

NATIONAL CENTER FOR STATE COURTS
Court Services Division

**ASSESSMENT OF JUROR UTILIZATION IN THE
MASSACHUSETTS TRIAL COURTS**

Final Report
June 22, 2007

By Paula L. Hannaford-Agor
Director, Center for Jury Studies
&
G. Thomas Munsterman
Director Emeritus, Center for Jury Studies

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The views and opinions expressed in this report are those of the authors and do not necessarily reflect those of the Massachusetts Court System, the Office of Jury Commissioner for the Commonwealth of Massachusetts, Jury Systems Incorporated, or the National Center for State Courts.

TABLE OF CONTENTS

Executive Summary i

Introduction..... 1

The Massachusetts Jury System: Background and Impetus for this Assessment..... 2

Juror Utilization Defined, Justified, and Measured 4

Juror Utilization in Massachusetts 8

Juror Utilization Rates in Other Jurisdictions..... 15

Costs of Poor Utilization in Massachusetts 16

Options for Improved Juror Utilization 18

Issues Related to Juror Utilization: Data Integrity and Institutional Structures 23

Conclusions and Recommendations 25

Appendix A: Utilization Statistics for Superior and District Courts 29

EXECUTIVE SUMMARY

For more than 30 years, Massachusetts has demonstrated a commitment to innovation in jury management. More recently, its trial courts have exhibited leadership and vision by embracing the use of performance measures to assess trial court performance across all areas of court operations. This commitment to excellence in court management serves as the backdrop to this assessment of juror utilization, which the Supreme Judicial Court requested from the NCSC Center for Jury Studies in April 2007.

To conduct the assessment, Paula Hannaford-Agor (Director, Center for Jury Studies) and G. Thomas Munsterman (Director Emeritus, Center for Jury Studies) met with judges, chief justices, and administrators in the Massachusetts jury system in a series of meetings on April 9-11, 2007 and obtained reports on jury yield and juror utilization for all trial courts during the period September 1 through November 30, 2006. The full report summarizes the thoughts and concerns expressed to NCSC during the site visit, describes juror utilization rates for the Massachusetts trial courts for the September 1 through November 30, 2006 period, compares these rates with juror utilization in other jurisdictions, and makes recommendations for practices to improve juror utilization. This summary highlights the major findings, conclusions and recommendations of the assessment.

A general assessment about juror utilization is easy to obtain by simply asking citizens about their jury service experience. They are often pleased by the experience and defend the use of the jury to resolve cases, but many also express concern and disappointment about how their time was used in the process. At the most basic level, a citizen's experience during his or her usual one day of jury service can be classified in one of four categories:

1. They were sworn as a juror, heard evidence, deliberated and delivered a verdict. About 11 percent of the people reporting in Massachusetts fall into this category.
2. They were sent to the courtroom and were questioned in the jury selection process, but were not selected as a sworn juror. This includes another 12 percent of those reporting.
3. They went to the courtroom but were not needed for jury selection (27% of those reporting).
4. They reported to the courthouse but were not sent to a courtroom and were dismissed (50% of those reporting).

Common sense, which is supported by a large body of empirical research on the topic, dictates that citizens' perceptions of the justice system vary according to their experience as jurors. The greater their participation in the trial process, the more favorable their view of the justice system. Ideally, the number of citizens in categories 3 and 4 would be minimized to the greatest extent possible, thus maximizing the positive perceptions about the justice system and minimizing the disruption to jurors' lives. The essential question is whether courts can resolve cases efficiently and effectively with fewer people in the last two categories.

The four categories illustrate the juror use measures used in Massachusetts and elsewhere throughout the country. The sum of Categories 1 and 2 is the percentage of "jurors used" (sworn,

challenged, or excused), which averaged 23 percent during the NCSC assessment period. Category 3 refers to the citizens who were not needed to select a jury in a specific trial and is referred to as “not reached.” Citizens in Category 4 (Not Sent to a Courtroom) are truly those that serve and wait.

Courts across the country employ a variety of juror utilization measures. Consequently, there is no national consensus on the “ideal” rate of juror utilization. The NCSC advocates an overall rate of 81 percent or higher based on an objective that 90 percent or more of jurors will be sent to a courtroom for jury selection and fewer than 10 percent of those jurors will be “not reached” – that is, not selected, challenged, or excused. Very few courts routinely report utilization rates, but those that do report overall utilization rates between 59 and 73 percent.

Conclusions

First and foremost, the rate of juror utilization by the Massachusetts trial courts, which averaged 23 percent during the NCSC assessment period, falls woefully short of aspirational standards such as those advocated by the NCSC. Nor do they compare favorably with reported juror utilization rates in other state and federal courts. There is certainly room for great improvement.

The largest volume of jury activity takes place in the Multi-Use Courts – that is, those court locations in which jurors are available for use by various combinations of Superior, District, Housing, and Juvenile Courts. Thus, poor juror utilization in those locations is the biggest contributor to poor utilization on a statewide basis, accounting for nearly half of unused jurors. The District Courts (including BMC) and Superior Courts accounted for 36 percent and 15 percent of unused jurors, respectively. Jury activity in Juvenile and Housing Courts and in county Grand Juries contributed only negligibly to overall utilization rates.

Of those courts with significant jury trial activity, the District Courts had the lowest overall utilization rates (19%). The Superior Courts had the highest overall rates (37%) while the rates for the Multi-Use Courts fell in the middle (24%). Nevertheless, there was great variation in juror utilization rates within the various Trial Departments. Rates reported by the Superior Courts ranged from 33 to 71 percent, by the District Courts ranged from 2 to 54 percent, and by the Multi-Use Courts ranged from 16 to 52 percent. The extent of these ranges suggests that some courts employ more efficient juror utilization practices than others, and that wider dissemination of those practices could improve statewide utilization rates substantially.

Juror utilization rates are affected by different factors in different courts. As an overall generalization, excessive panel size appears to be the primary factor in Superior Courts while the number of zero panel days – that is, days on which jurors reported for service, but no trial activity took place – appears to be the primary factor in District Court utilization rates. Only rarely does it appear that a single factor drives juror utilization in any one court; most involve a combination of factors.

Due to the unique structure of the Massachusetts jury system, control of the various factors that contribute to poor juror utilization lies within the various Trial Departments. However, the costs of poor juror utilization have been incurred mainly by the jurors themselves and, more specifically, their employers. To a lesser extent, the Office of Jury Commissioner incurs increased administrative costs for summoning and qualifying unused jurors. The combined cost

of lost wages and salaries and lost productivity by employers, lost opportunity costs for individual jurors, and excessive administrative costs for the OJC is estimated at \$63 million for unused jurors each year (categories 3 and 4). Although not quantifiable in monetary terms, the justice system in Massachusetts also bears the cost of reduced public trust and confidence by those citizens who were not used effectively.

A number of institutional and cultural factors also contribute to poor juror utilization. Not the least of these is an entrenched belief by many trial judges, and presumably the local legal communities over which they preside, that the physical presence of jurors rather than effective judicial management is the key to efficient and timely case disposition. Substantial improvements in juror utilization will depend on the ability of court leaders to address and overcome those beliefs with evidence of effective practices that do not undermine the goals of efficient and timely case management.

Recommendations

1. Develop a culture of shared responsibility for juror utilization throughout the Massachusetts Court System.

The Massachusetts Court System should take steps to overcome the limitations of its institutional fragmentation and develop a culture of shared accountability for juror utilization. To begin, the Office of Jury Commissioner should resume its practice, suspended during implementation of the JSI Jury+ NextGen System (juror automation software), of routinely informing the Administrative Office of the Trial Court about juror utilization rates on a court-by-court basis. The AOTC should then share that information with the relevant Trial Departments and with individual courts and judges. Periodic meetings between representatives of the AOTC, the OJC, and the individual court departments would enhance this effort.

2. Adopt juror utilization as a critical performance measure and encourage trial courts to draw on OJC knowledge and experience to improve juror utilization.

The OJC has a wealth of data and experience available to assist individual trial courts to diagnose the causes of poor utilization, implements steps to improve utilization, evaluate the results of improvement efforts, and educate trial judges and court staff on effective practices. The AOTC and Chief Justice should encourage courts to take advantage of the OJC's knowledge and at the same time should incorporate juror utilization as a critical measurement of court and judicial performance.

3. Use enhanced data reporting functions in NextGen to identify specific causes of poor utilization in individual courts.

The analyses presented in this report provide an overview of juror utilization across the Commonwealth, but do not provide detailed information on individual trial courts or judges. The OJC should make use of the NextGen capabilities at the earliest opportunity to conduct these analyses for the AOTC to assist the trial courts in identifying factors that contribute to poor utilization in individual trial courts.

4. **Pilot test suggested techniques to improve juror utilization and disseminate practices that demonstrate the most effectiveness in Massachusetts through judicial education and training.**

This report briefly describes a number of approaches that have proven successful in other jurisdictions in improving juror utilization rates. The AOTC through its Trial Departments should identify and assist courts and judges who are willing and motivated to implement these approaches on pilot basis. Based on the results of those pilot programs, the AOTC and the Jury Management Advisory Committee should identify practices that show the most improvement in juror utilization and disseminate those practices through judicial education and training.

5. **Establish an initial goal to increase juror utilization rates to the highest current rate for each of the respective trial departments. Using the practices identified through Recommendation 4, gradually improve juror utilization rates to match, and exceed, those of other jurisdictions.**

A long-term objective for juror utilization should be to meet the aspirational standard of 81 percent juror use promulgated by the NCSC. As a practical matter, the Massachusetts Court System should adopt some intermediate goals that will lead eventually to accomplishment. An appropriate initial goal might be to increase juror utilization rates by each of the trial courts to the highest current rate for their respective court types. That is, increase juror utilization to at least 71 percent in all of the Superior Courts, to at least 54 percent in all of the District Courts, etc. This step alone would increase the statewide juror utilization rate to 58 percent overall. From there, the Massachusetts trial courts can strive to match, and then to exceed, juror utilization rates in other jurisdictions. By doing so, the Massachusetts Court System will again be demonstrating its initiative, creativity, and leadership in jury management for the country.

INTRODUCTION

In 2006, approximately 340,000 people reported for jury service in the Massachusetts trial courts. During the same time, approximately 790,000 civil, criminal and juvenile cases will be resolved, of which less than 3 percent will be tried to a jury. The existence and ready availability of a jury trial causes many cases to settle or reach a plea agreement. The Administrative Office of the Trial Court has recently adopted the use of statistical measures to assess the efficiency with which the courts conclude these cases.¹ Statistics on citizens' experience while on jury service, referred to as "juror utilization," are described in this report to provide a more complete picture of the courts' activities.

General assessments about juror utilization are easy to obtain by simply asking citizens about their experience. They are often pleased by the experience and defend the use of the jury to resolve cases, but many also express concern and disappointment about how their time was used in the process. In this report, we review the juror utilization statistics, identify practices that contribute to poor juror utilization, and provide a number of approaches that the Massachusetts trial courts can employ to improve their performance.

