

NATIONAL CENTER FOR STATE COURTS
Court Services Division

**ASSESSMENT OF JURY OPERATIONS AND PROCEDURES
FOR HIGH PROFILE AND LENGTHY TRIALS IN THE
EIGHTH JUDICIAL DISTRICT COURT OF NEVADA**

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INTRODUCTION

Efforts to improve jury service operations and procedures have been a key focus of recent court improvement initiatives in both state and federal courts across the country. Some of these efforts have been driven by renewed recognition of the unique role of trial by jury in the American justice system, especially its contribution to public trust and confidence in the courts. This, in turn, has prompted many courts to expand their view of the citizens who serve as trial jurors from functional components of court operations to customers deserving of respectful and dignified treatment and support. At the same time, contemporary economic conditions have placed increasing pressure on courts to improve the efficiency and effectiveness of internal operations. Although jury trials are a relatively rare event in contemporary courts, they use a disproportionate share of resources when they do take place. High profile and extremely lengthy trials (e.g., those exceeding 15 days) occur even more infrequently, but their impact on court operations is commensurately greater in both quantitative and qualitative ways. As a result, attention to jury trial operations and procedures in high profile and lengthy trials is an important component of any court improvement effort.

To address concerns of this type, the Eighth Judicial District Court in Clark County, Nevada contracted with the National Center for State Courts (NCSC) for a review of its existing procedures for managing high profile and lengthy trials as well as its general jury management operations. The contract was performed by Paula L. Hannaford-Agor, Director of the NCSC Center for Jury Studies, who visited the Eighth Judicial District Court on July 14-17, 2007. During her visit, she met with several judges to discuss their experience with high profile and lengthy trials; she reviewed jury management reports and compiled statistics on jury usage; and she met with representatives from the Clerk of Court and the Court Administrator's Offices to better understand the Court's caseflow management practices and its effect on jury operations. This report describes Ms. Hannaford-Agor's observations concerning jury operations and procedures in high profile and lengthy trials and offers recommendations and supporting documentation for possible improvements.

RECENT JURY IMPROVEMENTS IN THE EIGHTH JUDICIAL DISTRICT COURT

Before turning to the primary focus of this review, it is important to recognize the many improvements that the Eighth Judicial District Court has already made in its jury operations and management procedures in recent years. First and foremost, the completion of the Regional Justice Center offers much improved facilities for the Office of Jury Services. The new Jury Assembly Room is spacious and clean with comfortable seating and appropriate diversions (television, games, etc.) for waiting jurors. By all accounts, this is a significant improvement over the jury facilities in the previous courthouse. The only deficiency noted in the jury facilities was the lack of Internet access for citizens waiting in the Jury Assembly Room. Although wireless Internet access is available at no cost to users throughout the courthouse, including individual courtrooms, inexplicably the signal does not extend to the Jury Assembly Room on the third floor. As discussed later in this report, a substantial proportion of citizens summonsed for jury service are ultimately released without participating in jury selection

for a specific trial, spending their entire day of service in the Jury Assembly Room.¹ For many, the ability to work productively using the Court's Internet access would be a welcome amenity.

In addition to the new facilities, the Office of Jury Services also purchased and implemented a new jury automation system from ACS Government Systems, which has greatly increased the efficiency of jury operations. Specifically, the new automation system now issues summonses for a date certain, eliminating the need for jury staff to individually establish a service date for each citizen as they call to verify their qualification status. The ACS automation system also features an Interactive Voice Response (IVR) system for qualification purposes. Prospective jurors call the number indicated on the summons to verify their qualification status and ability to serve on the date summonsed. Jury staff only interact with jurors who need additional information or assistance.

The Eighth Judicial District Court has also implemented a number of trial innovations such as the Short Trial program, which first developed as an alternative to mandatory arbitration for lower value (e.g., amount in controversy less than \$50,000) civil cases. The Short Trial program features a set of procedures for a jury trial with restrictions on the number of live witnesses and streamlined evidence. A jury of four to eight jurors is selected from an initial panel of 12 to 20; trials typically last only one day. Another innovation is the development of the High Profile Trial Protocol, a planning guide for judges and court staff to formulate detailed preparations to manage high profile trials. The Protocol has been used successfully in a number of cases including *State v. Darren Roy Mack*. Finally, these local improvements have taken place against a background of statewide jury improvements including a number of procedural revisions to facilitate juror comprehension and performance.²

CHALLENGES FROM HIGH PROFILE AND LENGTHY TRIALS

In terms of jury management, high profile and lengthy trials pose a number of challenges. First and foremost is the need to summons very large panels of jurors for jury selection from which to identify a sufficient number of jurors who are able to serve for extended periods of time. Panels exceeding 100 prospective jurors are relatively common in these cases, and some trials have involved panels of up to 500 prospective jurors. This large volume of jurors places great demands on the jury facilities and on the staff of the Office of Jury Services.

