulletin boards.

References:

- David C. Brody, et al., *Juror Survey Results, 1998-1999*, p. ii (jurors have a very positive impression of the jury system, see Appendix 9).
- Arizona Supreme Court Committee on More Effective Use of Juries, *Jurors: The Power of 12*, pp. 33-36 (proposing a broad array of public, bar and other private educational programs).
- District of Columbia Jury Project, *Juries for the Year 2000 and Beyond: Proposals to Improve the Jury Systems in Washington D.C.*, p. 6 (1998) (proposing educating citizenry about juries and jury service).
- G. Thomas Munsterman, et al., *Jury Trial Innovations*, pp. 25-28 (discussing citizen education campaigns about jury service).

3

THE FORMAT OF THE ADDRESSES IN THE JURY SOURCE LIST DATABASES SHOULD BE STANDARDIZED BEFORE THE DATABASES ARE COMBINED. THE CORRECT COUNTY CODE SHOULD BE ASSIGNED TO THE LICENSING DATA.

Address Accuracy

The combination and sorting of the Department of Licensing (DOL) database and the Voter Registration databases is the basic function that occurs before any summons work. There is anecdotal evidence indicating that this combination is functioning, but that improvements can be made which will ultimately result in increased summons response. Counties indicate that their most pressing problem with the jury source list is the quality of the addresses provided, causing summonses to be undeliverable by the United States Postal Service (USPS). In addition, incorrect county codes are often included in the DOL data, causing address records to be sorted into the wrong county's list. In addition, the process to determine and eliminate duplicates between the two lists could be improved.

Coding Accuracy Support System (CASS)

The USPS has created software called the Coding Accuracy Support System (CASS). CASS software does not clean the list for bad addresses but instead standardizes the format of each address into the accepted USPS format. According to industry sources, the software is extremely sophisticated and the processing accuracy rate is 98% in standardizing addresses. It is commonly accepted that if the software cannot make sense of an address, the chances of successful delivery via USPS are very low.

Process through CASS

The Commission recommends that the statutes and procedures be changed to require that all addresses be processed by CASS system software as the first step of list creation. The output of the CASS software should be required to append two data items to the original record for each person. The first is the system corrected address and the second is an assigned county code. Appending the output of the CASS software does not reduce the amount of information available to the summoning body.

Eliminating Duplicates

Standardizing the addresses before combining the lists should provide an additional source of information for eliminating duplicates. The statutes and procedures used to determine duplicates should be modified to include an examination of the county code and address in addition to the current checks.

We recommend that the Office of the Administrator for the Courts request an increase in the source list budget allocation to cover the increase in cost.

References:

- RCW 2.36.054 (rules governing the creation of the jury source list).
- GR 18, Appendix, (providing the methodology for merging the registered voters list and licensed drivers/identocard holders lists).

4

THE COMBINED LIST SHOULD BE PROCESSED THROUGH A NATIONAL CHANGE OF ADDRESS PROGRAM IN ORDER TO OBTAIN UPDATED ADDRESS INFORMATION BEFORE MAILING.

In addition to standardizing addresses on the source list databases (see Recommendation 3), the merged database should be run through the National Change of Address (NCOA) program. This step would be performed before the source list is sent to each county.

Undeliverable Rates Will Drop

NCOA charges are based on the number of “hits” on a list. This means that a clean list will cost almost nothing to process. A list that has many out-of-date addresses will cost more to process, but costs will be recouped because undeliverable rates will drop. This will save staff time, postage, and supply costs because the resulting improved data will avoid summoning people that have moved out of the county.

Pilot Project Assessing Benefits Versus Costs

This proposal would result in a transfer of cost from the counties to the state as the costs of the NCOA process would be paid by the state, but the savings would accrue to the counties. The Commission recommends a pilot project to assess costs and benefits for this process. The Office of the Administrator for the Courts should request additional funding in the source list budget for this project.

Additional Lists

Courts should be given the authority to refer to additional lists at the local level in order to correct master source list addresses for the purpose of mailing summonses. Reference to additional lists may lead to the input of more current address information into the system, which would lead to more representative jury pools and a better response rate. Among the additional lists to be considered are those for unemployment compensation recipients and newly naturalized citizens.

5

THE RULES OF GENERAL APPLICATION RELATING TO JURY SOURCE LISTS SHOULD BE MODIFIED TO ELIMINATE LICENSE AND IDENTICARD HOLDER RECORDS THAT HAVE BEEN EXPIRED FOR MORE THAN 90 DAYS AND TO SPECIFY THAT ONLY “ACTIVE” REGISTERED VOTER RECORDS BE CONSIDERED FOR USE IN JURY SOURCE LISTS.

License Expired for up to Two Years

The current rule governing jury source list processing allows for the inclusion of Department of Licensing (DOL) information for people whose licenses or identicards have been expired for up to two years. However, in 1999 only 24,000 people (out of one million) renewed their licenses more than 60 days after expiration. After 90 days, only 2,000 had not renewed. The current practice leads to outdated and unreliable information being included in the list. The Commission recommends that DOL should remove all records that have been expired for more than 90 days before transmitting the data to the Department of Information Services for inclusion in the jury source list.

Voter No Longer Resides in County

The voter registration lists maintained by the counties contain both “active” and “inactive” voters. A voter is placed in an inactive status because the county elections department has information indicating that the voter no longer resides in the county, but there is no confirmation from the voter to that effect. A notice is mailed, and the voter is placed in an inactive status pending removal from the database. Inactive voters would have been eliminated from the rolls under previous processes that are now precluded by federal law. The Commission recommends that only active registered voters should be included in the jury source lists.

References:

GR 18, Appendix, (providing the methodology for merging the registered voters list and licensed drivers/identocard holders lists).

National Voter Registration Act, 42 USC 1973.

6

THE TIMING OF THE JURY SOURCE LIST PROCESS SHOULD BE RE-EXAMINED TO ENABLE JURISDICTIONS TO PERFORM THEIR ANNUAL DRAW WHILE THE LIST DATA IS STILL CURRENT.

**Election Data
Gathered
in November**

Many jurisdictions do not start using their master source lists until September of each year. This timing is probably based on the original schedule, which was put into place when the expanded source list process was implemented in 1994. The jury source lists use information gathered from the county election department in the previous December, after new voter registration information has been gathered for the November election.

**Start Using the
Master
Source List Earlier**

The Commission recommends that a new schedule should be developed so that the source list can be put into use earlier each year. The Department of Information Services (DIS) should provide the counties with data as soon as possible after the voter and driver data is received and processed. The jurisdictions should then re-synchronize their annual draw to coincide with the release of the list. They should start summoning from the new list as soon as possible.

7

ALL UNDELIVERABLE AND CHANGED ADDRESS INFORMATION GATHERED BY THE COURTS SHOULD BE DELIVERED TO THE DEPARTMENT OF LICENSING AS WELL AS TO COUNTY ELECTION DEPARTMENTS FOR PROCESSING. THE DEPARTMENT OF LICENSING AND COUNTY AUDITORS SHOULD USE THIS INFORMATION FOR DATABASE CORRECTIONS. COUNTY CLERKS SHOULD BE ENCOURAGED TO CREATE SUSPENSE FILES FOR CHRONIC NON-DELIVERABLE ADDRESSES.

Provide Undeliverable Address Information

The quality of the jury source list is only as good as the information used to create it. The courts can help to reduce the number of returned summonses by providing information to those maintaining the source databases for research and correction.

Currently, county clerks are required by statute to notify the county auditor of jury summonses that are returned by the postal service as undeliverable. It is recommended that the courts also notify DOL of undeliverable summonses and that the following process be put in place:

Procedure to Notify DOL

- The court sends DOL a copy of the address update information provided by the U.S. Postal Service (USPS).
- DOL sends a post card to the forwarding address provided by USPS requesting an address update.

Suspense File

In addition, clerks should be encouraged to create a suspense file of chronic non-deliverable addresses, those permanently excused, and deceased people. This suspense file should be checked annually against the new master source list.

References:

RCW 2.36.095(3) (providing that the county clerk shall notify the county auditor of each jury duty summons that is returned).
WAC 308-104-018(1)(b)(iii) (allowing the change of the address of record when documentation is provided by a public official or government agency).

Accommodating Citizens Called to Jury Service

8

COURTS SHOULD REQUIRE JURY SERVICE FOR THE SHORTEST PERIOD POSSIBLE. THEREFORE, THE STATUTE SHOULD BE AMENDED TO SHORTEN THE JURY TERM TO A MAXIMUM OF ONE WEEK AND JURY SERVICE TO A MAXIMUM OF TWO DAYS OR ONE TRIAL.

Jury Term and Jury Service Definitions

Currently, the Washington statutes provide the following definitions:

“Jury term” means a period of time of one or more days, not exceeding one month, during which summoned jurors must be available to report for juror service.

“Juror service” means the period of time a juror is required to be present at the court facility. This period of time may not extend beyond the end of the jury term, and may not exceed two weeks, except to complete a trial to which the juror was assigned during the two-week period.

Current Optimal Term and Service

In addition, the Washington State Jury Standards and Washington statutes currently state that the optimal jury term is two weeks or less and that optimal juror service is one day or one trial, whichever is longer.

Based on a recent survey conducted by Senate Committee Services, it appears that the majority of Washington courts have either a two-week or one-month jury term. Very few courts offer citizens the option to serve for one day or one trial.

Shorten the Jury Term to One Week

The Commission recommends that the jury term be shortened to a maximum of one week. Asking citizens to put their lives on hold for one month or even two weeks makes scheduling business and personal events difficult and sometimes impossible.

Shorten Jury Service to Two Days or One Trial

By also shortening the time potential jurors are required to be present at the court facility to two days or one trial, the hardship associated with service is reduced and thus the need for exemptions or excuses is reduced. Reducing the number of people excused increases the representativeness and inclusiveness of the jury pool. Juror satisfaction increases because courts have to make better use of a juror’s time (only having the juror’s services for two days). As courts have to summon more prospective jurors with a two-day or one trial service time, more citizens have the experience (usually found to be positive) of serving on a jury, and jury service is spread more evenly among the community.

The Commission recognizes that courts using a two-day or one trial jury system may have to summon greater numbers of prospective jurors resulting in increased postage and additional staff and supplies costs. However, offsetting that cost, a reduced term of service can result in an increased yield (the number of qualified potential jurors available at the court facility). For example, after Thurston County recently reduced its term of service, the yield increased to 40%, which is significantly higher than many other counties in our state.

The Commission recommends that courts gradually shorten the jury term and time of service with the goal of implementing a two-day or one trial system in every Washington State court by July 2001. This would be a significant improvement in reducing the burden of jury service on our citizens.

References:

- RCW 2.36.010 (providing definitions for jury term and term of service).
- RCW 2.36.080(2) and Washington Jury Standard 5 (1997) (recommending that optimal service is one day or one trial).
- G. Thomas Munsterman, et al., *Jury Trial Innovations*, pp. 29-31 (describing the advantages, disadvantages, and procedures for one day or one trial).

9

JURORS SHOULD BE PROVIDED WITH FULL AND COMPLETE INFORMATION ABOUT JURY SERVICE FROM THE TIME THEY ARE SUMMONED.

Providing prospective jurors with as much information as possible early in the process will help alleviate much of the apprehension and confusion caused by the receipt of a summons to jury service. Information can be imparted at two stages: before arrival at the court facility and after.

Information Provided Before Arrival

Before Arrival: Optimally, information should be transmitted in several redundant media (e.g., summons; cable television; e-mail; internet; U.S. mail; toll-free telephone) to increase the likelihood of full understanding and exposure and to maximize convenience. To the extent possible, information should impart exactly what a juror will experience upon arrival at the court facility. Additionally, the information should answer these frequently asked questions:

- Term of service;
- Length of typical service;
- Fees and when paid;
- Parking (where and cost);
- Bus routes;
- Length of court day and whether evening service could be necessary;
- Lunch (who pays);
- Available amenities:
 - Dependent care;
 - Phone, computer outlets;
 - Refreshments;
 - Entertainment available at the court facility and what jurors could bring with them;
- Most common types of cases;
- Privacy issues such as the opportunity to ask for private voir dire;
- Ability to ask questions during voir dire;
- Potential punishment for failure to respond;
- How to obtain information on restoration of civil rights;
- Methods for returning the summons and questionnaire, e.g., mail, internet email, or fax;
- How to obtain more information;
- What to do upon arrival.

Information Provided After Arrival

After Arrival: Jurors should be given information about the court process and their responsibilities as jurors. They should be told why they are waiting and the likelihood of being impaneled. Being well informed will generally make jurors feel more appreciated and respected.

When a judge takes the time to greet each panel of jurors

**Judges
Should Talk
to Jurors**

personally and to answer their initial questions, it immediately sets a tone that indicates to the prospective jurors that they are an important part of the process. Once a jury has been impaneled, the judge should explain how the trial will proceed. If the jurors are kept waiting, irritation and frustration can be eliminated by the judge simply taking the time to explain, as far as possible, why they are waiting. After the trial is over, the judge should personally express appreciation for the essential service the jurors have performed.

References:

District of Columbia Jury Project, *Juries for the Year 2000 and Beyond: Proposals to Improve the Jury Systems in Washington D.C.*, pp. 3-4 (1998) (proposing that citizens receive substantial information concerning jury service).
CrR 6.2 (providing for a general orientation for all jurors when they report for duty including a juror handbook and juror information sheet).

10

IN ORDER TO PROMOTE BROAD CITIZEN PARTICIPATION AND TO SEND A MESSAGE THAT COURTS RESPECT THE TIME COMMITMENTS OF CITIZENS, A STATE-WIDE POLICY SHOULD BE ESTABLISHED TO ENFORCE AND STRICTLY LIMIT THE GRANTING OF JURY EXCUSES WHILE LIBERALLY GRANTING REQUESTS FOR POSTPONEMENT.

Standard Process for Postponement

The Commission recommends that a standardized process for postponing jury service should be created that includes prompt responses to correspondence from prospective jurors. RCW 2.36.100(2) allows jurors to be assigned to another jury term within the same jury year.

Permanent Excuse from Jury Service

In order to avoid repeated summoning, jurors with physical or mental conditions that in the opinion of a physician are of a permanent nature should be permanently excused from service. RCW 2.36.110 allows judges to excuse people who are unfit by reason of physical or mental defect. RCW 2.36.100 allows judges to excuse people for a period of time the court deems necessary. Because the court can define the period of time, this would permit the granting of permanent excuses.

Clerks Process Routine Requests

To better utilize the judges' time, clerks should process routine requests for excuse from jury service. Excuses under RCW 2.36.100 and 2.36.110 must be ordered by a judge, except under the conditions of *State v Rice*, 120 Wn. 2d 549, 844 P.2d 416 (1993). In that case, the administrative judge sent a memorandum to the county clerk's office setting forth specific guidelines for excusing prospective jurors. (See sample juror excusal and deferral Guidelines in Appendix 2.) This was found to be consistent with RCW 2.36.100, and the selection of the venire was considered proper. This decision permits clerks to perform assigned functions on behalf of the judge.

Best Practices

The Commission recommends the following best practices:

1. Excuses for undue hardship, public necessity, and extreme inconvenience should be processed by a judge.
2. The Supreme Court should pass a rule directing the clerk to process:
 - a) All excuses for disqualification under RCW 2.36.070 and all temporary requests for excuse.
 - b) All requests for permanent excuse when a physician's letter states that the patient has a permanent condition.

c) All postponements:

Postponement or deferral for planned business matters, vacations, personal business and other personal inconveniences should be liberally and routinely granted when the request is made in a timely manner, rather than on the day preceding the appearance date.

**Continuance to
Another Time
Period**

Continuing people to another term is a good option for seasonal workers or for those whose personal business make them unavailable for all or most of the period for which they were drawn.

**Continuance to a
Specific Date**

Deferring to a different day provides an alternative for those people such as doctors, dentists, hairdressers, and accountants, who have a clientele list. Rather than excusing these individuals they may be assigned to a specific date in the future.

3. Jurors requests for postponement or excuse should be answered in a timely manner.

11

RCW 2.36.070 SHOULD BE AMENDED TO INCLUDE A PILOT PROJECT ALLOWING NON-ENGLISH SPEAKING CITIZENS TO SERVE ON A JURY WITH THE AID OF A CERTIFIED INTERPRETER.

Current Statutory Disqualifications:

RCW 2.36.070(4) currently bars people who do not "communicate" in English, but who are otherwise qualified as jurors, from serving on juries. This statute provides:

A person shall be competent to serve as a juror in the state of Washington unless that person:

Current Statutory Disqualifications

- (1) Is less than eighteen years of age;
- (2) Is not a citizen of the United States;
- (3) Is not a resident of the county in which he or she has been summoned to serve;
- (4) **Is not able to communicate in the English language;** or
- (5) Has been convicted of a felony and has not had his or her civil rights restored.

(Emphasis added).

