Jury News

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THE ETHICS OF JUROR USE

When we think about the biggest problems in contemporary jury management, a few predictable topics come immediately to mind — usually efficiency, operational integrity, and cost. Certainly jury yields are high on this list — how many summonses need to be mailed to secure a sufficient number of warm bodies from which to select juries? How much staff time is needed to process the paperwork and to supervise and orient the jurors who report for service. Is the automation working correctly to select citizens randomly from the master jury list.

Only after these valid, and critically important, issues are attended to do courts turn to the issue of the treatment of jurors. Are the facilities reasonably clean and comfortable? Do jurors have reasonable access to quiet work areas or diversions such as televisions, reading materials, or games and puzzles. What about access to food and beverages, or at least decent vending machines? All too often, the ethical treatment of jurors focuses too narrowly on these mundane "care and feeding" issues. I want to suggest that this is too narrow a view. Effective juror use, which is usually associated with efficient court operations, has much more to do with the ethical treatment of jurors than with efficiency.

First, what do I mean by effective juror use? In a nutshell, it means ordering only as many citizens to report for service as is realistically needed to impanel juries. And how many is that? Well, the actual number will depend on a variety of things, but typically a jury panel must have enough prospective jurors to cover the jurors, alternates, peremptory challenges, challenges for cause, people excused for hardship or other reasons, and possibly one or two more just in case a couple of prospective jurors fail to appear for service. Accuracy on the demand side of this equation requires that we know all of the pertinent details about all of the jury trials scheduled (e.g., case type, estimated length of trial) and that all trials would begin as scheduled, with no last minute settlements or plea agreements. In a perfectly efficient system, a court would be able to predict both the appropriate panel size and the number of anticipated trials with absolute accuracy, so that only the minimum number of citizens would be inconvenienced.

The problem, of course, is that no one operates in a perfect system, so the inclination is to err on the side of too many jurors. The result is excessively large jury panels from which only a handful of people are questioned and sworn as trial jurors. Invariably, some trials are cancelled or postponed, so citizens who reported for service are never sent to a courtroom for jury selection. Of course, for all of those unused jurors, the jury staff has already done a phenomenal amount of work — processing qualification questionnaires, printing and posting summonses, conducting orientation, etc. All of those unused jurors represent substantial operational costs, not to mention juror fees, that could have been avoided.

But what do I mean by the "ethics" of juror use. Usually when we think of ethics in the context of the justice system, we refer to the judicial canons or professional conduct rules for lawyers. But on this topic, I prefer to think in terms of a conceptual model that was developed by Rushworth Kidder, who founded the Institute for Global Ethics. Kidder outlined six fundamental characteristics of "ethical behavior": responsibility, honesty, fairness, respect, compassion, and moral courage. If any of these ethical characteristics is missing, the ethical quality of the behavior is substantially compromised. For example, it is difficult to characterize dishonest behavior as ethical, even if the dishonest behavior was responsible, fair, respectful, compassionate, and morally courageous.

In the context of jury service, we are used to thinking about ethical behavior as a civic obligation that citizens owe their communities to uphold our democratic form of government. By applying Kidder's model, we say that jurors should be responsible (e.g., by listening attentively to the evidence), honest during voir dire about their ability to decide fairly and impartially, fair to the litigants, respectful to the court and to the judge's authority to

dictate the governing law, compassionate (especially to each other during contentious deliberations), and morally courageous, especially if it requires them to return a correct, but unpopular, verdict.

Courts have a reciprocal obligation to treat citizen jurors in ethically appropriate ways. But juror use, perhaps because it is more often associated with the monetary costs of jury operations than with the treatment of jurors, is unfortunately one of the areas of contemporary court management that all too frequently violates these ethical principles. Certainly, poor juror use does not make responsible use of jurors' time. In a word, it is wasteful — and the fact that the costs of this waste are borne most heavily by the jurors, their employers, and their families is no excuse. Similarly, it is dishonest to jurors. They are told that their service is needed to try cases. Yet when courts routinely over-summon jurors, knowing that far more will report for service than is actually necessary, can it be characterized as anything other than dishonest? It is certainly not fair to jurors or to their families, employers, or communities. It has no compassion for the unnecessary burdens imposed on unused jurors. And to the extent that judges, court administrators, lawyers and litigants fail to call themselves to account for poor juror use, it shows a lack of courage to fix the problem at its root.

So how do courts begin to practice effective — that is, ethically defensible — juror use. There are some recognized standards for juror use that set the baseline for reasonably ethical treatment of jurors' time without compromising obligations to other equally important values in court operations, especially the fair, impartial, and efficient disposition of cases. For example, the size of the panel sent to a courtroom for jury selection should be large enough to select a fair and impartial jury, but with fewer than 10% of the jurors left unreached or unchallenged. Courts that wish to assess their current jury operations can do so online with the Effective Use of Jurors measure (Measure 8) for CourTools at http://www.courtools.org.

In late 2002, the Superior Court in Contra Costa County, California implemented a program to reduce the size of jury panels by 25% countywide. In the first 10 weeks of the program, the Court summonsed an estimated 1,000 fewer people each week. Certainly, the Court experienced significant benefits in terms in reduced costs — nearly $25,000 in direct savings plus an additional $23,000 savings for staffing expenses in just 10 weeks! But the real benefit of the program was realized by the citizens of Contra Costa County. On an annual basis, approximately 10,000 fewer citizens (roughly 1.4% of the adult population) did not have their lives interrupted by a wasted day sitting in the jury assembly room or watching others be questioned for voir dire. As importantly, those citizens who were summonsed were far more likely to have the positive experience of serving as a trial juror or at least participating in a meaningful way in jury selection. Florida has also focused increased attention on juror use and panel sizes, issuing a report in 2004 with recommended panel size guidelines to be implemented statewide by Supreme Court Rule.

The voir dire attendance rate is another aspect of juror use that many courts could improve. The NCSC standard is that 90% or more of the jurors who report for service should be sent to a courtroom for voir dire. To be able to meet this standard, courts must get two things right: they must summons the right number of jurors and all trials must start on schedule. Both pretrial management and communication between the courtrooms and the jury office must be very effective if jury managers are to have accurate information to be able to tell jurors not to report if a trial is cancelled or rescheduled.

The latter is perhaps the hardest nut to crack because it requires a subtle, but fundamental, change in how many judges perceive jurors' role in the American justice system. Namely, it must no longer be acceptable to require citizens to report for jury service as a routine case management technique to force litigants to decide to plea/settle or to go to trial. Instead, the expectation must be that citizens report for jury service to try cases in which the litigants have already made that choice. Only by holding themselves and the litigants to practices consistent with that view will juror use be practiced in a way that upholds the ethical integrity of the court system and enhances community respect for and confidence in the justice system.