

SAVING MONEY FOR EVERYONE: THE CURRENT ECONOMIC CRISIS IS AN OPPORTUNITY TO GET SERIOUS ABOUT IMPROVING JUROR UTILIZATION

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The current economic crisis provides an opportunity for courts to improve juror utilization, potentially saving tens of thousands of dollars per year in unnecessary expenses incurred for unused jurors and hundreds of thousands of dollars in lost income and lost productivity incurred by jurors, their employers, and their communities.

The single biggest complaint that people have about jury service is the seemingly interminable waiting involved. Waiting for everyone to arrive in the morning so juror orientation can begin. Waiting for the judges to begin requesting jury panels. Waiting in the hallways outside the courtroom for the judges and lawyers to finish last-minute motions before voir dire. Waiting during trial recesses. A number of courts have made valiant efforts to make the waiting more tolerable by setting up work areas, installing wireless systems in the jury assembly room, and providing cable television, reading materials, puzzles, and other diversions. Although well-intentioned, these gilded cages seem to concede that waiting is an inevitable part of jury service.

This is unfortunate news for jurors, most of whom recognize the importance of jury service, but understandably resent the court's apparent lack of consideration for their time, the disruption to their daily schedules, and their unreimbursed expenses (lost income, child care, transportation) related to jury service. What court officials too often fail to recognize is that poor juror utilization is at least as much of a problem for court management as it is for jurors. Every person who reports for jury service, but is ultimately not needed to impanel a jury, represents a number of "hidden" administrative costs beyond the juror fee and mileage reimbursement. The current economic crisis has prompted many courts to cut services related to jury trials, including the amount of the juror fee, the amenities offered to jurors, and even, in some cases, the availability of jury trials to litigants. A more productive

approach, however, would be to recognize the extent to which poor juror utilization inflates costs unnecessarily. In many instances, improvements in juror utilization would pay for themselves entirely and could possibly generate additional savings that could be put to use in other areas of court operations.

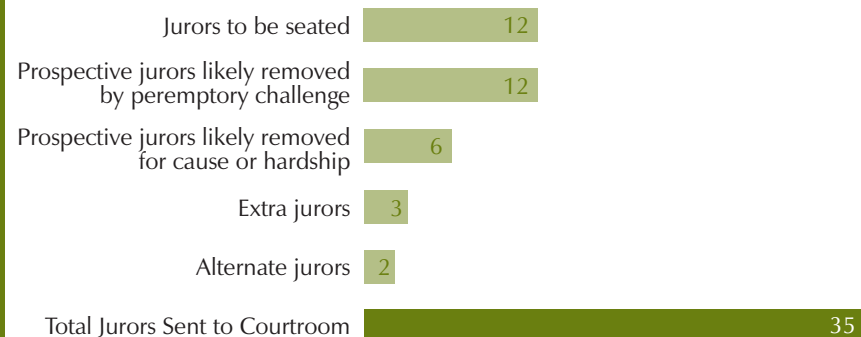
How Many Jurors Are Really Needed?

In an ideal world, courts would be able to anticipate the exact number of jurors needed on any given day and would summon and qualify jurors accordingly. The NCSC recommends that courts summon only enough jurors to ensure that 90 percent are sent to a courtroom for voir dire, and that 90 percent of jurors sent to a courtroom are actually "used" (sworn as a trial juror or alternate, excused for cause or hardship, or removed by peremptory challenge) during jury selection. This standard provides for an overall utilization rate of 81 percent, ensuring enough "extra" jurors to accommodate most unanticipated circumstances, but not so many that substantial numbers of jurors are unused during voir dire or, worse, left waiting in the jury assembly room each day.

A useful way to calculate the number of jurors to summon and qualify is to start with the jurors needed for any given trial and work backward (Munsterman, 1996:101-09).

How Many Jurors Should Be Sent to a Courtroom?

Example of a routine, nonviolent felony trial in a jurisdiction that requires a 12-person jury and provides each side with 6 peremptory challenges:



Source: Center for Jury Studies

Most courts should be able to impanel a jury with alternates from a panel of 35 prospective jurors. Lengthy or high-profile trials will normally require a larger panel as more jurors are excused for cause or hardship. In those cases, a panel of 40 to 45 prospective jurors might be more appropriate. Similarly, trials involving difficult or controversial evidence (e.g., sexual assault, crimes against children) may also require larger panels. In most instances, the trial judge will be sufficiently familiar with the case to predict when a larger panel is needed.