Reasons Why RCW 2.36.070 Should Be Changed:

Equal Access to the Courts

As it is currently written, RCW 2.36.070(4) contradicts the policy of the State of Washington set out in RCW 2.42 and RCW 2.43 to allow for equal access to the courts for those who do not speak English. In establishing an interpreter system in Washington, the Legislature has declared:

State Policy to Provide Interpreters

It is hereby declared to be the policy of this state to secure the rights, constitutional or otherwise, of persons, who, because of a non-English speaking cultural background, are unable to readily understand or communicate in the English language, and who consequently cannot be fully protected in legal proceedings unless qualified interpreters are available to assist them.

RCW 2.43.010.

Washington State Jury Commission

No Official Language in Washington State

There is no official language in the State of Washington and many members of minority communities are not fluent in English. This is especially the case in various areas in Eastern Washington where many individuals may be American citizens but are not able to communicate in English fluently. Eliminating the "English-only" requirement for jury duty recognizes that these people are equal citizens with others.

Deaf Jurors

Moreover, there is concern that the exclusion of non-English speaking jurors may affect the rights of deaf jurors to serve who must rely on a sign-language interpreter. Changing the "English-only" requirement would allow deaf jurors to continue serving on juries in Washington State in various courts. See "Proving her case: Deaf juror does duty in federal court," Morning News Tribune, August 15, 1992, and other newspaper articles, in Appendix 8.

More Inclusive Jury Panels

Amending RCW 2.36.070(4) would lead to a more diverse jury pool, which would ultimately be more likely to arrive at the truth in any decision-making process.

Greater Confidence in the Justice System

Non-English speaking litigants (and especially defendants) will have greater confidence in, and may more easily accept, jury verdicts rendered by a jury if one or more jurors also speaks the language of the litigant.

Proposed Statutory Changes:

RCW 2.36.070 should be amended to read:

Proposed Changes to Statute

A person shall be competent to serve as a juror in the state of Washington if that person:

- (1) Is over eighteen years of age;
- (2) Is a citizen of the United States;
- (3) Is a resident of the county in which he or she has been summoned to serve;
- (4) Is able to communicate in the English language, or by court-approved sign language, or by The Office of the Administrator for the Courts-certified interpretation; or
- (5) Has not been convicted of a felony, or, if has been convicted of a felony, has had his or her civil rights restored.

The above-provision allowing for jurors to serve who use court-certified interpretation (RCW 2.36.070(4)) should only take effect under the following circumstances:

- One year after the end of a two-year pilot in which non-English speaking jurors were allowed to serve on juries with the assistance of court-certified interpreters in at least two separate counties or judicial districts.
- The funding for the pilot project should be from the State. The fiscal burden of providing interpreters for jurors should not be placed on the counties.
- The above-noted amendments should be effective only if funds are available.

**Certified Interpreter
in Jury Room**

As noted above, deaf jurors are already serving on juries with the assistance of American Sign Language interpreters. Courts that have reviewed the propriety of the presence of an interpreter in the jury room have firmly held that such a practice is appropriate.

**Federal Court
Upholds Signer in
Jury Room**

In *United States v. Dempsey*, 830 F.2d 1084 (10th Cir. 1987), a deaf person served on the jury, with a court appointed signer interpreting the trial proceedings and also accompanying the juror to the jury room, where she interpreted the deliberation process for the juror. The 10th Circuit upheld this practice, comparing it to providing interpreters for other participants in a case (defendants or witnesses) 830 F.2d at 1088. As for the presence of the interpreter in the jury room, the court held that the oath that the interpreter took prohibiting her from interfering with the deliberations or revealing the confidences of the jury should be sufficient to protect the deliberative process. 830 F.2d at 1090. Finally, the court held:

[W]e think this television-age society has become so accustomed to seeing interpreters for the deaf translating to sign political speeches, newscasts, and the like that virtually all of us have come to view such interpreters more as part of the background than as independent participants. Second, an important social policy argues against automatically foreclosing members of an important segment of our society from jury duty simply because they must take an interpreter into the jury room. Several states have supported this policy by specific legislation permitting deaf jurors to serve. [footnote omitted] A decision by this court that they must be excluded because of the interpreter's presence in the jury room, if deemed persuasive by other courts, would doom that legislation on the shoals of the federal constitution.

830 F.2d at 1091

Currently, the interpreter statute makes a distinction between

The Interpreter Must Be Certified certified interpreters and qualified interpreters. There are some languages where there is no state certification, and each judge must determine if an interpreter is qualified on a case-by-case basis. This proposal limits interpretation in the jury room to certified interpreters only.

Pilot Proposed The proposal should be tested in at least two counties or judicial districts for a two-year period.

In the pilot program, a check box should be included on the summons form to give the citizens the option to request a court-certified interpreter. This would give advance warning of the need for an interpreter.

The Commission anticipates objections to allowing non-English speaking jurors based on cost, logistics, and the concern that such jurors will not be readily able to determine which witnesses tell the truth, which witnesses equivocate, and which witnesses lie. A pilot project will enable the state's legal system to gain experience with the logistics and costs of allowing such jurors. Experience will also allay the concern regarding a non-English speaker's ability to determine the credibility of witnesses.

Other References:

Yniguez v. Arizonans for Official English, 69 F.3d 920, 947-48 (9th Cir. 1995) (en banc) (striking down Arizona's English-only policy), *vacated as moot sub. nom. Arizonans for Official English v. Arizona*, 520 U.S. 43, 137 L.Ed.2d 170, 117 S. Ct. 1055 (1997).

Hernandez v. Texas, 347 U.S. 475, 98 L.Ed. 866, 74 S. Ct. 667 (1954) (striking down exclusion of Mexican-Americans from juries).

Duren v. Missouri, 439 U.S. 357, 58 L.Ed.2d 579, 99 S. Ct. 664 (1979) (striking down statute that gave women automatic exemption from jury duty).

Meyer v. Nebraska, 262 U.S. 390, 401, 67 L.Ed. 1042, 43 S. Ct. 625 (1923) ("The Constitution extends to all, -- to those who speak other languages as well as to those born with English on the tongue.").

G. Thomas Munsterman, et al., *Jury Trial Innovations* (1997), at 41-43 ("ADA Compliance").

12

THE COMMISSION VIEWS A FEE INCREASE AS ITS HIGHEST PRIORITY. CITIZENS REQUIRED TO PERFORM JURY SERVICE SHOULD BE COMPENSATED FAIRLY AND APPROPRIATELY. LEGISLATION SHOULD BE DRAFTED REQUIRING THAT CURRENT FEES BE RAISED, WITH THE INCREASE FUNDED BY THE STATE.

LOCAL JURISDICTIONS ARE ENCOURAGED TO PROVIDE OR PAY FOR TRANSPORTATION AND PARKING.

JURORS COULD DONATE THEIR FEES AND EXPENSES TO A COURT JURY IMPROVEMENT FUND.

Jurors in most jurisdictions have not received a raise since 1959 when the \$10 per day juror fee was first instituted. Adjusted for inflation, that \$10 fee would have increased to \$55 by 1999. The Commission considers it unacceptable that this state's citizens are required to perform one of the most important civic duties at a rate that does not remotely approach minimum wage.

In order to fairly compensate those most burdened by jury service, while still considering the current fiscal environment in the local jurisdictions, the Commission proposes the following:

Juror Fees:

1. The juror fee should remain at \$10 for the first day of service.
2. From the second day forward, juror fees should be increased to \$45 per day.
3. Localities will be responsible for paying the \$10 fee on the first day, and for funding \$10 of the \$45 fee from day 2 forward. The \$35 increase, starting with day 2 of service, should be funded by the state.
4. Any portion of a day in which a juror is required to report to a court facility should be considered a full day.

**Juror Fees
Increased to
\$45**

Transportation Expenses:

1. Jurors will continue to be reimbursed for mileage. At the court's discretion, mileage may be calculated based on their home address zip code.
2. Courts should be encouraged to provide or pay for transportation and parking. Local governments should be encouraged to cooperate with the courts to ensure parking is available to jurors at minimal or no cost. This would be a locally implemented option.

**Mileage
Reimbursement**

**Transportation
and Parking**

**Citizens Should
Be Paid
Immediately**

Fee/Expense Disbursement:

1. Jurors should be paid immediately—optimally within one week after service.
2. Payments should be made immediately in cash where possible to reduce the administrative costs of generating drafts, warrants, or checks.

**Jury
Improvement
Fund**

Fee/Expense Donation:

1. Jurors may donate their fees and expenses to a court Jury Improvement Fund.
2. This fund would be used, at the local court's discretion, for jury-related improvements. This fund should not be part of the jurisdiction's general fund and should not be used to supplant the jurisdiction's jury expenses.

This state's citizen jurors are long overdue for an increase in fees. The Commission's challenge was to create a proposal that would more equitably spread the burden of this fee increase. Where the Commission would recommend that \$45 be paid for each day of service, its actual recommendation is that the fee remain at \$10 for the first day in an attempt to balance a citizen's responsibility to perform this civic duty with government's fiscal responsibility.

Washington State relies on citizens to make its most important decisions about law, business practice, and criminal matters. Jurors should be compensated appropriately for this crucial civic duty. Local jurisdictions should not solely bear the financial burden for funding an activity that is essential to provide justice for all.

References:

David C. Brody, et al., *Juror Survey Results, 1998-1999*, p. 9 (85% of jurors surveyed were paid by their employers during jury service).

13

COURTS SHOULD MAKE EVERY EFFORT TO UTILIZE JURORS EFFICIENTLY. THEY SHOULD AVOID CALLING MORE CITIZENS TO THE COURT FACILITY FOR JURY SERVICE THAN NEEDED.

Excuse Citizens Not Needed

Prospective jurors find it frustrating to spend the day sitting idly at the court facility only to be eventually informed that their services are not needed. Jurors should not be required to report to the court facility unless there is a high likelihood that they will be empanelled that day. Once called to the court facility, citizens not needed for a jury panel should be excused as soon as possible.

Maximum Panel Sizes

Proper panel sizes can be calculated on the basis of past experience to ensure that they are large enough to provide jurors and alternates while allowing for the proscribed number of challenges. The determination of appropriate maximum panel sizes can result in significant cost savings for the courts.

The Commission also recommends that, where possible, jurors should be pooled and drawn for all court levels. Pooling courts should then ensure that each citizen reporting is assigned for jury selection before any prospective juror is sent a second time.

References:

- G. Thomas Munsterman, *Jury System Management*, pp. 101-106 (National Center for State Courts, 1996) (the determination of proper panel sizes can generate a great amount of jury systems savings).
Washington Jury Standard 12(4) (3rd ed. 1997) (The efficient use of jurors. A number of measures are suggested to monitor this function).
Washington Jury Standard 13 (3rd ed. 1997).

14

EACH COURT SHOULD MAINTAIN ADEQUATE FACILITIES FOR JURORS WITH THE APPROPRIATE SEATING, WORK SPACE, REST ROOMS, LIGHT, AND TEMPERATURE CONTROL NECESSARY TO FACILITATE JURY SELECTION AND DELIBERATIONS.

SPECIAL CONSIDERATION SHOULD BE GIVEN TO JURORS WITH DISABILITIES OR OTHER SPECIAL NEEDS. COURTS MUST MAKE EVERY EFFORT TO PROVIDE THE APPROPRIATE FACILITIES TO ACCOMMODATE THESE NEEDS.

SPECIAL REQUIREMENTS SHOULD BE CONSIDERED WHEN REPLACEMENT EQUIPMENT AND FIXTURES ARE PURCHASED FOR THE JURY ASSEMBLY ROOM, JURY WAITING AREAS, JUROR REST ROOMS, THE COURTROOM, AND THE DELIBERATION ROOM.

**All People
Should Serve**

All people meeting the statutory requirements for jurors and summoned to duty should be expected to serve, except for those people excused for actual bias based on prior knowledge, prejudice, or familial relationships. Lack of the appropriate facilities should not preclude an otherwise qualified juror with a disability from serving.

Some facilities lack the basic furnishings or appropriate atmosphere for jurors to gather and deliberate around a table. The Americans with Disability Act of 1990 (ADA) and Washington Jury Standard 14 define with specificity the minimum mandatory needs for jurors to meet and reach a fair verdict.

**Minimum
Amenities**

Jurors should expect a fully accessible court facility with accommodations compliant with ADA standards and at least the following minimum amenities:

- Humane and comfortable conditions.
- Rooms and furnishings adequate to meet the numbers and needs of jurors.
- Separation from parties and witnesses.

**Ease of Use By
All People**

Basic furnishings and fixtures should be reviewed before purchase or replacement for ease of use by all people. *Into the Jury Box: A Disability Accommodation Guide for State Courts*, and *The Courthouse, A Planning and Design Guide for Court Facilities*, are excellent resources for courts to use when planning facility upgrades with jurors with disabilities in mind.

References:

Washington statutes and court rules: CR 47 (i); CRLJ 47(b);
RCW 4.44.160 (2); RCW 4.44.170 (2) and (3); RCW 4.44.300.
Don Hardenbergh, *The Courthouse, A Planning and Design
Guide for Court Facilities*, pp. 39-41 (2nd ed. 1998).
Kristi Bleyer et al., *Into the Jury Box: A Disability Accommodation
Guide for State Courts*, The American Bar Association and the
State Justice Institute.

15

AMENITIES TO IMPROVE THE EXPERIENCE OF JURY SERVICE SHOULD BE PROVIDED WHEREVER POSSIBLE.

Time Spent Waiting

One of the primary reasons that citizens are reluctant to serve on juries is the time spent waiting. Courts should aim to provide the following amenities so that prospective jurors may fill their time at the court facility productively and comfortably:

Juror Assembly Room:

- Business accommodations, such as quiet working areas, telephones, and power and telephone hookups for computers.
- The ability to leave the building (with a court-issued pager).
- Provision for refreshments, such as a microwave oven, vending machine, refrigeration, smoking locations, and coffee.
- Entertainment such as television, magazines, and a videotape player.
- Access to telephones for free local calls.
- Provision of a telephone number where emergency messages can be left for jurors.

Jury Box:

- The same amenities given to others in the courtroom (a writing area, writing materials, water, and comfortable chairs).
- Assisted hearing devices.

Jury Deliberation Room:

- A room suitable for the purpose that is private and adequately screened.
- Small refrigerator, microwave oven, water, and coffee.
- Adequate and comfortable seating.
- Assisted hearing devices.

References:

David C. Brody, et al., *Juror Survey Results, 1998-1999*, pp. 6-7 (The most common problem mentioned by jurors was the time spent waiting).

AT THE START OF A JURY TRIAL, THE JUDGE SHOULD

16

INFORM THE JURORS OF THE COURT'S NORMAL WORKING HOURS, AS WELL AS THE WORKING HOURS THAT COULD BE EXPECTED DURING DELIBERATIONS. THE JUDGE SHOULD DETERMINE WHETHER THE JURORS HAVE ANY SPECIAL NEEDS THAT JUSTIFY SETTING DIFFERENT TIMES.

**Scheduling
Jury
Deliberations**

Because trial judges sometimes exercise their authority to continue witness testimony and jury deliberations past regular working hours and into the weekend, jurors often do not know what to expect in a given trial and how to plan accordingly. This issue is particularly important for jurors who have to arrange care for dependents and for jurors whose personal commitments may be affected by lengthy deliberations. Jurors also need to know what to expect when deliberations go into mealtimes.

**Reasonable
Deliberation
Hours**

Judges need to ensure that the jurors are not overworked. Deliberating hours should be reasonable. Although jurors are not court employees, judges should be guided by federal and state laws limiting the number of hours an employee can be required to work.

References:

- G. Thomas Munsterman, et al., *Jury Trial Innovations*, pp. 183-84 (1997).
- A.B.A. Jury Standard 18(d) ("A jury should not be required to deliberate after a reasonable hour, unless the judge, after consultation with counsel, determines that evening or weekend deliberations would not impose an undue hardship upon the jurors and are required in the interest of justice.").
- Washington Jury Standard 18(d) (3rd ed. 1997) (identical to the A.B.A. Standard).
- Arizona Supreme Court Committee on More Effective Use of Juries, *Jurors: The Power of 12*, pp. 115-17 (1994).

17

JUDGES AND COURT PERSONNEL SHOULD ASSIST JURORS TO HANDLE THE STRESS THAT MAY BE CAUSED BY JURY SERVICE.

Jurors should be given every assistance possible to help them cope with the stress that can be caused by jury service. If a trial is very long, if it is emotionally grueling, if the jurors must be sequestered, if the evidence is unusually unpleasant and graphic, or if there is a high level of publicity surrounding the trial, a juror may be totally unprepared for the toll this may take on his or her emotional well-being. We recommend using a variety of techniques, depending upon the nature of the trial, to assist jurors in handling stress.

Brochure on Handling Stress

As a matter of practice, a brochure can be distributed, such as "Tips for Coping After Jury Duty", used in Maricopa County, Arizona, which illustrates techniques a juror can use to help put their experience in perspective.

Post-Verdict Meeting with Judge

At the close of the trial, we encourage judges to meet personally with the jurors in an informal setting to allow the jurors to express their concerns and discuss their feelings about the trial. Such a meeting also gives the judge the opportunity to thank the jurors for their service and to obtain other more general feedback about their reactions to jury service.