A citizen's experience during his or her usual one day of jury service² can be classified in one of four categories:

1. They were sworn as a juror, heard evidence, deliberated and delivered a verdict. About 11 percent of the people reporting in Massachusetts fall into this category.
2. They were sent to the courtroom and were questioned in the jury selection process, but were not selected as a sworn juror. This includes another 12 percent of those reporting.
3. They went to the courtroom but were not needed for jury selection (27% of those reporting).
4. They reported to the courthouse but were not sent to a courtroom and were dismissed (50% of those reporting).

Common sense, which is supported by a large body of empirical research on the topic, dictates that citizens' perceptions of the justice system vary according to their experience as jurors. The greater their participation in the trial process, the more favorable their view of the justice system.³ Ideally, the number of citizens in categories 3 and 4 would be minimized to the greatest extent possible, thus maximizing the positive perceptions about the justice system. On a more concrete level, minimizing the number of unused jurors also minimizes the disruption to jurors' lives and to the work of their employers. The essential question for the courts is whether they can continue to resolve cases efficiently and effectively with fewer people in the last two categories. Insofar that several trial courts within the Massachusetts Court System routinely exceed these statewide averages, as do courts in other states, the evidence suggests that improved juror utilization can be achieved without sacrificing efficient case processing.

¹ Robert A. Mulligan, *Enhancing the Delivery of Quality Justice: Report of the Court Metrics Project*, Calendar Year 2006 (March 27).

² Ninety percent (90.4%) of citizens reporting for service serve only one day. Office of Jury Commissioner for the Commonwealth, *Annual Report*, Calendar Year 2006 at 31.

³ For a summary of this literature, see Shari S. Diamond, *What Jurors Think: Expectations and Reactions of Citizens Who Serve as Jurors*, in ROBERT E. LITAN ed., *VERDICT: ASSESSING THE CIVIL JURY SYSTEM* 282 (1993).

The four categories illustrate the juror use measures used in Massachusetts and in this report. The sum of Categories 1 and 2 is one definition or measure of juror utilization, traditionally the one reported by the Office of Jury Commissioner. For the purpose of this report, it is called “**Jurors Used.**” The statewide average in Massachusetts is 23 percent. Category 3 refers to the citizens who were not needed to select a jury in a specific trial and is referred to as “**not reached.**” Citizens in Category 4 (**Not Sent to a Courtroom**) are truly those that serve and wait. When every citizen who reported for jury service at a given courthouse is not used, the day is referred to as a “**zero panel day.**” These zero panel days are quite common in locations with few District Court judges because so few cases in the District Courts proceed to trial. In the District Courts, 75 percent of the days that citizens report for jury service, no juries are selected.

During the site visit to conduct this assessment, NCSC staff did not have the opportunity to observe the conditions under which jurors serve nor the respect shown them by the judges and staff, but heard that these vary as well. This report is based on the data provided by the courts in the statewide jury automation system. The figures cited above reflect the averages for the Superior Courts, the District Courts, the Housing Courts, the Juvenile Courts, and many court locations that serve various combinations of the Superior, District, Housing, and Juvenile Courts. These “Multi-Use” courts account for a large volume of jury activity in the state and thus their contribution to statewide juror utilization is substantial.

The Massachusetts Jury System: Background and Impetus for this Assessment

The Commonwealth of Massachusetts has long been regarded as a national leader in effective jury management practices. As early as 1977, it implemented a One Day or One Trial term of service, the first jurisdiction to do so on a statewide basis.⁴ As part of the same legislative package, the Commonwealth also tackled the thorny issue of juror compensation, designing a graduated fee structure that (1) mandated that employers continue to pay employee salaries and wages for the first three days of jury service; (2) paid an unprecedented \$50 per diem beginning on the fourth day of jury service; and (3) paid actual out-of-pocket expenses to unemployed jurors for transportation, childcare, and other necessary expenses up to \$50 per day.⁵ Since then, eighteen states have adopted a graduated juror fee structure, although only four of those have a daily fee as high as \$50. Only seven states and the District of Columbia require employers to compensate employees while on jury service.

In 1996, Massachusetts began a Delinquent Juror Prosecution Program (DJPP) to aggressively prosecute citizens who failed to appear for jury service, the only such program that operates on a statewide basis. This program consistently keeps failure-to-appear rates low compared to other jurisdictions. In the NCSC State-of-the-States Survey of Jury Improvement Efforts, Massachusetts reported an average statewide FTA rate of 6.5 percent compared to a national average of 8.9 percent, making it the twelfth lowest in the country.⁶ In 2006, the DJPP mailed

⁴ Mass. Gen. Laws ch. 234A § 41. The One Day or One Trial system is extremely popular with citizens as it minimizes the burden of jury service on any one juror and distributes that burden more equitably among the jury eligible population.

⁵ Mass. Gen. Laws ch. 234A § 50.

⁶ Gregory E. Mize, Paula L. Hannaford-Agor & Nicole L. Waters, State-of-the-States Survey of Jury Improvement Efforts: A Compendium Report (April 2007).

28,242 delinquency notices, of which approximately half were resolved without further prosecution, and generated 10,983 applications for Criminal Complaint.⁷ Overall, the DJPP resolves approximately 85 percent of all Massachusetts' juror delinquencies.

The volume of DJPP prosecutions was slightly reduced in 2006 as staff from the OJC Legal Department were enlisted to assist in the statewide implementation the JSI Jury+ Next Generation (NextGen) jury automation system.⁸ The sophisticated software will provide uniform reporting and data-gathering functions. In late 2007, NextGen will also provide an interactive website through which citizens can confirm their qualification, defer their service date, request a hardship transfer to a new location, locate important courthouse information, and complete required forms. It will also provide the OJC with improved statistical reports and will automate the generation of DJPP delinquency notices and Criminal Complaints, which is expected to result in a greatly increased enforcement of jury summonses in 2007. As of this writing, the Legal Department has already surpassed the total number of delinquency notices issued in 2006, and is on track to issue more than 75,000 delinquency notices in 2007.

In addition to improvements in jury management and operations, the Massachusetts Courts System has embraced the concept of performance measures to evaluate internal operations and to identify and prioritize areas in need of improvement. Following on the major recommendations of the report from the Visiting Committee on Management in the Courts (Monan Report), the Administrative Office of the Trial Court (AOTC) established time standards for all court departments, adopted common metrics for measuring performance on timely case disposition, and set common, specific goals for these metrics for all court departments.⁹ As noted by Chief Justice Mulligan in the 2006 Report of the Court Metrics Project, the "performance-based approach adopted in this initiative represents a radical departure from traditional court practice and a transformation of the court culture."¹⁰ As a corollary to performance-based self-evaluation, the AOTC has also developed comprehensive court staffing models to more effectively match court resources with court performance objectives. In 2007, the AOTC plans to expand on this approach by developing performance measures based on NCSC CourTools Measure 1 (Access and Fairness).

Massachusetts' historical commitment to innovation in jury management and its more recent commitment to rigorous self-evaluation of performance serve as a backdrop to this assessment of juror utilization. In April 2007, the Supreme Judicial Court of Massachusetts contracted with the NCSC Center for Jury Studies to assess current jury operations to determine if existing juror utilization practices provide a sufficient number of prospective jurors to the Massachusetts trial courts while minimizing the burden on the public and their employers. Paula Hannaford-Agor (Director, Center for Jury Studies) and G. Thomas Munsterman (Director Emeritus, Center for Jury Studies) conducted the assessment during a visit to the Massachusetts Court System on May

⁷ Office of Jury Commissioner for the Commonwealth, *supra* note 2, at 20.

⁸ Jury+ Next Generation is a commercial jury automation package developed by Jury Systems, Incorporated based in Encino, California.

⁹ Robert A. Mulligan, *supra* note 1. The performance measures adopted were based on NCSC CourTools Measures 2, 3, 4, and 5.

¹⁰ *Id.* at 1.

9-11, 2007. During that time, they met with judges, chief justices, and administrators in the Massachusetts jury system including Chief Justice of the Supreme Judicial Court Margaret H. Marshall; Chief Justice for Administration and Management Robert A. Mulligan; Chief Justice of the Superior Court Barbara J. Rouse; Chief Justice of the District Court Lynda Connolly; members of the Jury Management Advisory Committee and the Jury Commissioner, Pamela J. Wood and her staff.

NCSC staff also obtained reports on jury yield and juror utilization for all trial courts during the period September 1 through November 30, 2006. This three-month period was selected with guidance from Commissioner Wood on the belief that it would reflect a reasonably accurate picture of current juror utilization for the Massachusetts trial courts. During this period, almost all of the trial courts had converted to the Jury+ NextGen system and the system was thus able to generate accurate reports from all of the trial courts about their respective juror use. This time period also avoided the decrease in trial activity that traditionally occurs during the December holiday season as well as an anomalous period in juror utilization that occurred in January 2007.¹¹

This report summarizes the thoughts and concerns expressed to NCSC during the site visit, describes juror utilization rates for the Massachusetts trial courts for the September 1 through November 30, 2006 period, compares these rates with juror utilization in other jurisdictions, and makes recommendations for practices to improve juror utilization. Before discussing those items, it is useful to define the concept of juror utilization, how it relates to the role of the jury in the American justice system, the various ways that utilization can be measured, and the institutional and procedural factors that affect utilization rates.

JUROR UTILIZATION DEFINED, JUSTIFIED, AND MEASURED

Juror utilization is a term used to describe how well courts use the time of citizens who are told to report for jury service. At its most basic level, it expresses the number of jurors who were used (sworn, challenged, or excused) during jury selection as a proportion of all jurors who appeared for service. To determine the number of jurors needed to impanel a jury in a reasonably efficient manner, courts have traditionally worked backward from the number of jurors and alternates that must be impaneled to the number of summonses that must be mailed to ensure a jury pool large enough to select them. For example, to impanel a 12-person jury plus 2

¹¹ In late 2006, the OJC began summoning jurors to report in January 2007 from a new master jury list compiled entirely through Jury+ NextGen protocols. To preserve information about previous jury service, the OJC imported juror identification numbers generated by the previous Legacy System into the Jury+ NextGen system including those of citizens who had previously failed to appear for service. Due to the unique system of assigning juror identification numbers through the Legacy System, the new master jury list included a disproportionate number of these records at the top of the master jury list. As a result, jury yields in January 2007 were substantially lower than historical experience, especially in Suffolk County. As a result of the lower juror appearance rates, Suffolk County had much higher utilization rates than usual.

alternates, the jury panel¹² must include a sufficient number of prospective jurors to cover the impaneled jurors and alternates plus the estimated number of prospective jurors who will be removed for cause, removed by peremptory challenge, or excused for hardship. Most courts also include a limited number of “extra jurors” to compensate for normal variation in the number of jurors removed, challenged or excused based on trial characteristics such as the type of case or the estimated length of trial.¹³ Based on the estimated size of the panel needed to select the jury, the court must then calculate the number of prospective jurors needed to report for service given the number of trials scheduled to start. Then it must calculate the number of summonses to mail to guarantee the minimum number of prospective jurors needed to report for service given the jury yield in that jurisdiction.¹⁴

Courts often inflate the number of prospective jurors needed to appear, and the number of summonses to mail, to compensate for normal variations in the yield due to undeliverable summonses, disqualification and excusal rates, deferral rates, and failure to appear rates. In every instance, courts tend to err on the side of too many prospective jurors rather than risk having too few and delaying the start of a trial. The objective of efficient juror utilization, therefore, is to minimize the number of jurors who are not needed for service.