A common characteristic of courts with good juror utilization rates is an established and enforced policy that sets standard panel sizes for case types based on current information about the number of jurors needed to impanel juries in those cases. Under those policies, judges who want a larger panel must submit a written request explaining the need for a larger panel to the chief judge or court administrator (not the jury manager, who rarely has sufficient authority to deny a judge's request with impunity).

Once the court has determined the appropriate panel size for different case types, it is then possible to calculate the number of jurors needed to report to the courthouse each day based on the number of trials scheduled. For example, if three felony trials requiring panels of 35 jurors each and one civil trial requiring a panel of 45 jurors is scheduled for a given day, the court will need 165 to 170 jurors to report for service that day (150 jurors for panels plus a few extra, just in case). Courts typically summon jurors three to six weeks before the reporting date—well before the court has finalized its trial calendar. Consequently, they typically summon many more jurors than are needed to report, even after accounting for the expected jury yield.¹ To secure optimal juror utilization, it is necessary for the court to have a mechanism such as a telephone call-in system to cancel or “waive off” summoned jurors or to place them on standby. This prevents the court from having more jurors report than are necessary to fill jury panels, leaving excess numbers of jurors sitting in the assembly room for the day.

The NCSC-recommended standards for juror utilization are ambitious, but achievable. On a statewide basis, for example, the Pennsylvania Court of Common Pleas boasted an impressive 81 percent of jurors sent to courtrooms for voir dire in 2006. Individually, 42 out of 67 counties exceeded the NCSC-recommended

standard of 90 percent (Pines, 2007:76-82).² In 2007 the U.S. District Courts collectively sent 87 percent of jurors to courtrooms for voir dire (Duff, 2008:Table J-2). Unfortunately, most courts do not meet the NCSC standard, but rather err on the side of summoning too many jurors. In a 2007 evaluation of juror utilization in the Massachusetts trial courts, for example, an average of only 50 percent of jurors were sent to courtrooms, and more than half of those were not used during voir dire (Hannaford-Agor and Munsterman, 2007:15). Only 64 percent of scheduled trials actually started in the first six months of 2008 in the Eighth Judicial District Court in Las Vegas, Nevada, resulting in more than one-third of jurors being left in the jury assembly room (Hannaford-Agor, 2004:9).³ Based on unpublished data for the first six months of 2008, approximately 54 percent of jurors reporting to New Mexico courthouses were ultimately used.⁴ A 2002 study of voir dire in California Superior Courts found that more than one-third of jurors sent to courtrooms were “not reached” (questioned and impaneled, challenged or excused) during voir dire (Hannaford-Agor, 2004:11-12). In each of these cases, the courts expended additional time and resources to summon and qualify jurors who were not ultimately needed to impanel juries.

Fiscal and Other Impacts of Poor Juror Utilization

One of the reasons that juror utilization has traditionally received less attention than other court performance measures is the pervasive belief that the costs of poor juror utilization are relatively inexpensive, particularly in light of the costs of keeping busy judges, lawyers, and other trial participants waiting in the event of a shortage of jurors. To the extent that costs of poor juror utilization include only the juror fees and mileage reimbursements paid to jurors, regardless of whether they are used, the pervasiveness of this belief is understandable. Nationally, juror fees average less than \$25 per day (25 percent of daily per-capita income), and only half of courts reimburse jurors for transportation expenses (Mize, Hannaford-Agor, and Waters, 2007:11-13). Many jurisdictions, especially those employing one-day/one-trial terms of service, have adopted a graduated juror-fee system in which jurors are paid a minimal fee or nothing for a limited period of time (typically one to five days).⁵ In most courts, however, juror fees and mileage are only the tip of the iceberg in terms of operational costs. Courts rarely take into account the staff and physical resources expended to summon, qualify, and bring those jurors to the courthouse in the first place. Although precise figures are unknown, anecdotal reports suggest that these “upstream” administrative costs of jury management

What Are Typical Costs for Unused Jurors and Who Bears the Costs?