Fear of Retaliation

If the court determines that a trial poses a security risk, precautions should be taken to ensure that sufficient personnel and equipment are in place to handle that risk. If a juror expresses fear for his or her personal safety, the court should conduct a debriefing and make any necessary referrals to law enforcement.

Professional Debriefing

For trials likely to cause severe emotional distress, courts can initiate a voluntary juror debriefing program. The court may contract with a professional psychologist, social worker, or counselor (usually someone with expertise in post-traumatic stress disorder) to conduct a short group session following the conclusion of the trial. The jurors and alternates, sometimes with the judge participating, are given the opportunity to explore their reactions to the trial, and the facilitators will often discuss symptoms commonly associated with juror stress. King County Superior Court obtained a grant to conduct a pilot for such a debriefing program which was very successful.

References:

- G. Thomas Munsterman, et al., *Jury Trial Innovations*, pp. 203-205 (3rd ed. 1997).
- G. Thomas Munsterman, *Managing Notorious Trials*, pp. 97-99 (2nd ed. 1998).
- District of Columbia Jury Project, *Juries for the Year 2000 and Beyond: Proposals to Improve the Jury Systems in Washington D.C.*, p. 73 (1998) (provide closure to the jury experience, especially in stressful cases).
- Arizona Supreme Court Committee on More Effective Use of Juries, *Jurors: The Power of 12*, pp. 125-126 (become proactive in detecting and treating juror stress).

Protecting Juror Privacy

18

A JUROR'S PERSONAL PRIVACY EXPECTATION IS EXTREMELY IMPORTANT. JUDGES SHOULD HAVE DISCRETION TO BALANCE A PARTY'S INTEREST OR RIGHT TO KNOW ANY PARTICULAR INFORMATION ABOUT A JUROR WITH THE JUROR'S PRIVACY INTEREST.

WITH THE BALANCE PRESUMPTIVELY IN THE FAVOR OF JUROR PRIVACY, THE GENERAL PUBLIC HAS A RIGHT TO KNOW THAT THE JURY PROCESS IS FAIR AND HAS INTEGRITY. JUDGES MUST EXERCISE DISCRETION TO BALANCE JURORS' PRIVACY INTERESTS WITH THOSE OF THE GENERAL PUBLIC.

AT A JURY TRIAL, EACH PARTY SHOULD RECEIVE A LIST OF PANEL MEMBERS IMMEDIATELY PRECEDING VOIR DIRE. THIS LIST SHOULD INCLUDE ONLY STATUTORY QUALIFYING INFORMATION. OTHER IDENTIFYING INFORMATION MAY BE PROVIDED AT THE DISCRETION OF THE COURT.

A NEW COURT RULE OR STATUTE SHOULD SPECIFY WHICH JUROR RECORDS ARE PRIVATE AND WHICH ARE PUBLIC. IT SHOULD SPECIFY RETENTION PERIODS FOR EACH TYPE OF JUROR INFORMATION RECORD MAINTAINED BY COUNTY CLERKS.

The Commission bases this recommendation on the following premises:

Expectation of Privacy	First, jurors have a reasonable expectation of privacy. They are citizens who have responded to a court order. Their participation in the legal process is an act of good citizenship and is to be encouraged. Their right to privacy should be balanced with the interests of the general public and the litigants.
Public and Litigant's Interest	Second, the general public and litigants have legitimate interests which may compete with the privacy interests of jurors. The public has an interest in an open judicial process. Litigants have an interest in having information which will allow them more effectively to participate in the choice of a jury.
	Third, the judge presiding at a jury trial has inherent

Judge Has Discretion Regarding Disclosure

discretion to allow greater or lesser disclosure of identifying information to the parties. As discussed in Recommendation 19, a more detailed questionnaire (often part of the summons) may be used by the court as standard procedure. The judge should decide whether to provide that information to the parties or the general public. There should be no presumption that it be provided automatically. The judge may set a hearing upon any party's or panel-member's request for greater or lesser disclosure, and should do so when the determination depends on a factual showing. The Commission recommends that, to the extent possible, the hearing be held before voir dire and that panel members be informed of any ruling affecting the scope of disclosure.

Presumption of Privacy

Fourth, there should be a presumption of privacy. Where personal information in addition to statutory qualification information is supplied to the court by jurors, that information should be treated as presumptively private and should not be disclosed to anyone without good cause shown. If disclosed, the court should consider whether protective orders are appropriate.

Retention of Juror Information

In addition, because the public has an interest in the fairness and integrity of the jury process, a variety of juror information records are maintained by the county clerks. No court rule or statute currently exists specifying which juror information records are private and which are available as public record. The Commission recommends that such a rule or statute be created. It should also specify retention periods for each type of record and the format in which a record may be maintained.

Note: Just before the Jury Commission completed its work, the Supreme Court amended GR 15 to establish a presumption of privacy for juror information other than juror names. The amendment allows the parties and their attorneys to petition the court for access to this information. This amendment largely addresses the privacy concerns. Unfortunately, the public's right of access to juror information is not covered. There should be a mechanism for the public to petition the court as well as counsel and the parties. The public's right of access to master jury source lists is protected by statutory law. Thus, court clerks currently permit the public to access these records.

References:

- G. Thomas Munsterman, et al., *Jury Trial Innovations*, pp. 29-31 (privacy considerations in voir dire).
- Governor's Executive Order 00-03 Public Records Privacy Protections (see Appendix 3).
- GR 15(j) (regarding access to juror information, see Appendix 5).

19

THE JUROR SUMMONS SHOULD PROVIDE USEFUL INFORMATION TO THE POTENTIAL JUROR AND REQUIRE OF THE JUROR ONLY THAT INFORMATION MANDATED BY STATUTE. A STANDARDIZED SUMMONS FORM SHOULD BE CREATED FOR USE AND MODIFICATION BY ANY JURISDICTION.

Information to Provide to the Prospective Juror

The summons form is the prospective juror's introduction to jury service and often his or her first encounter with the judicial system. It is important that the summons form is clear and that it provides the prospective juror with as much information as possible about upcoming jury service. Recommendation 9 elaborates on the kinds of information that may be provided.

Service Rescheduling Information

Potential jurors should also be provided space on the summons form to request rescheduling of service as well as exemption from service. The summons should spell out under what circumstances rescheduling or exemption from service will be allowed.

Required Qualifying Information

The summons form is also an information gathering tool. Prospective jurors must answer certain *mandatory* questions to determine whether they are qualified for jury service. This information allows the summoning court to determine whether statutory requirements for service are met such as minimum age, citizenship, residency status, ability to communicate in English, and criminal conviction status.

Administrative/ Biographical Information

The summons also requests information about the juror, such as address and telephone numbers, which the court uses for administering its jury system. In addition, the summons may ask biographical questions which provide information to assist the attorneys in determining if a juror can be fair and impartial in an upcoming trial.

We recommend that any information requested by the summons other than the qualifying requirements should be listed as *optional*.

Protection of Privacy

In accordance with section (a) of the American Bar Association Standard 20 on juror privacy (see Appendix 4), the juror summons should differentiate between information collected for the purpose of juror qualification, jury administration, and jury selection. To facilitate the protection of a juror's privacy, we recommend that the summons be designed so that the different types of

information can be easily separated into sections which would then be provided only to the appropriate parties.

**Retention
Schedules**

Appropriate retention schedules should be determined for each kind of information provided on the summons.

References:

- RCW 2.36.070 (listing qualifications for jury service).
District of Columbia Jury Project, *Juries for the Year 2000 and Beyond: Proposals to Improve the Jury Systems in Washington D.C.*, pp. 3-4 (1998) (proposing that citizens receive substantial information concerning jury service).
CrR 6.2 (providing for a general orientation for all jurors when they report for duty including a juror handbook and juror information sheet).
American Bar Association's Jury Standard 20 (see Appendix 4 for the A.B.A.'s commentary on privacy issues related to summons and questionnaires).

20

THE COURT SHOULD TRY TO PROTECT JURORS FROM UNREASONABLE AND UNNECESSARY INTRUSIONS INTO THEIR PRIVACY DURING JURY SELECTION. IN ADDITION TO MONITORING LAWYERS' QUESTIONS, THE COURT SHOULD PROVIDE ALTERNATIVES FOR JURORS WHO DO NOT WISH TO ANSWER PARTICULAR QUESTIONS IN OPEN COURT. THE COURT SHOULD INFORM JURORS OF THESE OPTIONS BEFORE THEIR QUESTIONING.

DURING JURY SELECTION IN APPROPRIATE CASES, THE TRIAL COURT SHOULD SUBMIT WRITTEN QUESTIONNAIRES TO POTENTIAL JURORS REGARDING INFORMATION THAT THEY MAY BE EMBARRASSED TO DISCLOSE BEFORE OTHER JURORS. THE COURT SHOULD SOLICIT COUNSEL'S COMMENTS REGARDING THE APPROPRIATENESS OF SUCH A QUESTIONNAIRE AND ITS CONTENTS. THE COURT SHOULD INFORM THE POTENTIAL JURORS THAT THEIR QUESTIONNAIRES WILL REMAIN CONFIDENTIAL. THE COURT SHOULD DESTROY THE QUESTIONNAIRES OR MAINTAIN THEM, SEALED, IF NECESSARY TO PRESERVE THE RECORD. RELEVANT PORTIONS OF THE TRANSCRIPT OR TAPED RECORD SHOULD ALSO BE SEALED.

BEFORE DISMISSING JURORS FROM SERVICE ON A TRIAL, THE COURT SHOULD INFORM JURORS OF THEIR RIGHTS TO DISCUSS OR REFRAIN FROM DISCUSSING THE CASE.

**Protecting
Juror Privacy
in Sensitive
Cases**

During jury selection in cases such as sexual harassment or sex crimes, counsel often will ask potential jurors whether they have ever been sexually harassed, assaulted, or molested. Jurors may find such questions embarrassing and intrusive and be less willing to speak publicly about their prior experience. In sensitive cases, the court should consider using written questionnaires and examining jurors outside the presence of other jurors. The questionnaires would identify which jurors should be separately questioned. Jurors' privacy would thereby be protected while still allowing the parties effective jury selection. The trial court has this discretion and should use it in appropriate cases.

The court should solicit comments of counsel regarding

**Procedures for
Juror
Questionnaires**

both the appropriateness of a juror questionnaire and the content of individual questions. The court should explain to the jurors the reasons for the questions. The questions should be simple, easy to read, and easy to answer.

**Procedures
When
Dismissing
Jurors**

At the end of a trial, jurors are sometimes concerned about whether they should discuss the case with others. The jurors' concerns should be addressed by a brief discussion of their right of privacy. They should be informed of their right to speak, or not to speak, to anyone after trial. Further, they should be cautioned about the privacy interests of their fellow jurors and should be reminded not to disclose identifying information about other jurors.

References:

Recommendation 22, Arizona Supreme Court Committee on More Effective Use of Juries, *Jurors: The Power of 12*, Summary of Recommendations ("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.").

G. Thomas Munsterman, et.al., *Jury Trial Innovations*, §III-4 (1997) (Privacy Considerations in Voir Dire—recommending option of responding to voir dire in camera); §III-5 (Individualized Voir Dire).

American Bar Association's Jury Standard 20 (see Appendix 4). (The Jury Commission supports all aspects of this standard except subparagraph (e), which concludes that jurors "should have the continuing protection of the court" when others persistently question them about their jury service. Jurors have other civil and criminal remedies, and although the court has authority to regulate the parties' and counsel's requests to interview jurors after the trial, the court lacks jurisdiction over third parties.).

Improving Jury Selection Procedures

21

TRIAL COURTS SHOULD MAKE AVAILABLE TO ATTORNEYS A WRITTEN STATEMENT OF THE COURT'S STANDARD PRACTICES FOR JURY SELECTION.

THE COURT'S STANDARD PRACTICES SHOULD ENSURE THAT THE PARTIES HAVE A FULL OPPORTUNITY TO SELECT A FAIR JURY WHILE AVOIDING UNDUE AND UNREASONABLE JUROR DISCOMFORT AND EMBARRASSMENT.

BEST PRACTICES SHOULD INCLUDE:

- **INVITING PARTIES TO SUBMIT GENERAL QUESTIONS TO THE COURT IN ADVANCE OF JUROR QUESTIONING;**
- **SETTING REASONABLE TIME LIMITS FOR ATTORNEY QUESTIONING WHILE REMAINING FLEXIBLE TO INCREASE LIMITS IF CIRCUMSTANCES WARRANT;**
- **NUMBERING JURORS WITHIN THE INDIVIDUAL TRIAL PANEL BEFORE THEY ENTER THE COURTROOM AND SEATING THEM IN NUMERICAL ORDER;**
- **GIVING AN INTRODUCTORY INSTRUCTION AND ASKING GENERAL QUESTIONS OF THE ENTIRE PANEL;**
- **PERMITTING JURORS TO BE QUESTIONED AS A GROUP RATHER THAN BY A SERIES OF REPETITIOUS QUESTIONS TO INDIVIDUAL JURORS;**
- **REQUIRING CHALLENGES FOR CAUSE TO BE MADE WHENEVER THE GROUNDS FOR THE CHALLENGE ARISE. THE CHALLENGE AND THE COURT'S RULING MUST BE MADE ON THE RECORD AT A TIME WHEN THE JUROR CAN BE QUESTIONED ON THE CHALLENGE. THE COURT HAS DISCRETION TO CONDUCT THE HEARING ON THE CHALLENGE OUTSIDE THE PRESENCE OF THE OTHER JURORS;**
- **TAKING PEREMPTORY CHALLENGES OUT OF THE HEARING OF JURORS, WITH THE COURT ANNOUNCING THE FINAL SELECTIONS TO THE PANEL; AND**
- **IDENTIFYING THE ALTERNATE JURORS AS SOON AS THE PANEL IS SELECTED.**

**Current Jury
Selection
Practices Vary**

Jury selection practices vary significantly from court to court. Most courts now use some version of the struck jury method, but many variations still exist.

**Struck Jury
Method**

The struck jury method differs from the traditional method of strike-and-replace selection in that all members of the panel may be questioned by counsel at any time during jury selection; counsel need not limit questioning to a single juror in the jury box. The advantages of this method are that it saves time, reduces juror boredom and frustration because every juror is not asked the same questions, and promotes juror participation and the jurors' sharing of relevant information. The method should be used with caution, if at all, in the most serious cases where thorough questioning of individual jurors and accurate notetaking of each juror's response is critical.

**Written
Procedures
and Best
Practices**

The Jury Commission believes that less time will be wasted during jury selection if the attorneys are told in advance how jury selection will be conducted. This information is easily communicated through a set of written procedures. The written procedures should adopt the "best practices" identified above. The written procedures should also specify the particular sequence of steps in the court's selection process, beginning with any pre-trial submission of questions by the attorneys, continuing through the arrival of the jury panel in the courtroom and the handling of peremptory challenges and challenges for cause, and concluding with the final selection of the jury.

References:

- G. Thomas Munsterman, Roger G. Strand, and J. William Hart, "The Best Method of Selecting Jurors", *The Judge's Journal* (Summer 1990) (concluding that the "struck jury" method is generally superior to the "strike and replace" method).
- Washington Jury Standards, Part B: Selection of a Particular Jury (3rd ed. 1997) (establishing standards for conducting voir dire, challenges for cause, and peremptory challenges).
- Arizona Supreme Court Committee on More Effective Use of Juries, *Jurors: The Power of 12*, p. 61 (1994) (recommending that judges be allowed to choose between the "struck" and the "strike and replace" methods).
- New York court rule § 202.33 (allowing judges in civil cases to choose among a few methods for selecting a jury, including

(1) a “struck” method, (2) a method blending the “struck” and “strike and replace” approaches, and (3) other alternative methods—including “strike and replace”—only if specially approved).

Judge David A. Nichols, “Some Thoughts on How to Use the Struck System in Jury Voir Dire”, Washington State Bar News, July 1992, p. 11.

22

THE JUDGE SHOULD GIVE PROSPECTIVE JURORS A BRIEF AND NEUTRAL DESCRIPTION OF THE CASE AFTER CONSULTING WITH THE PARTIES AND BEFORE JURY SELECTION. THE DESCRIPTION SHOULD BE SUFFICIENTLY DETAILED TO ASSIST JURORS IN ANSWERING QUESTIONS DURING JURY SELECTION AND WHILE PERFORMING THEIR DUTIES.

THE JUDGE SHOULD ADVISE THE JURY THAT THE DESCRIPTION REPRESENTS THE CONTENTIONS OF THE PARTIES AND DOES NOT IMPLY THE COURT'S VIEW ON THE MERITS OF THE CASE.

**Need for Case
Summaries
During
Jury Selection**

During jury selection, potential jurors often know little more than the criminal charges named in the charging document or the generally stated civil cause of action. This information is often not specific enough for jurors to give meaningful answers during jury selection. Thus, lawyers may resort to prefacing their questions with awkward, case-specific hypotheticals. These complicated questions increase objections from opposing counsel and the need for court intervention, all of which cause additional juror discomfort.