Although juror utilization is primarily considered a quantitative measure of efficiency, it is important to understand its function in the broader context of the role of the jury in the American justice system. According to a 2003 public opinion survey conducted on behalf of the American Bar Association, the American public continues to express extraordinary confidence in the American jury system. Nearly nine in ten American adults consider trial by jury to be the fairest form of adjudication and 75 percent reported that they would prefer to be tried by a jury rather than a judge.¹⁵

Much of this confidence stems from widespread belief in the benefits that the American jury brings to the justice system. The jury’s role is not simply to decide cases. It also serves as a necessary bulwark against governmental tyranny and judicial bias;¹⁶ it interjects community values into the adjudicatory process;¹⁷ it educates citizens about self-governance;¹⁸ and by doing

¹² For the purpose of this report, we will refer to the prospective jurors that are sent to a courtroom for jury selection (*voir dire*) as the *jury panel*.

¹³ Case type, especially the types of factual and legal issues likely to arise at trial, can affect the optimal panel size by affecting the likelihood that prospective jurors will be removed for cause. For example, many prospective jurors have strong attitudes and opinions about the sexual abuse of children that would prevent them from serving fairly and impartially in a child molestation trial. Consequently, the number of prospective jurors removed for cause would be expected to increase in such a trial compared to the number excused for cause in an automobile accident case. Similarly, the number of prospective jurors expected to be excused for hardship would be larger in longer trials compared to shorter trials.

¹⁴ Jury yield refers to the number of citizens who are found to be qualified and available for jury service expressed as a percentage of the total number of qualification questionnaires or summonses mailed.

¹⁵ HARRIS INTERACTIVE, *JURY SERVICE: IS FULFILLING YOUR CIVIL DUTY A TRIAL?* 11, (July 2004) (located at <http://www.abanews.org/releases/juryreport.pdf>).

¹⁶ *Duncan v. Louisiana*, 391 U.S. 145, 151-57 (1968).

¹⁷ ALEXIS DE TOCQUEVILLE, *DEMOCRACY IN AMERICA* 361 (1835).

so it confers public legitimacy on the justice system and on the entire governmental infrastructure. It is these intangible, but very real, benefits that encourage citizen participation in jury service in spite of the fact that it is rarely convenient and often quite burdensome. Implicit in this understanding, of course, is the idea that citizens voluntarily report for jury service with the expectation that their presence is needed *to try cases*.

Most jurors would be extremely surprised to learn that many judges in the Massachusetts Court System and elsewhere throughout the country have an additional perspective on the jury's role. Namely, jurors must be physically present in the courthouse before litigants will feel compelled to decide either to go to trial or to resolve the case through a plea agreement or settlement (most of whom will choose the latter). To those who espouse this view, the jury is an indispensable tool with which trial judges resolve pending cases through non-trial dispositions. Moreover, in jurisdictions with very short terms of service (one day or one trial) such as Massachusetts, the tendency of judges to undervalue citizens' time often is further justified on the grounds that a day or two of jury service every few years is a civic responsibility – and a not-very onerous one – that is the price of maintaining a viable system of self-government. Thus, jurors should not question or complain about the conditions under which they serve, including poor utilization, as long as the wheels of justice continue to turn, however slowly or inefficiently. Implicit in this view is that the value of citizens' presence in the courthouse as a case management tool is far greater than the value of their time that would otherwise be spent in routine daily activities such as employment, childcare, volunteer work, education, or recreation.

Although this view is not often expressed in traditional descriptions of the American jury, it has probably been common among judges and lawyers for a considerable period of time. It may, however, have become more prominent over the past three to four decades as the practice of active judicial case management has gained legitimacy. While the practice of keeping a pool of jurors in reserve as the final incentive to force case dispositions may be common, the essential question is whether other forms of judicial management can be effectively employed that do not impose unreasonable burdens on citizens and their employers or unnecessary costs on the justice system.

The importance of effective juror utilization is not simply a matter of appropriate respect for citizens' time and talents. Courts, as stewards of public resources, have become more accountable for how effectively and efficiently they manage their operations.¹⁹ Particularly in response to increased budgetary pressures in recent years, courts have focused on improved juror utilization as a way to reduce administrative and direct costs.²⁰ In addition, improved juror

¹⁸ *Id.* at 334-37.

¹⁹ TRIAL COURT PERFORMANCE STANDARDS, standard 4.2 Accountability for Public Resources (“The trial court responsibly seeks, uses and accounts for its public resources.”).

²⁰ For example, in late 2002, the Superior Court in Contra Costa County, California implemented a program to reduce the size of jury panels by 25 percent countywide. In the first 10 weeks of the program, the Court summonsed an estimated 1,000 fewer people each week. The Court experienced significantly reduced costs — nearly \$25,000 in direct savings plus an additional \$23,000 savings for staffing expenses in just 10 weeks. Memorandum on “Budget Reduction Plan – Juror Summoning and Utilization” to Superior Court Bench Officers and Management from Presiding Judge Garrett Grant, Superior Court of California, County of Contra Costa (September 13, 2002);

utilization has become a higher priority in many jurisdictions as the volume of jury trials and its demand for prospective jurors threatens to outstrip the supply of qualified jurors. Jurors are not an inexhaustible resource, and poor utilization affects the jury yield by removing qualified jurors from consideration for future service for up to three calendar years in Massachusetts.²¹ Commissioner Wood has expressed concern that the jury pool in Suffolk County is nearing, or may have already passed, this point.

Finally, poor juror utilization also imposes significant non-monetary costs on courts in the form of decreased public trust and confidence in the justice system. Empirical research repeatedly documents that citizens who participate in the justice system as trial jurors or as members of the jury panel have significantly more positive views of the justice system than those that are not provided an opportunity to observe and participate in jury service.²² These citizens then communicate their experiences and views – positive and not-so-positive – to their employers, families, neighbors, and co-workers in the community. The more often citizens are poorly utilized during jury service, the more negative the message that is conveyed.

Juror utilization rates are affected by at least four stages of the jury summoning, qualification, reporting, and selection process. As a consequence, several different performance measures exist with which courts can evaluate juror utilization. A global measure is “percent utilized” which is derived from the total number of jurors impaneled, challenged, or excused divided by the total number of jurors who reported for jury service. This can be a useful measure for court policymakers insofar that it provides a straight-forwarded metric that can be compared over time and against stated objectives. It is not, however, particularly useful for diagnostic purposes as it doesn’t identify juror utilization rates at different stages of the jury selection process.

The recently developed NCSC CourTools Measure 8 (Efficient Use of Jurors)²³ breaks down juror utilization into three component parts: (1) the percentage of the venire selected as jurors/alternates, challenged, or excused; (2) the percentage of jurors reporting for service that is sent to a courtroom for voir dire; and (3) the percentage of jurors summonsed that is told not to report for service. This breakdown permits courts to identify specific factors that contribute to poor utilization and to implement appropriate remedies. While the OJC does include each of these measures among the statistics included in its standard utilization report, the Massachusetts courts tend to focus almost exclusively on the first measure.

The first component examines the size of the panel sent to the courtroom, which should be large enough to impanel a jury without seeking supplemental jurors, but which leaves on average fewer than 10 percent of the venire not reached. The second component focuses on the ability of the court to accurately forecast the number of scheduled trials that will *actually* go forward, a function of effective pretrial management. Ideally, an average of 90 percent of jurors who report for service will be sent to a courtroom for jury selection. The most common reason for poor

Memorandum on “Revisions to Jury Panel Size Reduction Plan” to Superior Court Bench Officers and Management from Presiding Judge Garrett Grant, Superior Court of California, County of Contra Costa (December 3, 2002).

²¹ MASS. GEN. LAWS ch. 234A § 4(8).

²² See *supra* note 3.

²³ See <http://www.courtools.org>.

utilization due to this component is same-day settlements, plea agreements, and trial continuances.

All of the Massachusetts trial courts except the Suffolk County Superior Court use a telephone call-in system to tell jurors not to report for service, and the OJC has recommended that the Suffolk Superior Court institute a call-in system immediately. The third component describes the proportion of jurors that are cancelled by the court. This cancellation rate focuses on how the inability to accurately forecast trial starts affects the upstream costs of jury management.

Over time, courts have developed a number of additional measures of juror utilization. One such measure, which is a subset of the percentage of jurors sent to a courtroom for voir dire, is the percentage of “zero panel days.” A “zero panel day” is a day on which jurors reported for jury service, but no trials started on that day and all jurors were sent home without being used. The measure is calculated as the number of zero panel days divided by the number of days on which jurors were told to report for service. This measure is particularly useful for smaller courts that generally bring in jurors for a single trial rather than pooling jurors for multiple trials on the same day.

JUROR UTILIZATION IN MASSACHUSETTS

To examine juror utilization, NCSC staff obtained data from the JSI Jury+ Next Generation System detailing the following for each of the court locations that had jury sessions in the Commonwealth of Massachusetts from September 1 through November 30, 2006:

- Number of jurors summonsed;
- Number of jurors postponed in;
- Number of jurors disqualified;
- Number of jurors cancelled by mail;
- Number of jurors cancelled by court/standby;
- Number of jurors confirmed;
- Number of jurors told to report;
- Number of jurors that appeared for service;
- Number of jurors sent to a courtroom;
- Number of jurors impaneled;
- Number of jurors challenged; and
- Number of jurors excused.

For background and reference purposes, the NCSC also obtained from the Office of Jury Commissioner a list of the court locations, by judicial district, their subject matter jurisdiction (superior, district, juvenile, housing,²⁴ Boston municipal, grand jury), their estimated number of

²⁴ No Housing Court jury trials took place during the study period, and consequently the findings reported herein do not make reference to juror utilization by the Housing Courts. Regardless, the extremely low volume of jury trials suggests that juror utilization by the Housing Courts has no significant effect on statewide utilization rates.

jury days per year, and the number of the judges assigned to those locations. These were compiled into an SPSS database to generate descriptive statistics and regression analyses to identify specific court characteristics that affect juror utilization.

Based on discussions during the site visit, we anticipate that the specific factors affecting juror utilization would differ according to court type (superior, district, multi-use, grand jury, housing, juvenile), jury trial volume, number of jury sessions, number of judges assigned to each court, and idiosyncratic characteristics in each county (e.g., SDP trials in Suffolk County Superior Court). Recommendations for improved juror utilization may be applicable to some courts, but not applicable to others, depending on the factors that contribute to poor juror utilization.

Moreover, the different trial departments have differing demands for jurors. Just under half (46.8%) of all jurors reporting for service appeared in Multi-Use Courts. District Courts including the Boston Municipal Court²⁵ had the next largest demand with just under one-third (31.7%) of all jurors who appeared for service. Superior Courts accounted for one in five jurors (19.7%). Grand Juries and the Juvenile Court accounted for only a negligible amount of juror usage statewide (1.5% and .3%, respectively) and none in the Housing Courts. Insofar that the quantitative impact of poor utilization necessarily stems from those courts with higher demands for jurors, this report focuses mainly on utilization in the Multi-Use, District/BMC, and Superior Court locations.

