



Council for
Court Excellence
Improving Justice for the Community



Jury Service Revisited:

UPGRADES *for*
21ST CENTURY

DC JURY SERVICE STATISTICS IN BRIEF

The US District Court for the District of Columbia and the Superior Court of the District of Columbia hold petit jury trials.

In 2014, the District Court held 46 jury trials, representing 2,984 prospective jurors in attendance at the Court for jury selection or orientation. In 2015 the average number of prospective jurors present for selection was 56.9, with 43.2% either not selected or challenged.

In 2014, the Superior Court Criminal Division held 367 jury trials and the Civil Division had 105 cases reach judgment from a jury trial. This represents 31,345 prospective jurors reporting for service, an average of 169 per day, with 24,404 sent to voir dire and 5,657 selected for panels. To reach those numbers, in 2014 the Superior Court sent out 150,454 summons, of which 22,027 were returned as undeliverable, 70,715 were never responded to, and 12,898 were responded to with a request for deferment.

A Note About the Highlight Boxes

Throughout the report you will see highlighted quotes and figures. This data comes from surveys, focus groups, roundtable discussions, and interviews. The Data Collection and Methodology section of the report explains how this information was gathered.

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NOTE FROM THE CO-CHAIRS OF THE DC JURY PROJECT

For the past 12 months, a Committee of the Council for Court Excellence (CCE or The Council) has undertaken to re-examine the jury system in the District of Columbia, as a follow up to CCE's initial study of jury service in 1998. We have been pleased to co-chair this recent effort, and we are delighted to share the results in this report: *Jury Service Revisited: Upgrades for the 21st Century*. Building on the seminal CCE study, our devoted Committee—comprised of judges, court officials, trial attorneys, bar leaders, policy experts, and former jurors—spent many hours researching various aspects of jury service in the District, debating potential proposals, and drafting the recommendations that appear in this report, which we hope will be useful both to the officials in our community who bear the responsibility of administering this critical institution and to the citizens who devote their time and attention to the important work of serving as jurors.

We would like to take this opportunity to applaud CCE for initiating this re-evaluation of the petit jury as an institution, and for supporting and facilitating this effort. We also express our gratitude to the judges and court administrators of the Superior Court of the District of Columbia and of the United States District Court for the District of Columbia for their participation and cooperation, without which we could not have produced such an informed report. These officials do an excellent job of endeavoring to insure that the time-honored institution of jury service functions well in the District of Columbia, and we sincerely hope that they will consider our recommendations in the spirit in which they are offered: to build upon and improve this vital organ of our democracy, which is key to the fair and just resolution of disputes between private citizens and also disputes between citizens and our government.

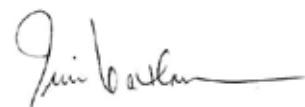
We want to extend special thanks to those who served on this Committee—your dedication, insight, and expertise were invaluable and much appreciated. This undertaking was no small task, and we applaud the participants for working in good faith to bridge differences that arose during the discussion of complex issues. Not all of the recommendations made are entirely unanimous, so the Working Groups deserve credit for tackling these issues forthrightly to produce recommendations that reflect the general consensus of the group. We are also grateful to those who advised our Committee in their capacity as former jurors, as well as those who answered our surveys and participated in our focus groups; we thank you for your reflections and your time. It is because of the collective efforts of all of the people who have been involved in this project in some way that we have been able to provide these recommendations, and it is our sincere hope that future participants in the jury system—whether they be prospective jurors, jurors, lawyers or litigants—will benefit from this group's work.

As you will see, the Committee's recommendations cover a wide spectrum of topics related to jury service. These suggestions are designed to account for changes in technology and circumstances that have occurred in the nearly twenty years since CCE's prior report; to make the system more efficient for jurors, judges and litigants; to foster understanding regarding the importance of jury service in our community; and ultimately, to increase satisfaction with the fairness and efficacy of the jury system on the part of all who come in contact with it.

We hope the recommendations will stimulate thought, and like the 1998 Report, will lead to constructive changes as appropriate, whether by legislation, rules, policies, or practices. All on our Committee stand ready to discuss, to explain, and to help implement the recommendations in order to update and improve jury service in the District of Columbia in the years to come.