Procedures

These problems can be minimized if the judge gives potential jurors more information about the pending case before jury selection begins. Judges should give detailed information about:

- witnesses, trial participants, and other individuals who might be mentioned at trial;
- the acts that are alleged to have occurred;
- when and where the acts occurred;
- the defendant's alleged role in these acts in criminal cases; and
- the nature of the requested relief in civil cases (*e.g.*, whether damages sought include pain and suffering).

The judge should ensure that the description is neutral and does not comment on the evidence or imply any view on the merits of the case.

At least one other state addresses this problem by allowing parties to give mini-opening statements at the beginning of jury selection. The Jury Commission considered this approach but believed that jurors would receive a more balanced summary if it were delivered by the judge.

References:

- G. Thomas Munsterman, et al., *Jury Trial Innovations*, pp. 57-59 (3rd ed. 1997) (discussing the problems caused when jurors have insufficient information during jury selection).
Arizona Rules of Civil Procedure 47(b)(2) (authorizing parties to present brief opening statements to potential jurors before jury selection begins).

23

A PARTY SHOULD RAISE ANY *BATSON* OBJECTIONS TO THE OPPOSING PARTY’S PEREMPTORY CHALLENGES BEFORE THE JURY IS IMPANELED. THE COURT SHOULD EXERCISE ITS DISCRETIONARY POWER TO RAISE *BATSON* OBJECTIONS ON ITS OWN MOTION. *BATSON* CHALLENGES, AND OBJECTIONS TO THESE CHALLENGES, SHOULD BE HANDLED OUTSIDE THE JURORS’ PRESENCE.

Batson Objections	<p>The U.S. Supreme Court cases of <i>Batson v. Kentucky</i> and <i>Ford v. Georgia</i> provide a three-step inquiry at the trial court level to determine if prohibited race or gender discrimination in jury selection has occurred. The first step requires the objecting party to show that a peremptory challenge was exercised against a member of a constitutionally cognizable group. Second, that party must show that the use of the peremptory challenge and other relevant circumstances raise an inference of discrimination. If the objecting party is able to establish a prima facie case of discrimination, the third step requires the other party to offer a race/gender-neutral explanation for its use of the peremptory challenge.</p>
Washington Practices	<p>Only a handful of Washington cases address this issue. In only one of those cases, (<i>State v. Burch</i>) was the conviction reversed on <i>Batson</i> grounds. The <i>Burch</i> case noted that Washington State had not (and still has not) adopted any procedural requirements relating to <i>Batson</i> claims, although the U.S. Supreme Court stated in <i>Ford v. Georgia</i> that states may adopt these requirements. In <i>Ford</i>, the state court rule had provided that a <i>Batson</i> claim must be raised before the jurors are sworn in. The U.S. Supreme Court found the court rule to be “sensible.”</p>
Raising Issue for First Time on Appeal	<p>In <i>Burch</i>, the defendant raised a <i>Batson</i> claim for the first time on appeal. The <i>Burch</i> court commented that the better practice is to raise a <i>Batson</i> objection in a timely manner at trial. Nevertheless, a defendant could still raise it for the first time on appeal by tying it to a claim of “ineffective assistance” of counsel.</p>
Procedures for Judges	<p>If a trial court judge observes that a party is exercising a peremptory challenge under circumstances where a <i>Batson</i> claim could reasonably be made, and the opposing party is not objecting to the challenge, the judge should raise the issue with trial counsel on the record outside the presence of the jurors. This way, if the case is appealed with the <i>Batson</i> claim as one of the issues, the appellate court will be able to fully address the merits of the claim.</p>

**Outside the Jury's
Presence**

Batson challenges should be handled outside the jury pool's presence. In the event the trial judge rules that a juror was challenged in violation of *Batson*, the challenged juror could remain on the jury with a lessened risk of the verdict being affected by jury knowledge of *Batson* discrimination being at issue.

References:

- Batson v. Kentucky*, 476 U.S. 79, 90 L.Ed.2d 69, 106 S.Ct. 1712 (1986).
Ford v. Georgia, 498 U.S. 411, 112 L.Ed.2d 935, 111 S.Ct. 850 (1991).
State v. Medrano, 80 Wn. App. 108, 906 P.2d 982 (1995).
State v. Wright, 78 Wn. App. 93, 896 P.2d 713 (1995).
State v. Sanchez, 72 Wn. App. 821, 867 P.2d 638 (1994).
State v. Ashcraft, 71 Wn. App. 444, 859 P.2d 60 (1993).
State v. Burch, 65 Wn. App. 828, 830 P.2d 357 (1992).
State v. Morales, 53 Wn. App. 681, 769 P.2d 878 (1989).
G. Thomas Munsterman, et al., *Jury Trial Innovations*, pp. 71-75 (3rd ed. 1997).

24

ALTERNATE JURORS SHOULD BE TOLD THAT THEY ARE ALTERNATES AT THE BEGINNING OF THE TRIAL.

Designating Alternates

Although it has been suggested that alternates are less attentive than jurors, no reliable research exists to support this conclusion. Not designating alternates until the end of trial is disrespectful and may cause juror frustration and resentment.

References:

G. Thomas Munsterman, et al., *Jury Trial Innovations*, pp. 84-86 (1997).

Improving the Trial Process for Jurors

25

TRIAL JUDGES SHOULD SET REASONABLE OVERALL TIME LIMITS FOR EACH PARTY AT TRIAL. TO SET TIME LIMITS, THE COURT SHOULD CONSIDER AMONG OTHER FACTORS:

- **THE NUMBER OF WITNESSES;**
- **THE NUMBER AND COMPLEXITY OF ISSUES;**
- **THE RESPECTIVE EVIDENTIARY BURDENS OF THE PARTIES;**
- **THE NATURE OF EVIDENCE TO BE PRESENTED;**
- **THE FEASIBILITY OF SHORTENING TRIAL BY STIPULATIONS; AND**
- **PRE-ADMITTING EXHIBITS.**

Time Limits for Trials

As long as fairness and justice are not compromised, all participants in the legal system benefit from trials that are conducted as quickly and efficiently as possible. Therefore it is appropriate for judges to try to manage the time for trial to maximize efficiency while ensuring fairness.

Procedures

In order to set time limits that are reasonable, the court should discuss with counsel a variety of factors that affect the length of the trial. The court then should assign a total number of hours to each party to be used by that party for opening statements, direct examination of witnesses, cross examination, and closing arguments.

Improving Juror Comprehension

The purpose of time limits is to encourage counsel to present their case in the most effective and efficient way, not to micro-manage the parties' presentations. A better prepared presentation will improve juror comprehension and satisfaction.

References:

G. Thomas Munsterman, et al., *Jury Trial Innovations*, 91-94 (3rd ed. 1997).

26

JUDGES SHOULD ENCOURAGE ALL TRIAL PARTICIPANTS TO USE PLAIN LANGUAGE LIKELY TO BE UNDERSTOOD BY THE JURY. JUDGES SHOULD ALSO TAKE STEPS TO MINIMIZE JUROR CONFUSION.

A point can be lost by the use of a word or phrase not understood by a juror. Terms may not be readily understandable when they are not in common usage.

It will require a concerted effort on everyone's part to change the way we speak. Courses on this subject have been offered in law school and in continuing legal education classes, but more needs to be done.

Promote the Use of Plain Language

Judges have the opportunity to promote the use of plain language in trial proceedings. First, judges should take care to use plain language, such as using the term "jury selection" instead of "voir dire." Second, judges should minimize the likelihood that other trial participants will confuse the jury with language that is not clear. As examples, judges may provide jurors with a glossary of terms that are likely to arise during trial. They may also remind lawyers before and during the trial about the importance of using plain language.

References:

- G. Thomas Munsterman, et al., *Jury Trial Innovations*, pp. 157-58 (3rd ed. 1977).
- Arizona Supreme Court Committee on More Effective Use of Juries, *Jurors: The Power of 12*, pp. 99-101 (1994).
- Report of the Colorado Supreme Court Committee on the Effective and Efficient Use of Juries in Colorado, pp. 33-35 (1997).

27

IN BOTH CIVIL AND CRIMINAL CASES, AFTER THE JURY IS IMPANELED, THE JUDGE SHOULD INSTRUCT THE JURORS AS TO THE BASIC ELEMENTS OF THE CLAIMS, CHARGES, AND DEFENSES. THE JUDGE MUST INFORM THE JURORS THAT THE INSTRUCTIONS ARE PRELIMINARY ONLY AND THAT THEIR DELIBERATIONS MUST BE GOVERNED BY THE FINAL INSTRUCTIONS.

**Pre-Instructing
the Jury**

Informing jurors about the applicable legal principles at the beginning of the case helps them to understand the testimony more easily and quickly. Studies confirm that pre-instructing jurors gives them a greater opportunity to focus on and remember the relevant evidence, improves their adherence to the judge's instructions, and increases juror satisfaction.

**Cautioning
the Jury**

Jurors should be cautioned that the preliminary instructions are intended solely to assist them in evaluating the evidence during the trial. Because claims or defenses can be dropped or added during the course of a trial, the court should advise the jurors that the preliminary instructions will not necessarily be the same as the final instructions that will govern their deliberations.

References:

- G. Thomas Munsterman, et al., *Jury Trial Innovations*, pp. 151-53 (1997) (describing studies from the American Bar Association and others).
- B. Michael Dann, "Educated & Democratic Juries", 68 *Indiana L.Rev.* 1229, 1249 (1993).
- Washington Jury Standard 16(c)(i) (3rd ed. 1997) (a trial judge "should give preliminary instructions directly following the empanelment of the jury that explain ...the issues to be addressed and the basic relevant legal principles") (this standard is identical to the A.B.A.'s standard).
- Arizona Supreme Court Committee on More Effective Use of Juries, *Jurors: The Power of 12*, pp. 80-83 (1994).
- California Blue Ribbon Commission on Jury System Improvement, *Final Report*, p. 95 (1996).
- District of Columbia Jury Project, *Juries for the Year 2000 and Beyond: Proposals to Improve the Jury Systems in Washington D.C.*, pp. 61-62 (1998).

28

WHEN THE PROCEDURE WILL ASSIST JURORS, THE COURT SHOULD DISTRIBUTE PLACE CARDS, NAME TAGS, OR SEATING CHARTS IDENTIFYING PARTIES, WITNESSES, COUNSEL, AND OTHER PERTINENT INDIVIDUALS IN THE COURTROOM.

**Identifying
Trial
Participants**

Identifying trial participants aids jurors in understanding and recalling the evidence and understanding the significance of courtroom events. Before trial begins, counsel should provide the court with names of parties, witnesses, and counsel who will appear in the trial. Either court staff, or counsel under the court's supervision, should prepare place cards or name tags for the relevant individuals. A seating chart may be placed in juror notebooks before trial.

Caution

In any case in which a trial participant's identity is an issue, the court should exercise caution in using this procedure.

References:

G. Thomas Munsterman, et al., *Jury Trial Innovations*, § IV-II, p. 123 (3rd ed. 1997).

29

COURT RULES SHOULD BE AMENDED TO ALLOW JURORS TO TAKE NOTES IN EVERY CASE, REGARDLESS OF THE LENGTH OR COMPLEXITY OF THE TRIAL. JURORS SHOULD BE PERMITTED TO REVIEW THEIR OWN NOTES IN THE JURY ROOM DURING RECESSES.

Current Practice

Although many judges in the state already allow jurors to take notes during trial, the practice is not universal. Jurors who take notes remember the evidence more accurately, apply the evidence to the law more accurately, are more attentive during trial, and are more satisfied with jury service.

Court Rules

Court rules currently allow jurors to take notes with the permission of the trial judge. These rules should be amended to allow jurors to take notes in every case.

Procedures for Taking Notes

The judge should instruct jurors using applicable pattern jury instructions. These instructions caution jurors about proper procedures for taking notes, about the importance of not allowing other jurors to see the notes before deliberations, and about notes not necessarily being more accurate than the memory or notes of other jurors. The court rules state that the notes should be destroyed immediately after the verdict is rendered.

References:

- David C. Brody, et al., *Judicial View on Jury Reform in the State of Washington in 1998-99*, pp. 15 and 20 (survey results show that 86% of superior court judges and 49% of district and municipal court judges allow jurors to take notes in some or all cases).
- G. Thomas Munsterman, et al., *Jury Trial Innovations*, pp. 141-43 (3rd ed. 1997) (discussing research findings).
- CR 47(j), CRLJ 38(h), CrR 6.8, CrRLJ 6.8 (allowing jurors to take notes if the trial judge has given permission).
- Washington Pattern Jury Instruction (Criminal) 4.63 (2nd ed. 1994).
- Washington Pattern Jury Instruction (Civil) 6.06.01 (3rd ed. 1989).

30

JUROR NOTEBOOKS SHOULD BE PROVIDED IN LENGTHY OR COMPLEX CASES AND IN OTHER CASES AT THE JUDGE'S DISCRETION. THE NOTEBOOKS SHOULD CONTAIN INFORMATION THAT WILL HELP JURORS PERFORM THEIR DUTIES, SUCH AS PRELIMINARY INSTRUCTIONS, A SUMMARY OF CLAIMS AND DEFENSES, AND COPIES OF KEY EXHIBITS.

Importance of Juror Notebooks	<p>Juror notebooks can be a significant aid to juror comprehension and recall of evidence. The parties should prepare the notebook with court supervision. The tabbed notebook may contain:</p> <ul style="list-style-type: none">• a trial schedule of days and hours court will be in session• a seating chart for the courtroom that identifies all trial participants• preliminary jury instructions• a summary of the parties' claims and defenses• witnesses names, biographies, or photographs• a glossary of technical terms• copies of key exhibits and an index of all exhibits• paper for taking notes• final jury instructions
Including Exhibits	<p>Key exhibits admitted into evidence should be displayed to the jury in some fashion. If the number of exhibits makes it impractical to put them all in a juror notebook, the more important ones should be included. If the parties do not agree on which items to include, each party should be permitted a specified number of exhibits.</p>
Preliminary Instructions	<p>The preliminary instructions should be replaced with final instructions before the judge reads them to the jury.</p>
Privacy of Notebooks	<p>Notebooks should remain in the courtroom or jury room during trial and should be secured by the bailiff during overnight recesses. Jurors should be permitted to take their notebooks to the jury room during deliberations. Judges should decide whether jurors may keep the notebooks.</p>

References:

A.B.A. Litigation Section Report, *Jury Comprehension in Complex Cases*, 34-37 (1989).
G. Thomas Munsterman, et al., *Jury Trial Innovations*, 109-111 (1997).

John V. Singleton, "Jury Trial: History and Preservation", 32
Trial Law. Guide 237, 279 (1988).
Ariz. R. Civ. Proc. Rule 47(g) (1999) ("In its discretion, the
court may authorize documents and exhibits to be included
in notebooks for use by the jurors during trial to aid them in
performing their duties").

31

EXHIBITS AND DEPOSITIONS SHOULD BE MARKED AND ADMITTED TO THE GREATEST EXTENT FEASIBLE BEFORE POTENTIAL JURORS ARE CONDUCTED TO THE COURTROOM FOR JURY SELECTION.

IF THE CASE IS ASSIGNED TO AN INDIVIDUAL JUDGE OR SUBJECT TO A PRETRIAL ORDER, EXHIBITS AND DEPOSITIONS SHOULD BE MARKED. THE PARTIES SHOULD FILE A STIPULATION THAT IDENTIFIES EXHIBITS AND GROUPS THEM INTO THREE CATEGORIES:

- 1. EXHIBITS THAT MAY BE ADMITTED WITHOUT OBJECTION;**
- 2. EXHIBITS THAT ARE STIPULATED TO BE AUTHENTIC, BUT A PARTY MAKES A SUBSTANTIVE OBJECTION TO ITS ADMISSION; AND**
- 3. EXHIBITS THAT ARE CHALLENGED AS NOT AUTHENTIC.**

THE STIPULATION SHOULD BRIEFLY STATE THE OBJECTION TO ADMISSIBILITY AND IDENTIFY THE OBJECTING PARTY. THE MARKING OF EXHIBITS AND DEPOSITIONS AND THE FILING OF THE STIPULATION SHOULD OCCUR BEFORE THE EARLIER OF THE TRIAL DATE OR PRETRIAL CONFERENCE.

**Marking
Documents
Delays Trials**

More jurors identified time spent waiting as a problem of jury service than any other identified problem.¹ Admission of documentary evidence requires counsel to interrupt questioning to ask the clerk to mark an exhibit, to ask the court for permission to approach the witness, to ask the witness questions to establish the authenticity and relevance of the exhibit, to move the admission of the exhibit, and to respond to any objection by opposing counsel. Admission of a deposition requires a similar process, involving a motion to publish and the clerk's unsealing of the deposition.