Juror Utilization Rate

Table 1 describes the number of individual jurors who reported for service and the percentage of those individuals who were used in descending order by court type.²⁶ Statewide, just under one in four jurors (22.9%) were used for jury selection; three out of four either were not reached during jury selection or were not sent to a courtroom at all. There was great variation depending on court type. Grand Juries had the highest average utilization rates (64.8%), Juvenile Courts had the lowest (11.0%),²⁷ and Multi-Use Courts fell in the middle (24.4%). In terms of overall impact, poor utilization in the Multi-Use Courts accounts for just under half (47.8%) of the unused jurors during this period compared to slightly more than one-third unused by the District Courts (36.2%) and 15.0 percent by the Superior Courts. Thus, Multi-Use and District Courts have disproportionately poor utilization relative to their respective juror demands.

²⁵ For the purpose of this report, analyses for the Boston Municipal Court are included with those of the District Courts.

²⁶ The reports extracted from the Jury+ Next Generation System aggregated juror use data by trial court location on a daily basis. Approximately 10 percent of those aggregate reports indicated that jurors were recycled on those days. Thus, the sum of jurors sworn, challenged, excused and not reached was greater than the total number of jurors sent to a courtroom on those dates. To compensate for this issue, the NCSC inferred the number of jurors sworn, challenged, excused and not reached by calculating the percentage for each of those categories and multiplying that value by the number of jurors sent to a courtroom. As a result, the NCSC figures may slightly underestimate the number of jurors not reached as it characterizes a juror as used (sworn, challenged, or excused) even if they were not reached on one or more of the jury selections that day.

²⁷ The Berkshire Juvenile Court had only recently begun jury sessions at the time of this study. The OJC reports that its juror utilization rates have improved substantially in the interim.

Court Type	# Jurors Appeared	% Used by Court Type	# Jurors Not Used	% Contribution to Statewide Utilization
Grand Jury	1,361	64.8	411	.6
Superior Courts	17,527	37.2	9,516	15.0
Multi-Use Courts	41,587	24.4	30,286	47.8
District Courts	28,154	18.8	22,920	36.2
Juvenile Courts	223	11.0	200	.3
TOTAL	88,852	22.9	63,333	100.0

It is important to recognize, however, that juror utilization rates varied considerably within each court type. For example, juror utilization rates for the Superior Courts ranged from 33 to 71 percent while those for the District Courts ranged from 2 to 54 percent. Rates by the Multi-Use Courts ranged from 16 to 52 percent. Thus, some District and Multi-Use Courts performed better than some Superior Courts, even though their overall utilization rates were lower.

Percentage of Jurors Sent to a Courtroom and Percent of Zero Panel Days

Although juror utilization rates are useful for identifying courts that would benefit the most from improved practices, they do not indicate the specific cause of poor utilization. Tables 2 and 2a describe (1) the rate at which jurors who appeared for service were sent to a courtroom for jury selection; (2) the number of jurors who were not sent to a courtroom and their respective proportion of unused jurors; (3) the percentage of days on which jurors appeared for service but no jurors were sent to a courtroom (zero panel days). It also describes the number of jurors who appeared on zero panel days, a subset of (1), and their respective proportion of unused jurors.

Table 2: Percentage of Jurors Sent to a Courtroom				Table 2a: Percentage of Jurors Not Sent to a Courtroom on Zero Panel Days		
Court Type	% Sent to Courtroom	# Jurors Not Sent to Courtroom	% Contribution to Statewide Utilization	% Zero Panel Days	# Jurors on Zero Panel Days	% of Juors Not Sent to a Courtroom
Grand Jury	92.3	37	.2	.0		.0
Superior Courts	66.4	4,244	44.6	27.2	2,380	56.1
Multi-Use Courts	54.8	17,438	57.6	31.7	9,376	53.8
District Courts	44.6	15,476	67.5	54.2	15,066	97.4
Juvenile Courts	42.9	127	63.5	57.1	127	100.0
TOTAL	50.4	37,322	58.9	44.1	26,949	72.2

On average, only half (50.4%) of the jurors who report for service in the Massachusetts trial courts actually leave the jury assembly room for jury selection. Nearly half (44.1%) of the days on which jurors appeared for service were zero panel days – that is, none of the prospective jurors ever left the jury assembly room. In terms of the overall impact of these factors on juror utilization rates, 58.9 percent of the unused jurors were never sent to a courtroom and nearly three-quarters of those (72.2%) appeared on zero panel days.

Again, these rates vary considerably depending on the type of court. The rates for the Grand Juries exceed the 90 percent standard recommended by the NCSC and they had no zero panel days during the entire three-month period. Only one-third of the jurors reporting to the Superior Court were never sent to a courtroom, but these accounted for nearly half of all unused jurors in those courts. However, only one-quarter of unused jurors in Superior Court appeared for service on zero panel days. In the District and Juvenile Courts, we see a very different pattern. Fewer than half of the jurors who report for service are sent to a courtroom, and the ones left in the jury assembly room account for nearly two-thirds of the unused jurors in these courts. Moreover, almost all of the jurors who are never sent to a courtroom reported for service on a zero panel day. Again, the Multi-Use Courts fall squarely in the middle as is expected given the mix of cases in those locations. Slightly more than half of jurors are sent to a courtroom, and those left in the jury assembly room account for 57.6 percent of all unused jurors. However, only half of these reported on zero panel days.

Cancellation by Court Rates

The Massachusetts definition of juror utilization focuses exclusively on how jurors are used after they have reported for service. Another view incorporates the extent to which jurors are cancelled after they have been summonsed. This is an important concept for juror utilization with respect to the percentage of jurors sent to a courtroom. To the extent that a court can accurately predict the number of trials that are likely to start and thus cancel unnecessary jurors, a greater proportion of jurors reporting will be sent to courtrooms for jury selection. Moreover, a cancellation by court rate that is fairly stable over time is an indication that the court is over-summoning jurors, unnecessarily increasing administrative costs. Table 3 describes the average cancellation by court rates for each of the trial departments.²⁸ The combined number of jurors cancelled by court was 24,878 (12.2% of jurors summonsed). Yet as we saw in Table 2, the courts could have cancelled up to 37,322 more citizens (23% of jurors summonsed) and still had more than enough jurors from which to select juries. In essence, the inability of the trial court to accurately forecast trial starts required the OJC to summons nearly one-third more jurors than was necessary to satisfy the courts' actual need for jurors.

	# of Jurors Cancelled by Courts	% of Jurors Summonsed
District Court	1,416	2.0
Superior Court	10,896	15.0
Grand Jury		.0
Juvenile Court	160	18.0
Multi-Use Courts	12,296	10.7
TOTAL	24,768	9.4

²⁸ The figures in Table 3 do not include jurors who were cancelled by mail by the OJC, which it does automatically when the number of confirmed jurors exceeds the number of jurors routinely scheduled to appear for jury service.

Percent of Jurors Not Reached

Another major cause of poor juror utilization is sending more jurors to the courtroom than is necessary to select a jury. In some instances, especially in courts with simultaneous jury sessions for multiple courts or judges, this is due to excessive panel size. In most instances, however, it is still a function of excessive numbers of jurors told to report to the courthouse, but due to limited staffing resources, the entire jury pool is sent to the courtroom rather than leaving some jurors in the jury assembly room. In either instance, the overall percentage of jurors used is unaffected. Instead, this measure indicates “where” jurors were unused in the jury selection process (the jury assembly room or the courtroom).

Table 4 describes the percentage of jurors who were sent to a courtroom, but were “not reached” during voir dire; the number of jurors not reached, and the percentage of unused jurors resulting from jurors not reached. Overall, more than half (54.3%) of the jurors sent to a courtroom were not reached during voir dire and these individuals accounted for 41 percent of all unused jurors. Again, the District and Juvenile Courts had the highest percentages of not reached jurors (57.7% and 74.3%, respectively).

	% Jurors Not Reached	# Jurors Not Reached	% Contribution to Statewide Utilization
Juvenile Courts	74.3	73	36.5
District Courts	57.7	7,445	32.5
Multi-Use Courts	55.0	12,848	42.4
Superior Courts	44.0	5,272	55.4
Grand Jury	30.2	374	91.0
TOTAL	54.3	26,012	41.1

Major Contributors to Poor Juror Utilization in Massachusetts

Looking at Tables 2 and 3 together, it is possible to identify the primary contributors to poor juror utilization for each of the Trial Departments and the impact that they have collectively on statewide utilization rates. Table 5 provides this information for each of the Trial Departments.

	Excessive Pool		Excessive Panel Size	# Unused Jurors	Contribution to Statewide Utilization
		On Zero Panel Days			
Multi-Use Courts	57.6	31.0	42.4	30,286	47.8
District Courts	67.5	65.7	32.5	22,920	36.2
Superior Courts	44.6	25.0	55.4	9,516	15.0
Grand Juries	.2	.2	91.0	411	.6
Juvenile Courts	63.5	63.5	36.5	200	.3

As a general assessment, none of the trial departments can boast of exemplary utilization rates. Grand Juries had the best overall utilization rate (63.5%), but they account for only a negligible portion of the statewide utilization rate. The Berkshire Juvenile Court was the only stand-alone Juvenile Court that conducted jury trials during the study period.²⁹ Although it had the worst utilization rates (11.0%) of all of the trial departments, it too contributes only negligibly to the statewide utilization rates. Any substantial improvement in the statewide rates will have to come from improved utilization by the Multi-Use Courts (47.8%), the District Courts (36.2%), and the Superior Courts (15.0%). Because the Multi-Use Courts pose a unique analytical challenge due to the different combinations of trial departments conducting jury trials in those locations, we will defer our discussion of those courts temporarily and focus on the District and Superior Courts.

The major factor in the District Courts appears to stem from unpredictable trial starts, especially zero panel days, which accounted for nearly two-thirds of unused jurors during the study period. Cases tried in the District Courts include misdemeanors, less serious felonies, and lower value civil cases. District Court judges engage in comparatively little pretrial management and consequently have less information on which to assess the likelihood that the case will be disposed by a plea agreement or settlement. The predominant practice is to schedule multiple cases for trial on the same day in anticipation that most will settle or plea, but that one or more might opt for a jury trial. In reality, trials actually begin on fewer than half the days that jurors are told to report for service. Last minute cancellations of jurors are extremely rare in the District Courts; on average only 2 percent of the jurors summonsed were cancelled by the District Courts the day before service, and of the 37 District Courts with jury activity during the study period, only 15 reported any cancellations at all.

As a general matter, the major factor in the Superior Courts involves excessive panel size, which accounted for more than half of the unused jurors in those courts during the study period. In contrast to the practice in District Court, Superior Court judges generally engage in more extensive pretrial management. Thus, the likelihood of a case that has been scheduled for trial actually starting is greater in Superior Court than in District Court. The greater trial certainty permitted the Superior Courts to cancel nearly one-quarter (22.8%) of the jurors who had been summonsed on the eve of trial, thus preventing jurors from reporting for service only to be sent home without being sent to a courtroom at the end of the day. Although most jurors did see the inside of a courtroom, almost half of those that did (44.0%) ultimately were not needed to select a jury.

