

An Overview of Contemporary Jury System Management

May, 2011
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Introduction

Contemporary jury system management is a complex area of court operations. Although jury operations are often viewed as an isolated trial support activity, in reality jury operations both affect and are affected by a number of other areas of court operations including pretrial management, fiscal management, technology support, facilities management, and public outreach and education. As such, the relative effectiveness of a court's jury operations can act as a lens through which court administrators can assess the effectiveness of court operations generally.

As a preliminary matter, it is important to recognize the distinction between jury operations and jury system management. Jury operations focus primarily on the day-to-day tasks involved in summoning, qualification, orientation, and what is often referred to as "the care and feeding of jurors." The types of questions that arise in jury operations tend to involve a very specific, but highly limited, set of issues: when do the jury summonses for next month need to be mailed? Who is responsible for reviewing the juror qualification questionnaires and entering the jurors' information into the jury automation system? How long will the juror orientation take before jury panels are available to send to courtrooms for jury selection? Jury system management, in contrast, focuses on how well the jury operations area serves the needs of the court, what its strengths and weaknesses are, how the strengths might be leveraged to support other areas of court operations, and what strategies might be employed to address any weaknesses. To borrow a familiar analogy, jury operations focuses mainly on the trees, but the perspective of jury system management must encompass the entire forest including the myriad factors – soil quality, rainfall, undergrowth management, fire hazards – that can either support or undermine the health of the individual trees. This summary, therefore, employs this broader focus on jury system management.

A well-run jury system is one that achieves four key objectives:

1. Secures an adequate number of prospective jurors from which to select juries;
2. Ensures that the jury pool reflects a fair cross section of the community;
3. Manages court resources, including jurors' time and talents, efficiently; and
4. Treats jurors with dignity and respect.

These objectives are co-equal in importance, albeit for different reasons. The first objective serves a purely practical function: without a sufficient number of jurors from which to select juries, trials cannot take place at all. The second objective, in contrast, is a legal mandate specifying minimal criteria for the composition of a fair and impartial jury. The third objective is one of system efficiency, and the fourth relates to public trust and confidence in the justice system. Fortunately for court administrators, in addition to being co-equal in importance, these four objectives are heavily interdependent. A jury system that experiences difficulty securing an adequate number of prospective jurors, for example, is one that often fails to secure a demographically representative jury pool, is by definition less efficient, and frequently treats its jurors poorly overall. In contrast, a well-managed and efficient jury system

generally treats its jurors well while meeting the court's demand for jurors and guaranteeing litigants' rights to juries selected from a representative jury pool.

This summary of contemporary jury system management provides detailed descriptions of each of these four objectives including historical background about when and how each objective became recognized as a key component of an effective jury system. It also describes applicable performance measures and institutional standards, current challenges in effective jury management, proven solutions for those problems, and references to additional resources. An important note regarding terminology, this monograph employs the term "juror" to refer to individuals who have been summoned for jury service, regardless of whether they are ultimately impaneled as trial juror. Following the conclusion of this monograph are additional references and resources available from the National Center for State Courts (NCSC) Center for Jury Studies to assist court managers explore more detailed areas of these topics.

Securing an Adequate Number of Prospective Jurors

The first objective of effective jury system management is to secure an adequate number of prospective jurors from which to select juries. This is by far the oldest objective, dating in essence to the Magna Charta, the legal charter guaranteeing the right to trial by jury to English freemen in 1215.¹ In Medieval England, a jury was composed of 12, 24, or 36 individuals depending on the severity of the offenses charged. The trial could not take place unless the requisite quorum was present to serve as jurors. Today, jury managers face the same challenge of making reliable estimates about the number of qualified jurors that will be needed to impanel juries and extrapolating from that information the number of jury summonses to mail to secure that many jurors. Because trials cannot take place if too few jurors are available on the day of trial, jury managers tend to err on the side of over-summoning jurors.

Qualified and available jurors

“Jury yield” is the term used to describe the number of jurors who are qualified and available for jury service on the date summoned expressed as a proportion of the number of jury summonses mailed. The majority of state trial courts (58%) operate their jury systems as a 1-step qualification and summoning process.² That is, courts randomly select names from a list of prospective jurors and send them a combined jury summons ordering the person to appear for jury service on a given date and a qualification questionnaire to determine if the person is statutorily qualified for jury service in the jurisdiction. If, after reviewing the juror’s responses to the questionnaire, the court determines that the person is not qualified for jury service or is otherwise exempt or excused from service, the court sends a second mailing informing the person that he/she should not report to the courthouse on the summons date. The formula for calculating jury yield in a 1-step jury process is as follows:

$$\text{Jury Yield} = \left[\frac{\# \text{ qualified and available for service}}{\# \text{ of summonses mailed}} \right] \times 100$$

Other courts operate a 2-step process in which the court randomly selects names from a list of prospective jurors and sends a qualification questionnaire to determine if the person is statutorily qualified for jury service. If so, the person is placed on a “qualified juror list.” As needed, the court then randomly selects jurors from the qualified juror list to appear for jury service on a given date. Two-step courts have two types of jury yield: the qualification yield (the number of persons who are qualified for jury service expressed as a proportion of the number of qualification questionnaires mailed) and the summoning yield (the number of qualified jurors who are available for jury service expressed as a proportion of jury summonses mailed). The product of the qualification yield and the summoning yield is the overall jury yield. The formula for calculating jury yield in a 2-step jury process is as follows:

¹ “No freeman shall be captured or imprisoned or disseised or outlawed or exiled or in any way destroyed, nor will we go against him or send against him, except by the lawful judgment of his peers or by the law of the land.”

² GREGORY E. MIZE, PAULA HANNAFORD-AGOR & NICOLE L. WATERS, THE STATE-OF-THE-STATES SURVEY OF JURY IMPROVEMENT EFFORTS: A COMPENDIUM REPORT 21 (April 2007).

$$\text{Jury Yield} = \left[\frac{\# \text{ jurors qualified for service}}{\# \text{ qualification questionnaires mailed}} \right] \times \left[\frac{\# \text{ of qualified jurors available for service}}{\# \text{ jury summonses mailed}} \right] \times 100$$

Nationally, the average jury yield is approximately 53%.³ That is, 53% of the persons who are mailed a jury summons are statutorily qualified for service and available on the summons date. The remaining 47% of jury summonses are returned undeliverable or are not responded to, or the persons are disqualified, exempted, or excused from jury service. Approximately 5% of jurors also defer their service to a future date, but these are offset by jurors who appear for service after deferring from a previous date. Urban areas tend to have lower jury yields compared to suburban and rural areas, and 2-step courts tend to have lower jury yields than 1-step courts.⁴ The National Center for State Courts has developed *CourTools*, a set of performance measures for a number of areas of court operations including *CourTools* Measure 8: Effective Use of Jurors.⁵ Figure 1 shows the estimated number and percentage breakdown of the jury yield components nationally based on *CourTools* Measure 8.