The Honorable Ketanji Brown Jackson
United States District Court for the District of Columbia



Irvin B. Nathan
Senior Counsel, Arnold & Porter
Former DC Attorney General

MISSION STATEMENT

In consideration of the importance of the right to a trial by jury in the United States, the Council for Court Excellence, in cooperation with the leadership of the Superior Court of the District of Columbia and the US District Court for the District of Columbia, seeks to evaluate and strengthen the institution of the jury in the District of Columbia. This mission was originally articulated by the Council's 1998 Jury Project Committee, and is adopted here as part of the effort to evaluate that project's impact while also looking to the future and building on its work.

To this end, a Committee comprised of judges, court staff, interested members of the public, former jurors, attorneys, civic and business leaders, academics, and others has been established under the auspices of the Council for Court Excellence. The Council is a non-profit, non-partisan, civic organization that works to improve the administration of justice in the local and federal courts and the justice system in general.

The overall goal of the Committee is to support citizens in their roles as jurors and to improve the effective administration of justice through juries. Specifically, the DC Jury Project Committee will:

1. Study and evaluate the utilization of juries and the conduct of jury trials in both the United States District Court for the District of Columbia and the Superior Court of the District of Columbia. This evaluation will include examinations of jury selection, the trial process, and the jury service experience in general.
2. Publish and disseminate findings and recommendations of specific ways to enhance jury trials.
3. Encourage and support testing of proposed improvements through pilot projects in courtrooms of the DC Superior Court and the US District Court for DC.
4. Support implementation of recommendations contained in the DC Jury Project Report.
5. Suggest educational programs for the bench, the bar, jurors and the public concerning any prospective jury reforms.
6. Establish methods to periodically examine the utilization of any newly adopted rules and procedures to determine their effects, and suggest modifications when necessary.

PROJECT OVERVIEW

Creation of the Committee

The Council for Court Excellence assembled a 16-member Planning Committee on December 20, 2013 and charged it with laying the groundwork for a year-long study of the jury system in the District of Columbia. This group modeled its work after the successful efforts of the 1998 Jury Project Planning Committee and identified a number of priority issues to examine, structuring this effort as both a look forward and a look backward.

This core planning group was expanded to a 40-member DC Jury Project Committee by July 2014. Judge Ketanji Brown Jackson of the US District Court for DC and former DC Attorney General Irvin Nathan served as co-chairs of the Committee. Project members were drawn from the legal, civic, academic, and business communities in the District of Columbia.

Committee Structure and Process

DC Jury Project members were divided into three Working Groups – Juror Care, Jury Pool and Summoning, and Trial Structure. Over the course of a year, these respective Working Groups examined the summoning process, including the scope and quality of juror source lists, summons response rates, juror utilization, and sanctions for scofflaw jurors; addressed issues related to the nature of the trial process and how that process affects both judicial efficiency and juror understanding; and studied issues related to the quality of the juror experience, such as the physical environment of the courthouse, orientation materials, juror privacy, and juror compensation. The Working Groups were made up of former jurors, judges, attorneys, court administrators, and academics. The Working Groups met monthly to develop draft recommendations for consideration by the full Project Committee.

PROJECT MEMBERS AND ACKNOWLEDGEMENTS

Co-Chairs

Hon. Ketanji Brown Jackson, US District Court for the District of Columbia

Irvin B. Nathan, Senior Counsel, Arnold & Porter, former DC Attorney General

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Within the Council for Court Excellence, this project was staffed by June Kress, Executive Director; Zach Zarnow, Jury Analyst/DC Jury Project Manager; Emily Tatro, Policy Analyst; Amanda Townsend, Development Director and former interns Abdiaziz Ahmed, Daisy Ayon, Nathaniel Goodman-Johnson, Grace Kim, Daria Kapitanova, Rebecca Kozlowski, Badria Mryyan, Alyssa Orozco, Gregory Segal, Sheron Torho, Benjamin Wright, and Ilana Yanku.

The Project Committee wishes to thank the leadership and staff of the US District and DC Superior Courts for their assistance with this project.

The Committee also wishes to thank Judge Gregory E. Mize and Paula Hannaford-Agor of the National Center for State Courts for their input and assistance, as well as the American Board of Trial Advocates and the American Bar Association for inviting CCE staff to attend their respective conferences, which were invaluable in the collection of best practices.

The Council for Court Excellence would like to thank all of the jurors, judges, attorneys, and employers who gave their time to participate in focus groups and roundtable discussions, and to take our surveys.