The voir dire in these cases is typically quite lengthy, particularly insofar that many of the Eighth Judicial District Court judges employ case-specific jury questionnaires to facilitate the voir dire process. In these cases, the panel of prospective

¹ Until they are selected to participate in jury selection for a particular trial, prospective jurors are restricted from leaving the Jury Assembly Room due to the close proximity of the District Attorney's Victim Assistance Unit, adjacent to the Jury Services area, and the concern that prospective jurors might overhear potentially prejudicial *ex parte* information.

² JURY IMPROVEMENT COMMISSION, REPORT OF THE SUPREME COURT OF NEVADA (October 2002).

jurors reports to the courthouse and is given a copy of the questionnaire to complete.³ The questionnaires typically include 20 to 50 pages of questions. Upon completion, jury staff collect the questionnaires, make three (or more, depending on the number of litigants) copies of each questionnaire, and deliver them to the trial judge for distribution to the parties. The jurors are ordered to return to the courthouse for oral voir dire at a future date (usually one to three weeks later). During the intervening time, the judge and attorneys review the questionnaires and make preliminary decisions about the suitability of jurors. Some jurors may be removed for cause based on their written responses on the questionnaires and excused from returning for oral voir dire. All of the judges interviewed during the NCSC site visit reported that they restrict oral voir dire to topics that were not specifically raised by questionnaires. A great deal of the oral voir dire is focused on screening for jurors' availability during the estimated trial period and their financial ability to serve for an extended period of time.

A Proposal for Time Screening in High Profile and Lengthy Trials

The heavy reliance on case-specific questionnaires in high profile and lengthy trials is a unique feature of the Eighth Judicial District Court. From the perspective of the trial judge and attorneys, this approach is quite useful in terms of reducing the amount of time needed to impanel a jury. From a jury management perspective, however, it is a logistically cumbersome process and one that does not use jurors to optimal advantage. For example, only a small proportion of prospective jurors would be capable of serving in a trial lasting more than four weeks due to preexisting time constraints and potential financial hardship for jurors whose employers do not pay compensation for jury service. Jurors summonsed for a high profile or lengthy trial must complete the questionnaire on one day and return for a second (or more) days of oral voir dire, but the vast majority will ultimately be excused from service on that trial. Yet while they are under consideration for the high profile or lengthy trial, those jurors are ineligible for selection in "routine" trials of shorter duration, for which many would be available to serve.

In response to similar concerns, courts in other jurisdictions have developed standardized procedures for the jury commissioner to conduct a preliminary time or financial hardship screening. The resulting panel of prospective jurors sent to the courtroom for voir dire consists only of individuals who are reasonably likely to be available to serve if selected. In the Superior Court of Los Angeles County, California, for example, the Office of Jury Services routinely collects information about employer pay policies from jurors as part of the qualification process. When jurors report for service, the jury manager is able to identify those jurors whose employers pay compensation for jury service and for how long (e.g., up to 10 days, up to 15 days, up to 1 month, unlimited).⁴ When the jury office receives a request for a "long cause" panel

³ A review of jury panel activity for the first six months of 2008 found that 5.8 percent of the jury panels summonsed employed juror questionnaires for voir dire. The average (mean) panel size for trials employing juror questionnaires was 142 jurors compared to 40 jurors for trials that did not use a questionnaire.

⁴ In 2004, the NCSC conducted a statewide study of juror financial hardship on behalf of the Administrative Office of the California Courts. Paula L. Hannaford-Agor, *Increasing the Jury Pool: Impact of the Employer tax Credit* (August 2004) (available at <http://www.ncsconline.org/juries/cataxtep.pdf>). The study found that 82 percent of jurors reporting for

(estimated trial length exceeds 15 days),⁵ the jury automation system is programmed to randomly select only from those jurors who are able to serve for the anticipated trial length based on the employer pay policy.⁶ At the request of the trial judge, and with consent by the parties, the jury commissioner can also conduct additional screening based on occupation (e.g., fulltime student, or self-employed person) or preexisting time constraints (e.g., prepaid vacation or business obligations, medical procedures, etc.). The Superior Courts of San Diego and Orange Counties in California have time screening procedures similar to that of Los Angeles, although neither of those programs requires that the trial attorneys consent to the prescreened panel.⁷

The Eighth Judicial District Court should consider a variation on the time screening procedures employed by these courts as a way to reduce the logistical difficulty involved in administering case-specific questionnaires to large jury panels and to use the existing jury pools more efficiently. To do so, the Court would have to develop a set of objective criteria related to financial hardship and detailed screening procedures for use by the Jury Commissioner in these types of cases.⁸ The Jury Commissioner does not currently collect detailed information about employer compensation policies from individual jurors as part of the qualification process, but it would be possible to administer a survey asking the same information from jurors as they report for service in the morning.