Figure 1: Jury Yield Computation Worksheet (National Estimates)

Potential Availability		Not Available		
A. Summonses Sent	31,857,717	E. No Show	2,564,566	7.6%
B. Postponed to Serve this Period +	1,744,481	F. Undeliverable +	4,147,033	12.3%
C. Told Not to Report -	n/a	G. Disqualified +	2,592,016	7.7%
		H. Exempt +	2,120,201	6.3%
		I. Excused +	2,622,792	7.8%
		J. Postponed to Future +	1,744,481	5.2%
D. Total Potentially Available =	33,602,198	K. Total Not Available to Serve =	15,791,088	
Total Serving and Yield				
L. Total Serving (D - K) =	17,811,110			
M. Juror Yield (%) [(L/D)*100] =	53%			

Maximizing jury yield

Jury yield is used by court administrators to estimate the number of jury summonses to mail to secure an adequate number of jurors from which to select juries (the first objective of effective jury system management). However, it is also a measure of system efficiency (the third objective of effective jury system management) insofar as it indicates the relative amount of work a court must perform to achieve its first objective. Nationally, courts send approximately two jury summonses for every qualified and available juror they need to secure. Courts with higher jury yields (e.g., 60%) do less work—

³ This figure reflects the average summoning yield for courts with both one-step and two-step jury operations—that is, the overall yield for one-step courts and the summoning yield only for two-step courts.

⁴ *Id.* at 22.

⁵ The *CourTools* performance measures are available at http://www.ncsconline.org/D_Research/CourTools/index.html.

prepare, mail, and process jury-related correspondence—to secure the same number of qualified and available jurors than courts with lower jury yields (e.g., 40%). To simultaneously achieve both the first and third objectives of effective jury system management, it is thus in courts' best interest to maximize jury yields to the greatest extent possible. This can be accomplished by minimizing the number of jurors who are not qualified or available for jury service by implementing effective jury operations practices.

As a practical matter, courts have little control over the proportion of its citizens who are statutorily ineligible for jury service. In most U.S. jurisdictions, the minimum qualifications for jury service eligibility are set by statute and generally include U.S. citizenship, legal residency in the geographic jurisdiction served by the court, adult (age 18 or older), absence of a legal disability such as a felony conviction or legal incompetence, and ability to speak and understand English.⁶ The extent to which the resident population of any given community meets these minimum qualifications is generally regarded as an established condition. For example, the disqualification rate for communities with large Hispanic or Asian populations is often higher due to non-citizenship or non-English fluency rates. Historically, courts attempted to minimize disqualification rates by using the list of registered voters as the source list for names of prospective jurors. In most states, the eligibility qualifications for voting and jury service were similar or identical. As discussed below, however, these lists often have other disadvantages that tend to outweigh their ability to minimize disqualification rates.

Exemption criteria are similarly difficult to mitigate. Jury service exemptions are statutory provisions that permit otherwise qualified individuals to decline jury service if summonsed. Usually these exemptions are based on conditional circumstances such as previous jury service, sole care giver for young children or incapacitated adults, advanced age, or occupation (e.g., political officeholders, judicial officers, public safety personnel, health care personnel). Nationally, the policy trend has been to eliminate most, if not all, exemptions from jury service. But as anyone familiar with legislative policymaking is aware, the process is often time-consuming and uncertain and maintaining the policy against the addition of future exemptions requires constant vigilance and exemplary legislative outreach and liaison skills.

In jury operations, therefore, the components of jury yield that offer the most potential for effective control are undeliverable rates, non-response and failure-to-appear rates, excusal rates, and the choice of 1-step versus 2-step jury operations. Undeliverable rates are a function of the local migration rate for each community. Nationally, 17% of the US population moves to a new address each year. The US Postal Service will forward jury-related mailing for up to 12 months if the person files a change-of-address form with the local post office. But thereafter, jury-related mailings will be returned to the court marked "undeliverable as addressed." Undeliverable rates are the single largest drain on jury yield, averaging 13% of all jury-related mailings nationally. It is the court's responsibility, therefore, to maintain the accuracy of its master jury list. It can do so in several ways. First, the court should renew its master jury list at least annually, if not more frequently, to maximize the likelihood that the

⁶ Pursuant to a provision of the New Mexico Constitution prohibiting the disenfranchisement of persons from the right to vote *and the right to serve on a jury* on the basis of inability to speak English, the New Mexico courts provide foreign language interpreters to non-English speaking jurors. N.M. CONST. art. 7 sec. 3. It is the only state that does so.

addresses of prospective jurors are current or at least within the timeframe for mail forwarding by the US Postal Service if the person has moved.⁷ Annual updates also ensure that newly eligible jurors are included on the list of prospective jurors.

Second, when merging multiple juror source lists and identifying and removing records, the court can improve the likelihood of retaining the records with the most accurate addresses through its list priority procedures. The vast majority of state trial courts use two or more source lists to compile the master jury list. The most frequent combination of source lists is the list of registered voters and the list of licensed drivers and state identification card holders (19 states).⁸ Eleven states mandate the use of three or more lists – typically, registered voters, licensed drivers, and state income or property tax lists.⁹ Connecticut, New York, and the District of Columbia mandate the use of up to five lists including unemployment compensation and public welfare recipients.¹⁰ Not all of these source lists are maintained in the same way or with the same regularity, however. Contemporary federal election laws, for example, make it extremely difficult for state voter registrars to remove persons from the voters list without substantial documentation that the person is no longer eligible to vote in that jurisdiction.¹¹ Hence, the list of registered voters often contains records for persons who no longer live at that address. Until recently, the list of licensed drivers was maintained more frequently (every four to five years), but the current economic crisis has resulted in many states extending the life of a valid driver's license up to eight years. The list of state income tax filers, which is updated at least annually, is now the most frequently updated broad-based juror source list. Unemployment compensation recipients and public welfare recipients are the most frequently updated lists, receiving monthly or even weekly maintenance, but these contain comparatively few records.

When courts compile their master jury list, which involves identifying and removing duplicate records, they can greatly improve the accuracy of the address records on the master jury list by retaining the records from the most reliable source lists first, then for the source lists in decreasing order of reliability. Alternatively, if the source list agencies can provide information about when each record was most recently updated, the court can establish the record retention priority based on the most recently updated record, regardless of the maintenance procedures of the source list agency.

Finally, courts can routinely verify the accuracy of address records before mailing qualification questionnaires and jury summonses by using the US Postal Service National-Change-of-Address (NCOA) database. Anecdotal reports from commercial jury vendors suggest that NCOA address verification returns 10% to 15% of records from the master jury list with an updated or corrected address. Based on the updated address, the court can determine whether the person would still be eligible for jury service

⁷ AMERICAN BAR ASSOCIATION, PRINCIPLES FOR JURIES AND JURY TRIALS (2005). Principle 10(A)(1).