As we discuss below, poor juror utilization by the Multi-Use Courts accounts for nearly half of the unused jurors for the September 1 through November 30, 2006 period. Multi-Use Courts pose an analytical challenge in that, as the name implies, these courts handle jury trials for a variety of combinations of Superior, District, Housing, and Juvenile Courts. The Barnstable Courthouse, for example, tries a mixture of Superior and District Court cases while the Lynn Courthouse tries cases only from the District and Juvenile Courts. Even those court locations that have the same combination of courts trying cases may have very different trial caseload compositions. For example both the Barnstable and Norfolk Courthouses try cases from the

²⁹ *But see supra*, note 27.

Superior and District Courts, but during the period from September 1 through November 30, 2006, all but 14 of 51 cases tried in the Barnstable Courthouse came from the Superior Court, while during the same period the Norfolk Courthouse tried 50 percent more cases in the District Court (34 cases) than in the Superior Court (22 cases).

These differences make it difficult to characterize Multi-Use Courts as being more or less similar to either the Superior Courts or the District Courts. Rather, each Multi-Use Court location must be examined on its own, ideally taking into account the mix of jury sessions (Superior, District, Juvenile, Housing, Grant Jury) and the specific factors that tend to drive juror utilization rates for each court type. Table 6 presents the analyses for these courts in descending order according to the overall rate of juror utilization. Similar tables for individual Superior and District Court locations are provided in Appendix A. Here we find that poor juror utilization in some Multi-Use Courts stems mainly from one specific factor, such as high proportions of zero panel days in the Nantucket County and Lawrence District Courts or excessive panel sizes in the Edgartown, Fall River, and Lowell Superior Courts. Other Multi-Use Courts have a combination of factors driving overall juror utilization rates.

	% Used	Sent to Courtroom		Zero Panel Days		Jurors Not Reached	
		% Sent to Courtroom	% of Jurors Not Used	% Zero Panel Days	% of Jurors Not Used	% Jurors Not Reached	% of Jurors Not Used
Edgartown Superior Courthouse	42.5	83.9	34.9	15.4	33.7	49.0	65.1
Nantucket County Courthouse	38.7	50.0	68.2	50.0	68.2	22.3	31.8
Lawrence District Courthouse	30.9	50.1	69.9	48.9	68.4	38.4	30.1
Worcester Superior Courthouse	29.8	53.3	64.3	18.0	23.0	45.7	35.7
Edward J Sullivan Courthouse	27.9	63.1	49.9	13.3	16.0	56.8	50.1
Hampden County Hall of Justice	26.7	47.3	71.2	24.6	32.0	40.9	28.8
Fall River Superior Courthouse	25.8	65.1	31.6	29.4	21.8	62.8	68.4
Norfolk County Courthouse	25.4	52.1	62.8	28.6	34.4	51.1	37.2
Barnstable Superior Courthouse	24.4	75.9	36.5	10.2	10.6	66.4	63.5
Hampshire County Courthouse	24.3	48.8	66.3	40.0	50.7	50.6	33.7
Franklin County Courthouse	23.3	53.4	57.9	37.5	46.0	58.0	42.1
Lowell Superior Courthouse	23.0	50.2	40.1	46.9	32.5	54.6	59.9
Pittsfield Superior Courthouse	21.9	53.6	50.8	45.1	48.6	59.1	49.2
Brockton Trial Court	15.7	60.6	43.8	36.0	38.3	73.9	56.2
Edward W. Brooke Courthouse	13.6	38.4	72.6	47.5	53.2	60.5	27.4
TOTAL	24.4	54.8	57.6	44.1	31.0	55.0	42.4

These analyses present only a preliminary view of the practices that contribute to poor juror utilization in the Massachusetts trial courts. Other factors that were not incorporated into the analyses, but may be relevant, include the number of the trial judges assigned to those locations and the number of jury sessions scheduled. These preliminary analyses also suggest that District and Superior Court judges may employ different case management strategies that affect how jurors are used or not used (e.g., not sent to a courtroom, not reached), making it difficult to interpret findings, especially in the Multi-Use Courts.³⁰ As previously mentioned, the variation

³⁰ The NCSC obtained reports providing additional details about juror utilization for each of the Multi-Use Courts, but these were aggregated on a monthly, rather than daily basis, making it difficult to assess the degree to which Superior, District, or Juvenile Court activity was driving juror utilization in the Multi-Use Courts.

in juror utilization rates within court types suggests that individual judges also differ in their approach to pretrial management. Jury Systems, Inc. has provided the OJC with access to data necessary to conduct more detailed analyses that could assist individual trial courts to identify the major factors contributing to poor utilization.

Juror Utilization Rates in Other Jurisdictions

NCSC CourTools Measure 8 provides aspirational benchmarks for juror utilization – namely that an average of 90 percent of jurors be sent to a courtroom for voir dire and not more than 10 percent of them be left not reached, resulting in an overall utilization rate of 81 percent. But very few courts rigorously document juror utilization, so it is difficult to ascertain the extent to which these standards are routinely met, if at all. Moreover, the jurisdictions that do document juror utilization do not necessarily use the same metrics. Nevertheless, systematic data are available for a handful of jurisdiction that can provide some basis of comparison with the Massachusetts data. See Table 7. In Pennsylvania, for example, each Court of Common Pleas submits a monthly juror utilization report to the Administrative Office of the Pennsylvania Courts detailing the percent of jurors sent to a courtroom, the percent of zero panel days, and other key measures.³¹ The Florida Circuit Courts³² and the U.S. District Courts³³ submit similar reports to their respective Administrative Offices. The NCSC has access to jury panel data in California from a 2002 study of voir dire practices.³⁴ That study examined jury panel data from 14 counties comprising 56 percent of the jury trials conducted in 2002 and 51 percent of the state population.³⁵ Other individual courts such as the Maricopa and Yuma County Superior Courts in Arizona post information about juror utilization online.

	% Used	% Sent to Courtroom	Average # Zero Panel Days	% Not Reached
Pennsylvania Court of Common Pleas (2005)	n/a	83.4	7.2	n/a
Florida Circuit Courts (2006)	n/a	73.6	8.2	n/a
California Superior Courts (2002)	n/a	n/a	n/a	37.3
U.S. District Courts (2005)	73.3	86.7	n/a	23.4
Maricopa (AZ) Superior Court (2006)	n/a	84.7	n/a	n/a
Yuma (AZ) Superior Court (2006)	59.3	n/a	n/a	n/a
Massachusetts Court System	22.9	50.4	57.2	54.3

³¹ ZYGMONT PINES, 2005 CASELOAD STATISTICS OF THE UNIFIED JUDICIAL SYSTEM OF PENNSYLVANIA 79-84.

³² Juror utilization data for all Florida counties for 2006 was provided by Arlene Johnson, Florida Administrative Office of the Courts, on May 24, 2007.

³³ JAMES C. DUFF, JUDICIAL BUSINESS OF THE UNITED STATES COURTS Table J-2 (2006).

³⁴ Paula L. Hannaford-Agor & Nicole L. Waters, Examining Voir Dire in California (August 2004).

³⁵ *Id.* at 9-10.

Although none of these jurisdictions provides complete information for comparative purposes, the various measures provide an approximate baseline for juror utilization in a sample of courts to compare with those in Massachusetts. Reported utilization rates (% used) in other jurisdictions ranged from 59 to 73 percent compared to 23 percent in Massachusetts. The percent of jurors sent to a courtroom is ranged from 74 to 87 percent compared to 50 percent in Massachusetts. The number of zero panel days per court ranged from 7.2 to 8.2 days annually compared to 57.2 in Massachusetts. The percentage of jurors not reached ranged from 23 to 37 percent compared to 54 percent in Massachusetts. Even restricting the comparisons to rates for the Massachusetts Superior Courts,³⁶ it is fair to say that Massachusetts does not compare favorably to these jurisdictions.

COSTS OF POOR UTILIZATION IN MASSACHUSETTS

In most jurisdictions, the costs of poor juror utilization include some combination of juror fees and mileage for unused jurors, lost income and lost opportunity costs for individual jurors, lost wages/salaries and lost productivity for employers, and unnecessary administrative costs. In Massachusetts, these costs are somewhat simplified insofar that, except for unemployed jurors, the court does not incur juror fees or mileage for individual jurors until after the third day of service and employed jurors are guaranteed their regular earnings from employers. Therefore, the costs of poor juror utilization in Massachusetts fall almost exclusively on the business community in the form of lost wages/salaries and lost productivity for employers, and on the Office of Jury Commissioner in the form of increased administrative costs.

The court does not collect income data on jurors reporting for service, but assuming that the jury pools in each court location fairly reflect the income characteristics of their communities, it is possible to estimate the costs of poor juror utilization on Massachusetts' employers using per capita income statistics³⁷ from the 2005 American Community Survey administered annually by the U.S. Census Bureau.³⁸ Based on the number of unused jurors and the per capita income for each district, the estimated wages/salaries paid by Massachusetts' employers to unused jurors during the study period were \$7.4 million (approximately \$29.7 million for all of 2006).

³⁶ The vast majority of jurisdictions, including those listed in Table 7, conduct jury trials only in their general jurisdiction courts. The average Superior Court statistics for Massachusetts were 37.2 percent of jurors used; 66.4 percent of jurors sent to a courtroom; 54.4 zero panel days per court per year; and 44 percent of jurors not reached.

³⁷ Per capita income reflects the average income across the entire population, regardless of employment status (employed, not employed, retired, etc.). Consequently, the value of per capita income is commensurately less than the actual compensation of employed workers.

³⁸ American Community Survey is an annual survey that samples 1 out of every 6 households in every county, American Indian and Alaska Native Area, Hawaiian Home Land, and Puerto Rico. Testing for the American Community Survey began in 1996 and the survey is intended to provide critical economic, social, housing, and demographic information to federal, state, and community policymakers every year instead of once in 10 years. It will replace the Census Bureau "long form" in the 2010 Decennial Census. AMERICAN COMMUNITY SURVEY: QUESTIONS AND ANSWERS (January 2005) (available at http://www.census.gov/acs/www/Sbasics/Congress_toolkit/Q&A.pdf).

This figure, of course, represents only the wages/salaries paid by employers during the study period. It does not include non-income compensation such as benefits (e.g., pension, health insurance, workman's compensation, disability insurance, vacation/sick day accruals,) that are also incurred by the employer. In addition to paying compensation, however, the business community loses the value of employees' work – that is, their labor productivity³⁹ – for the day. Using Bureau of Labor Statistics for the fourth quarter of 2006⁴⁰ and U.S. Census Bureau statistics on employment status for the population aged 20 to 69,⁴¹ it is possible to estimate the maximum value of lost economic output due to poor juror utilization at \$15.7 million during the study period or as much as \$63 million per year.⁴² As a practical matter, most employers will not lose the full value of an employee's productivity by their absence for a day as other employers will be engaged to compensate for the absent employee or that employee will make up for some or all of the lost productivity on their return to work. A more conservative estimate of the impact of poor juror utilization is \$31.5 million per year in lost economic output (approximately half of the maximum estimate).