	Estimated Cost Per Day - Per Juror	Costs Borne By
Average U.S. Juror Fee Paid by Courts	\$25	Courts
Administrative Costs of Jury Management	\$20-\$25 for an efficient court \$100+ for an inefficient court	Courts
Lost Income/Lost Wages Paid	\$100.68	Jurors
Estimated Amount of Lost Productivity at Work	\$675	Employers
Total - Typical Costs for Unused Jurors	\$800 to \$1000	

Source: Center for Jury Studies

range from \$20 to \$25 per juror reporting for service in reasonably efficient courts. Administrative costs in excess of \$100 per juror reporting have been found in less efficient courts. Few courts take these administrative costs into account when assessing the fiscal impact of poor juror utilization.⁶

The limited focus on costs incurred directly by the courts, however, ignores the reality that jury service is heavily subsidized by in-kind contributions of jurors, their employers, their families, and their communities. Because these costs rarely, if ever, appear in court budgets, court policy makers often underestimate their magnitude. But the fiscal impact on individual jurors, their employers, and their communities is very real and often substantial. The daily per-capita income in the United States is \$100.68.⁷ For jurors, this is the average lost income they incur as a result of jury service or, if they are fortunate enough to work for employers that continue compensation for employees during jury service, the wages/salaries paid by those employers.⁸ In addition, employers lose the value of their employees' productivity for a day, which according to the U.S. Department of Labor was \$1,350 in 2008.⁹ As a practical matter, most employers will not lose the full value of an employee's productivity as other employees 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. Nonetheless, even half the Department of Labor estimate—\$675 in lost productivity—for each day that an employee reports for jury service, but is not ultimately needed, is still substantial.

These represent the easily 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 (child care, volunteer activities, education, recreation). Public trust and confidence in the courts is also lost by those individuals who did not enjoy the meaningful participation in the justice system of their peers who were impaneled, challenged, or excused. Although not easily quantifiable, courts should not discount or ignore the existence of these costs. Adding these costs together, we find that typical costs for unused jurors can range from \$800 to \$1,000 each, the vast majority of which are absorbed by jurors, their employers, and their communities; courts typically incur \$25 to \$150 per unused juror, or less than 20 percent of the total costs. Chart at left summarizes these costs.

Causes and Solutions

Studies of juror utilization have attributed poor utilization to three factors: excessive panel size; day-of-trial cancellations due to plea agreements, settlements, and continuances; and over-summoning practices. As discussed above, the solution to excessive panel sizes is simply to establish standardized panels based on historical juror usage for different types of cases. Cases that warrant larger panels generally include capital felony trials, crimes involving sex offenses, crimes against children, and lengthy civil trials. Cases that warrant smaller panels generally include nonviolent felony offenses, misdemeanor offenses, and routine civil trials. The optimal panel size for each case type should be sufficient to accommodate the substantial majority of trials (e.g., 90 percent) but does not necessarily have to accommodate historical juror usage for all trials provided that judges can request a larger panel for unusual cases, such as high-profile or very lengthy trials.

The problem of last-minute cancellations is more difficult to address insofar that it is essentially a matter of effective pretrial management, rather than effective jury operations. Thus, the onus falls on judges to encourage litigants to engage in timely plea and settlement negotiations. It may not be possible to eliminate all day-of-trial cancellations, but many courts have adopted policies that provide substantial disincentives for late trial cancellations. One approach is simply to assess the full costs of a cancelled jury panel against the litigants (see box at top on following page). For example, if the cost per juror is \$50 (\$25 juror fee plus

Courts that Assess Litigants Costs for Cancelled Jury Trials

- **Oregon:** The city of Lebanon charges litigants \$10/juror in the event of a cancelled trial. See “City of Lebanon Fees and Charges” at <http://www.ci.lebanon.or.us/files/active/0/City%20Fees%20Schedule%20EFFECTIVE%20January%201,%202009.pdf>.
- **Washington:** The Columbia County District Courts assesses fees equal to the total juror fees and mileage paid to jurors if a jury trial is cancelled after 1:30 pm three working days before trial. See “Local Rules, Columbia District Court, State of Washington,” at <http://www.columbiaco.com/District%20Court/LocalRules.htm>.
- **Washington:** The Lincoln County District Court assesses fees equal to the total juror fees and mileage paid to jurors and postage costs for summons if a jury trial is cancelled less than five working days before trial. See “Local Rules, Lincoln County District Court, State of Washington,” at http://www.courts.wa.gov/court_rules?fa=court_rules.rulesPDF&groupName=district&setName=dislin&pdf=1.

\$25 administrative costs per juror reporting) and 45 jurors report for a trial that is cancelled on the day of trial, the court would assess a fee of \$2,250 equally against the litigants. This amount reflects the full value of costs incurred by the court for the unused jurors. In states that permit courts to assess costs against criminal defendants who plea or are convicted at trial, these costs can be assessed against the defendant and prosecutor. Of course, these costs can be waived by the judge if the litigants can provide a reasonable explanation for their inability to plea or settle the case before the day of trial.