⁸ STATE-OF-THE-STATES SURVEY, *supra* note x at 13.

⁹ *Id.*

¹⁰ *Id.*

¹¹ The state voter registrars are authorized to change the status of persons who have not voted in two consecutive federal general elections to “inactive,” which would require the person to show positive identification if they appeared at the local voting precinct in a subsequent election. But they cannot remove the person from list of registered voters without written documentation that the person is no longer eligible to vote in that jurisdiction. 42 USC 1973gg-6 (2010).

within the jurisdiction. In almost every instance, the savings in printing and postage costs greatly exceed the cost of the NCOA update.

Non-response and failure-to-appear (FTA) rates are a chronic problem in jury operations, averaging 8% nationally. Typically, the proportion of non-respondents and FTA jurors who are statutorily qualified and available for jury service is similar to the overall jury yield for the jurisdiction. In a court with a 50% overall jury yield and a 10% non-response/FTA rate, for example, half of the non-respondents/FTA jurors would be qualified and available for jury service if they could just be induced to respond, in effect increasing the overall jury yield to 55%. Fortunately, many procedures employed to follow-up on non-respondents and FTA jurors are highly effective. A 1997 pilot program in Eau Claire, Wisconsin, for example, found that increasingly aggressive steps to follow-up on non-responders reduced the non-response rate from 11% on the first mailing to 5% after the second mailing, and to less than 1% after issuing Order-to-Show Cause notices and *capias* warrants.¹² The Los Angeles County Superior Court had equally impressive results from its Summons Sanction Program. The failure-to-appear rate for jury summonses on the first mailing was 41%, but follow-up efforts reduced the final non-response rate to 2.7%.¹³

The single most effective form of follow-up is a simple, second notice/second summons program in which the court mails a jury summons or qualification questionnaire shortly after the juror fails to respond or appear for service. The most effective time frame is within three weeks of the original return or appearance date. Courts that employ such programs report non-response/FTA rates 24% to 46% lower than courts that do not follow-up on non-respondents and FTA jurors. More aggressive measures including Order-to-Show Cause hearings, *capias* warrants, and the imposition of fines and fees can also be pursued, although these are more time and labor-intensive efforts and do not tend to have as great an impact on non-response/FTA rates as the second notice programs, ostensibly because they are conducted with less frequency and consistency.

An average of 8% of prospective jurors are excused from service due to medical or financial hardship or extreme inconvenience.¹⁴ Like other community characteristics, the proportion of the local population experiencing medical hardship is extremely difficult to remedy. However, financial hardship and extreme inconvenience are often as much the result of the burden imposed on prospective jurors from jury service as the prevailing socioeconomic conditions in the community. Thus, efforts to reduce the burden on prospective jurors by reducing the term of service, increasing juror compensation, and implementing liberal deferral policies can dramatically reduce excusal rates. The ABA *Principles* address these issues. Principle 2(C)(1) specifies that “the time required of persons called for jury service should be the shortest consistent with the needs of justice,” ideally no more than one day or one trial.¹⁵ Principle 2(F)(1) specifies that jurors “should receive a reasonable fee that will, at a minimum, defray routine expenses such as travel, parking, meals and child-care. Courts should be encouraged to increase

¹² Eau Claire County, WI Juror Qualification Questionnaire Enforcement Program (March-July 1997) (documentation on file with the author).

¹³ Los Angeles County, CA 2003 Summons Sanction Program (documentation on file with the author).

¹⁴ STATE-OF-THE-STATES SURVEY, *supra* note x at 22.

¹⁵ ABA JURY PRINCIPLES, *supra* note 53, Principle 2(C)(1).

the amount of the fee for persons serving on lengthy trials.”¹⁶ The NCSC *State of the States Survey of Jury Improvement Efforts* found that both of these policies had a substantial impact on court excusal rates.¹⁷ Courts that employed a one day or one trial term of service, for example, had an average excusal rate of 6% while the excusal rate in courts with longer terms of service was 8.9%.¹⁸ Similarly, courts with high juror compensation policies had an average excusal rate of 6.6% while courts with lower compensation policies averaged 8.9%.¹⁹ Implementing optimal policies simultaneously resulted in excusal rates that were approximately half (4.1%) of those employing less effective policies (9.3%).²⁰ Liberal deferral policies to accommodate prospective jurors with preexisting commitments shifts a certain percentage of jurors who would be otherwise excused from service to the deferred category where they ultimately serve at a later date, offsetting future deferred jurors.

Finally, 2-step courts often can increase their overall jury yield by converting to a 1-step summoning and qualification process. Research indicates that 2-step qualification and summoning systems tend to be less efficient compared to 1-step systems. In essence, the qualification process for 2-step courts tends to be imperfect, resulting in duplicative efforts by jury staff to manage undeliverable jury summonses and disqualified, exempted, and excused jurors during the later summoning stage of jury selection. Two-step systems are also more expensive insofar that they require two separate mailings (qualification questionnaire and jury summons), necessitating additional printing and postage costs. Overall, the NCSC estimates that the overall jury yield for 2-step jury systems is 40% compared to 52% for 1-step jury systems. As a result, printing and postage costs are an estimated 25% to 50% higher for 2-step jury operations. A final benefit of the 1-step process is that it eliminates the task of re-verifying qualification and administrative information with jurors who report for jury service.

All of these practices, either individually or in combination, can dramatically increase jury yields, making it easier to secure an adequate number of prospective jurors and to improve the overall efficiency of the jury system. In addition, the components of jury yield over which the court can exert the most control are those that are substantially correlated with socioeconomic status, which in turn is correlated with minority status in most communities. Thus, overall reductions in undeliverable, non-response/FTA, and excusal rates generally result in a more representative jury pool. The next section discusses contemporary fair cross section jurisprudence and its relationship to effective jury system management.

¹⁶ ABA JURY PRINCIPLES, *supra* note 53, Principle 2(F)(1).

¹⁷ *State-of-the-States Survey*, *supra* note 56, at 24.

¹⁸ *Id.*

¹⁹ *Id.* Higher compensation rates were defined as more than the average juror fee of \$22 per day for flat fee courts and \$32 per day for graduated fee courts. Lower compensation rates were defined as less than the average juror fee.

²⁰ *Id.*

Ensuring that the Jury Pool Reflects a Fair Cross Section of the Community

The phrase “a jury of one’s peers” brings to mind an image of a jury that perfectly mirrors its community in terms of demographic and attitudinal characteristics. In an ideal world, a perfectly representative jury would be best able to fulfill its role as the conscience of the community in judicial decision-making. As a practical matter, however, the legal requirements governing the composition of the jury do not mandate perfect representation of the jury pool. Rather, they set the minimum standards that state and federal courts must achieve to guarantee the Sixth Amendment and Equal Protection rights of criminal defendants to a jury drawn from a fair cross section of the community.