Under such a program, the jury panel for the high profile or lengthy trial would be randomly selected from among those jurors who meet the defined criteria. Case-specific juror questionnaires would then be administered only to the time-qualified panelists;

service were employed. Of those who were employed, nearly two-thirds (62 percent) worked for employers that provide compensation to employees during jury service, but only 25 percent of those employers continued compensation for more than 10 days. Thus, in a randomly selected jury pool consisting of 100 individuals, only 13 jurors would be able to serve on a trial exceeding 10 days time.

⁵ To initiate the time screening, the panel request must include a stipulation by the trial attorneys consenting to the time screening procedures and a written order from the trial judge authorizing the use of the prescreening procedures.

⁶ If the number of such jurors in the jury pool on that day is insufficient to complete the panel, all of the eligible jurors are told to report for jury selection on a later date, and the jury office continues to screen jurors on subsequent days until the trial panel is complete.

⁷ The San Diego program came under a legal challenge in *State v. Manjit Basuta*, 94 Cal. App. 4th 370 (2001) in which the defendant argued that the prescreening procedure was unconstitutional because the process was not conducted in public, the defendant and counsel were not present and had no opportunity to be heard or object, and no record was kept for review. The California Court of Appeal ruled that the trial judge has great discretion in making decisions concerning jurors' requests to be excused for hardship. Moreover, it ruled that hardship screening of the jury is not a crucial stage of the trial such that it required the absolute presence of the defendant and counsel. However, the court did find that the jury commissioner's failure to preserve a record of the number of jurors initially screened, the number of jurors excused for hardship, and the specific reason for excusing the juror, violated California legal provisions requiring that requests to be excused from jury service be in writing, be signed by the juror, and be placed on the court's record. *Id.* at 396 (citing CAL. C. CIV. PROC. §218 and CAL. R. CT. 860(c)).

⁸ A committee consisting of judges who most frequently have lengthy trials (e.g., Judges Earl, Johnson, and Williams who currently manage the construction defect cases) and the Jury Commissioner would be best situated to develop prescreening criteria and procedures that would be acceptable to themselves and to others on the trial bench.

jurors who were not time-qualified would remain eligible for service in other trials. Distributing the time qualification survey to prospective jurors on a pilot basis for a limited period of time would allow the Court to estimate the proportion of jurors who would be available for trials of varying duration. As a result, a fewer number of prospective jurors would be burdened with the task of completing the case-specific juror questionnaires and returning on a subsequent date for oral voir dire. Copying costs for the questionnaires would also be commensurately reduced. Finally, the trial judge and attorneys would be able to use the time that they would otherwise spend screening for time constraints and financial hardship to focus on substantive issues. This would likely reduce the overall amount of time needed to impanel a jury, while permitting somewhat more time to focus the voir dire examination on substantive issues, thus improving the confidence of the trial attorneys in the fairness and impartiality of the jurors who are ultimately impaneled.

Other Issues Related to Voir Dire and Trial Procedures

The High Profile and Lengthy Trial Protocol serves as a standardized template for addressing issues related to media relations, court security, and jury management. The judges who have used the Protocol uniformly reported that they found it to be helpful, although most of them were unfamiliar with *Managing Notorious Trials*, one of the publications on which the Protocol is based.⁹ By all accounts, the media relations and court security aspects of high profile trial management have become almost routine in the Eighth Judicial District Court. For example, it is common practice to assign another judge to serve as the “media judge” in high profile trials to coordinate logistical arrangements for the media and to serve as a single point of contact for questions from media personnel about court procedures or other substantive issues during the trial.

Only one concern arose with respect to court security, and that involved jury trials that take place in the Complex Litigation Center (CLC) located four blocks from the Regional Justice Center on South Seventh Street. Security personnel are not routinely stationed at the CLC and visitors are able to enter the building and take the elevators to the second floor where the courtroom and judicial chambers are located before encountering any court staff. The cases assigned to the CLC for trial are civil and thus do not typically involve the heightened emotions characteristic of criminal and family court trials that are the primary concern of contemporary court security. Nevertheless, some greater level of security should be in place at the CLC to protect the judge and court staff assigned to that location as well as counsel, litigants, and jurors who may be in the building for formal court proceedings. It may not be necessary to post a fulltime security guard at that location, but an electronic security system that would permit court staff to visually identify visitors at the building entrance before granting them access is certainly warranted.

Several of the judges interviewed by the NCSC mentioned their practice of conducting voir dire for high profile and lengthy trials in smaller “sub-panels.” In high profile trials, this prevents the possibility that the entire panel might be exposed to potentially prejudicial information disclosed by a single juror (e.g., concerning information learned from pretrial publicity). Similarly, questioning jurors individually

⁹ TIMOTHY R. MURPHY et al., *MANAGING NOTORIOUS TRIALS* (NCSC 1998).

about their ability to serve in a lengthy trial prevents jurors from learning and repeating the types of situations that result in jurors being excused for hardship. Conducting voir dire with smaller segments of the jury panel also presents an opportunity to have jurors report at staggered times during the day, thus reducing the amount of time that jurors must spend waiting their turn to be questioned. The call-in system for the jury automation is capable of supporting this approach to voir dire. To the extent that it reduces the amount of juror waiting time and the pressure on jury facilities to accommodate large numbers of jurors, the practice should be encouraged in more cases.