¹ 37.8%, compared to the next "largest" problem, parking (29.6%). Brody, Lovrich, Sheldon, and Neiswinder, *Juror Survey Results, 1998-99*, Table A-12 (p. 18).

Washington State Jury Commission

**Current
Practice**

In practice, many exhibits are admitted without objection, and depositions are commonly published and unsealed. The federal courts have required pre-marking exhibits for years.²

**Pre-Marked
Documents**

Early resolution of evidentiary issues avoids unnecessary delays and jury waiting. In addition, early disclosure of trial exhibits minimizes trial by ambush and may encourage early settlement.

References:

G. Thomas Munsterman, et.al., *Jury Trial Innovations*, §IV-2 (1997).

U.S.D.C. West. Dist. of Washington Local Rule 16.1.
Evidence Rule 104.

² E.g., U.S.D.C. Western Dist. of Washington Local Rule 43(g) (“Unless otherwise ordered by the court, on the morning of trial, each party appearing shall present marked and tagged trial exhibits to the clerk. Exhibits shall be marked in accordance with the Pretrial Order.”) Another local requires disclosure of documentary exhibits in the Pretrial Order Drafted by the parties. *Id.* at 16.1.

32

WHEN A WITNESS APPEARS BY WRITTEN OR VIDEOTAPED DEPOSITION, THE TESTIMONY PROPOSED FOR ADMISSION SHOULD BE IDENTIFIED AND OBJECTIONS TO ADMISSION RESOLVED BEFORE POTENTIAL JURORS ARRIVE AT THE COURTROOM.

WHEN DEPOSITION TESTIMONY IS READ TO THE JURY, EACH JUROR SHOULD BE PROVIDED, TO THE EXTENT FEASIBLE, WITH A REDACTED TRANSCRIPT OF THE TESTIMONY FOR THE JUROR'S USE DURING THE READING. REDACTIONS SHOULD NOT BE APPARENT TO THE JURY.

Deposition Testimony

When a witness appears by deposition, presentation of that testimony by reading questions and answers can be time-consuming and boring, interfering with jurors' comprehension and retention. Providing copies of the testimony offered will allow jurors to better understand and retain the deposition testimony. Copies of testimony will also enable hearing-impaired jurors to comprehend the deposition testimony more easily.

Advance Identification

Parties usually know the portions of deposition testimony they intend to introduce. Advance identification of proposed testimony allows the parties and the court to resolve objections before the potential jurors arrive at the courtroom for selection, thereby minimizing juror waiting time.

Federal Court Practice

The federal court in Spokane requires advance identification, objection, and resolution of deposition testimony:

Depositions which a party intends to use at trial in lieu of calling the witness must be purged of all repetitious and irrelevant questions and answers, all objections which have been abandoned, and irrelevant colloquy between the attorneys. Purging shall be accomplished by designating the page and line numbers of material proposed to be used. This may be accomplished by the use of a high-lighting marker. A copy of the depositions so purged, or designations thereof, shall be served upon the opposing party no later than ten days before the pretrial conference. Objections and counter-designations by the opposing party shall be served no later than five days before the pretrial conference. Objections shall be submitted to the Court for resolution at the pretrial conference and

depositions shall be purged in accordance with the court's ruling. This subsection shall not apply to depositions used to refresh recollection, as an admission against interest, or for impeachment.

LR 32.1 (E.D. Wash. 1996).

References:

- G. Thomas Munsterman, et.al., *Jury Trial Innovations*, §IV-10 (1997) (regarding use of deposition summaries).
Arizona Supreme Court Committee on More Effective Use of Juries, *Jurors: The Power of 12*, Summary of Recommendations, no. 33 (p. 24) (recommending use of deposition summaries).
U.S. Dist. Court LR 32.1 (E.D. Wash. 1996).
U.S. Dist. Court LR 32(c) (W.D. Wash. 1997).
U.S. Dist. Court LR 9.4.9 (16-9.4.9) (C.D. Cal.).

33

IN EVERY CASE, JURORS SHOULD BE PERMITTED TO SUBMIT WRITTEN CLARIFYING QUESTIONS TO WITNESSES, SUBJECT TO CAREFUL JUDICIAL SUPERVISION. THE DECISION OF WHETHER TO PERMIT A QUESTION RESTS WITH THE JUDGE, ALTHOUGH COUNSEL RETAIN THE RIGHT TO OBJECT TO THE SCOPE OR CONTENT OF ANY SPECIFIC QUESTION. JURORS ARE NOT PERMITTED TO ASK ORAL QUESTIONS. THE RULES OF CIVIL PROCEDURE AND CRIMINAL PROCEDURE SHOULD BE AMENDED ACCORDINGLY.

Allowing Jurors to Propose Questions for Witnesses

Jurors should be allowed to ask questions during civil and criminal trials, subject to careful judicial supervision. Permitting jurors' questions acknowledges the importance of the role of jurors as active learners and active participants in the search for the truth, promotes efforts to focus on the merits of a case rather than speculation, and avoids the real possibility of an erroneous verdict based on confusion or misunderstanding.

The procedure must include a number of safeguards. Before testimony begins, the court should instruct the jury that:

Cautionary Instructions

1. The sole purpose of jurors' questions is to clarify the testimony, not to express any opinion about it or to argue with the witness;
2. Jurors are to remember that they are not advocates and must remain neutral fact finders;
3. Jurors are to submit questions in writing, without discussion with fellow jurors, and are to leave them unsigned; oral questions are not allowed;
4. There are some questions that the court will not ask, or will not ask in the form that a juror has written, because of the rules of evidence or other legal reasons or because the question is expected to be answered later in the case;
5. Jurors are to draw no inference if a question is not asked—it is no reflection on either the juror or the question;
6. Jurors are not to reveal to other jurors a question that was not asked by the judge or speculate as to its answer or why it was not asked; and
7. Jurors are not to interpret this instruction as meaning that the court is encouraging jurors' questions.

The court should take the following steps when allowing jurors to propose questions:

Procedures

1. At the conclusion of each witness's testimony, the court asks if jurors have written questions, which are brought to the judge;
2. Outside the presence of the jury, counsel are given the opportunity to make objections to the question or to suggest modifications to the question, by passing the written question between counsel and the court during a side-bar conference or by excusing jurors to the jury room;
3. The judge asks the question of the witness;
4. Counsel are permitted to ask appropriate follow-up questions; and
5. The written questions are made part of the record.

This recommendation is drawn primarily from American Bar Association standards, the recommendation of the National Center for State Courts, the Federal Judicial Center's Manual for Complex Litigation, and an Arizona rule of civil procedure, which was adopted in 1995 as part of wide-ranging jury reforms in that state.

Benefits of Allowing Jurors to Propose Questions

Judges and attorneys who have used this procedure report that the great majority of juror questions are serious, concise, and relevant to the issues of the trial. Counsel also find the questions to be a useful gauge of how clearly they are explaining their case. Jurors who have been permitted to ask questions indicate the procedure kept them engaged in the proceeding and gave them greater satisfaction with jury service. Studies verify that the advantages to jurors and the trial as a whole outweigh the feared risks.

As the courts have observed, in the context of complex cases or complicated testimony,

[J]uror-inspired questions may serve to advance the search for truth by alleviating uncertainties in the jurors' minds, clearing up confusion, or alerting the attorneys to points that bear further elaboration. Furthermore, it is at least arguable that a question-asking juror will be a more attentive juror.

United States v. Sutton, 970 F.2d 1001, 1005 n.3 (1st Cir. 1992). All federal appeals courts that have considered the issue and a significant number of state appellate courts have held that trial courts may permit jurors to submit questions to witnesses.

**Concern
Raised in the
Pattern Jury
Instructions**

In Washington, both civil and criminal pattern jury instructions provide for written questions by jurors. The Comment to both instructions indicates, however, that while the rules of evidence neither explicitly allow nor disallow the practice of permitting jurors to question witnesses, the procedure should not be encouraged because it usually interrupts the trial.

This concern is largely alleviated by the cautionary instruction and procedures outlined above. Moreover, many of the questions posed by jurors can be handled in a manner that is even less time-consuming than a side-bar conference. The more routine questions can easily be addressed by passing the note from the judge to counsel, with each writing down their reactions on the note.

**Concerns
Raised in the
Case Law**

The Washington Court of Appeals has explicitly disapproved of the practice, but has not found that it constitutes reversible error. In *State v. Munoz*, *State v. Monroe*, and *State v. Walker*, Division I of the Court of Appeals has consistently observed that the active solicitation of juror questions is inappropriate. In each of these three cases, the court held that the court's solicitation of questions was not error of constitutional magnitude.

The *Monroe* court disapproved of the practice because of a number of potential risks: (1) questions can act as improper communication between jury and counsel and generally favor the prosecutor because a question signals the jurors' doubts and perceived weaknesses in the State's case; (2) a juror's question might provide "mental reactions" in other jurors, giving the question undue influence over the jury as a whole; (3) jurors may place undue significance on answers to questions by an influential juror; (4) one or more jurors may dominate the questioning process; and (5) questioning may cause jurors to begin the deliberative process before they have heard all the evidence.

Many of these concerns are minimized by using the cautionary instruction and procedures outlined above. The instruction cautions jurors about the proper purpose for their questions. Moreover, jurors are instructed at the beginning of the trial to withhold judgment until all evidence has been presented.

Conclusion We believe that the experience in federal and state courts around the country confirms that juror questions are an important component of the truth-finding process. The recommended preliminary cautionary instruction to the jury and the controlled procedures described here address due process concerns. Because the Court of Appeals has disapproved the use of juror questions, we recommend that both the rules of civil procedure and criminal procedure be amended to authorize the procedure.

References:

- American Bar Association, Civil Trial Practice Standards, No. 4 (“Juror Questions for Witnesses”) (February 1998).
- American Judicature Society, *Toward More Active Juries: Taking Notes and Asking Questions* (1991).
- Ariz. R.Civ.Proc. 39 (providing a procedure for questioning by jurors).
- B. Michael Dann, “‘Learning Lessons’ and ‘Speaking Rights’: Creating Educated and Democratic Juries”, 68 Ind. L.J. 1229 (1993).
- Federal Judicial Center, *Manual for Complex Litigation 3d Sec. 22.42* (1995).
- Larry Heuer & Steven Penrod, “Increasing Jurors’ Participation in Trials: A Field Experiment with Jury Note Taking and Question Asking”, 79 Judicature 256 (1996).
- Saul M. Kassin & Lawrence S. Wrightsman, *The American Jury on Trial: Psychological Perspectives* (1988).
- Kelso, “Final Report of the Blue Ribbon Commission on Jury System Improvement”, 47 Hasting L.J. 1433, 1507 (1996).
- G. Thomas Munsterman, et al., *Jury Trial Innovations*, Sec. V-7 (3rd ed. 1997).
- Washington Pattern Jury Instructions: WPI 6.12, WPIC 4.66 (Questions by Jurors Addressed to Witnesses).
- State v. Munoz*, 67 Wn. App. 533, 837 P.2d 636 (1992).
- State v. Monroe*, 65 Wn. App. 245, 828 P.2d 24, review denied 119 Wn.2d 1019 (1992).
- State v. Walker*, 1997 WL 599169 (unpublished 1997).
- State v. Brinkley*, 66 Wn. App. 844, 837 P.2d 20 (1992).
- United States v. Sutton*, 970 F.2d 1001 (1st Cir. 1992).
- For a list of appellate court decisions holding that trial courts have discretion to allow juror questioning of witnesses, see pp. 12-13 of American Bar Association’s Civil Trial Practice Standards (February 1998).

**IN LONG TRIALS, THE COURT SHOULD CONSIDER
ALLOWING PERIODIC MINI-OPENING STATEMENTS TO**

34

IMPROVE JUROR UNDERSTANDING.

Mini-Opening Statements	Parties introduce evidence based on the sequence of witnesses, not necessarily in a chronological or subject matter sequence. Presentation of evidence that jumps back and forth in time or subject matter is difficult to understand and retain. Mini-openings allow the parties to explain to the jury the significance of testimony or evidence about to be presented in relation to the theories of the case. Opposing counsel should be allowed to respond.
Procedures	Each party should be given a specific amount of time. Responsive opening statements should be allowed and should count toward that party's allocated time. The court would determine when mini-openings may be made.
Increased Juror Comprehension	Mini-opening statements should increase juror comprehension and retention, allowing jurors to place evidence in the context of the theories of the case. Greater comprehension and retention results in greater confidence in the jury's decision and may well shorten the jury's decision process.
Discretion	Courts currently have the discretion to authorize mini-opening statements.

References:

- G. Thomas Munsterman, et al., *Jury Trial Innovations*, §V-10 (3rd ed. 1997).
- B. Michael Dann, "'Learning Lessons' and 'Speaking Rights': Creating Educated and Democratic Juries", 68 Ind. L.J. 1229, 1255-56 (1993).
- New York State Bar Ass'n, "Improving Jury Comprehension in Complex Civil Litigation", 62 St. John's L. Rev. 549, 557-58 (1988) (description of interim commentaries in *Westmoreland v. CBS*).
- Arizona Supreme Court Committee on More Effective Use of Juries, *Jurors: The Power of 12*, Summary of Recommendations, no. 35 (p. 24) (encouraging use of interim summaries and mini-openings in long or complex trials).
- Higginbotham, "Juries and Complex Cases: Observations About the Current Debate", *The American Civil Jury* 78 (1987) (advocating interim commentary in lengthy trials).

TO THE GREATEST EXTENT FEASIBLE, EACH JUROR

35

SHOULD BE GIVEN A COPY OF THE JURY INSTRUCTIONS BEFORE ORAL INSTRUCTION BY THE COURT.

Copies of Instructions for Each Juror

Giving a copy of the instructions to each juror before instruction by the court and argument of counsel substantially aids jurors' understanding of the instructions individually and as a whole. Increased comprehension of the instructions allows jurors to relate the instructions to the facts more quickly, thus expediting deliberations. The American Bar Association and New York Bar Association recommend the practice.³ Three studies reported four advantages to providing each juror with his or her own copy of instructions before oral instruction by the court and final arguments by counsel:⁴

1. Jurors experienced less confusion about the instructions.
2. Jurors reported deliberations were aided because of the individual copies.
3. Jurors had fewer questions about the instructions during deliberations.
4. Jurors were more confident in their verdict.

Short Trials

In a very short trial having few instructions, it may not be practical or necessary to provide jurors with individual copies.

References:

G. Thomas Munsterman, et al., *Jury Trial Innovations*, §IV-5 (3rd ed. 1997).

B. Michael Dann, "'Learning Lessons' and 'Speaking Rights': Creating Educated and Democratic Juries", 68 *Ind. L.J.* 1229 (1993).

Arizona Supreme Court Committee on More Effective Use of Juries, *Jurors: The Power of 12*, Summary of Recommendations, no. 42 (p. 25).

American Bar Association, *Charting a Future For the Civil*

³ B. Michael Dann, "'Learning Lessons' and 'Speaking Rights': Creating Educated and Democratic Juries", 68 *IND. L.J.* 1229, 1259 n. 203 (1993).

⁴ *Id.*, citing *Jury Comprehension in Complex Cases*, 1989 A.B.A. Litig. Sec. Rep.; Committee on Federal Courts, New York State Bar Ass'n, "Improving Jury Comprehension in Complex Civil Litigation", 62 *St. John's L. Rev.* (1988); Sand and Reiss, "A Report on Seven Experiments Conducted by District Court Judges in the Second Circuit", 60 *N.Y.U. L. Rev.* 423 (1985).

Jury System: Report from an American Bar Association/Brookings Symposium 24 (1992) (recommending all jurors be provided copies of final instructions).

American Bar Association, Special Committee on Jury Comprehension, *Jury Comprehension in Complex Cases*, 51-52 (1989) (unanimous reports by jurors that copies of instructions were helpful in deliberations).

Heuer & Penrod, "Instructing Jurors: A Field Experiment with Written and Preliminary Instructions," 13 *Law & Hum. Behav.* 409 (1989) (finding that providing written instructions tended reduce juror disagreements about instructions and finding no support for contention that written instructions lengthen proceedings).

36

JURY INSTRUCTIONS SHOULD BE READILY COMPREHENSIBLE BY JURORS. THEY SHOULD BE CASE SPECIFIC AND STATED IN PLAIN LANGUAGE. THE NUMBER AND LENGTH OF INSTRUCTIONS SHOULD BE REDUCED TO A MINIMUM.

Plain English Jury Instructions

Many studies reveal that jurors are often confused by jury instructions because of their technical nature, use of legal terms, and lack of organization. Research results strongly suggest that bench-bar jury instruction committees be expanded to include or use the services of experts in communication, psychology, and psycholinguistics as well as lay people, including former jurors. Experts agree on the following general goals for reform: (1) drafting instructions with jurors in mind, (2) making them clear, simple, and case-specific (by using the parties' names, actual fact issues, and examples from the case), and (3) reducing the number and length of instructions to the absolute minimum.