This objective developed jurisprudentially from the late 1890s through the middle of the Twentieth Century. Not coincidentally, the case law that introduced and developed the fair cross section requirement coevolved with the Civil Rights Movement. Originally, the Sixth Amendment right to “a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed” focused on the ability of individual jurors to judge the cases before them fairly and impartially. Over time, however, courts came to recognize the reality that jurors have preexisting life experiences, attitudes and opinions that affect the way they perceive and interpret information. Courts abandoned their insistence on unrealistically stringent criteria for the impartiality of individual jurors (e.g., no relevant life experience, attitude or opinions related to the case). Instead, the theory supporting jury diversity is that biases held by individual jurors will be balanced or canceled out by competing biases held by other jurors. Gradually, they adopted the idea that the best way to ensure a fair and impartial jury is to ensure a diverse jury pool from which to select juries. An important caveat concerning the fair cross section requirement is that it only applies to the pool from which juries are selected, not to composition of the jury itself.

Constitutional Basis for the Fair Cross Section Requirement

The fair cross section requirement derives principally from the Sixth Amendment right to an impartial jury and the Equal Protection Clause of the Fourteenth Amendment. These constitutional provisions prohibit systematic (Sixth Amendment) or intentional (Equal Protection Clause) exclusion of groups of commonly recognized minorities. As a practical matter, the Sixth Amendment and Equal Protection Clause jurisprudence have tended to merge over time, but originally each provision had slightly different procedural requirements. In addition, the Equal Protection Clause cases tended to focus on grand jury selection procedures while Sixth Amendment cases tended to focus on petit (trial) jury procedures. Some court opinions addressing alleged fair cross section violations review the facts of the case under both jurisprudential theories separately. These federal constitutional requirements may also be supplemented by state constitutional or statutory requirements.

The contemporary test to determine whether a violation of the fair cross section has occurred is the *Duren* test, named for *Duren v. Missouri*, a 1979 case decided by the U.S. Supreme Court.²¹ In *Duren*, the Court addressed the question of whether an automatic exemption from jury service offered to women was unconstitutional given that it reduced the percentage of women from 46% of the community to 15% of the pool from which the defendant's jury was selected. The Court described three criteria that a defendant must show to establish a *prima facie* violation of the fair cross section requirement: (1) the group alleged to be excluded is a "distinctive" group in the community; (2) the group's representation in the jury pool is not fair and reasonable in relation to the number of such persons in the population; and (3) the under-representation of the group results from systematic exclusion of the group in the jury selection process. Once the defendant has established a *prima facie* violation of the fair cross section requirement the burden shifts to the State to provide a compelling justification for the systematic exclusion of the distinctive group. *Duren* made it clear, however, that the States retained broad discretion to define eligibility qualifications and exemption criteria for jury service.

Distinctive or Cognizable Groups

A "distinctive" group for fair cross section purposes generally refers to groups that see themselves as distinct from other groups, that are seen by others as a distinct group, and that hold values not necessarily held by other groups. Many court opinions also refer to these groups using Equal Protection terminology of "cognizable" groups. In most instances, these groups are defined by immutable characteristics, especially gender, race, and ethnicity (Hispanic/Latino) and are recognized as valid groups under both Sixth Amendment and Equal Protection Clause criteria.²² In addition to gender, race, and ethnicity, some courts have found groups characterized by religious affiliation or national origin to be distinctive groups under the Sixth Amendment. In most instances, however, distinctive groups characterized by religious affiliation have such a strongly cohesive community that the religious affiliation is similar to ethnicity in terms of its cultural significance (e.g., Jews in New York City²³ and Amish persons in Ohio²⁴).

Fair and Reasonable Representation

The second requirement under *Duren* is that the representation of the group alleged to be excluded is not fair and reasonable compared to the proportion of that group in the community. An important caveat related to this requirement is that the relevant "community" consists of individuals who are eligible for jury service in the jurisdiction – that is, they are *qualified* for jury service. Qualifications for jury service in most jurisdictions include U.S. citizenship, residency in the geographic area served by the court, adult (age 18 or over), able to speak and understand English, and not subject to other legal disqualifications (e.g., previous felony conviction, mental incompetency). In many jurisdictions, these qualification requirements result in significant differences between the demographic characteristics of

²¹ *Duren v. Missouri*, 439 U.S. 357 (1979).

²² Under the Equal Protection Clause of the Fourteenth Amendment, these three demographic characteristics are accorded "strict scrutiny" by courts, requiring the government to offer a compelling justification for disparate treatment.

²³ *U.S. v. Gelb*, 881 F. 2d 1155 (2d Cir. 1989).

²⁴ *State v. Fulton*, 566 N.E. 2d 1195 (Ohio 1991).

the jury-eligible population and those of the total population. For example, the jury-eligible population for communities with large Hispanic or Asian populations is often proportionately much smaller than that of the total population as individuals in those groups are disqualified due to non-citizenship or inability to speak and understand English.

With respect to how the representation of distinctive groups in the jury pool compares to their representation in the community, the law does not require that demographic characteristics exactly mirror one another. Some deviation ordinarily occurs, for example, due to the random selection process. Several measures can be used to determine the extent to which the jury pool demographics differ from those of the community. The two measures most frequently used by courts are absolute disparity and comparative (relative) disparity.²⁵ Absolute disparity describes the proportional difference in the representation of the distinctive group. In *Duren*, for example, the absolute disparity for women was 31% (46% women in the community - 15% women in the jury pool = 31% absolute disparity).

Comparative disparity is a second measure of representational disparity. Comparative disparity measures the percentage by which the number of distinctive group members in the jury pool falls short of their number in the community. The formula for calculating comparative disparity is the absolute disparity divided by the percentage of the distinctive group in the jury-eligible community. The comparative disparity in *Duren*, for example, was 67% (31% absolute disparity ÷ 46% jury-eligible population = 67%), indicating that the percentage of women in the jury pool was 67% less than would ordinarily be expected for the female population of Jackson County, Missouri, in 1976 when the trial took place.

Comparative disparity can be a very useful measure for describing the level of disparity when the proportion of the distinctive group in the jury-eligible population is relatively small (e.g., less than 10%) and the level of absolute disparity would not necessarily reach the threshold needed to establish a *prima facie* violation of the fair cross section requirement. For example, if African-Americans represented 12% of a jury-eligible community, but only 4% of the jury pool, the absolute disparity would be 8% and the comparative disparity would be 67%. If previous case law had established the requisite threshold for absolute disparity at 10%, a defendant would not be able to demonstrate a violation of the fair cross section requirement, even though the proportion of African-Americans in the jury pool was fully two-thirds less than expected given their representation in the jury-eligible community.