After the jury has been selected and impaneled, high profile and lengthy trials tend to go forward in much the same way as routine trials, except perhaps that scheduling in lengthy trials is somewhat more flexible. This flexibility (e.g., trial scheduled only Monday through Thursday, or only from 8:30 a.m. to 2 p.m.) allows the court to accommodate jurors' preexisting obligations (family vacations, holidays, business obligations, medical appointments) and to provide a predictable window of time in which attorneys can submit and argue trial motions without disrupting the trial schedule. It is extremely unusual to sequester jurors during trials or deliberations. Concern for the welfare and comfort of the jurors was raised frequently by the judges interviewed during the NCSC site visit. These judges also expressed great support for revisions to statewide statutes and court rules concerning juror note taking, juror questions to witnesses, and other techniques designed to improve juror comprehension, retention, and satisfaction.

In some respects, lengthy trials are more problematic than high profile trials in terms of the disruption to jurors' lives. At least one judge interviewed by the NCSC expressed the opinion that these trials are considerably longer than they have to be to achieve a fair and informed verdict. His views are supported by the recently published *ABA Principles for Juries and Jury Trials*, which endorses limitations on the amount of discovery, the number of issues to be addressed at trial, the number of witnesses, and the manner of presenting evidence as techniques to limit the length of jury trials.¹⁰

One technique that may be useful in limiting the length of trials is one that is commonly used in the management of mass tort cases – namely, clustering plaintiffs alleging similar claims or damages together and selecting a few representative plaintiffs from each cluster to be tried to a jury. Trials involving only a few plaintiffs (e.g., less than 12) will take considerably less time than trials involving dozens or even hundreds of parties. This technique is different from that of class certification insofar that it is a pretrial management technique rather than a legal classification.¹¹ Plaintiffs whose cases are not tried are not legally bound by the trial outcomes, but the verdicts from the first representative parties can provide a basis for the remaining parties to assess the value of other cases for settlement purposes, particularly with respect to amount of damages.

¹⁰ ABA PRINCIPLES FOR JURIES AND JURY TRIALS (2005). Principle 12(A) states “[T]he court, after consulting with the parties, should impose and enforce reasonable time limits or portions thereof.”

¹¹ See generally FEDERAL JUDICIAL CENTER, MANUAL FOR COMPLEX LITIGATION (4th ed.), § 11.63 (Structure of Trial) (2004); Paula L. Hannaford-Agor, *Comment: Federal MCL Fourth and Suggestions for State Court Management of Mass Tort Litigation* (2006) (available at <http://www.ncsconline.org/WC/Publications/MassTorts/MaTortMCLAnnotation.pdf>).

High profile and lengthy trials increasingly involve large numbers of trial exhibits and other forms of demonstrative evidence. Most of the courtrooms in the new Regional Justice Center have been configured to permit the display of exhibits in electronic form either privately to the judge and trial counsel through monitors on the bench and counsel tables, or publicly on a large screen to the jury and other spectators in the courtroom. Ironically, when these exhibits are admitted as trial evidence, they are submitted and marked in paper format, rather than electronically. One of the courtrooms toured during the NCSC site visit featured a pristinely clean bench and counsel tables, but boxes full of paper exhibits and documents stacked behind the clerk's desk. When asked how the jury might examine those materials during deliberations, the judge explained that the courtroom clerk would dig through the boxes to find any requested exhibits and bring them back to the jury. Given that a large proportion of the exhibits in these types of cases either originated as electronic documents or have been digitized for ease of storage, retrieval, and display during trial, it seems more efficient to have those exhibits submitted and marked electronically with copies of all admitted exhibits burned to a DVD and provided to the jury for deliberations.

JURY MANAGEMENT

In addition to a review of practices and procedures for high profile and lengthy trials, the Eighth Judicial District Court also requested a review of its jury operations generally. In terms of commonly employed measures of jury performance, the Court appears to function comparably to or better than its state court peers in Nevada and elsewhere in the United States. See Appendix A for a table comparing the Eighth Judicial District Court with district courts in Nevada and general jurisdiction courts in other states based on reports submitted for the NCSC *State-of-the-States Survey of Jury Improvement Efforts*. These measures also compare favorably to other urban courts, which often experience lower performance measures (e.g., jury yield) than their suburban and rural peers. The new jury automation system may be a factor insofar that it supports many recommended practices such as using the U.S. Postal Service National-Change-of-Address database to update addresses on the master jury list and issuing second summonses for jurors who fail to appear on their service date. These types of practices can greatly improve system efficiency by minimizing the number of jury summonses that must be mailed to secure an adequate number of jurors from which to impanel juries.