References:

- Alan Reifman, et al., "Real Jurors' Understanding of the Law in Real Cases", 16 *Law & Hum. Behav.* 539, 547, 556 (1992) (reporting survey of former jurors that revealed they understood instructions on substantive law less than one-half of the time).
- Valerie P. Hans & Neil Vidmar, *Judging the Jury* 120-122 (1986).
- Jury Comprehension in Complex Cases*, 1989 A.B.A. Litig. Sec. Rep. 43-52.
- Lawrence J. Severance & Elizabeth F. Loftus, "Improving the Ability of Jurors to Comprehend and Apply Criminal Jury Instructions", 17 *Law & Soc'y. Rev.* 153, 161 (1982) (presenting the results of three studies on jury instruction comprehension).
- Walter W. Steele & Elizabeth G. Thornberg, "Jury Instructions: A Persistent Failure to Communicate", 74 *Judicature* 249, 251 (1991).
- David U. Strawn & G. Thomas Buchanan, "Jury Confusion: A Threat to Justice", 59 *Judicature* 478, 480-82 (1976);
- G. Thomas Munsterman, et al., *Jury Trial Innovations*, 163-170.
- B. Michael Dann, "Educated & Democratic Juries", 68 *Indiana L.J.* 1229 (1993).

Improving the Deliberating Process

37

WASHINGTON'S PATTERN JURY INSTRUCTIONS SHOULD PROVIDE JURORS WITH SUGGESTED DELIBERATION PROCEDURES. THE SUGGESTED PROCEDURES SHOULD INCLUDE SELECTING A PRESIDING JUROR, ORGANIZING THE DISCUSSION, ENCOURAGING FULL PARTICIPATION BY ALL JURORS, HANDLING DISAGREEMENTS, AND TAKING VOTES.

Group Decision-Making Procedures

Many jurors are unfamiliar with group decision-making procedures. They do not know which procedures are more likely to further, and which are more likely to inhibit, their collaborative search for the truth in the evidence. They do not know that taking a vote early in their deliberations can polarize the jury and inhibit their open-minded discussion of the evidence. They do not know how to set up their discussion so that each juror fully participates and the discussion still stays on track. It is therefore not surprising that research shows that jurors spend up to one-quarter of their time trying to get organized.

Procedures in Jury Instructions

Judges can assist jurors by including in their final instructions some suggested, but not dictated, procedures for their deliberations. Other jury reform groups have made similar recommendations.

Sample Jury Instruction

Appendix 6 contains a sample instruction that incorporates instructions being developed elsewhere. We recommend that an instruction along these lines be included in Washington's pattern jury instructions.

References:

- G. Thomas Munsterman, et al., *Jury Trial Innovations*, pp. 171-73 and Appendix 9 (3rd ed. 1997) (presenting sample jury instructions on this topic).
- American Judicature Society, *Behind Closed Doors: A Resource Manual to Improve Jury Deliberations* (1999) (discussing research and proposing a 10-page booklet for jurors to use in organizing their deliberations).

- Hastie, Penrod, and Pennington, *Inside the Jury* (Cambridge, MA: Harvard, 1983), pp. 230, 232-33 (concluding that “early and frequent voting is ... obstructive of reaching a verdict. High rates of voting are associated with the appearance of tight-knit, defensive factions that do not devote all of their energies to an open-minded search for truth in the evidence. Jury instructions should caution the jury to avoid early or frequent polling during deliberation.”).
- Arizona Supreme Court Committee on More Effective Use of Juries, *Jurors: The Power of 12*, p. 104 and Exhibit H (1994) (proposing a jury instruction).
- District of Columbia Jury Project, *Juries for the Year 2000 and Beyond*, pp. 65-67 (1998) (proposing a jury instruction).
- California Blue Ribbon Commission on Jury System Improvement, *Final Report*, p. 99 and Appendix O (1996) (proposing a jury instruction).
- Washington Jury Standard 18(c) (3rd ed. 1997); A.B.A. Jury Standard 18(c) (both of which indicate that trial judges should instruct the jury on the appropriate procedures to be followed during deliberations).
- WPIC 151.00, WPI 1.08 (pattern jury instructions tell jurors to select a presiding juror and to fill out the verdict forms, but do not otherwise assist with suggested procedures).
- A Juror's Guide* (juror's pamphlet prepared by Washington's trial judges' associations telling jurors about some of the things they shouldn't do during deliberations).

38

TRIAL JUDGES SHOULD MAKE EVERY EFFORT TO RESPOND FULLY AND FAIRLY TO QUESTIONS FROM DELIBERATING JURORS. JUDGES SHOULD NOT MERELY REFER THEM TO THE INSTRUCTIONS WITHOUT FURTHER COMMENT OR TELL THEM TO RELY UPON THEIR MEMORIES OF THE EVIDENCE. IN DOING SO, JUDGES SHOULD BE CAREFUL NOT TO PRESSURE THE JURY OR STATE OR IMPLY ANY VIEW OF THE CASE'S MERITS.

**Questions from
Deliberating
Jurors**

The failure of trial judges to be of greater assistance to jurors during deliberations is a primary source of juror confusion. Research shows that the vast majority of the time, judges answer jurors' requests for clarification of instructions by simply referring the jurors to the instructions without further comment. Questions regarding the evidence are similarly dealt with by telling jurors to rely upon their memories of the evidence.

**Providing Full
Responses**

Although many judges and lawyers consider juror questions an inconvenience, they should be welcomed as opportunities to determine whether additional or corrective action is necessary to ensure juror comprehension. Judges should exercise their discretion to respond more fully to deliberating jurors' questions. As long as the judge does not impermissibly comment on the evidence, imply a view on the merits, or pressure the jury, the judge's response will not constitute error. This procedure will reduce the frequency of juror confusion and mistaken verdicts.

See Recommendation 39 for procedures to follow in responding to juror requests for clarifying instructions. See Recommendation 40 for procedures to follow in responding to juror requests relating to the evidence.

References:

CR 51(i), (j); CRLJ 51(i), (j); CrR 6.15(f); CrRLJ 6.15(e).
Jury Comprehension in Complex Cases, 1989 A.B.A. Litig. Sec. Rep. 43, 52-53.

Robert F. Forston, "Sense and Non-Sense: Jury Trial Communication", 1975 B.Y.U. L. Rev. 601, 628-29.

Lawrence J. Severance & Elizabeth F. Loftus, "Improving the Ability of Jurors to Comprehend and Apply Criminal Jury Instructions", 17 Law & Soc. Rev. 153, 172-73 (1982).

Vincent J. O'Neill, Jr., "Famous Last Words: Responding to Requests and Questions of Deliberating Jurors in

- Criminal Cases”, 11 Crim. Just. J. 381 (1989).
- Stephen P. Garvey, Sheri Lynn Johnson, & Paul Marcus, “Correcting Deadly Confusion: Responding to Jury Inquiries in Capital Cases”, 85 Cornell L.Rev. 627 (2000) (emphasizing the importance of directly responding to jurors’ questions about jury instructions instead of simply referring the jurors back to the original instructions).
- Bernard S. Meyer & Maurice Rosenberg, “Questions Juries Ask: Untapped Springs of Insight”, 55 Judicature 105 (1971) (explaining a system of monitoring jury deliberations through jury questions in order to better understand how civil juries bring community standards to bear in deciding the legal issues presented to them).
- B. Michael Dann, “Educated & Democratic Juries”, 68 Ind. L. J. 1229, 1260-61 (1993).
- G. Thomas Munsterman, et al., *Jury Trial Innovations*, 177-179 (3rd ed. 1997).

39

THE FINAL JURY INSTRUCTIONS SHOULD EXPLAIN THE PROCEDURES FOR REQUESTING CLARIFICATION OF INSTRUCTIONS. THE JUDGE SHOULD ADVISE THE JURY TO SUBMIT ANY QUESTIONS ABOUT INSTRUCTIONS IN WRITING TO THE BAILIFF.

WHEN A JURY QUESTION ARISES DURING DELIBERATIONS, THE QUESTION SHOULD BE NUMBERED, DESIGNATED BY TIME AND DATE, FILED AND MADE A PART OF THE RECORD. THE JUDGE SHOULD NOTIFY THE PARTIES OR THEIR COUNSEL THAT THE JURY HAS SUBMITTED A QUESTION AND DIRECT THEM TO MEET IN THE COURTROOM OR BY TELEPHONE. THE JUDGE SHOULD READ THE QUESTION AND SOLICIT COMMENTS FROM COUNSEL REGARDING THE APPROPRIATE RESPONSE. THE RESPONSE AND ANY OBJECTIONS TO IT SHOULD BE ENTERED ON THE RECORD.

THE JUDGE SHOULD, AFTER CONSULTING WITH COUNSEL, RESPOND TO ALL JURY QUESTIONS, EVEN IF THE RESPONSE IS NO MORE THAN A DIRECTIVE FOR THE JURY TO CONTINUE ITS DELIBERATIONS. IF THE JUDGE PROVIDES ANY ADDITIONAL INSTRUCTION IN RESPONSE TO A JURY QUESTION, THE JUDGE SHOULD REMIND THE JURY NOT TO EMPHASIZE ANY PARTICULAR INSTRUCTION OR PART OF ANY INSTRUCTION, BUT RATHER TO CONSIDER THE INSTRUCTIONS AS A WHOLE. RESPONSES TO JURY QUESTIONS ON ANY POINT OF LAW SHOULD BE DELIVERED TO THE JURY IN WRITING. THE JUDGE SHOULD ENSURE THAT ANY ADDITIONAL INSTRUCTIONS ARE NOT COERCIVE OR UNFAIRLY PREJUDICIAL TO EITHER PARTY.

THE ABOVE PROCESS SHOULD BE MANDATED BY COURT RULE.

For a related discussion of this issue, see the accompanying Recommendations 38 and 40.

References:

CR 51(i), (j); CRLJ 51(i), (j); CrR 6.15(f); CrRLJ 6.15(e);
Hue v. Farmboy Spray Co., Inc., 127 Wn.2d 67, 896 P.2d
682 (1995) [trial court has discretion in deciding whether
to give additional jury instructions].
Adcox v. Children's Orthopedic Hospital & Medical Center,
123 Wn.2d 15, 864 P.2d 921 (1993) [trial court must not

indicate its personal attitude toward evidence or merits of the case in instructing jury].

State v. Ransom, 56 Wn. App. 712, 785 P.2d 469 (1990)

[supplemental instruction in response to jury question after deliberations have begun may not introduce new theory that neither party has previously advanced];

B. Michael Dann, "Educated & Democratic Juries", 68 Ind. L. J. 1229, 1260-61 (1993).

Lawrence J. Severance & Elizabeth F. Loftus, "Improving the Ability of Jurors to Comprehend and Apply Criminal Jury Instructions", 17 Law & Soc. Rev. 153, 161 (1982);

Vincent J. O'Neill, Jr., "Famous Last Words: Responding to Requests and Questions of Deliberating Jurors in Criminal Cases", 11 Crim. Just. J. 381 (1989).

G. Thomas Munsterman, et al., *Jury Trial Innovations*, 177-179 (3rd ed. 1997).

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WHEN A JURY QUESTION ARISES DURING DELIBERATIONS REGARDING THE EVIDENCE, THE JUDGE SHOULD NOTIFY THE PARTIES OR THEIR COUNSEL OF THE QUESTION. THE JUDGE SHOULD READ THE QUESTION AND SOLICIT COMMENTS REGARDING THE APPROPRIATE RESPONSE. THE RESPONSE AND ANY OBJECTIONS TO IT SHOULD BE MADE A PART OF THE RECORD. THIS PROCESS SHOULD BE MANDATED BY COURT RULE.

THE JUDGE SHOULD, AFTER CONSULTING WITH THE PARTIES OR COUNSEL, RESPOND TO ALL JURY QUESTIONS, EVEN IF THE RESPONSE IS NO MORE THAN A DIRECTIVE TO RELY UPON THEIR MEMORIES OF THE EVIDENCE. THE COURT MAY ALLOW THE JURY TO REVIEW EVIDENCE (E.G., REPLAYING AUDIO OR VIDEO TAPES) IF SUCH REVIEW IS NOT UNFAIRLY PREJUDICIAL TO EITHER PARTY. THE COURT MAY GRANT A JURY'S REQUEST TO REHEAR OR REPLAY TRIAL TESTIMONY, BUT SHOULD DO SO IN A WAY THAT IS LEAST LIKELY TO CONSTITUTE A COMMENT ON THE EVIDENCE AND THAT MINIMIZES THE POSSIBILITY THAT JURORS WILL GIVE UNDUE WEIGHT TO THE SELECTED TESTIMONY.

**Reviewing
Evidence During
Deliberations**

Court rules provide that when the jury retires for deliberation, it must take with it the written instructions given, all exhibits received in evidence (except testimonial exhibits such as depositions), and the verdict form(s). However, neither court rules nor the rules of evidence specifically address the jury's ability to review evidence after deliberations have begun, although exhibits taken to the jury room generally may be used by the jury as it sees fit. In general, the court has discretion to allow an admitted, non-testimonial exhibit to go to the jury room, so long as it is not unduly prejudicial. (See references.)

**Requests from
Jurors to
Rehear or Replay
Testimony**

Washington's case law has not yet addressed whether a trial judge may grant a deliberating jury's request to rehear or replay particular trial testimony. Concerns sometimes are expressed that granting these requests may be interpreted as an unconstitutional comment on the evidence or that jurors might place undue weight on the selected testimony. The general rule in other states, however, is that trial judges have discretion to grant these requests. This general rule includes cases from states in which judges are prohibited from commenting on the evidence.

**Safeguards
When Allowing
Jurors to Rehear
or Replay
Testimony**

The Commission believes jurors should be allowed to rehear or replay testimony as long as appropriate safeguards are in place. Judges should give a cautionary instruction advising jurors to keep in mind all the evidence in the case, not just the testimony being reheard or replayed, and advising that the judge is not making any comment on the value or credibility of the testimony at issue. The testimony should be read or played to the jurors in the courtroom and should not be given to the jurors in written form to take to the jury room. Because of concerns over commenting on the evidence, the judge ordinarily should not select additional testimony for the jury to hear along with the requested testimony.

Although judges now have discretion to allow this practice, the Commission recommends that a court rule be adopted. A more complete protocol should be developed as part of the implementation of this recommendation.

For a discussion of other issues related to this recommendation, see the accompanying Recommendations 38 and 39.

References:

- CR 51(h); CRLJ 51(h); CrR 6.15(d); CrRLJ 6.15(d).
State v. Castellenos, 132 Wn.2d 94, 935 P.2d 1353 (1997) (trial judges have discretion to allow jurors to take to the jury room nontestimonial exhibits, including tape recordings and playback equipment, but tape recordings involving statements made by a witness who was not subject to cross-examination should not go to the jury room if doing so will violate a defendant's right to confront witnesses).
State v. Frazier, 99 Wn.2d 180, 661 P.2d 126 (1983).
Washington Constitution, Article IV, Section 16 (prohibiting judges from commenting on the evidence).
Annotation, "Right to Have Reporter's Notes Read to Jury," 50 A.L.R.2d 176 (concluding that a "vast majority" of cases, both criminal and civil, allow reporter's notes to be reread to juries upon request); 75B Am.Jur.2d Trial § 1685. Although some of the states following the majority rule are also states that prohibit judges from commenting on the evidence, no cases could be found that directly analyze whether this prohibition bars a judge from granting a request for testimony to be reheard.
Kalven and Zeisel, *The American Jury*, 420 (1966) (listing approximately 35 states that prohibit judges from commenting on the evidence, whether by constitution, court rule, statute, or case law).

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WHEN DELIBERATING JURORS IN A CIVIL CASE REPORT THAT THEY CANNOT REACH A VERDICT, THE JUDGE SHOULD TAKE ADDITIONAL STEPS AFTER CONFIRMING THAT THE JURY IS, IN FACT, DEADLOCKED. THE JUDGE SHOULD INVITE THE JURY TO STATE, IN WRITING, THE POINTS OF LAW OR EVIDENCE UPON WHICH IT CANNOT AGREE AND DESIRES HELP. THE JUDGE SHOULD DISCUSS THE JURY'S RESPONSE WITH COUNSEL BEFORE DECIDING HOW TO PROCEED. THE JUDGE CAN PROVIDE ADDITIONAL INSTRUCTIONS, PERMIT ADDITIONAL CLOSING ARGUMENTS, REREAD OR REPLAY TESTIMONY, REOPEN THE TRIAL FOR MORE EVIDENCE, OR ALLOW A COMBINATION OF THESE. IN COMMUNICATING WITH JURORS, THE JUDGE MUST AVOID ANY APPEARANCE OF COERCING A VERDICT.

Jury at an Impasse

Traditionally, when a deliberating jury in a civil case reports that it is unable to reach a verdict, the trial judge asks a series of questions, to be answered "yes" or "no," aimed at discovering whether the jury is actually deadlocked. After the jury confirms it is deadlocked, the court declares a mistrial, usually without further dialogue with jurors and without offering any assistance. The trial lawyers are left to wonder about, and perhaps later investigate, what caused the hung jury and what they might do differently at a retrial.