Administrative costs of the jury system include the total expenditures for printing and posting summonses, staffing costs for administering the jury system and supervising jurors, capital costs for maintaining jury system automation, and costs of jury facilities. In most jurisdictions, these costs are all borne by the local court. In Massachusetts, however, they are distributed among separate agencies (the OJC, the AOTC, and local counties). The NCSC was able to obtain 2006 budget information from the OJC, which assumes a substantial portion of the jury administration costs⁴³ and estimated that the cost per juror reporting for service was \$7.32.⁴⁴ Therefore, the administrative expenses incurred by having 63,333 jurors report for service, but not be used, was approximately \$463,600 during the study period (\$1.85 million annually).

All of these costs – which total an estimated \$63 million per year – represent the quantifiable costs associated with poor juror utilization. Other costs that are not as easily measured in monetary terms are the lost opportunity costs for jurors who are not employed and who would otherwise be engaged in activities other than jury service (childcare, volunteer activities, education, recreation) and the lost public trust and confidence in the courts by those individuals who did not enjoy the meaningful participation in the justice system of their peers who were

³⁹ Labor productivity is defined as the value of economic output divided by the unit of labor. See Economic Web Institute, Productivity, located at <http://www.economicwebinstitute.org/glossary/prdctvt.htm>.

⁴⁰ Non-farm business output per hour (4th Q 2006) = 167.675; Non-farm business compensation per hour (4th Q 2006) = 125.781. U.S. DEPT. OF LABOR, BUREAU OF LABOR STATISTICS, Productivity and Costs, located at <http://www.bls.gov/lpc/home.htm#data>.

⁴¹ U.S. CENSUS BUREAU, 2005 AMERICAN COMMUNITY SURVEY, Table B23001 (Sex by Age by Employment Status for the Population 16 Years and Over), located at <http://www.factfinder.census.gov/>.

⁴² This estimate reflects the maximum theoretical value of lost productivity due to poor juror utilization. It was calculated as the estimated value of non-farm business output for employed jurors who were not used during jury service minus the estimated value of non-farm business compensation paid to those jurors.

⁴³ The OJC covers the cost of posting summonses and staffing costs for administering the jury system (but not supervising jurors) while the AOTC pays printing costs and capital costs for maintaining jury system automation. The OJC annual budget for FY2008 is approximately \$2.6 million.

⁴⁴ This figure underestimates the actual administrative costs of jury administration, which is probably in the range of \$10 to \$15 per juror reporting based on costs incurred by the AOTC and by local county governments.

impaneled, challenged, or excused did. Although not easily quantifiable, courts should not discount or ignore the existence of these costs.

All of these cost estimates due to poor juror utilization presume that 100 percent utilization is within the realm of possibility. However, not even the NCSC CourTools Measure 8 proposes perfect utilization as the standard. Instead, it allows for a minimal level of wastage (no more than 19 percent of jurors reporting) to ensure that a sufficient number of jurors are always present from which to select juries. Otherwise, trials would be delayed for lack of jurors, which would also incur costs for the court, for the attorneys, for the parties, and for the public that would offset – and possibly exceed – any savings due to improved juror utilization.

Based on the number of jurors actually used during the study period, the maximum number of unused jurors that would comply with NCSC standards is 4,844 (compared to 63,333 that were actually unused). The reasonable costs of underutilization, therefore, should be no more than \$1.2 million during that three-month period (approximately \$4.8 million annually). By improving juror utilization to NCSC standards, the Massachusetts Court System could save Massachusetts' jurors, employers, and taxpayers up to \$58 million per year.

OPTIONS FOR IMPROVED JUROR UTILIZATION

Poor juror utilization in Massachusetts stems from a number of factors: (1) an excessive number of jurors reporting for the number of trials scheduled to start; (2) a large proportion of zero panel days, especially in the District Courts; and (3) excessive panel size, especially in the Superior Courts. The first two factors essentially stem from the failure of each court location to accurately predict the number of trials that will start. In the vast majority of cases, trials are cancelled as a result of last-minute plea agreements and settlements that dispose of cases after the jurors have been told to report. More infrequently, trials are continued to a future date at the last minute or the parties failed to communicate their intent to plea or settle the case to the court in time to cancel jurors before the reporting date. Together, these factors accounted for more than half (56.1%) of the unused jurors in the Massachusetts Trial Courts during the study period. The third factor is simply a matter of sending more jurors to the courtroom than is necessary to select a jury.

Four techniques have been used successfully in other jurisdictions to address the juror utilization implications of day-of-trial plea agreements, settlements, and continuances. The first two focus on improving the predictability of trial starts so jurors are not required to report unnecessarily. The third and fourth techniques attempt to compensate for the high probability of non-trial dispositions by concentrating impanelment activity or by adjusting the number of jurors told to report. These techniques can be employed in various combinations, but some are more likely to be effective in locations with a high volume of jury activity (e.g., Superior and Multi-Use Courts) while others are more appropriate for courts with a lower volume of jury activity or limited numbers of jury sessions.

Effective Judicial Pretrial Management

The first technique is simply to strengthen judicial pretrial management to better predict trial starts – for example, by setting firm trial dates,⁴⁵ encouraging litigants to inform the court in a timely manner about non-trial dispositions (plea agreements and settlements), and to calendar cases for trial according to the level of certainty that they will actually proceed to trial. These are basic case management techniques with a long track record for resolving cases in a timely and efficient manner.⁴⁶ With respect to juror utilization, they also provide the court with more accurate information with which to decide whether, and how many, jurors will be needed to try cases.

These types of techniques are already practiced to some extent by judges in the Superior Courts and could be strengthened with additional training. At present, District Court judges rarely have any contact with the parties or attorneys before trial and thus have little opportunity to assess the seriousness of the parties' intent to proceed to trial. As part of the Court's existing efforts to improve the timeliness of case processing, it may be prudent to explore the feasibility of improved judicial pretrial management in the District Courts.

Disincentives for Day-of-Trial Settlements, Plea Agreements, and Continuances

One comment that was expressed repeatedly to NCSC staff during their visit to Massachusetts was the belief that the physical presence of jurors in the courthouse, ready to hear cases, was necessary before parties would agree to settle or accept a plea agreement. This perception implicitly assumes that the parties have no incentive to resolve cases through non-trial means until compelled to do so by the arrival of the trial date – and may, in fact, have every incentive to delay. Thus, day-of-trial settlements and plea agreements appear to be the prevailing expectation by trial judges throughout Massachusetts. Without an expectation that dilatory practices are strongly discouraged, it is little wonder that litigants and their attorneys would take full advantage of the opportunity to resolve the case right up to the last minute. To counter this cultural norm, the court should consider adopting policies to encourage litigants to inform the court of their intent to settle a case before jurors are told to report.

Many courts across the country employ semi-formal or informal policies to provide appropriate incentives for litigants to inform the court of their intent to accept a plea agreement or settle a civil matter before jurors are told to report for service. A common technique in Florida courts, for example, is to assess the full costs of requiring jurors to report unnecessarily against civil litigants who settle on the day of trial or who fail to inform the court of their intent to settle before jurors are told to report for service, usually the day before trial.⁴⁷ Massachusetts does not

⁴⁵ CourTools Measure 5 (Trial Date Certainty) provides a tool to evaluate the effectiveness of calendaring and continuance practices. The Massachusetts Court System is currently using Measure 5 as part of the Court Metrics Project.

⁴⁶ See DAVID C. STEELMAN, JOHN A. GOERDT & JAMES E. MCMILLAN, CASEFLOW MANAGEMENT: THE HEART OF COURT MANAGEMENT IN THE NEW MILLENNIUM (NCSC 2004).

⁴⁷ The vast majority of courts now use a telephone call-in system for jury service. Citizens are summonsed to report for jury service on a specific day, but the summons informs jurors to call a dedicated telephone number after a certain time (e.g., 4:00 pm) the day before trial to find out if they are still needed to report.

pay jurors a per diem fee until the fourth day of service, so this penalty may be inadequate as a financial disincentive for many civil litigants. For example, assuming administrative costs of \$7.32 per juror reporting, a fee assessed against litigants for a panel of 50 jurors that reported unnecessarily would be \$366. In comparison, a jurisdiction that pays a \$25 juror fee for each day of service and comparable administrative costs would assess a penalty of \$1,530 for a day-of-trial settlement, plea agreement, or continuance. To ensure that the penalty provides a sufficient financial disincentive against delaying the decision to settle or try the case, it may be necessary to assess a flat amount as the penalty or a scheduled amount based on the amount in controversy.

State laws vary substantially with respect to the practice of assessing court costs against criminal defendants. Nevertheless, many judges have established similarly effective policies to encourage prosecutors and defense counsel to engage in timely plea negotiations. A common tactic is for the court to have a “plea cutoff date” policy,⁴⁸ informing prosecutors and criminal defendants that notice of their intent to plead must be provided to the court by a specified date and time before jurors are told to report for service, again usually the day before the trial is scheduled to start. If they fail to do so, the defendant must plead to the full charge(s) filed.⁴⁹ This type of policy provides equal incentives for the prosecution and the defense to engage in meaningful plea negotiations. Prosecutors are encouraged to assess the strength of their cases and make reasonable plea offers or face the prospect of having to prove all charges to a jury beyond a reasonable doubt. Criminal defendants are encouraged to accept reasonable plea offers or accept a sentence commensurate with conviction on more serious charges. Of course, the trial judge retains the discretion to permit a late plea agreement if the parties can show good cause why they could not inform the court of the decision to plead in a timely manner. For these types of incentive policies to be effective, enforcement must be consistently and uniformly applied by all of the judicial officers of the court.

Concentrate Impanelment Activity

Zero panel days were a substantial factor in poor juror utilization in Massachusetts, especially in the District Courts where the prevailing practice involves calendaring multiple cases for trial on the same day with the expectation that most or all of them will plead or settle, although jurors must be available in the unlikely chance that one of those cases will proceed to trial. There may be some types of case characteristics (e.g., nature of charges, identity of attorneys) that would indicate a greater likelihood of a case proceeding to trial. In most instances, however, these cases can be compared to a half-life of an atomic particle; each case has an equal, but very small, probability of proceeding to trial on any given day, but it is extremely difficult to determine in advance which cases will do so.

⁴⁸ See STEELMAN et al., *supra* note 24, at p.33 for further discussion of the application of a plea cutoff date policy to criminal cases.

⁴⁹ See, e.g., N.J. CT. R. Rule 3:9-3(g) (2006) (“Plea Cut Off. After the pretrial conference has been conducted and a trial date set, the court shall not accept negotiated pleas absent the approval of the Criminal Presiding Judge based on a material change of circumstance, or the need to avoid a protracted trial or a manifest injustice.”).