Finally, thanks to the student volunteers from Howard University School of Law, George Washington University Law School, and University of the District of Columbia David A. Clarke School of Law for their help in voir dire and trial observation.

The Council for Court Excellence is especially grateful to our anonymous donors, as well as The Morris & Gwendolyn Cafritz Foundation, The City Fund, The GEICO Philanthropic Foundation, Pepco, the State Justice Institute, and the Anne and Ronald Abramson Family Foundation.

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SUMMARY LIST OF RECOMMENDATIONS

JUROR CARE:

1. Using Positive Means to Encourage Participation
The DC Jury Project recommends that the courts increase the use of positive means of encouraging participation in the jury system.
2. Augmenting the Summons
The DC Jury Project recommends that the summons form be augmented to include information about term of service, payment, amenities, and the like.
3. Providing Substantial Information During Juror Orientation
The DC Jury Project recommends that substantial information concerning jury service and the judicial system be provided before and during the juror orientation process.
4. Implementing a Call-In/Online Check-In System
The DC Jury Project recommends the utilization of a call-in and/or online check-in system for petit jurors in DC Superior Court to decrease juror "wait time" and increase juror satisfaction and willingness to serve.
5. Using Technology to Interact with Jurors
The DC Jury Project recommends that DC Courts make further use of technology to communicate and interact with jurors.
6. Improving Juror Compensation
The DC Jury Project recommends that the DC Council and DC Courts implement changes to juror compensation funds for the betterment of jurors, the Courts, and the community.
7. Reducing Juror Stress
The DC Jury Project recommends that the Courts consider enhancing procedures relating to the stress associated with jury service.
8. Adjusting Trial Schedules
The DC Jury Project recommends that judges consider adjusting trial schedules where feasible to minimize juror inconvenience.
9. Thanking Jurors
The DC Jury Project recommends that the Courts implement formal and official means of thanking potential and empaneled jurors for their service, including service as alternates.

JURY POOL AND SUMMONING:

10. Ensuring Agency Source List Certification
The DC Jury Project recommends amending the DC Code so that agencies that provide the Court with source lists have to certify that the lists have been accurately updated.
11. Adding New Source Lists
The DC Jury Project recommends drawing from additional source lists to increase the accuracy and representative nature of the master jury lists at DC Courts.

12. Utilizing Big Data Technology

The DC Jury Project recommends that the DC Courts examine the possibility of improving jury summoning rates by using big data resources to identify more accurate addresses and contact information for potential jurors.

13. Permitting Citizens to Provide the Court with Updated Information

The DC Jury Project recommends that citizens be permitted to provide information for inclusion in the master juror source list in DC in order to ensure that the source list includes citizens who are qualified but who are not otherwise included.

14. Reducing Felon Restrictions

The DC Jury Project recommends that the Superior Court revise its jury plan so as to reduce the ten-year restriction on people with felony convictions being called to serve on a petit jury.

15. Improving Employer Jury Service Policies with Civic Leave

The DC Jury Project recommends that employers adopt policies that encourage their employees to serve on juries and that make explicit the Constitutional and civic nature of jury service.

16. Excusing Jurors for Previous Service

The DC Jury Project recommends that the Superior Court and the District Court modify their jury plans to state explicitly that they will excuse prospective jurors who have served on a petit or grand jury within the past two years.

TRIAL STRUCTURE:

17. Clarifying the Rules for Researching Jurors

The DC Jury Project recommends that lawyers and their agents be permitted to research potential jurors and to monitor selected jurors by looking at the publicly available portion of social media sites subscribed to by those jurors. However, direct contact between an attorney or agent and a potential or selected juror should continue to be prohibited.

18. Sharing the Results of Criminal Background Checks of Jurors

The DC Jury Project recommends that judges consider ordering the government to share with defense attorneys the results of criminal record checks of potential jurors in criminal cases unless prohibited by law from doing so.

19. Improving Voir Dire and Peremptory Challenges

The DC Jury Project makes four recommendations regarding the jury selection process.

- First, the Committee recommends that prospective jurors be provided with questionnaires that request additional biographical information when they arrive for jury service and that these questionnaires be made available to counsel and the litigants when a panel arrives in the courtroom.
- Second, the Committee recommends that judges use the index-card method, or some similar technique, for voir dire screening that permits counsel both to offer additional questions and to make reasonable follow-up inquiries at the bench.
- Third, the Committee recommends that a jury panel be called in the Superior Court only after all preliminary trial matters have been resolved and that the number of jurors to be utilized for a venire should be limited to those prescribed by the Court's protocol, unless special circumstances warrant a larger pool.
- Fourth, the Committee recommends that the number of strikes permitted to litigants not be reduced below that now provided by statute and by rule in Federal and Superior Court.