In *Berghuis v. Smith*,²⁶ the US Supreme Court revisited the fair cross section requirement for the first time since *Duren*. The opinion strongly reaffirms *Duren*'s three-prong test as the appropriate analytical

²⁵ A number of additional measures of representational disparity are often used by expert witnesses testifying in jury challenges. These include statistical significance tests, which indicate whether the amount of disparity reflects an actual difference or simply the result of random chance in the selection process and disparity of risk analyses, which quantify the representational difference in terms of the probability that the jury pool would have the same percentage of the distinctive group as the result of random chance. Richard Seltzer et al., *Fair Cross-Section Challenges in Maryland: An Analysis and Proposal*, 25 U. BALT. L. REV. 127, 141 (1996).

²⁶ *Berghuis v. Smith*, 130 S. Ct. 1382 (2010).

framework for considering jury challenges based on fair cross section claims, but disavowed that *Duren* specified a particular method or test that courts should employ to measure under-representation. It recognized that lower courts had employed a number of different measures of disparity, but found that all of them could be misleading, particularly with respect to comparatively small populations of distinctive groups. It approvingly cited the Michigan Supreme Court's admonition that "provided that the parties proffer sufficient evidence, the results of all of the tests should be considered."

The threshold at which under-representation reaches unconstitutional levels is rarely articulated as a fixed value in court opinions. Most cases that discuss absolute disparity in detail tend to cite values of 10% to 12% absolute disparity as sufficient to establish a prima facie violation of the fair cross section requirement while the threshold level for comparative disparity is generally cited as 40% to 50%. In the *Berghuis* decision, however, the Court explicitly rejected a proposal to adopt a bright-line 10% absolute disparity threshold and declined to consider the constitutional significance of such a rule, which may suggest that a purely mechanical approach to fair cross section jurisprudence might be viewed with disfavor if it were raised in an appropriate case.

Systematic Exclusion

The final prong of the *Duren* test is that under-representation of the distinctive group is the result of intentional discrimination (Equal Protection) or systematic exclusion (Sixth Amendment). Systematic exclusion does not have to be intentional, but merely an inherent result of the jury selection process. In *Duren*, the Supreme Court found that the policy of offering automatic exemptions to women was systematic exclusion insofar that it was inherent in the jury selection process.

More recent examples of systematic exclusion are often related to the automation used in the jury selection process. In *U.S. v. Osorio*,²⁷ for example, the length of the database field for the prospective juror's city of residence in the master jury list was truncated, causing the system to misread the eighth character as the jurors' status. As a result, all of the records for individuals living in Hartford were mistakenly excluded from jury service because the system interpreted the "d" in Hartford to mean "deceased." At that time, the largest single concentration of both Blacks and Hispanics in the state resided in the city of Hartford. In another example, during a routine upgrade to the jury automation system in Kent County, Michigan, the software was mistakenly programmed to randomly select names from the first 125,000 records on the master jury list rather than from the entire list, which was more than 500,000 records in length.²⁸ The list was sorted alphabetically by zip code and the largest proportion of African-Americans in Kent County resided in the sequentially higher zip codes.

Non-systematic exclusion, in contrast, is the under-representation of distinctive groups in the jury pool due to factors beyond the control of the court. Common examples of non-systematic exclusion include disproportionately low rates of voter registration by minorities that result in under-representation by those groups on the master jury list and subsequently in the jury pool.²⁹ Courts have no authority to

²⁷ *U.S. v. Osorio*, 801 F. Supp. 966 (D. Conn. 1992).

²⁸ G. Thomas Munsterman, *Jury Management Study for Kent County, Michigan* (May 6, 2003).

²⁹ See, e.g., *U.S. v. Biaggi*, 909 F. 2d 662, 676-78 (2d Cir. 1990).

compel members of those groups to register to vote. Another factor commonly related to under-representation of minorities is undeliverable rates, which are strongly correlated with lower socioeconomic status and, in turn, correlated with minority status. Courts similarly have no authority to compel individuals to provide the US Postal Service with a forwarding address or to require the agencies that provide the source files for the master jury list to improve their record maintenance procedures. Failure-to-appear rates and excusal rates are likewise highly correlated with socio-economic status and have historically been considered forms of non-systematic exclusion.

Nevertheless, the question of whether the impact of socioeconomic factors on the demographic composition of the jury pool could support a fair cross section claim is still unsettled. Some courts in recent years have expanded the scope of systematic exclusion to include factors that may fall outside of the court's ability to prevent, but for which reasonably effective and cost-efficient remedies exist. One of the earliest examples was *People v. Harris*,³⁰ in which the Supreme Court of California found that exclusive reliance on the voter registration list as the sole source of names for the master jury list systematically excluded Blacks and Hispanics from the jury pool. Technological advances had made it possible for courts to merge multiple source lists to create a more inclusive and representative master jury list, negating the argument that the absence of African-Americans and Hispanics in the jury pool was the result of the low voter registration rates by these groups. The California Supreme Court explicitly warned against under-representation "stemming from negligence or inertia" in the jury selection process, citing cases that recognize that "official compilers of jury lists may drift into discrimination by not taking affirmative action to prevent it."³¹

In *U.S. v. Green*,³² the U.S. District Court for the Eastern District of Massachusetts ruled that the court's failure to take reasonable steps to address undeliverable and failure-to-appear rates for jurors living in predominately minority zip codes violated the federal Jury Selection and Service Act. The court proposed over-sampling from predominantly minority zip codes as a remedy in that case.³³

The most recent discussion of this question occurred in *Berghuis v. Smith* in 2010. The federal Sixth Circuit Court of Appeals had ruled that the trial court's excusal policy, which "allowed prospective jurors to essentially 'opt out' of jury service if jury duty would constitute a hardship based on child care concerns, transportation issues, or the inability to take time from work" was a systematic exclusion that produced unacceptable under-representation in the jury pool.³⁴ As the Sixth Circuit stated, "the Sixth Amendment is concerned with social or economic factors when the particular *system* of selecting jurors makes such factors relevant to who is placed on the qualifying list and who is ultimately called to or

³⁰ *People v. Harris*, 36 Cal. 3d 36, (1984).

³¹ *Id.* at 58.

³² *U.S. v. Green*, 389 F. Supp. 2d 29 (D. Mass. 2005).

³³ The U.S. Court of Appeals for the First Circuit subsequently overturned the order on grounds that the remedy unlawfully supplemented the Jury Plan for the Eastern District of Massachusetts. *In re U.S.*, 426 F. 3d 1 (1st Cir. 2005). In 2006, the U.S. District Court for the Eastern District of Massachusetts amended its Jury Plan to respond to an undeliverable summons by sending an additional summons to the same zip code.