One approach to deal with this level of unpredictability is to concentrate jury selection activity by scheduling a larger number of cases for trial on any given day, but delaying the actual start of the trial until a future date. This technique is called “multiple voir dire” in some jurisdictions. It is premised on the assumption that, although each individual case has a very small probability of proceeding to trial, the likelihood of *at least one* of those cases being tried increases as the number of cases calendared for trial increases.⁵⁰

Procedurally, the technique works as follows. The trial judge calendars a “jury selection day” for all cases that are calendared for trial in given period of time (e.g., that week, that month) and brings in a panel large enough to select one or more juries.⁵¹ As each case is called, the parties either select a jury or resolve the case through non-trial means. In effect, the jury selection day functions as the last possible pretrial conference and “plea cut-off date.” If the parties decide to proceed to trial, the jury is selected, sworn, and told to report back on a future date.⁵² This process continues until all of the cases scheduled for that day are disposed. Time permitting, the last jury selected can begin hearing the case that day. In this manner, jurors in the jury pool have a greater probability of being used (sworn, challenged or excused) and the only people who report back on a second day are those who are actually impaneled as trial jurors or alternates.

If this technique is used, it is important to emphasize to the parties that, if they subsequently decide to settle or consent to a plea agreement, they must inform the court *before the trial date* so the sworn jurors can be cancelled. Commensurately higher financial disincentives against day-of-trial settlements and plea agreements (discussed above) should be applied to cases in which the jury has already been selected. The primary complication involved in this technique is the need to schedule two or more trial days for every case – one to select the jury and a second to try the case, which requires more coordination between the trial judge, the calendar clerks, and the attorneys to ensure that the attorneys and their clients are available for both the jury selection date and the scheduled trial date.

Decreased Jury Pool Size

A final technique to address the issue of too many jurors being called to court is simply to adjust the number of jurors who are told to report to the jury pool each day based on historical usage

⁵⁰ In statistics, the probability of an event occurring over several iterations follows a multiplicative rule. For example, if the probability of any case proceeding to trial is 10 percent, and if five cases are scheduled for trial, the probability that at least one of those cases will proceed to trial is 41 percent -- that is, 100 percent minus the probability that all cases will settle (90% x 90% x 90% x 90% x 90%). If 10 cases are scheduled for trial, the probability that any one case will proceed to trial is 65 percent. If 20 cases are scheduled for trial, the probability increases to 88 percent.

⁵¹ The number of jurors told to report for service should encompass the number of jurors/alternates needed for one or more juries (depending on the number of cases scheduled and the probability of any one cases proceeding to trial) plus a sufficient number of jurors to cover the anticipated number of peremptory challenges and excusals for ONE CASE. Those jurors that are challenged or excused during jury selection for the first case are then recycled onto the next venire.

⁵² An alternative approach in multi-judge locations is for one judge to supervise jury selection for those cases scheduled for trial. As soon as the jury is selected, the case is transferred to another judge for trial.

patterns.⁵³ This technique works best in courts that routinely have some level of trial activity (e.g., few zero panel days) and a high proportion of jurors who are never sent to a courtroom. The Worcester County Superior Court is a good example. See Table 5. More than half of the jurors who reported for jury service were not sent to courtroom for voir dire accounting for nearly two-thirds of that court's unused jurors, but zero panel days accounted for less than one-fourth of its unused jurors. On average, 85 jurors reported for service during the 60 jury sessions of the study period, but the average number of jurors sent to a courtroom for voir dire was 52. If the number of jurors who were told to report was reduced to 58, the average percentage of jurors sent to a courtroom for voir dire would meet the NCSC recommended standard (90%).

The major disadvantage of this approach is the risk of having too few jurors from which to select juries, especially when the percentage of jurors sent to a courtroom fluctuates widely, as was the case in the Worcester Superior Court.⁵⁴ For 53 of the 60 jury sessions (88.3%), a jury pool of 58 would have been sufficient to cover all of the impanelment needs for those sessions. In the remaining 7 jury sessions, however, the number of jurors used ranged from 59 to 79. Thus, a jury pool of 58 would have been insufficient for those sessions. Although it is possible in many instances to identify cases that are likely to exhaust the jury pool by the nature of the charges, the identity of the parties, or the anticipated length of trial, it requires diligent oversight and planning to ensure that an additional number of jurors are summonsed and told to report when those cases are scheduled for trial.

Decrease Panel Size

Another major cause of poor juror utilization in Massachusetts is excessive panel size, resulting in a large proportion of the venire left "not reached," especially in courts that have simultaneous jury sessions for multiple courts or judges.⁵⁵ This factor accounted for 44 percent of the unused jurors in Massachusetts during the study period. This is perhaps the easiest problem to address insofar that it involves decreasing the size of the jury panels sent to the courtrooms. This is a relatively easy technique to implement, especially in courts with multiple jury trials scheduled on the same day.⁵⁶ The court establishes a standard panel size that is large enough to accommodate jury selection in a substantial portion of trials (e.g., up to 90%). The court also keeps a small reserve of jurors in the jury assembly room to supplement the panel in the event that any given case is one of the few that requires more jurors than was provided in the initial panel. The reason for setting the panel size so that it will accommodate jury selection in most, but not all, cases is simply as a convenience for the trial judge, who will not have to call for a supplemental panel except in fairly rare circumstances. To improve juror utilization, of course, it is not sufficient simply to reduce the panel size as that could potentially increase the number of jurors not sent to a courtroom. Instead, the court would then reduce the number of jurors summonsed and told to

⁵³ The OJC current employs this technique in Suffolk County, and has offered to provide it to any other court that wishes to fine-tune its summoning rate.

⁵⁴ The percent sent to court ranged from 0 percent (10 jury sessions) to 100 percent (3 jury sessions).

⁵⁵ As noted before, this factor is identical to excess jury pool size in most Massachusetts trial courts that do not have simultaneous jury sessions by multiple courts or judges.

⁵⁶ The District Courts enacted such a change recently, reducing the standard venire size from 24 to 21.

report, so that the jurors who were previously “not reached” are now not being told to report for service.

Like jury pool size, it is possible to establish standard panel sizes for different types of cases based on based on case characteristics. For example, the Suffolk County Superior Court is currently the only court to hear Sexually Dangerous Persons (SDP) cases, which reportedly require substantially more jurors to select a jury due to the sensitive nature of the trials. It would be appropriate to establish a standard venire size for SDP cases that, again, is large enough to accommodate jury selection in most but not all SDP cases. Similar distinctions in panel sizes can be made for serious felonies, other criminal cases, and civil cases if the average number of jurors reached for those types of cases so warrants.

Reduced Summoning Rates

Strategic implementation of the techniques discussed above will improve juror utilization rates for those jurors who are told to report for service. However, the administrative costs associated with jury service will remain the same unless the OJC is able to take advantage of improved juror utilization and reduces summoning rates. Table 3 illustrated that the trial courts routinely cancel 12 percent of jurors based on the anticipated need for jurors. The NCSC also examined cancellation by mail rates and found that the statewide average was 9 percent whom the OJC told not to report once the juror yield for the location on a particular day exceeded the anticipated needs of the court for that day. Combining these two rates, the OJC could reduce the number of jurors summonsed by nearly one-fifth to reduce the printing, postage and staffing costs associated with jury administration. Perhaps as important, reducing the number of jurors who are summonsed and qualified but subsequently told not to report will also slow exhaustion of the master jury list and preserve those jurors for use at a later time.⁵⁷ This is particularly important in Suffolk County where the current demand for jurors appears to be nearing, or maybe has already surpassed, the supply of qualified jurors.

ISSUES RELATED TO JUROR UTILIZATION: DATA INTEGRITY AND INSTITUTIONAL STRUCTURES

The implementation of JSI Jury+ Next Generation and the MassCourts case management automation provides an invaluable opportunity to improve the ability of the trial courts to assess the probability that a case that is scheduled for trial will actually result in jury selection. Statewide implementation of MassCourts was not complete by November 30, 2006, so NCSC staff were unable to obtain statewide data on the number of cases scheduled for trial. This information will be useful for calculating the ratio of scheduled trials to trial starts over time and thus having information on which to calibrate the number of jurors told to report with the number of trials that are likely to go forward. As the trial courts use this information to reduce the

⁵⁷ Jurors who are summonsed and qualified, but then cancelled, are held out from being re-summonsed for the remainder of the year, but are eligible to be summonsed the following year.

number of jurors told to report, the OJC will be able to reduce the number of jurors summonsed and qualified, thus reducing administrative costs and preserving the master jury list.

A critical component of any court improvement efforts that rely on ongoing self-evaluation is, of course, the accuracy and integrity of the data used to conduct the assessments. The NCSC found that the data provided by JSI included a small number of records for which the use of the jury panel was recorded as “not updated” – meaning that the trial court officers failed to report how jurors were used (e.g., impaneled, challenged, excused, or not reached).⁵⁸ As part of the ongoing training of and support to the trial courts, the OJC should continue to emphasize the importance of accurate and complete data entry in the JSI NextGen System as it relates to the usefulness of juror utilization statistics that are provided to each of the trial courts.

A final comment is in order about the unique institutional and legal structure of the Massachusetts jury system and how it affects the trial courts’ awareness of and ability to address issues related to juror utilization. In almost every other state in the U.S., jury management is conducted exclusively on a local county or judicial region basis. Most courts compile their own master jury list, and almost all summons and qualify prospective jurors, select juries to try cases, and pay those jurors for their service using local court resources. Thus, jury operations in most courts are viewed as an integral component of the trial court structure. Recent budgetary pressures increasingly have forced courts to confront poor juror utilization because the associated costs – printing, postage, staffing, and juror fees – directly affect the court’s bottom line. In addition, many local trial courts also view improved juror utilization as a meaningful topic with which to engage their local communities in public outreach efforts.

In 1977, Massachusetts made a number of groundbreaking institutional and legal changes to its jury system, introducing tremendous efficiencies in jury administration and redistributing the burden of jury service much more equitably among the jury eligible population of the Commonwealth. As a result of those changes, however, it removed some of the traditional incentives for the trial courts to monitor and manage their juror utilization in an efficient manner. The creation of a statewide Office of Jury Commissioner removed responsibility for the summoning and qualification of prospective jurors from the trial courts. The graduated juror fee structure, again operated on a statewide basis, eliminated the financial impact of poor juror utilization on the local trial courts and passed it along to the considerably more diffused population of individual jurors and their employers. Complaints about jury service are generally directed to the OJC, not to the trial courts, so judges do not often hear directly from citizens and their employers about the impact of poor utilization on jurors’ lives. This fragmentation of the jury system has fostered a culture in which none of the various components of the judicial system – the OJC, the AOTC, the Chief Justices, or the local trial courts – has properly retained responsibility for juror utilization.

Greatly improved interagency communication and cooperation will be necessary to overcome the unintended consequences of this unique institutional structure. A major objective should be to

⁵⁸ For NCSC analysis purposes, “not updated” records were interpreted as jurors not reached, which may have slightly inflated those numbers. These accounted for only 184 records (3% of the total jury sessions held during the study period), so they do not significantly affect the statewide statistics or NCSC conclusions and recommendations about juror utilization.

replace the existing culture of balkanized responsibility for jury operations with a culture that recognizes jury utilization as a system-wide problem that requires a system-wide response. The OJC should continue to provide statistical reports concerning juror utilization to the AOTC. It should also supplement those basic statistics with information about how juror utilization affects other aspects of the jury system such as administrative costs and the viability of the pool of eligible jurors. Open access and regular communication between the AOTC, the OJC, and the Chief Justices is critical to this effort.