The ACS system is also capable of generating some very basic management reports, but the Jury Commissioner expressed reservations about the accuracy of those reports and their usefulness for informing management decision-making. In fact, this is a long-standing complaint that has never been satisfactorily addressed by the vendor. In 2002, the former Director of the NCSC Center for Jury Studies worked with the Eighth Judicial District Court and ACS Government Solutions to modify some of these management reporting functions, but these changes were apparently not satisfactorily implemented.¹² The absence of accurate and meaningful reports about jury operations severely hampers the ability of the Jury Commissioner to make informed decisions about

¹² See Letter from G. Thomas Munsterman to Charles J. Short, dated January 3, 2003. The NCSC is aware of other courts that have had similar complaints, many of which have developed their own personalized management reports using Christal Reports software to extract information from the ACS database.

the number of jurors to summons on any given day. It also prevents her from communicating information about the effectiveness of jury operations to the Chief Judge and the Office of Court Administration. Given the inability or unwillingness of ACS to address those concerns, it is strongly recommended that the Eighth Judicial District Court use Christal Reports or similar software to extract data from the ACS database and develop its own personalized jury management reports. At a minimum, these reports should document periodic jury yield and juror utilization information with a sufficient level of detail to permit meaningful assessments of jury system effectiveness.

Juror Utilization

Although jury yield in the Eighth Judicial District Court is comparatively strong, the same cannot be said for another key measure of jury system performance – juror utilization. Juror utilization is the measure of how efficiently the court uses the jurors who actually report to the courthouse for jury service. It is an important measure insofar that it affects not only the operational costs of the jury system but also citizens' experience of jury service and thus their perceptions of the local justice system.

Operational costs obviously include the direct costs (juror fees and mileage reimbursements) associated with having citizens report for jury service. These are actually quite modest in Nevada insofar that citizens are not eligible to receive the \$40 juror fee until either the third day of service or their first day as a sworn juror, whichever comes first. It is important to recognize that jury operations are subsidized to a very large extent by the local community. Juror fees and mileage reimbursements in Nevada and elsewhere do not come close to meeting the average per capita income for local citizens. Citizens, or their employers who provide compensation to their employees who are summonsed for jury service, absorb the costs of lost income (jurors) and lost wages and productivity. (employers). Although these costs are broadly diffused through local community, they are substantial and very real nonetheless. Also included in the operational costs are the administrative costs expended by the court in summoning and qualifying the jurors who report for service.

Finally, there are also significant indirect costs in terms of public trust and confidence in the justice system. The NCSC estimates that between 4 and 6 percent of the adult American population reports to state and federal courthouses every year for jury service. This cohort is larger by far than any other cohort of court users (litigants, witnesses, attorneys, and court employees including judges). Ironically, citizens who participate in a meaningful way in jury service are the only cohort of court users whose views of the American justice system is more likely to improve as a result of their experience; all other cohorts report more negative views of the justice system. There is an important caveat with respect to the impact of jury service on citizens' perceptions of the justice system: they have to have participated in jury service *in a meaningful way* – that is, they have to have been sent to a courtroom and questioned as one of the panelists. Citizens who do not have this positive experience report decreased satisfaction and confidence in the justice system.

There are two primary components of juror utilization: (1) the percentage of jurors who are sent to a courtroom for jury selection; and (2) the percentage of jurors sent to courtrooms who are actually needed to impanel a jury. The NCSC recommends that

90 percent or more of citizens reporting for jury service be selected for a jury panel and sent to a courtroom for voir dire and that at least 90 percent of those panelists be questioned during voir dire. Thus, on average, overall juror utilization should meet or exceed 81 percent of jurors reporting for service. This standard provides a sufficient number of “extra jurors” to satisfy unanticipated demands for jurors without summoning an excessively large jury pool.

The NCSC recommended standards for juror utilization are ambitious, but achievable. On a statewide basis, for example, the Pennsylvania Court of Common Pleas boasted an impressive 81 percent of jurors sent to courtrooms for voir dire in 2006. Individually, 42 out of 67 counties exceeded the NCSC recommended standard of 90 percent.¹³ In 2007, the U.S. District Courts collectively sent 87 percent of jurors to courtrooms for voir dire. Again, more than half of the individual federal district courts met or exceeded the NCSC recommended standards.¹⁴

Unfortunately, juror utilization for the Eighth Judicial District Court does not currently meet this standard. Based on a review of jury panel activity for the first six months of 2008, only 64 percent of jury panels that were scheduled for trial actually began jury selection on that day. The majority (58%) of the cancelled panels were called off due to a day-of-trial plea agreement or settlement; nearly one-fourth (23%) of the trials were continued. As a result, more than one-third of the jurors who reported for service never left the Jury Assembly Room.