³⁴ *Smith v. Burghuis*, 543 F.3d 326 (2008), *cert. granted*, (U.S. Sept. 30, 2009) (No. 08-1402). Reducing the term of service, ideally to one day or one trial, reduces the financial impact on prospective jurors, making it possible for people to serve who would otherwise be excused for financial hardship.

excused from service on a venire panel.” Upon review, the US Supreme Court concluded that there was insufficient evidence that the trial court’s excusal policy caused the under-representation of African-Americans and thus declined to address the question directly.

An Uneasy Relationship between the Second and Third Prongs of *Duren*

The *Duren* test requires that all three elements be satisfied to find a violation of the fair cross section requirement. Yet a close examination of contemporary cases reveals an ongoing ambivalence about whether the ultimate objective of the requirement is a more representative jury pool or a non-exclusionary jury system. In some cases, courts have determined that the fair cross section requirement is satisfied provided that the process of summoning and qualifying jurors does not systematically exclude distinctive groups, even if the level of underrepresentation is substantial. Other courts have found fair cross section violations in cases with comparatively low levels of disparity if there is any evidence of systematic exclusion.³⁵ It remains to be seen whether the recent trend toward expansion of the definition of systematic exclusion will relieve or further exacerbate this tension. Nevertheless, an effective jury system will ensure that jury operations are free of systematic exclusions and that the resulting jury pool is a reasonable reflection of community demographic characteristics.

³⁵ The tension between process and outcome is also evident in other areas of law involving race and gender discrimination.

Managing Court Resources, Including Jurors, Efficiently

The third objective of an effective jury system is to manage court resources efficiently. This objective developed in the latter half of the twentieth century in conjunction with the development of court administration as a professional discipline. As such, it developed conceptually with caseflow management, court automation, continuing education for judges and court staff, budgeting and human resource management, and other initiatives in which the courts borrowed ideas and techniques from the business community to improve court operations. In the context of jury operations, jurors are a resource employed to resolve cases. Thus, the efficient use of jurors' time is included in the objective. As discussed in the previous sections, jury yield, as one measure of jury system efficiency, gauges how hard the court must work to summon and qualify jurors for service. As important, however, is how effectively the court uses those jurors once they have been summoned and qualified. In an effective jury system, the court summons and qualifies a sufficient number of jurors from which to select juries, but not so many jurors that substantial numbers of them are ultimately not needed for jury selection.

Components of Juror Utilization

"Juror utilization" is the performance measure used to describe how well the court uses its supply of jurors. Juror utilization has three separate components: the percentage of jurors who are ultimately told to report to the courthouse for jury service, the percentage of jurors who are sent to a courtroom for jury selection, and the percentage of the jury panel that is ultimately needed to select a jury. The NCSC recommends 90% or more of jurors be "used" in each component of juror utilization. That is, 90% or more of jurors who are summoned and qualified are told to report to the courthouse for jury service; 90% or more of jurors who report for service are sent to a courtroom for jury selection, and 90% or more of the jury panel is ultimately needed to select a jury. The overall juror utilization rate, therefore, should be 73% or higher (90% x 90% x 90%). This ensures that the court always has a sufficient number of jurors from which to select juries with enough "extra jurors" to accommodate unanticipated demands, but not so many extras that substantial numbers of jurors are wasted.³⁶

To maximize juror utilization, courts first need to obtain reliable information about historical patterns of juror usage over time. Estimates of the number of jurors to report to the courthouse on any given day depend on the number and types of trials scheduled for trial and the optimal panel sizes for those trials. Similarly, estimates of the number of jurors to summon for jury service depend on the number of jurors needed to report. Thus, the most appropriate place to begin is to determine the optimal panel size for different types of cases and work backward. Normally, the jury panel should consist of enough prospective jurors to accommodate the number of jurors and alternates to be sworn (6 to 12 jurors plus

³⁶ Like jury yield, juror utilization is addressed in detail in the NCSC *CourTools* Measure 8. However, contemporary understanding of juror utilization as a performance measure has developed considerably over the past several years. For example, the number of qualified jurors who are told not to report was originally characterized as a component of jury yield (a measure of how hard courts must work to summon and qualify jurors), but is now recognized as more consistent with juror utilization (a measure of how effectively courts use the qualified pool of jurors).

1 to 2 alternates, depending on case type, jurisdiction, and anticipated trial length); the number of peremptory challenges allocated to each side (3 to 20, depending on case type and jurisdiction); the anticipated number of jurors excused for cause or hardship; and a small number of “extra” jurors, just in case. The nature of the case and the anticipated trial length are the factors that tend to affect the number of jurors excused for cause or for hardship. High profile trials and trials involving difficult or disturbing evidence (e.g., sex offenses, offenses involving children, offenses involving drug or alcohol abuse) often result in greater numbers of jurors excused for cause, while lengthy trials tend to result in greater numbers of jurors excused for hardship.

Once the optimal panel size has been determined, the court next needs to determine the number of jurors to report to the courthouse for jury service on any given day based on the number and type of scheduled trials. Typically, the accuracy of this estimate is a reflection of trial date certainty – that is, the likelihood that a scheduled trial will go forward. Courts in which trial date certainty is high will be able to make more reliable estimates than courts in which trial date certainty is more tenuous due to day-of-trial settlements, plea agreements, and continuances. As a practical matter, this component of juror utilization is less reflective of effective jury system management and more a function of effective pretrial management.

Finally, the court should estimate the number of qualified and available jurors that will satisfy the court’s demand for jurors as determined by the two previous components of juror utilization. Again, it is certainly acceptable to have a small reserve of “extra” jurors who can be told either to report or not to report for service as the daily trial calendar becomes more settled. Dividing this number by the jury yield indicates the number of jury summonses the court should mail to secure an adequate pool of jurors from which to select juries.

Fiscal Implications of Juror Utilization

The importance of maintaining optimal juror utilization becomes extremely apparent when the fiscal implications of this measure are taken into account. Most courts tend to underestimate the financial resources involved in the administrative process of summoning and qualifying jurors, which range between \$25 and \$50 per juror reporting for service in reasonably efficient courts and have been as high as \$200 per juror reporting in less efficient courts.³⁷ Aggregated over the course of an entire fiscal year, the administrative costs of unused jurors can run into the tens of thousands, or even the hundreds of thousands of dollars. The costs incurred for excessive number of jurors above and beyond those needed to select juries deprives other areas of court operations of these resources.

In most jurisdictions, however, the administrative costs involved in summoning and qualifying jurors is just the tip of the iceberg in terms of total jury system costs. The jury system is heavily subsidized by the in-kind contributions of jurors, their employers, and their communities. Per capita income averages

³⁷ Administrative costs include printing, postage, jury automation, and staffing expenses as well as juror compensation and mileage reimbursements. The cost per juror reporting necessarily depends heavily on volume of jurors reporting. Consequently, lower volume courts such as those in rural areas tend to have higher cost per juror reporting. Higher volume courts, in contrast, can take advantage of economies of scale to keep the administrative costs per juror reporting at relatively low levels.