20. Instructing the Jury on Social Media Rules

The DC Jury Project recommends that, before the trial begins, the Court instruct the jury regarding restrictions on the use of social media while serving as jurors.

21. Offering Expedited Jury Trials

The DC Jury Project recommends that the Superior Court provide an expedited jury trial option for civil trials. Shortening trials saves litigants and the Court time and money and reduces the burden of service on jurors.

22. Providing Affirmative Instructions on Note-Taking to Jurors

The DC Jury Project recommends that the Courts take special care to provide affirmative instructions to jurors so that jurors are aware that they are permitted to take notes during the trial.

23. Explaining the Procedures for Jurors to Ask Questions

The DC Jury Project recommends that judges in the DC Courts, in the exercise of their discretion in appropriate civil cases, permit jurors to submit written questions for witnesses so long as the Court instructs the jury that: (1) The Court will determine whether it is proper to pose the question to the witness; (2) The juror should not discuss any unasked question with the jury and should not draw any inference from the judge's decision not to pose the question to the witness; and (3) The questions as posed by the trial judge should be designed to assist the jury in reaching an impartial determination of the facts and not to serve as advocacy for either side in the trial.

Because no model jury instruction for civil cases similar to Criminal Jury Instruction 1.106 concerning questions from jurors in criminal cases currently exists, the DC Jury Project recommends the creation and adoption of a similar instruction in the model Civil Jury Instructions.

The DC Jury Project recommends that judges in DC Courts, in the exercise of their discretion in appropriate criminal cases, permit jurors to submit written questions for witnesses so long as the Court instructs the jury in accordance with DC Criminal Jury Instruction 1.106 that: (1) The Court will determine whether it is proper to pose the question to the witness; (2) The juror should not discuss any unasked question with the jury and should not draw any inference from the judge's decision not to pose the question to the witness; and (3) The questions as posed by the trial judge should be designed to assist the jury in reaching an impartial determination of the facts and not to serve as advocacy for either side in the trial.

24. Encouraging Post-Trial Communications Between Attorneys and Jurors

The DC Jury Project recommends that post-trial communications among jurors willing to speak with counsel and the Court should be encouraged in order to improve the administration of the jury system.

NEXT STEPS:

25. Authorizing Implementation of Recommendations

The DC Jury Project recommends that CCE advocate for the implementation of the recommendations in this report by conducting an education campaign that publicizes the report's findings, encourages citizens to serve on juries, and improves the perception and reality of jury service.

JUROR CARE WORKING GROUP

The Juror Care Working Group focused on promulgating recommendations aimed at building upon and improving the overall juror experience in the DC local and federal court system. The members of the Working Group included a variety of legal practitioners and consultants. Several of the members of the Working Group also have previously served as jurors in both the local and federal court. The Working Group was therefore able to draw from a variety of different experiences in reviewing and promulgating its recommendations. The Working Group examined and supplemented these issues with additional topics that became evident as our work progressed. Members of the Working Group also examined relevant practices and processes in neighboring jurisdictions with similar dockets, such as Maryland.

The Working Group met monthly from September 2014 to June 2015 starting with an agenda of issues gleaned from CCE's 1998 report. Based on the Working Group members' individual experiences and the information gathered by CCE staff members, Working Group members, and volunteer law students, the Working Group agreed upon and drafted nine separate recommendations. The Working Group believes that jury service is a vital aspect of our justice system, and our recommendations hope to not only encourage participation in the jury system, but also to ensure that all individuals have a positive experience before, during and after jury service. The recommendations thus can largely be grouped into two primary areas: Methods to encourage and increase jury participation prior to jury service through the promulgation of information, and enhancing the processes that are currently in place to ensure that jurors have a positive experience throughout their jury service.

For the first area, the Working Group examined studies that reveal a low turnout rate for citizens summoned for jury service, approximately 19% of whom ignore jury duty and approximately 43% of whom never receive the summons. The Working Group discussed factors that may drive this low turnout rate, and how to encourage participation by both the dissemination of information on the jury service process and the use of positive means. For example, the Working Group discussed ways the

courts can promulgate information to prospective jurors as part of the summoning process in an effort to alleviate any confusion or apprehension regarding serving on a jury.