Offering Assistance

Once the court has determined that the jury is deadlocked, the judge should ascertain reasons for the impasse before declaring a mistrial. Once the jury has articulated its difficulties, the judge should take appropriate steps to assist the jury. Such steps may include clarifying instructions,⁵ allowing additional arguments, rereading or replaying testimony, and allowing supplemental evidence where appropriate. See Appendix 7 for a sample instruction to use in offering assistance to a jury at an impasse.

Supplemental

The Commission recognizes that reopening a trial to allow supplemental evidence and argument is a departure from

⁵ *State v. Ransom*, 56 Wn. App. 712, 785 P.2d 469 (1990) (Trial judge has discretion to further instruct jury, once deliberations have begun, but it is error to instruct on new theory of liability).

State v. Iverson, 73 Wn. 2d 973, 442 P.2d 243 (1998) (Grant of a new trial appropriate where the trial judge orally instructed jurors to try to "harmonize" their views, judge was aware of the jurors numeric voting split, and judge did not follow procedures in CR 51(i)).

CR 51(i) and CrR 6.15(f) set out the procedure the court must follow to instruct the jury further once deliberations have begun.

WPI 6.13 and WPIC 4.68 should be given.

Washington State Jury Commission

Evidence	common practice. Concern that this gives the plaintiff an unfair second opportunity is unfounded. At the point the court determines that the jury is deadlocked, the plaintiff has the opportunity for a retrial. This practice of reopening for additional evidence and argument is likely to be used infrequently, offers the opportunity to respond to jurors questions in the first trial, and potentially saves the time and expense of a retrial.
Jury's Request to Rehear or Replay Testimony	For a discussion of the safeguards that trial judges should use when allowing jurors to rehear or replay testimony, see Recommendation 40.
Caution	It is important to be careful in all comments to the jurors to avoid any appearance of coercion or pressure.
Civil Cases Only	This recommendation is limited to civil cases. The Jury Commission considered, but rejected, extending this recommendation to criminal cases.

References:

- G. Thomas Munsterman, et al., *Jury Trial Innovations*, 191-193 (3rd ed. 1997).
- B. Michael Dann, "Learning Lessons' and 'Speaking Rights': Creating Educated and Democratic Juries", 68 *Ind. L. J.* 1269-1277 (1993).
- Fernandez v. United States*, 329 F.2d 899 (9th Cir.), *cert. denied* 379 U.S. 832 (1964) (trial judges have discretion to reopen a case during deliberations).
- United States v. Burger*, 419 F.2d 1293 (5th Cir. 1969) (same holding).
- Henry v. United States*, 204 F.2d 817 (6th Cir. 1953) (same holding).
- People v. Scott*, 465 N.Y.S.2d 819 (1983) (same holding).
- State v. Ransom*, 56 Wn. App.712, 785 P.2d 469 (1990). See footnote 5.
- State v. Iverson*, 73 Wn.2d 973, 442 P.2d 243 (1998). See footnote 5.
- CR 51(i), CrR 6.15(f). See footnote 5.
- WPI 6.14, WPIC 4.70 (pattern jury instructions setting out the series of questions the judge asks the presiding juror to determine whether the jury is deadlocked).
- WPI 6.13 and WPIC 4.68. See footnote 5.

After the Trial

42

THE TRIAL JUDGE MAY SPECIALLY SCHEDULE THE TIME FOR THE VERDICT ANNOUNCEMENT IN CASES IN WHICH THE JUDGE IS CONCERNED ABOUT SECURITY OR WIDESPREAD PUBLIC REACTION TO THE VERDICT.

**Scheduling
Verdict
Announcements**

In both civil and criminal cases, people sometimes react to a verdict in a manner that threatens the safety or well-being of others. The range of potential security concerns is broad. Typically, the concern is over the emotional reaction in the courtroom and the need to protect jurors and others in the courtroom. Sometimes the concern is over the community at large. In these cases, the judge may specially schedule the verdict announcement after precautions have been taken.

References:

G. Thomas Munsterman, et al., *Jury Trial Innovations*, pp. 185-86 (3rd ed. 1997).

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COURTS SHOULD ADMINISTER AN ANONYMOUS QUESTIONNAIRE TO A REPRESENTATIVE SAMPLE OF PEOPLE CALLED FOR JURY SERVICE TO MONITOR JUROR REACTION TO JURY SERVICE AND TO IDENTIFY AREAS OF JUROR DISSATISFACTION.

Usefulness of Juror Feedback

Consistent and regular use of juror exit questionnaires provides the court with useful feedback. Jurors' responses can identify problems such as excessive waiting time for jurors and uncomfortable waiting rooms. This information will help courts improve juror satisfaction and the efficiency of jury administration.

Designing and Administering Questionnaires

The court need not administer a questionnaire to all jurors called for jury duty. The court should, however, administer a questionnaire on a regular basis to a representative sample of people called for service, including members not selected, members challenged and excused, alternates, and jurors who deliberate. The questionnaire should require fixed rather than open-ended responses. A sample questionnaire can be found in Appendix 8.

Completed Questionnaires

The questionnaire should be completed by jurors before they leave the court facility. The completed questionnaires are not public records, but rather will be used by the court, through its jury committee or court staff, to identify areas needing improvement.

References:

- A.B.A. Jury Standard 12.
- Washington Jury Standard 12 (3rd ed. 1997) (identical to the A.B.A.'s standard).
- Brookings Institution, *Charting a Future for the Civil Jury System: A Report from an American Bar Association/Brookings Symposium* 30 (1992).
- G. Thomas Munsterman, *Jury System Management* (National Center for State Courts, 1996).
- G. Thomas Munsterman, et al., *Jury Trial Innovations*, 209-10 (3rd ed. 1997).

A Declaration of Principles for Jury Service

44

A DECLARATION OF PRINCIPLES FOR JURY SERVICE SHOULD BE POSTED IN EACH COURT FACILITY AS A REMINDER OF THE IMPORTANCE OF THE JURY'S ROLE IN THE JUDICIAL SYSTEM AND TO ENSURE THAT JURORS ARE TREATED WITH RESPECT.

**Vital Role
of Juror**

Too often citizens called to jury duty are viewed as a cog in the machinery of the court's jury administration process. However, without citizens to fulfill the vital role of juror, the judicial system would grind to a halt. Prospective jurors are required to put their lives on hold while they perform this civic duty, often involving considerable inconvenience to themselves, their employers, and their families. Jurors should be treated with the respect that their important role in our system of justice deserves.

Declaration of Principles

**Declaration of
Principles**

Citizens called to jury service should be:

1. Fairly compensated for their service.
2. Treated with courtesy, respect, and consideration.
3. Free from discrimination.
4. Entitled to have their privacy interests carefully considered.
5. Provided with comfortable and convenient facilities, with particular attention to jurors with special needs.
6. Kept fully informed of trial schedules.
7. Informed of the trial process and of the applicable law in plain and clear language.
8. Able to take notes during trial, ask questions, and have them answered as permitted by law.
9. Entitled to have questions and requests that arise or are made during deliberations fully answered and met as allowed by law.
10. Offered appropriate assistance from the court when they experience serious anxieties or stress as a result of jury service.
11. Able to express concerns, complaints, and recommendations to court authorities.

References:

Arizona Supreme Court Committee on More Effective Use of Juries, *Jurors: The Power of 12*, pp. 130-132 (Promulgate a Proposed Bill of Rights for Arizona Jurors).

Appendices

Appendix 1

**BOARD FOR JUDICIAL ADMINISTRATION
State of Washington**

RESOLUTION for the Washington State Jury Committee

WHEREAS the United States and Washington State provide citizens a right to trial by jury and,

WHEREAS there is evidence an increasing number of citizens summoned for jury service do not appear and,

WHEREAS the judges of the Washington State courts see it as an important responsibility of the courts to determine what features of jury service could be changed or improved to encourage citizens to serve; and so litigants can continue to rely on a jury system that has integrity and is fair and impartial.

THEREFORE, be it by the Board for Judicial Administration:

That, a Washington State Jury Committee be formed to examine Washington State's jury system and recommend improvements to jury operations.

The Jury Committee will conduct a broad inquiry into the jury system and examine issues including, but not limited to, juror responsiveness, citizen satisfaction from jury service, adequacy of juror reimbursement, and improving juror participation in trials.

The Jury Committee is charged to make recommendations for changes in law, court rule, and court procedures,

The Jury Committee membership shall be representative of trial court judges, trial court administrators, county clerks, jury managers, attorneys, citizens who have served as jurors, legislators, labor, business, state, county and municipal officials, media, relevant academic disciplines, and experts in jury management. The Committee will provide a means for public commentary,

The Chair of the Jury Committee shall be a trial court judge who may appoint such ad hoc members as are deemed necessary to conduct the work of the committee;

The Jury Committee at the conclusion of its study shall make a written report of its findings and recommendations to the Board for Judicial Administration.

Done by the Board for Judicial Administration the 6th day of November, 1998.

Barbara Durham, Chief Justice
Washington Supreme Court

Attest: Chair

Appendix 2

(For Recommendation 10)

Disqualification, Excuse, and Deferral Guidelines

Disqualification--RCW 2.36.070 (processed by jury clerk):

1. Those under eighteen years of age.
2. Those who are not citizens of the United States.
3. Those not residents of the county.
4. Those not able to communicate in the English language.
5. Those convicted of felonies who have not had their civil rights restored.

Excuse (processed by judge):

1. Those showing undue financial hardship, outlined in writing, where a person is not compensated for jury service by an employer, or self-employed persons who would incur financial hardship.
2. A showing that excuse from jury service is a public necessity.
3. Those showing jury service would be an extreme inconvenience.

Excuse (processed by jury clerk):

1. Persons who have completed jury service within the last year as described in RCW 2.36.100(3) ("at least two weeks of jury service within the preceding twelve months.").
2. Age-related requests for excuse (proof of birth date).
3. Those with religious beliefs which would interfere with their ability to serve.

Permanent Excuse (processed by jury clerk):

1. Those with a permanent medical condition preventing jury service (verified by a doctor's letter).

Deferral (processed by jury clerk):

1. Persons with a verified temporary medical condition that prevents service as a juror if documented by a physician's statement.
2. Persons providing sole care for dependent family members.
3. Job-related requests for temporary deferral including seasonal work, but only if those persons are unable to be assigned to serve on a short jury trial. This would also apply to self-employed sole proprietors.
4. Students may have their jury service postponed to a time when courses are not being conducted.
5. Military personnel on active duty who are stationed out-of-county (with proof of military address).
6. Persons who have made reservations or plans to be out of town.
7. Persons who have appointments or obligations which cannot be cancelled without undue hardship.

Appendix 3

(For Recommendations 18-20)

EXECUTIVE ORDER 00-03 PUBLIC RECORDS PRIVACY PROTECTIONS

PREAMBLE

WHEREAS, Citizens of the state of Washington are gravely concerned about their privacy, and that concern is well founded. As the Internet comes of age, we are experiencing an explosion in the growth of commercial and government electronic databases that contain highly sensitive personal information about individuals. The businesses and governments that control those databases *must* be responsible. It is state government's added responsibility to protect the personal privacy rights of Washington's citizens and lead the private sector by example and by law.

I am a strong believer in open government and the people's right to know. The very existence of our democracy depends on the fundamental principles embodied in our laws ensuring that we never have secret government. People must be able to trust their government.

There is a critical distinction, however, between public information and private personal information that happens to be held by the government or a business. Simply because certain personal information is in the hands of a third party does not mean that it should be made public or available to anybody willing to pay for it. A taxpayer's sensitive tax information has never been subject to public scrutiny. Nor do citizens expect that their health records, bank account, or credit card numbers will be open for inspection or available to others.

Unfortunately, as citizens, our expectations may exceed the privacy protections provided in law and the practices and policies established by the private sector and public agencies to protect personal information. The information age has created an urgent need for the custodians of data to exercise special care in safeguarding that information.

With this executive order, it is my intent to ensure that state agencies comply fully with state public disclosure and open government laws, while protecting personal information to the maximum extent possible by:

Placing the government of Washington state at the forefront in protecting the personal information of its citizens; Minimizing as much as possible the collection, retention, and release of personal information by the state; Prohibiting the unauthorized sale of citizens' personal information by state government; Providing citizens with broad opportunities to know what personal information about them the state holds, and to review and correct that information; and Making certain that businesses that contract with the state use personal information only for the contract purposes and cannot keep or sell the information for other purposes – and that those who violate this trust are held accountable.

NOW THEREFORE, I, Gary Locke, Governor of the State of Washington, declare my commitment to strengthen privacy protections for personal information held by state agencies, and to the principles of open government and the people's right to know.

WHEREAS, an increasing number of citizens are concerned that personal information held by the state might be used inappropriately, that unauthorized people may have access to it, and that some information may be inaccurate, incomplete, or unnecessary.

WHEREAS, citizens have a right to know how information about them is handled by state agencies and the extent to which that information may be disclosed or kept confidential under the law.

WHEREAS, many state agencies collect, maintain, and dispose of public records that contain highly confidential and sensitive personal information that must be carefully safeguarded. These records contain sensitive and private health, financial, business, or other personally identifiable information. Their inadvertent release, careless storage, or improper disposal could result in embarrassment or harm to individuals and potential liability for the state.

WHEREAS, state agencies have an obligation to protect personal information about citizens, as required by law. They must exercise particular care in protecting records containing sensitive and private health, financial, and other personally identifiable information about individuals, such as social security numbers.

WHEREAS, the purpose of this executive order is to direct state agencies, as responsible information custodians, to institute additional privacy protections for personal information and to ensure that people who supply personal information to state agencies know how it will be handled and protected under state law.

I HEREBY ORDER as follows:

For purposes of this executive order, “personal information” means information collected by a state agency about a natural person that is readily identifiable to that specific individual.

- 1. Protecting the Confidentiality of Sensitive Personal Information.** Each state agency shall immediately establish procedures and practices for the handling and disposal of public records and copies to provide reasonable assurances that those containing confidential personal information are properly safeguarded.
- 2. Protecting Social Security Numbers and other Sensitive Personal Identifiers.** To the extent practicable, each state agency shall eliminate the use of Social Security numbers and other sensitive personal and financial identifying numbers from documents that may be subject to public scrutiny. Each state agency shall also take steps designed reasonably to ensure that appropriate personnel are aware of the new confidentiality requirement under Ch. 56, Laws of 2000, for credit card and debit card numbers, electronic check numbers, card expiration dates, and other financial account numbers connected with the electronic transfer of funds.
- 3. Prohibiting the Sale of Personal Information.** Except as otherwise provided by law, state agencies may not sell personal information that they collect from the public or obtain from other public or private entities.
- 4. Limitation on Collection and Retention of Personal Information.** State agencies shall limit the collection of personal information to that reasonably necessary for purposes of program implementation, authentication of identity, security, and other legally appropriate agency operations. Agencies shall examine their record retention schedules and retain personal information only as long as needed to carry out the purpose for which it was originally collected, or the minimum period required by law.

5. Protection of Personal Information used by Contractors. State agencies that enter into contracts or data sharing agreements with private entities and other governments that involve the use of personal information collected by the agencies shall provide in those contracts that the information may be used solely for the purposes of the contract and shall not be shared with, transferred, or sold to unauthorized third parties. A state agency that receives personal information from another state agency must protect it in the same manner as the original agency that collected the information. Each state agency shall establish reasonable procedures to review, monitor, audit, or investigate the use of personal information by contractors, including, when appropriate, the “salting” of databases to detect unauthorized use, sale, sharing, or transfer of data. Contractual provisions related to breach of the privacy protection of state contracts or agreements shall include, as appropriate, return of all personal information, termination, indemnification of the state, provisions to hold the state harmless, monetary or other sanctions, debarment, or other appropriate ways to maximize protection of citizens’ personal information.

6. Prohibiting the Release of Lists of Individuals for Commercial Purposes. RCW 42.17.260 prohibits public agencies from giving, selling, or allowing the inspection of lists of individuals, unless specifically authorized or directed by law, if the requester intends to use the information for commercial purposes. The Attorney General in AGO 1998 No. 2 has interpreted “commercial purposes” broadly and has not limited those purposes only to situations in which individuals are contacted for commercial solicitation. For that reason, unless specifically authorized or directed by law, state agencies shall not release lists of individuals if it is known that the requester plans to use the lists for any commercial purpose, which includes any profit expecting business activity.

7. Internet Privacy Policies. Within 30 days of the effective date of this executive order, the Department of Information Services shall, in consultation with other state agencies and affected constituency groups as appropriate, develop a clear and concise model privacy policy for use by state agencies that operate an Internet web site. The privacy policy shall contain at least the following elements: a) the manner in which the personal information is collected; b) the intended uses of the information; c) a brief description of the laws relating to the disclosure and confidentiality of the information with a link to the state public records act and other laws, as appropriate; d) information on the purpose and anticipated effects of the web site’s data security practices; e) the consequences of providing or withholding information; f) the agency’s procedures for accessing personal information, verifying its accuracy, and making corrections; g) the method by which an individual may make a request or provide notice to the agency concerning the use or misuse of a person’s personal information; and h) how the agency may be contacted. Within 60 days of the completion of the model policy, each state agency that operates an Internet web site shall, after consultation with affected constituency groups, adopt the model policy, modified to the minimum extent necessary to address practical and legal considerations specific to that agency. Links to agency privacy policies should be located prominently on each agency’s web site home page and on any other page where personal information is collected.