\$100 per day, which is the amount of lost income that jurors experience as a result of jury service or, alternatively, the amount of lost wages paid by employers who compensate their employees while on jury service.³⁸ Regardless of whether an employer compensates employees who are absent due to jury service, the employer also loses the productivity of that employee for the day. A conservative estimate of the value of lost productivity is \$650 per employed juror per day.³⁹ Adding all of these costs together, we see that the total cost per juror reporting ranges from \$750 to \$1,000 per day, of which the court typically incurs less than 20%. These are just the easily quantifiable costs associated with jury operations. Other costs include the lost opportunity costs for non-employed jurors who would be engaged in other activities (leisure, education, volunteer, homecare) as well as the lost public trust and confidence experienced by jurors who are not ultimately needed to select juries.

Improving Jury System Efficiency

Juror utilization in the context of court operations is somewhat analogous to inventory control in a retail environment involving perishable goods. In an ideal situation, the court makes a sufficient number of jurors available to satisfy the demand for jurors on any given day, but not so many that substantial numbers of jurors are wasted. A large part of this process requires detailed management information to identify the peak demand times and levels. Simultaneously, the court needs to streamline the process of procuring jurors to minimize those upstream costs. Contemporary communication technologies, especially Internet and Interactive Voice Response (IVR) technologies, can be employed to streamline many of the tasks that jury staff routinely do to manage the summoning and qualification process such as entering juror responses to qualification questionnaires on the jury automation system and responding to routine communication with jurors (e.g., name and address changes, deferral and excusal requests, etc.). By permitting jurors to communicate information directly to the jury automation system, jury staff can concentrate on more complex tasks that require a higher level of human involvement and discretion.

³⁸ Lost wages paid does not include non-income compensation such as pension and insurance contributions, unemployment compensation, and sick leave and vacation accruals that are also incurred by employers when their employees are serving as jurors.

³⁹ This estimate is based on the hourly non-farm business output per worker reported by the U.S. Department of Labor, Bureau of Labor Statistics, which was \$1,300 for an 8-hour day in 2008. Because some employers ultimately will recuperate the lost productivity when the employee returns to work, this value is discounted by 50%.

Respectful, dignified treatment of jurors

The fourth objective of an effective jury system is to treat jurors in a manner that reflects the respect and dignity that their role in the justice system warrants. This is the most recent of the four objectives of effective jury system management. “Being nice” to jurors has always been a personality trait of jury staff, but recognition of the importance of respectful, dignified treatment of jurors to the legal process itself only arose in the context of increasing concerns by court policymakers about declining public trust and confidence in the courts in the late 1980s and early 1990s.⁴⁰ Although jury trials comprise only a small portion of all case dispositions, jurors themselves are the single largest cohort of court users. An estimated 6 to 8 million prospective jurors report to state and federal courthouses each year⁴¹ and nearly one-third of the adult population has served as a trial juror at some point in their lifetime.⁴² Their collective experiences affect their perceptions of the justice system, but even more importantly, they communicate those perceptions to their families, neighbors, and coworkers who have not had that first-hand experience with the justice system. In most instances, jurors who experience at least the jury selection process in the courtroom, if not the experience of sitting as a sworn juror or alternate, view jury service as positive and educational.⁴³ Recent research even suggests that the experience of jury service also leads to increased civic engagement and political participation.⁴⁴ Little wonder, then, that many court policymakers came to appreciate the importance of respectful, dignified treatment of jurors as a key component in efforts to improve public trust and confidence in the courts.

Court administrators tend to view the jury service experience as a series of discrete phases: summoning and qualification, juror orientation and treatment in the jury assembly room, jury selection in the courtroom, trial and deliberations, and post-trial experience. For jurors, however, jury service is experienced much more holistically. Their first impression of jury service—receipt of the jury summons and qualification questionnaire—as well as all subsequent experiences tend to color the entire experience for better or worse. As a general matter, jurors expect that the information they receive from the court about jury service will provide clear instructions, that the facilities will be safe and comfortable, that their time will be used efficiently, and that they will be provided with all the tools necessary to serve effectively as trial jurors. With these expectations in mind, judges and court administrators should assess the entire jury service experience from the jurors’ perspective.

⁴⁰ See *generally* materials on public trust and confidence in the courts available on the NCSC website at <http://www.ncsc.org/topics/court-community/public-trust-and-confidence/overview.aspx>.

⁴¹ STATE-OF-THE-STATES SURVEY, *supra* note x at 8.

⁴² HARRISINTERACTIVE, JURY SERVICE: IS FULFILLING YOUR CIVIC DUTY A TRIAL (July 2004).

⁴³ This is particularly noteworthy insofar that the perceptions of the majority of other court users (e.g., litigants, witnesses) are less positive after directly experiencing the justice system. NCSC, HOW THE PUBLIC VIEWS THE STATE COURTS: A 1999 NATIONAL SURVEY.

⁴⁴ JOHN GASTIL et al., THE JURY AND DEMOCRACY: HOW JURY DELIBERATION PROMOTES CIVIL ENGAGEMENT AND POLITICAL PARTICIPATION (2010).

Communication with Jurors

The jury summons and juror qualification questionnaire typically provide jurors with their first impression of jury service. It is essential, therefore, that those documents provide clear and well-organized instructions to jurors about their responsibilities including any immediate steps to take (e.g., completing and returning the qualification questionnaire). The jury summons should also provide information about the location of the courthouse including parking and public transportation options. Citizens increasingly look to the Internet for information. Consequently the jury summons and juror qualification questionnaire should indicate in a prominent location that prospective jurors can obtain additional information about jury service from the court's website. Links to the court's jury web pages should be easily identified on the homepage and the jury pages should be designed in an attractive and well-organized manner. The jury summons and juror qualification questionnaire should also include a telephone number for the jury office. During evenings and weekends, the telephone should be configured to allow prospective jurors to leave messages, if necessary, and jury staff should respond to those messages promptly.

Reporting to the Courthouse

Few courts are fortunate enough to have juror parking facilities available at the courthouse itself. Most contract with local government agencies or private parking vendors. In making these arrangements, courts should consider the distance from the parking facilities to the courthouse and the neighborhoods through which jurors must pass to reach the courthouse. Jurors with physical handicaps should be offered parking within reasonable distance to the courthouse. At minimum, the immediate environment through which jurors must walk should be safe, well-lit, and reasonably clean. Once jurors have arrived at the courthouse, the signage inside the court should provide clear directions to the Jury Assembly Room and courtrooms.