For the second area, the Working Group focused on recommendations related to jury service itself. The Jury Project's recent survey found that while over 75% of jurors called to serve left with a favorable attitude toward jury service, less than half of those surveyed were eager to serve in the future. The Working Group discussed and examined methods to improve on a juror's experience so that a greater percentage of jurors will leave eager to serve in the future and will relay their positive experience to other potential jurors in the community. For example, the Working Group specifically discussed methods the courts can use to streamline the orientation and check-in process, as well as practices to ease scheduling, stress and compensation issues that many jurors encounter during their service.

The DC Jury Project understands and appreciates that the DC Courts are committed to ensuring that all jurors have a positive experience during jury service. We hope that our recommendations will assist in this effort.



Dana E. Koffman
Arnold & Porter
Juror Care Working Group Chair

01 THE DC JURY PROJECT RECOMMENDS THAT THE COURTS INCREASE THE USE OF POSITIVE MEANS OF ENCOURAGING PARTICIPATION IN THE JURY SYSTEM.

The DC Jury Project recommends that the Superior Court and the District Court take a positive approach to encouraging citizens to participate in jury service. Several actions may be taken to encourage participation in the jury system:

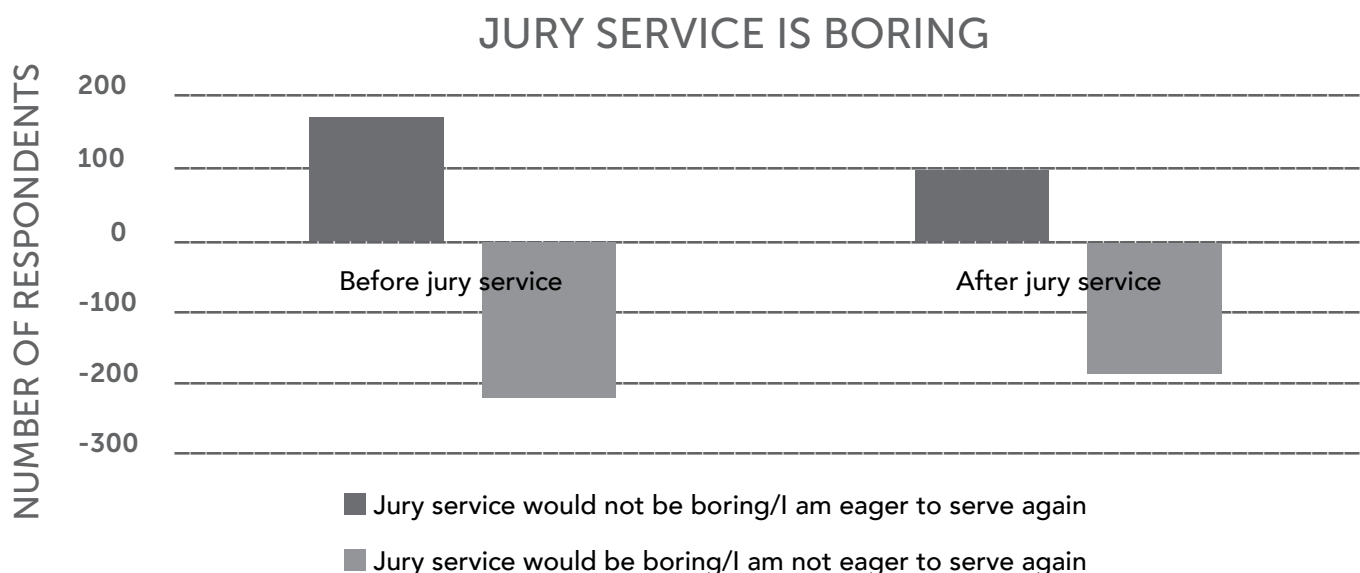
- Inform the public of the importance of jurors in the judicial system;
- Provide information to prospective jurors regarding what to expect, along with the summons;
- Advise jurors of the services available at the court (such as wireless internet and childcare);
- Educate jurors about the process when called to serve; and
- Express appreciation to jurors at the conclusion of their service.