8. Notification and Correction. Each state agency that collects personal information shall, to the extent practicable, provide notice to the public at the point of collection that the law may require disclosure of the information as a public record. Upon request, state agencies shall provide a written statement generally identifying a) the known circumstances under which personal information in public records may be disclosed, and b) the agency’s procedures for individuals to review their personal information and recommend corrections to information that

they believe to be inaccurate or incomplete. This notice and statement may be included in an agency privacy policy, as specified in item 7 above.

9. Citizen Complaints and Oversight. Citizen complaints, questions, or recommendations regarding the implementation of this executive order or the collection and use of personal information by state agencies shall be submitted to the agency that is the custodian or collector of the information. Each agency shall designate a person to handle complaints, questions or recommendations from, and provide information to, the public regarding the collection and use of personal information and the agency's privacy policies. I will designate a person within the Governor's office to monitor and oversee the administration of this executive order and to serve as a point of contact for complaints from the public not addressed by an agency.

10. Miscellaneous. Nothing in this executive order shall be construed to prohibit or otherwise impair a lawful investigative or protective activity undertaken by or on behalf of the state. This order does not create any right or benefit, substantive or procedural, at law or in equity, that may be asserted against the state, its officers or employees, or any other person. It prohibits the release of public records only to the extent allowable under law. State agencies shall, in all cases, comply with applicable law. This order is intended only to improve the internal management of the executive branch and enhance compliance with the law. The Governor may grant exceptions to the requirements of this executive order if an agency can demonstrate that strict compliance results in excessive and unreasonable administrative burdens or interferes with effective administration of the law.

This executive order shall take effect immediately.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the State of Washington to be Affixed at Olympia this 25th day of April A.D., Two thousand.

GARY LOCKE
Governor of Washington

BY THE GOVERNOR:

Secretary of State

Appendix 4

(For Recommendations 18-20)

American Bar Association Standard 20: Juror Privacy

- (a) **JUROR QUESTIONNAIRES SHOULD DIFFERENTIATE BETWEEN INFORMATION COLLECTED FOR THE PURPOSE OF JUROR QUALIFICATION, JURY ADMINISTRATION, AND VOIR DIRE AND PROVIDE A MEANS FOR JURORS TO RESPOND PRIVATELY TO SENSITIVE QUESTIONS.**
- (b) **THE METHOD OF CONDUCTING VOIR DIRE SHOULD BE THAT BEST SUITED TO PROTECT THE PRIVACY OF POTENTIAL JURORS GIVEN THE NATURE OF INFORMATION SOUGHT AND THE RIGHTS INVOLVED.**
- (c) **AFTER JURY SELECTION IS COMPLETE, THE COURT SHOULD MAKE INACCESSIBLE TO THE PUBLIC, THE PARTIES, AND THEIR ATTORNEYS ANY INFORMATION COLLECTED IN CONNECTION OR REVEALED DURING VOIR DIRE ABOUT INDIVIDUALS CALLED FOR JURY DUTY BUT NOT SELECTED FOR THE JURY. RECORD RETENTION REQUIREMENTS SHOULD SPECIFY HOW THIS INFORMATION WILL BE MADE INACCESSIBLE. INFORMATION RETAINED FOR SWORN JURORS SHOULD ONLY BE THAT REQUIRED BY STATUTE.**
- (d) **BEFORE DISMISSING JURORS FROM JURY DUTY, THE COURT SHOULD INFORM JURORS OF THEIR RIGHTS TO DISCUSS OR TO REFRAIN FROM DISCUSSING THE CASE.**
- (e) **JURORS SHOULD HAVE THE CONTINUING PROTECTION OF THE COURT IN THE EVENT THAT INDIVIDUALS PERSIST IN QUESTIONING THE JURORS OVER THEIR OBJECTION ABOUT THEIR JURY SERVICE.**

COMMENTARY:

Jury duty is a hallmark of democratic government. Unlike elected or appointed positions of public office, however, jury service is not a position that an individual can seek or avoid by choice. Although individuals serving as jurors do not have a constitutional right of privacy, they nevertheless have certain expectations of privacy. For citizens to respond and freely participate in jury service, the court must create an atmosphere of respect for jurors that addresses their expectations of privacy to the greatest extent possible given the need of the justice system to select an impartial jury and provide a fair trial.

Paragraph (a). For each individual who reports for jury duty, the court typically collects three different types of information: qualification information; administrative information; and jury selection (voir dire) information. See generally Standard 11(c)(ii). Qualification information is used by the court to determine whether a prospective juror meets the statutory requirements for service such as citizenship and residency status, age, ability to understand and communicate in English, and criminal conviction status. Administrative information, in contrast, is information that the court needs for the efficient management of its jury system (e.g., address, telephone numbers, Social Security numbers, daily mileage to the courthouse). Finally, the court and counsel require voir dire information to determine the ability of prospective jurors to serve as

impartial and objective jurors. Some courts use case specific questionnaires for this information. See G. Thomas Munsterman, Paula L. Hannaford & G. Marc Whitehead, Jury Trial Innovations (NCSC 1997).

Because the court uses juror information for these different purposes, the court should consider the extent to which its policies concerning public access to each type of information should also differ. Qualification and administrative information, for example, are generally not necessary for the attorneys and litigants to make judgments about prospective jurors' ability to be fair and impartial. Nor is this information typically of vital public concern. Thus, the court may reasonably place more restrictions on public and party access to qualification and administrative information than it may on voir dire information.

Paragraph (b). During voir dire, the judge and attorneys solicit personal information about potential jurors to determine their suitability for jury service in a particular trial. Typically, jury panel members are asked to reveal demographic and biographical information; their personal knowledge of the parties, the attorneys, and the specifics about the case; their opinions about the case; and their personal beliefs, attitudes and prior life experiences that might affect their ability to serve as fair and impartial jurors.

Consistent with Standard 7(c), the court should ensure that voir dire questions are relevant to the selection of a fair and impartial jury. Much of the demographic and biographical information is likely to be innocuous and jurors can be asked to answer voir dire questions pertaining to these topics in open court. For inquiring about more personal information, including potentially embarrassing or harmful information, the court should consider alternative methods of voir dire such as *in camera* voir dire or written questionnaires. In cases likely to involve a high degree of media attention or a strong possibility of physical harm to jurors, the court should consider the use of an anonymous jury to protect juror privacy and safety.

The use of *in camera* voir dire and written questionnaires are both conducted on the record and counsel for both parties have access to all of the information revealed. Thus, they conform to the requirements of Press Enterprises v. Superior Court (I), 104 S. Ct. 819 (1984). Press Enterprises established criteria for the court to consider before closing court proceedings or sealing the record. Specifically, the court must determine whether a juror has a compelling privacy interest, including protection from physical harm or the threat of physical harm, that outweighs the presumption favoring public access to judicial proceedings. *In camera* voir dire relieves jury panel members from revealing personal information in open court and in the presence of the entire panel and other individuals, such as court staff or spectators, who may be present in the courtroom. Questionnaires permit panel members to reveal sensitive or personal information in their written responses, rather than publicly.

The use of anonymous juries should be reserved for very limited and extraordinary circumstances. In cases involving very high levels of media attention, in which the identity of jurors is likely to be of significant public interest, maintaining the anonymity of jurors may be appropriate. Similarly, anonymous juries are appropriate for cases in which the parties may attempt to influence or coerce jurors in their decision making process.

Paragraph (c). During jury selection, prospective jurors may be asked to reveal a great deal of personal information. Standard 7(a) provides that juror information collected prior to in-court voir dire should be made available in writing to each party on the day on which jury selection is to begin. From this information, the court and counsel for both parties select a specified number of prospective jurors to serve on the jury. The court then dismisses the remaining prospective jurors or directs them to return to the jury assembly room for consideration on another jury. Unless one of the parties makes a legal objection to the selection of the jury panel, the personal information

revealed by individuals not selected for the jury is not relevant to the case and should be made inaccessible to the public. To the extent practical, references to such personal information should be expunged from the formal trial record. The court should also determine the record retention requirements for juror qualification, jury administration, and voir dire.

Paragraph (d). Before they are dismissed from jury duty, jurors should understand their rights concerning post-verdict discussions about the case. See Standard 16(d). In addition to thanking jurors for their service, the court should inform jurors that they are released from their obligation to refrain from discussing the case and that they may choose to discuss or not discuss the case as they wish. As part of this information, the court should inform jurors of any restrictions on the parties or their attorneys concerning post-verdict contact with jurors. See, e.g., U.S. v. Kepreos, 759 F.2d 961 (1st Cir. 1985); U.S. v. Shakur, 1988 U.S. Dist. LEXIS 5162 (S.D. N.Y. 1988); Florida Rules of civil Procedure 1.431(h)(1996). The court may also request that jurors respect the privacy of other jurors and not reveal information disclosed or statements made by those individuals during the deliberations.

Paragraph (e). Although many jurors are willing to talk about their jury experience after the trial, others prefer not to discuss it at all and are uncomfortable if asked about it. Before dismissing the jury, the court should inform jurors that they may call on the protection of the court if individuals persist in questioning them about their jury service. The court should also explain any procedures that jurors should follow to contact the court.

Appendix 5

(For Recommendations 18-20)

GENERAL RULE 15(j)

Access to Juror Information. Individual juror information, other than name, is presumed to be private. After the conclusion of a jury trial, the attorney for a party, or party pro se, may petition the trial court for access to individual juror information under the control of court. Upon a showing of good cause, the court may permit the petitioner to have access to relevant information. The court may require that juror information not be disclosed to other persons.

GR 15 (j) was adopted by Supreme Court Order No. 25700-A-683, dated June 12, 2000, and is effective September 1, 2000.

Appendix 6

(For Recommendation 37)

PROPOSED JURY INSTRUCTION PROVIDING SUGGESTED PROCEDURES FOR JURY DELIBERATIONS

You are free to manage your jury deliberations in any way that seems most suitable to you. However, I will make a few suggestions that may help you to proceed more smoothly with your deliberations. You are free to accept or reject these suggestions.*

When you return to the jury room to begin your deliberations, you might want to take a few minutes to get acquainted. You could each in turn introduce yourselves and indicate any topics or questions you want to discuss during the deliberations. I suggest, however, that you not give your opinion at this point about how you would vote.*

By first getting to know each other, you will feel more comfortable sharing your ideas, and you will have a better basis for choosing your presiding juror. Give careful consideration to this choice. Look for a juror who is a good listener and observer, who can organize the evidence and discussion, and who will see that every juror is heard fairly.*

You should then discuss the case with your fellow jurors to reach agreement if you can do so. I suggest that you:

- (1) discuss the evidence and the law to your satisfaction before you take a vote;
- (2) organize your discussion by separately considering each [charge] [claim] and by separately examining the evidence relating to each element of that [charge] [claim]; and
- (3) identify those issues for which there are differences of opinion and then discuss each in turn.**

Each of you must decide the case for yourself, but you should do so only after you have considered all the evidence and the law, discussed the case fully with the other jurors, and listened to the views of the other jurors.***

Do not be afraid to change your opinion if the discussion persuades you that you should. But do not come to a decision simply because other jurors think it is right. Each of you must make your own conscientious decision. Do not change an honest belief about the weight and effect of the evidence simply to reach a verdict.***

Your verdict must be based solely on the evidence and on the law as I have given it to you in these instructions. Nothing that I have said or done is intended to suggest what your verdict should be—that is entirely for you to decide.***

* Paragraphs marked with a single asterisk are adapted from a sample instruction that appears in G. Thomas Munsterman, et al, *Jury Trial Innovations*, Appendix 9, Sample A (3rd ed. 1997). The sample instruction was used by other states in developing their own proposed instruction .

Washington State Jury Commission

** This paragraph, other than item (2), is taken directly from the instructions proposed in Arizona and the District of Columbia. Item (2) is adapted from a sample instruction that appears in *Jury Trial Innovations, supra*, Appendix 9, Sample C.

*** These paragraphs are taken verbatim from the instructions proposed in Arizona and the District of Columbia.

Appendix 7

(For Recommendation 41)

Sample Instruction Offering Assistance to a Jury at an Impasse *

This instruction is offered to help you make a decision, not to force you to reach a verdict or to suggest what your verdict should be.

It may be helpful for you 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 disagree, you may identify any questions about the evidence, the instructions of law, or the deliberation process with which you would like assistance. If you choose this option, please list your questions in writing. The court will determine whether further assistance might help you reach a verdict.

* Adapted from an instruction appearing in a law review article written by Judge Michael Dann of Maricopa County Superior Court in Phoenix, Arizona. B. Michael Dann, "Learning Lessons' and 'Speaking Rights': Creating Educated and Democratic Juries," 68 Ind. L. J. 1229, 1277 (1993.)

Appendix 8

(For Recommendation 43)

JURY SERVICE EXIT QUESTIONNAIRE

(adapted from a questionnaire used by the Ninth Circuit)

Your answers to the following questions will help improve jury service. All responses are voluntary and confidential. (Please circle answers where appropriate.)

1. Approximately how many days did you report to the courthouse? _____
2. What percent of your time was spent in the jury waiting room? _____
3. How many times did you report to a courtroom for jury selection? _____
4. How many times were you actually selected to be a juror? _____
5. How would you rate each of the following factors?

	Good	Adequate	Poor
A. Initial Orientation			
B. Treatment by Court Personnel			
C. Physical Comforts			
D. Personal Safety			
E. Parking Facilities			
F. Scheduling of Your Time			

6. After having served, what is your impression of jury service? (Circle one)

- A. The same as before — Favorable
- B. The same as before — Unfavorable
- C. More Favorable than Before
- D. Less Favorable than Before

7. AGE: 18-20 21-24 25-34 35-44 45-54 55 -64 65-Over

8. SEX: Female Male

9. OCCUPATION: _____

10. RACE: Black White Other

11. Did you lose income as a result of jury service? YES NO

Amount \$ _____

12. Have you ever served on jury duty before? YES NO

Appendix 9

JUROR SURVEY RESULTS, 1998-99

A Report to the Office of the Administrator for the Courts

Prepared by:

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EXECUTIVE SUMMARY

The backbone of the jury system is the citizen juror. In an effort to determine what areas of the Washington State jury system can be improved, 1,329 Superior Court jurors from nine courts were administered a survey dealing with various aspects of their experience serving on a jury. The results from this survey along with the jurors written comments are reported in the pages herein.

The results show that jurors have a very positive impression of the jury system. On a scale of one-to-ten, with ten being highest, jurors rated the functioning of the jury system at over an 8. Additionally, well over 90% of the jurors said they would report for jury service if summoned again in one year.

Jurors did report some problems encountered during their service. The most complaints were raised about the time they had to spend waiting, parking, and the act that jury service interfered with their work. On the other hand, very few jurors listed the amount they were compensated for jury service, childcare issues or personal safety as problems.

While most of the jurors missed work to serve on the jury, a majority of these jurors were paid by their employers and had his or her support for their jury service. Moreover, jurors who were paid and/or had their employer's support gave the jury system high ratings and were extremely likely to serve again when summoned.

Jurors also indicated that they prefer being active participants in the trial process than merely passive listeners. When given the chance, most jurors took notes and made use of written copies of jury instructions that were provided. Additionally, a majority of jurors would have posed questions to witnesses if permitted.

Appendix 10

**JUDICIAL VIEWS OF JURY REFORM
IN THE STATE OF WASHINGTON**

A Report to the Office of the Administrator for the Courts

Prepared by:

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EXECUTIVE SUMMARY

Over the last decade, states around the nation have either implemented or explored various reforms to their jury systems. One aspect of the court system that must be considered in an examination of a state's jury system is the state's judiciary. This study reports the results of surveys administered to the Superior Court, District Court, and Municipal Court judges in the State of Washington regarding a number of possible reforms to the jury system.

The results indicate that the judges believe that the system is working well, but can be improved. A majority of judges believe the following items would improve the workings of the criminal justice system:

Providing written copies of jury instructions to jurors for use in deliberations

Permitting note taking by jurors.

Allowing jurors to ask questions of witnesses through the trial judge.

Instructing jurors on the law several times during the course of a trial.

Increasing the pay of jurors.

Providing child care for jurors.

Having court staff make phone calls to jurors the day before they are scheduled to report for jury duty.

Issuing citations to citizens who fail to report to jury service on more than two occasions.

Two items that the judges were strongly opposed to deserve special mention. A vast majority of judges were opposed to the elimination of peremptory challenges and the use of non-unanimous verdicts in criminal trials.

The judges appeared to have given a great deal of consideration to the survey. Their responses indicate that they favor minor changes to the jury system, but in all, they believe the system is working well.

Appendix 11

(For Recommendation 11)