The integrity of the jury system requires that jurors be kept as isolated as possible from individuals who might compromise their impartiality (e.g., lawyers, litigants, witnesses, media, other members of the public). Thus, the jury assembly room should be restricted to prospective jurors and authorized court staff only. The check-in process should be orderly and respectful to jurors. Many jurors will spend a considerable amount of time in the jury assembly room, so it should be as pleasant a waiting area as possible. At minimum, it should have sufficient seating for all of the assembled jurors. The room and its furnishing should be clean and neat. Restroom facilities should be clean, well-stocked and adequate for the number of anticipated jurors. Ideally, the jury assembly room should provide appropriate diversions for jurors while they wait (e.g., puzzles, games, reading materials) including wireless Internet access and work areas. Food and beverage facilities should also be convenient to the jury assembly room. During jury orientation, any audio-video equipment should work properly so all jurors can see and hear the information.

Although it is important to make the jury assembly room as pleasant as possible, court administrators should remember that a gilded cage is still a cage. Jurors' single biggest complaint about jury service is the seemingly endless waiting involved. Dignified and respectful treatment of jurors also involves using jurors' time as efficiently as possible. Ideally, jurors should be assigned to their respective jury panels

and sent to courtrooms as soon as possible following orientation. Any jurors left in the jury assembly room should be released from service as soon as it is clear that they will not be needed that day.

Jury Selection

When the jury panel leaves the jury assembly room for the courtroom, the jurors should be seated promptly in the courtroom. They should not be made to wait in the hallway outside the courtroom for long periods of time while the trial judge and attorneys complete unfinished business. Most courtroom hallways have insufficient seating to accommodate an entire jury panel. Moreover, litigants, witnesses, and media can more easily approach jurors in the hallways than they can in the courtroom. Once inside the courtroom, there should be sufficient seating for all the prospective jurors with an unobstructed view of the trial bench and counsel tables from the seating area so that jurors can see and hear the jury selection proceedings.

Jury selection can be an intimidating experience for some jurors. It is the trial judge's job to ensure that jurors feel sufficiently at ease to disclose relevant information during the process. To do so, the judge should greet the jurors and welcome them to the courtroom, introduce the courtroom staff and explain their respective roles during the trial, and then introduce the case, the trial attorneys, and the litigants to begin jury selection. The trial judge should always provide jurors with the opportunity to speak privately with the judge if necessary to protect juror privacy during jury selection. Those jurors who are not selected for trial should be thanked for their participation before being released from jury service.

Trial and Deliberations

Jurors who are impaneled as trial jurors or alternates should have a firm understanding of their role and responsibilities before the trial begins. The trial judge should provide this information including the rationale for any restrictions on juror conduct while the trial is underway. Research has shown that jurors are much more likely to comply with judicial admonitions, and to police each other, if they understand the reason for those rules. As a general matter, the trial should be conducted so as to use jurors' time wisely. Jurors should be advised in advance and consulted about the timing of trial recesses.

During trial, jurors should have access to reasonable tools to facilitate their understanding and retention of the evidence. These include notepaper and writing utensils with which to take notes, permission to submit written questions to witnesses to clarify testimony or obtain additional information about evidence, and individual copies of the final jury instructions. When the jurors retire to deliberate, they should be given clear instructions about how to ask questions of the court including how to announce that the jury has arrived at a verdict. Like the jury assembly room, the jury deliberation room, including juror restrooms, should be clean, well-maintained, and have sufficient seating for all jurors and alternates.

Post-Trial Services

After their release from jury service, most jurors return to their daily lives and do not require additional assistance from the court. Nevertheless, the court has a continuing obligation to those jurors to ensure that their jury service experience does not create additional problems. Before they are released from

service, the trial judge should thank them and provide clear instructions about contact information if the jurors have questions about their jury service in the future. Juror fees and mileage reimbursement should be sent to the jurors as soon as possible following their release from jury service. Some courts have developed procedures to provide checks or even cash before jurors leave the courthouse. At a minimum, the checks should be processed on a weekly basis. The court should also routinely provide jurors with a certificate of service for employers. In high-profile or highly stressful trials, the court should also provide jurors with information about how to access post-trial assistance, including mental health services, if necessary.

Conclusion

As this short overview has demonstrated, effective jury system management is a more complex endeavor than most people realize. It requires the simultaneous accomplishment of multiple objectives involving practical, legal, management, and public relations considerations. The choice of which objectives on which to concentrate has a tendency to shift with the interests of each court's policymakers and the immediate needs of the broader court community at any given time. A legal challenge to the adequacy of the jury system may prompt an immediate focus on fair cross section concerns while public criticism about the responsiveness of the court to local community concerns may shift attention toward the treatment of jurors. The current economic crisis, especially its impact on state and local court budgets, has renewed attention on program efficiency. While improvements directed at any one of these objectives can often result in corresponding improvements in the performance of other objectives, an exclusive focus on any single objective may actually shift needed resources and attention away from other important aspects of jury system management. Ironically, if these other objectives are deprived of too many resources as the court shifts its priorities, the performance of those objectives suffers, undermining the court's improvement efforts on the objective of immediate interest. A savvy court manager understands that a balanced perspective will serve the court more effectively than an intense focus on any single aspect of jury system management.

Additional Resources

JEFFREY ABRAMSON, *WE, THE JURY: THE JURY SYSTEM AND THE IDEAL OF DEMOCRACY* (1994).

AMERICAN BAR ASSOCIATION, *PRINCIPLES FOR JURIES AND JURY TRIALS* (2005).

JOHN GASTIL et al., *THE JURY AND DEMOCRACY: HOW JURY DELIBERATION PROMOTES CIVIC ENGAGEMENT AND POLITICAL PARTICIPATION* (2010).

Paula Hannaford-Agor, *Saving Money for Everyone: the Current Economic Crisis is an Opportunity to Get Serious About Improving Juror Utilization*, in *FUTURE TRENDS IN STATE COURTS*, 2009, at 50.

G. THOMAS MUNSTERMAN, *JURY SYSTEM MANAGEMENT* (1996).

G. THOMAS MUNSTERMAN, PAULA L. HANNAFORD-AGOR & G. MARC WHITEHEAD (eds.), *JURY TRIAL INNOVATIONS* (2d ed. 2006).

JURY MANAGERS' TOOLBOX (an online diagnostic tool for jury managers and court administrators), available at <http://www.jurytoolbox.org>

NATIONAL CENTER FOR STATE COURTS, CENTER FOR JURY STUDIES, available at <http://www.ncsc-jurystudies.org>.

NATIONAL CENTER FOR STATE COURTS, COURTOOLS MEASURE 8, available at http://www.ncsconline.org/d_research/CourTools/Images/courtools_measure8.pdf.

NEIL VIDMAR & VALERIE P. HANS, *AMERICAN JURIES: THE VERDICT* (2007).