In 2014, the Superior Court experienced a low turnout

rate for citizens summoned for jury service, approximately 15% of which were undeliverable and 47% to which a response was never received.¹ The DC Jury Project's recent survey reveals that while over 75% of jurors called to serve leave with a favorable attitude toward jury service, less than half of those surveyed were eager to serve in the future. The DC Jury Project believes that if positive reinforcement is provided from the time a juror is summoned through the conclusion of a juror's service, a greater percentage of jurors will be eager to serve in the future and will convey their positive experience to other potential jurors in the community. For example, the DC Jury Project commends the Superior Court for its policy of monitoring Twitter and thanking prospective jurors and former jurors who tweet about their positive experience. The DC Jury Project recommends that this practice be expanded and adopted by the US District Court.

The DC Jury Project recommends that the courts provide specific, helpful information to summoned prospective jurors, recognizing that summoned citizens may have limited experience with the judiciary and with the services available to a juror. While there is ample information available online for prospective jurors, not all citizens who are called to serve have access to the

¹ Past studies show similarly low turnout rates. See Council for Court Excellence, *Improving Juror Response Rates in the District of Columbia* (2006).



internet; therefore, the DC Jury Project recommends that the courts consider providing information regarding jury service, such as the answers to Frequently Asked Questions, along with the summons (See Recommendation #3). Additionally, courts should consider using text messages, phone calls, letters, and email reminders that could include some of this information as well as an additional thank you.

The DC Jury Project also recommends that the courts show their appreciation for citizens who have heeded the call to serve as jurors at the conclusion of their service, whether or not they have been empaneled on a jury, through a personal interaction with a judge (See Recommendation #9). The DC Jury Project's recent survey reflects a higher level of frustration with jury service in summoned citizens who are not empaneled than in those who are. The DC Jury Project recommends that before releasing prospective jurors who are not empaneled, a judge personally express appreciation for the time taken by the juror to appear for service, both in person and potentially through a thank you letter.

The DC Jury Project recommends that in contrast to positive means of promoting jury service, which should be widely implemented, the use of severe sanctions, including monetary fines, should be carefully considered prior to implementation. In light of the inaccuracy of the current source lists, it is possible that a citizen who never received a summons could be targeted for sanction. Furthermore, it is clear from surveys with jurors that the imposition of sanctions may lead to greater participation, but it could also result in far greater resentment toward what should be a positive experience.²

² Council for Court Excellence Jury Project, Show Cause Survey (2015).

02 THE DC JURY PROJECT RECOMMENDS THAT THE SUMMONS FORM BE AUGMENTED TO INCLUDE INFORMATION ABOUT TERM OF SERVICE, PAYMENT, AMENITIES, AND THE LIKE.

Providing important and specific information to citizens who have been called for jury service regarding their expected term of service prior to their arrival at the courthouse would significantly reduce juror frustration, confusion, or apprehension and limit the number of inquiries to the jury office. Giving citizens who are summoned more and earlier information about jury service would relieve anxiety and improve the overall court experience.

Given that approximately 30% of the residents of the District of Columbia do not have broadband internet access³, the DC Jury Project recommends that citizens receive substantial written information concerning jury service at the time that they are summoned. The

³ Connect DC Digital Inclusion Initiative, Connect DC Fact Sheet, available at: <http://connect.dc.gov/sites/default/files/dc/sites/connect/publication/attachments/Fact%20Sheet.pdf>



This was my first experience with DC Superior Court. It would have been nice to have known about amenities in advance. I didn't bring my laptop because I didn't know there was wifi.

—An Anonymous Juror

summons should be clear and easy to read. It should include specific information about getting to and through the courthouse (including Metro and parking information, the need to arrive at least ten minutes early to go through security, and the location of the jury office and jurors' lounge). Additionally, information about the summoning process and deferral and excusal procedures and policies should be included. At the time the summons issues, recipients should be informed about the term of service required, especially if circumstances may result in exceptions to the standard term. Citizens should also be notified of the appropriate attire, lunch information, payment information (such as juror debit cards and proof of service for their employers), amenities (such as WiFi access, childcare, the health unit for nursing mothers, vending machines, and lockers), things to bring (such as books, magazines, newspapers, laptops, and tablets) and any special services for persons with disabilities and persons needing assistance with communicating in English. Additionally, the juror summons should direct citizens to the court's website and the jury office for other helpful information, such as the juror fee schedule, courthouse evacuation procedures, inclement weather procedures, and a list of places to eat in the surrounding area.