There was no apparent pattern to the trial cancellation rate. For example, civil trials were no more likely to settle than criminal trials to accept a plea agreement. Nor did cancellation rates differ significantly according to the day of the week. There was also no predictability in terms of the proportion of trials cancelled on any given day; all of the trials were cancelled for 9 percent of the dates that trials were scheduled, but all of the trials went forward on 23 percent of those dates. There was, however, a marked difference in cancellation rates according to judicial department, which ranged from a low of 41 percent to a high of 80 percent.

With respect to panel size, the general policy of the Office of Jury Services is to randomly select a panel of 30 to 35 prospective jurors for civil trials and 40 to 45 prospective jurors for criminal trials. However, the Jury Commissioner expressed concern that many of the judicial departments had been requesting increasingly larger jury panels, and she questioned whether the larger panels were always needed to select juries. On average, civil jury panels consisted of 42 prospective jurors and criminal jury

¹³ ZYGMONT PINES, 2006 CASELOAD STATISTICS OF THE UNIFIED JUDICIAL SYSTEM OF PENNSYLVANIA 76-82. Pennsylvania does not report the percentage of jurors questioned (used) during voir dire.

¹⁴ JAMES C. DUFF, JUDICIAL BUSINESS OF THE UNITED STATES COURTS Table J-2 (2007).

panels consisted of 49 prospective jurors,¹⁵ but again there was significant variation in panel size according to judicial department.¹⁶

The NCSC attempted to assess the second component of juror utilization (percentage of jurors not reached), but found that this information was not being routinely communicated from the courtrooms to the Office of Jury Services.¹⁷ Because this is an essential component of juror utilization, it will be necessary to implement procedures and train the courtroom clerks to ensure that documentation concerning panel usage is communicated to the Office of Jury Services and entered onto the jury automation system.¹⁸ If the Jury Commissioner's concerns about excessive panel size are verified, the Eighth Judicial District Court should also establish standard panel sizes for civil and criminal jury trials. Requests for a larger panel should require authorization from the Chief Judge.

Without information on the percentage of jurors who are sent to a courtroom for voir dire, but ultimately not used, it is impossible to determine the actual juror utilization rate. However, if we assume that the percentage of jurors used (questioned during voir dire) meets the NCSC recommended standard of at least 90 percent,¹⁹ we can safely estimate that the overall juror utilization rate is not higher than 58 percent, substantially lower than the overall 81 percent NCSC recommended standard. Based on this information, it is possible to estimate the costs to the court and local community incurred as a result of poor juror utilization as follows:

- Approximately 37,670 citizens report for jury service to the Regional Justice Center each year. Of those, approximately 24,109 (64%) are sent to a courtroom for voir dire. Of those sent to a courtroom, we assume that at least 21,698 (90%) are questioned in the process of impaneling a jury. To meet NCSC recommended standards, the Eighth Judicial District Court only needs 26,788 citizens to report for service. The difference between the number of citizens who actually report and the number that is needed is 10,882 (29%);
- Juror fees are only paid to jurors beginning on the third day of service or upon selection as a trial juror, whichever comes first. Because the Eighth Judicial District Court has a one day or one trial term of service, jurors who are not used on the first day are released from service and do not receive juror fees. Thus the cost of juror

¹⁵ Jury panels for trials in which a case-specific juror questionnaire was administered are excluded from these averages. Thus, the figures more likely reflect the typical panel size for "routine" trials, rather than those that would merit a larger panel (e.g., high profile, death penalty, and lengthy trials).

¹⁶ Civil panels ranged from 30 to 88 prospective jurors and criminal panels ranged from 34 to 61 prospective jurors.

¹⁷ The judicial departments routinely send paperwork back to the Office of Jury Services documenting which jurors were impaneled, but it does not indicate the disposition (removed for cause, removed by peremptory challenge, excused for hardship, not used) of those jurors who were not ultimately impaneled.

¹⁸ It may be possible to provide limited access to the courtroom clerks to enter the information directly from the courtroom. During the NCSC site visit, the Jury Commissioner indicated her intent to pursue this possibility with ACS Government Systems.

¹⁹ Given the mediocre performance on the first component of the juror utilization measure, this is a generous assumption.

fees for unused jurors is \$0. Mileage is paid to jurors beginning on the first day of service, but only to those who live further than 30 miles from the Regional Justice Center. We can assume that these costs are negligible.