The AOTC, in turn, should take responsibility for communicating that information to the various Trial Departments and individual court locations and for working with judges and court staff to identify effective approaches to improve juror utilization. The AOTC and the Chief Justices should make improved juror utilization a priority and communicate that message emphatically to the trial courts to reshape the prevailing court and legal culture in a manner that places greater value on jurors' time and the tangible and intangible costs of poor utilization.

CONCLUSIONS AND RECOMMENDATIONS

Conclusions

From the analysis in this report, we can make the following general conclusions about juror utilization and its impact on the Massachusetts Court System:

- First and foremost, the rates of juror utilization by the Massachusetts trial courts fall woefully short of aspirational standards such as those advocated by the NCSC. Nor do they compare favorably with reported juror utilization rates in other state and federal courts. There is certainly room for great improvement.
- The largest volume of jury activity takes place in the Multi-Use Courts – that is, those court locations in which jurors are available for use by various combinations of Superior, District, housing, and Juvenile Courts. Thus, poor juror utilization in those locations is the biggest contributor to poor utilization on a statewide basis, accounting for nearly half of unused jurors. The District Courts and Superior Courts accounted for 36 percent and 15 percent of unused jurors, respectively. Jury activity in Juvenile and Housing Courts and in county Grand Juries contributed only negligibly to overall utilization rates.
- Of those courts with significant jury trial activity, the District Courts had the lowest overall utilization rates (19%). The Superior Courts had the highest overall rates (37%) while the rates for the Multi-Use Courts fell in the middle (24%).
- Nevertheless, there was great variation in juror utilization rates within the various Trial Departments. Rates reported by the Superior Courts ranged from 33 to 71 percent, by the District Courts ranged from 2 to 54 percent, and by the Multi-Use Courts ranged from 16 to 52 percent. The extent of these ranges suggests that some courts employ more efficient juror

utilization practices than others, and that wider dissemination of those practices could improve statewide utilization rates substantially.

- Juror utilization rates are affected by different factors in different courts. As an overall generalization, excessive panel size appears to be the primary factor in Superior Courts while the number of Zero Panel Days, which results in an excessive number of jurors reporting for service, appears to be the primary factor in District Court utilization rates. Only rarely does it appear that a single factor is driving juror utilization in any one court; most involve a combination of factors.
- Due to the unique structure of the Massachusetts jury system, control of the various factors that contribute to poor juror utilization lies within the various Trial Departments. However, the costs of poor juror utilization have been incurred mainly by the jurors themselves and, more specifically, their employers. To a lesser extent, the Office of Jury Commissioner incurs increased administrative costs for summoning and qualifying unused jurors. The combined cost of lost wages and salaries and lost administrative costs for the OJC is estimated at \$63 million for unused jurors each year. Although not quantifiable in monetary terms, the justice system in Massachusetts also bears the cost of reduced public trust and confidence by those citizens who were not used effectively.
- A number of institutional and cultural factors also contribute to poor juror utilization. Not the least of these is an entrenched belief by many trial judges, and presumably the local legal communities over which they preside, that the physical presence of jurors rather than effective judicial management is the key to efficient and timely case disposition. Substantial improvements in juror utilization will depend on the ability of court leaders to address and overcome those beliefs with evidence of effective practices that do not undermine the goals of efficient and timely case management.

Recommendations

Based on these findings, the NCSC offers the following recommendations:

6. Develop a culture of shared responsibility for juror utilization throughout the Massachusetts Court System.

The Massachusetts Court System should take steps to overcome the limitations of its institutional fragmentation and develop a culture of shared accountability for juror utilization. To begin, the Office of Jury Commissioner should resume its practice, suspended during implementation of the NextGen System, of routinely informing the Administrative Office of the Trial Court about juror utilization rates on a court-by-court basis. The AOTC should then share that information with the relevant Trial Departments and with individual courts and judges. Periodic meetings between representatives of the AOTC, the OJC, and the individual court departments would enhance this effort.

7. Adopt juror utilization as a critical performance measure and encourage trial courts to draw on OJC knowledge and experience to improve juror utilization.

The OJC has a wealth of data and experience available to assist individual trial courts to diagnose the causes of poor utilization, implements steps to improve utilization, evaluate the results of improvement efforts, and educate trial judges and court staff on effective practices. The AOTC and Chief Judges should encourage courts to take advantage of the OJC's knowledge and at the same time should incorporate juror utilization as a critical measurement of court and judicial performance.

8. Use enhanced data reporting functions in NextGen to identify specific causes of poor utilization in individual courts.

The analyses presented in this report provide an overview of juror utilization across the Commonwealth, but do not provide detailed information on individual trial courts or judges. The OJC should make use of the NextGen capabilities at the earliest opportunity to conduct these analyses for the AOTC to assist the trial courts in identifying factors that contribute to poor utilization in individual trial courts.

9. Pilot test suggested techniques to improve juror utilization and disseminate practices that demonstrate the most effectiveness in Massachusetts through judicial education and training.

This report briefly described a number of approaches that have proven successful in other jurisdictions in improving juror utilization rates. The AOTC through its Trial Departments should identify and assist courts and judges who are willing and motivated to implement these approaches on pilot basis. Based on the results of those pilot programs, the AOTC and the Jury Management Advisory Committee should identify practices that show the most improvement in juror utilization and disseminate those practices through judicial education and training.

10. Establish an initial goal to increase juror utilization rates to the highest current rate for each of the respective trial departments. Using the practices identified through Recommendation 4, gradually improve juror utilization rates to match, then exceed, those in other jurisdictions.

A long-term objective for juror utilization should be to meet the aspirational standard of 81 percent juror use promulgated by the NCSC. As a practical matter, the Massachusetts Court System should adopt some intermediate goals that will lead eventually to accomplishment. An appropriate initial goal might be to increase juror utilization rates by each of the trial courts to the highest current rate for their respective court types. That is, increase juror utilization to at least 71 percent in all of the Superior Courts, to at least 54 percent in all of the District Courts, etc. This step alone would increase the statewide juror utilization rate to 58 percent overall. From there, the Massachusetts trial courts can strive to match, and then to exceed, juror utilization rates in other jurisdictions. By doing so, the Massachusetts Court System will again be demonstrating its initiative, creativity, and leadership in jury management for the country.

APPENDIX A: UTILIZATION STATISTICS FOR SUPERIOR AND DISTRICT COURTS

Percentage of Jurors Used in Superior and District Courts							
Court	% Used	Sent to Courtroom		Zero Panel Days		Jurors Not Reached	
		% Sent to Courtroom	% of Jurors Not Used	% Zero Panel Days	% of Jurors Not Used	% Jurors Not Reached	% of Jurors Not Used
Superior Court							
Brockton Superior Courthouse	30.0	63.6	47.4	8.3	41.4	48.6	41.6
Lawrence Superior Courthouse	45.2	71.0	36.5	31.4	41.2	31.4	49.3
New Bedford Superior Courthouse	35.0	81.8	2.0	38.9	.8	57.4	98.0
Newburyport Superior Courthouse	43.0	98.1	3.1	.0	.0	56.2	96.9
Plymouth Superior Courthouse	15.7	35.2	7.6	17.6	5.5	55.7	92.4
Salem Superior Courthouse	21.6	82.1	17.7	64.3	45.2	66.3	53.6
Suffolk Superior Courthouse	53.0	96.1	.1	34.9	6.8	31.6	54.0
Taunton Superior Courthouse	38.8	60.6	51.4	34.2	50.2	36.0	48.6
District Court							
Attleboro District Courthouse	10.1	23.9	86.0	76.1	86.0	57.7	14.0
Ayer District Courthouse	14.7	67.0	36.4	50.0	57.0	70.0	42.2
BMC-Brighton Division	12.4	34.0	74.1	65.4	73.4	63.9	25.9
BMC-Dorchester Division	27.6	59.7	57.7	43.8	63.3	50.9	36.7
BMC-Roxbury Division	21.0	45.1	71.1	52.6	66.1	49.4	24.7
BMC-West Roxbury Division	14.0	37.9	69.6	67.5	76.3	55.6	22.2
Chelsea District Courthouse	7.2	43.0	59.3	64.0	66.7	76.5	28.2
Chipopee District Courthouse	23.8	76.1	31.2	33.3	41.8	55.5	45.2
Concord District Courthouse	27.5	68.2	41.4	33.3	44.9	57.4	51.9
East Brookfield District Courthouse	19.6	60.5	49.4	48.0	59.7	55.9	34.8
Eastern Hampshire District Court	14.7	39.3	69.0	62.5	70.6	60.4	27.6
Fall River District Courthouse	15.8	52.1	57.6	51.0	61.5	66.7	37.3
Falmouth District Courthouse	5.7	27.2	75.3	72.7	75.3	79.2	24.7
Fitchburg District Courthouse	31.0	97.0	4.7	25.0	36.7	58.4	62.9
Framingham District Courthouse	15.9	31.4	81.0	71.4	84.5	44.3	15.5
Haverhill District courthouse	21.9	60.2	51.6	38.5	49.6	64.2	48.4
Hingham District Courthouse	26.2	55.8	58.2	47.7	63.2	49.9	36.8
Holyoke District Courthouse	17.0	48.5	63.9	45.2	55.5	64.5	36.1
Lowell District Courthouse	24.5	75.4	30.8	42.9	54.6	56.6	43.1
Lynn District Courthouse	24.4	58.3	53.8	47.9	62.6	53.1	37.1
Malden District Court	20.4	38.9	76.6	64.3	80.7	43.0	19.3
Marlborough District Courthouse	19.6	69.4	44.9	53.3	68.6	58.0	31.4
New Bedford District Courthouse	25.3	60.8	51.9	44.7	59.3	53.9	39.6
Newburyport District Court	22.8	69.4	40.6	34.1	45.1	64.6	53.2
Newton District Courthouse	24.5	36.9	83.1	62.5	82.4	34.4	16.9
Northern Berkshire Jury Trial Session	27.0	36.4	86.0	63.6	86.0	25.9	14.0
Orange District Courthouse	51.3	82.5	37.6	28.6	59.4	27.1	38.8
Orleans District Courthouse	11.6	34.1	73.5	69.2	76.8	62.2	22.8
Palmer District Courthouse	17.4	30.3	80.8	60.0	63.8	49.2	19.2
Peabody District Courthouse	10.9	41.2	66.2	58.7	66.3	73.2	32.6
Quincy District Courthouse	2.7	49.5	52.0	51.0	52.3	96.1	47.0
Taunton District Courthouse	13.8	23.1	87.6	76.7	87.5	40.2	12.4
Wareham District Courthouse	18.3	37.5	77.3	65.3	81.1	46.9	18.7
Westborough District Courthouse	31.4	89.5	13.7	27.3	39.9	51.6	48.1
Westfield District Courthouse	44.7	95.3	7.6	15.4	27.5	47.0	71.9
Woburn District Courthouse	9.5	45.6	56.9	64.0	68.2	73.5	31.6
Wrentham District Courthouse	14.8	28.9	83.5	71.1	83.5	48.6	16.5