Another approach that courts have found effective for preventing day-of-trial plea agreements is the development of a strict “plea cut-off policy.” Under such a policy, prosecutors, criminal defense attorneys, and criminal defendants are given notice that they must inform the court of their intent to enter a negotiated plea agreement by a specified date and time before jurors are told to report for service (usually the day before trial). If they fail to do so, the defendant must plead to the full charges filed (see box on the right). This type of policy provides equal incentives for the prosecution and 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 risk being convicted and sentenced on more serious charges. Again, 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. To be effective, these types of incentive policies must be consistently and uniformly applied by all of the judicial officers of the court.

A third factor that contributes to poor juror utilization is over-summoning jurors. Unpredictable failure-to-appear (FTA) rates prompt some courts to compensate by summoning more jurors than needed. For example, a court that can predict with some level of certainty that 5 percent of summoned jurors will routinely fail to appear for service will summon 105 jurors for every 100 jurors it needs to impanel juries. However, if the FTA rate is less predictable—sometimes 5 percent of jurors fail to appear, other times 15 percent fail to appear, and other times all jurors report—the same court will adjust its summoning practice to compensate for the highest possible FTA rate by summoning 115 jurors, rather than 105 jurors, which will normally result in as many as 15 excess jurors per day. Finally, as many as one-third of state courts have no effective means to tell jurors not to report for service in the event that scheduled trials are cancelled before the trial date (Mize, Hannaford-Agor, and Waters, 2007:18-20). Jurors simply arrive at the courthouse only to be sent home. A dedicated telephone line and answering machine that permits jurors to call and find out if they need to report as directed is a simple and effective remedy that requires very little staff time or additional resources.

Courts with “Strict Plea Cut-Off” Policies

- **New Jersey:** “Plea Cut Off. After the pretrial conference has been conducted and trial date set, the court shall not accept negotiated pleas absent the approval of the Criminal Presiding Judge based on a material change of circumstances, or the need to avoid a protracted trial or a manifest injustice.” See N.J. Ct. R. Rule 3:9-3(g)(2009).
- **Texas:** The 506th Judicial District Court (Grimes and Waller counties) uses the date of the pretrial conference, scheduled ten days before trial, as the plea-bargain cut-off date. See “Plea Bargain Cut Off and Dates” at <http://www.court506.com/id66.html>.

Conclusions

As this brief article demonstrates, the costs of poor juror utilization are substantial—to courts, to taxpayers, and to jurors, their employers, and their communities. But most of these costs do not appear explicitly in court budgets. Rather, they involve inflated “upstream” administrative costs to summons and qualify jurors who were not ultimately needed to impanel juries. These inflated administrative costs pale in comparison to the costs incurred by jurors, their employers, and their communities. In the current economic climate, courts would be better served—and would better serve their communities—by improving juror utilization and, thus, reducing the wasted resources associated with poor juror utilization, rather than by cutting other budgetary lines in the jury operations budget.

ENDNOTES

¹ Jury yield is a basic measure of efficiency in jury operations that describes the proportion of citizens who are qualified and available for jury service.

² Pennsylvania does not report the percentage of jurors questioned (used) during voir dire.

³ The jury automation system in the Eighth Judicial District Court did not document the percentage of jurors used during voir dire.

⁴ Based on trial court reports compiled and analyzed in preparation for a series of jury management workshops conducted by the NCSC Center for Jury Studies with court policy makers and jury managers in New Mexico (November-December 2008).

⁵ The median introductory and graduated juror fees for courts using a graduated fee program are \$10 and \$35, respectively. Based on unpublished data from the *State-of-the-States Survey* (Mize, Hannaford-Agor, and Waters, 2007).

⁶ Munsterman (1975:4-12) first estimated that typical administrative costs per juror ranged from \$5 to \$20 in 1975. The \$20 to \$100 administrative costs discussed above reflect inflation-adjusted values and are consistent with more recent NCSC observations from technical assistance projects with state and local trial courts.

⁷ U.S. Census Bureau, Table B19301, “Per Capita Income in the Past 12 Months (In 2007 Inflation-Adjusted Dollars),” 2005-2007 American Community Survey 3-Year Estimates.

⁸ This figure 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 employers.

⁹ U.S. Department of Labor, Bureau of Labor Statistics, news release, Table 1, “Business Sector: Productivity, Hourly Compensation, Unit Labor Costs, and Prices, Seasonally Adjusted.” See <http://www.bls.gov/news.release/prod2.t01.htm>.

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Center for Jury Studies web site <http://ncsc-jurystudies.org>