- According to the U.S. Census Bureau, the per capita²⁰ income for residents of Clark County was \$26,735 in 2006 (the most recent data available). The lost income incurred (or, alternatively, the lost wages paid by employers that compensate employees while on jury service²¹) by the 10,882 jurors who reported for jury service, but were ultimately not needed to select juries, was \$1,119,008.²²
- Employers of the estimated 4,997 fulltime employed jurors²³ incurred approximately \$2,756,267 in lost productivity costs due to the absence of those employees from the workforce for the day.²⁴
- A common measure of administrative costs is cost per juror reporting for service. Based on the 2007-08 fiscal budget for the Office of Jury Services, the administrative cost per juror reporting for service is \$25.58.²⁵ The estimated administrative cost to the Eighth Judicial District Court for excess jurors is \$278,340.
- The total quantifiable costs of substandard juror utilization are \$4,153,615 per year. These costs are distributed to the Eighth Judicial District Court and its taxpayers (7%) and to its citizens and its business community (93%).
- Some costs of poor juror utilization are not quantifiable in monetary terms. These include the opportunity costs for jurors who are not employed, but who would have spent their time engaged in other activities (e.g., childcare, education, volunteer activities, recreation). Other non-quantifiable costs include the decrease in public

²⁰ Per capita income is the average income across the entire population, regardless of the proportion of the population that is employed.

²¹ An unknown portion of jurors are employed by companies that compensate their employees while on jury service. In the 2004 NCSC study of juror financial hardship, the proportion of employers who compensate employees for jury service ranged from 43 percent to 84 percent depending on the county surveyed. This figure includes wages or salaries paid to these employees without realizing the benefit of their production for the day. Wages and salaries do not, however, include the value of benefits (e.g., insurance, Workman's Compensation, vacation or sick leave accrual) that are incurred but not paid directly to employees as wages or salaries.

²² Based on a daily per capita income of \$102.83 for a 260-day work year.

²³ $10,882 \times 46.9\%$ fulltime employment rate = 4,997.

²⁴ This figure is based on the non-farm business output for 2007 of \$137.90 per hour reported by the U.S. Department of Labor, Bureau of Labor Statistics. It assumes an 8-hour workday and also assumes that 50% of the lost productivity is made up through the substitution of other employees or by the employee when he or she returns to work from jury service.

²⁵ The NCSC has not compiled an extensive database of the administrative costs of jury operations, but anecdotal reports from numerous courts across the country suggests that they range from as low as \$5 per juror reporting to more than \$50 per juror reporting. This figure is obviously affected by the statutory number of jurors to be impaneled per trial (6 to 12 in most states) and the number of peremptory challenges available to the parties (2 to 20, depending on case type). The NCSC estimates that this administrative cost in a reasonably efficient court is \$15 to \$20 per juror reporting.

trust and confidence in the American justice system for those jurors who felt that their time was not spent effectively.

As discussed above, the major contributing factor to poor juror utilization is the proportion of jury panels that are cancelled on the day of trial due to settlements, plea agreements and trial continuances. In terms of principles of caseflow management, this is a problem related to certainty of trial. Although a trial date has been scheduled, the local legal community works under the assumption that last-minute plea agreements and settlements are acceptable on the day of trial and last-minute trial continuances are also likely to be granted. The Office of Jury Services has virtually no control over these non-trial events. Moreover, the unpredictability of these occurrences prevents the Jury Commissioner from compensating for the number of jury panels cancelled by reducing the number of jurors told to report for service. The only effective remedy is to improve the likelihood that trials will actually begin on the date scheduled.

As a remedy for day-of-trial settlements and plea agreements, there are two strategies that have been employed effectively in other jurisdictions. For civil cases, the remedy is a financial penalty assessed equally against the parties who settle the case after the date and time that jurors are told to report for service (usually noon the day before trial). The penalty is based on the size of the requested panel and the total costs to the court of having each juror report unnecessarily. In the Eighth Judicial District Court, therefore, the financial penalty assessed the parties for cancelling a 35-person jury would be \$767.40, for a 50-person panel would be \$1,279.00, and for an 80-person panel would be \$2,046.00. The amount of these types of civil assessments is not so great that it would deter a settlement on the day of trial rather than incur the trial costs (e.g., attorneys fees, other court costs), but it is large enough to serve as an effective incentive to engage in meaningful settlement negotiations in a timely manner (rather than on the courthouse steps) in those cases where settlement is a viable option.

Financial assessments are not typically available for criminal cases, but the principle of providing a significant disincentive for last-minute plea negotiations is still valid. Some jurisdictions have found that an enforced plea cut-off policy is an effective alternative. A plea cut-off policy works as follows. The court establishes a date and time as the last point in time at which a criminal defendant can accept a plea offer from the District Attorney (again, usually at a specified time the day before trial). If the plea is not accepted by that time and reported to the court, the case either proceeds to trial or the defendant must plea to the full charges in the indictment. Courts that have employed such a policy report that it serves as an incentive for both the defendant and the prosecutor to engage in meaningful plea negotiations in a timely manner. If a prosecutor fails to offer a reasonable plea agreement, he or she must be prepared to prove the charges beyond a reasonable doubt at trial or face the possibility of an acquittal or convictions on less serious charges. The defendant, in contrast, must either accept a reasonable plea offer or face the possibility of conviction on all charges at trial. Although the trial judge retains the discretion to waive the plea cut-off policy for good cause, it is critical that the policy be fairly and uniformly enforced if it is to be an effective deterrent to last-minute plea agreements.

Of course, trial judges cannot force the parties to go to trial rather than accept a last-minute plea agreement or settlement. Nor would this be a prudent policy as non-trial dispositions are much more cost-effective than jury trials. Likewise, there are often good reasons to continue a trial to a future date. The point of these types of policies is simply to offer incentives to litigants to engage in meaningful negotiations if a plea or settlement offer is reasonably possible, or to request a continuance if necessary before the day of trial. This prevents the needless disruption to the lives of jurors and their employers. By reducing the number of citizens who are told to report for jury service, the Office of Jury Services will also be in a position to summons and qualify commensurately fewer jurors, freeing up staff resources in that office to be engaged in other tasks that are currently deferred or neglected due to the demands of day-to-day operations or else deploy them to other administrative tasks within the Eighth Judicial District Court.

CONCLUSIONS

Jury operations in the Eighth Judicial District Court have undergone a tremendous number of improvements over the past decade, particularly with respect to its jury facilities and its automation. These changes have greatly improved the efficiency of the Office of Jury Services as well staff morale. In terms of overall jury management, it is functioning at or higher than comparable urban courts in the United States. The Short Trial Program and the High Profile and Lengthy Trial Protocol are also indicative of the innovative approach to court management for which the Eighth Judicial District Court is known. The NCSC noted only two discrete areas of jury operations and trial management that were functioning at less than optimal levels and makes the following recommendations to address those areas:

1. Juror questionnaires in high profile and lengthy trials are viewed by trial bench as effective tools for identifying individuals who could not serve fairly and impartially as trial jurors. But the procedure for administering those questionnaires is logistically cumbersome, time-consuming, and expensive. It produces very large panels of which only a small proportion of individuals are likely to be able to serve. The NCSC recommends that the Eighth Judicial District Court develop a procedure that the Office of Jury Services can administer to identify jurors who will be able to serve for the anticipated length of the trial. Only the time-qualified jurors will be given juror questionnaires and told to report back for oral voir dire on a future date. This will reduced the panels for high profile and lengthy trials to a more manageable size and permit the trial judge and attorneys to focus their attention on substantive issues, rather than time screening, during voir dire.
2. Approximately 58 percent of the citizens that report for jury service are actually sent to a courtroom and questioned during voir dire. This figure is substantially less than NCSC recommended standard of 81 percent. In essence, this means that the Office of Jury Services must work 40 percent harder to summon and qualify jurors than is necessary to impanel juries in the Eighth Judicial District. Because the actual costs of jury operations are so heavily subsidized by the jurors themselves and by their employers, poor juror utilization also results in substantial

costs to the community in the form of lost income, lost wages, lost productivity, and decreased public trust and confidence in the justice system. The major contributing factor to poor utilization appears to be last-minute trial cancellations due to plea agreements, settlements, and continuances. Excessive panel size may also be a factor, but additional documentation is needed before coming to a definitive conclusion. The NCSC recommends that the Eighth Judicial District Court implement policies such as plea cut-off policies and financial assessments to encourage litigants to engage in more timely negotiations to resolve cases before jurors are told to report for service.

Respectfully submitted,

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APPENDIX A: COMPARISON OF KEY JURY PERFORMANCE MEASURES

Local Court Survey



Nevada

	Eight Judicial District Court	Nevada State Courts	All State Courts
Number of Counties Represented	1	17	1,546
% of State/U.S. Population Represented	73.6	100.0	70.3
Trial Rate per 100,000 population	22.0	29.5	52.8
Estimated number of jury trials annually	404	590	148,558
% Felony	55.7	60.8	44.2
% Misdemeanor		0.2	18.5
% Civil	44.3	38.3	34.1
% Other	0.7	0.7	3.2
Estimated number of summonses mailed	150,000	182,650	31,857,797
% Adult population represented (age 18+)	11.4	12.3	15.2
Estimated number of jurors impaneled	4,761	7,080	1,526,240
% Adult population represented (age 18+)	0.0	0.5	0.7
Term of Service (% of courts with each term)			
One Day or One Trial	100.0	33.3	34.5
Two to five days (one week)			15.3
Six days to 1 month		11.1	16.2
Greater than 1 month to 6 months			26.1
Longer than 6 months		55.6	8.0
Qualification and Summoning			
% One-Step Courts	100.0	22.2	59.9
% Two-Step Courts		77.8	40.1
Juror Yield, One-Step Courts Only (average %)			
% Undeliverable	9.0	15.0	14.7
% Disqualified	6.0	2.0	8.4
% Non-response	8.0	5.0	8.7
% Exempt	0.0	10.0	7.8
% Excused	15.0	3.0	9.2
% Deferred	10.0		5.4
% Qualified and Available	62.0	65.0	45.8
Automation (% of courts)			
% Online or Interactive Voice Recognition Qualification	100.0	11.1	12.0
% Telephone Call-in Reporting System	100.0	66.7	62.2

National Center for State Courts, 2007