The Superior Court and the District Court should include this additional information along with the summons, so that citizens receive it before their assigned reporting date. The Superior Court has already developed a very thorough Superior Court Juror Frequently Asked Questions (FAQs) handout, which includes much of the additional information referenced above.⁴ The DC Jury Project recommends that the courts consider redesigning the summons to incorporate the information provided in the FAQs handout and other necessary information. If redesigning the summons is not possible, the DC Jury Project recommends that the courts consider sending citizens reminders of their assigned reporting dates by email and/or text message and include the information provided in the FAQs handout and other necessary information along with the reminder email and/or text message.

⁴ The FAQs are available on the Court's website, here: <http://www.dccourts.gov/internet/faqlocator.jsf>

The courts should also consider how best to communicate this information with persons who have the ability to speak English but who are not fully able to understand the language in written form. The DC Jury Project recognizes that the District of Columbia is a diverse area, and that it is not feasible to mail jury summonses in all languages. However, interpretation assistance should be available by telephone to all citizens summoned for jury service. Due to the large percentage of Spanish-speaking residents, each mailed summons should state prominently on its cover that persons who speak Spanish may call the jury office to receive a written summons in Spanish or determine the appropriate course of action. A Spanish-speaking person should be available to assist these citizens when they call. In addition, a juror FAQ should be made available in the jury office and online in various popular languages (such as Spanish, French, Chinese, Korean, Amharic, Arabic, and Russian).

The following resources from DC and other jurisdictions should be consulted when determining how to best augment the summons:

DC Superior Court FAQ:

<http://www.dccourts.gov/internet/faqlocator.jsf>

DC District Court FAQ Handout:

<http://www.dcd.uscourts.gov/dcd/sites/dcd/files/jury-FAQ.pdf>

San Diego County Summons and Information Sheet⁵

Virginia Answer Book for Jurors:

<http://www.courts.state.va.us/courts/circuit/jury.pdf>

⁵ On file with CCE, available upon request.

03 THE DC JURY PROJECT RECOMMENDS THAT SUBSTANTIAL INFORMATION CONCERNING JURY SERVICE AND THE JUDICIAL SYSTEM BE PROVIDED BEFORE AND DURING THE JUROR ORIENTATION PROCESS.

Most citizens are not familiar with the court system. Therefore, the judiciary has an obligation to make its processes understandable and as user-friendly as possible. The orientation video currently in use in the DC Superior Court is a quality production that conveys important information on the importance and nature of jury duty. Similarly, the juror orientation slides currently available on the US District Court for DC's website provide key information on the overview and history of jury duty. These resources are crucial to ensuring that citizens receive information at the beginning of the jury service process, and the DC Jury Project recommends that the courts increase the visibility of this information and provide additional resources to supplement this information in order to ensure that citizens are provided with substantial background information about the courts and jury service from the beginning of the jury service process. Ensuring that citizens receive such information during, and even before, juror orientation will alleviate anxieties about jury service and improve potential jurors' overall court experience from the outset.

The DC Jury Project recognizes that the DC Superior Court and US District Court make their orientation materials (e.g., the Superior Court's orientation video) available to jurors online before they appear for jury service. The Committee recommends that notice of the availability of orientation materials also be included in the summons. In addition, the DC Jury Project recommends that the courts make their orientation materials available to a broader audience in and around the District in an effort to raise general awareness about the jury duty process, such as by providing public libraries

with copies of the materials or by placing informational posters in public areas like the Department of Motor Vehicles, libraries, and local and federal government buildings. The DC Jury Project also recommends that the courts work with DC area schools to incorporate juror orientation materials as part of Civics or Government courses and to encourage schools to utilize the programs available to raise awareness of jury service, such as the DC Superior Court's Court Visitor Program and CCE's School Jury Education Program.

The DC Jury Project also recommends that when citizens arrive for jury service, the courts provide them with orientation materials that contain information on specific logistics and expectations involved during the jury service process. Such information could consist of a brochure, handouts, or posters that discuss the basics of jury service and the court system and convey relevant information on accommodations and expectations for jurors during trial. The courts should also consider making available during orientation the same information that the DC Jury Project recommends be included with the summons to accommodate citizens who do not bring such information with them when they report for jury service (See Recommendation #2). While the District Court makes its juror orientation slides available online, it should also ensure that the informational slides are provided to citizens when they arrive for jury service. Providing citizens with specifics on the logistics of and expectations for jury service would be an effective supplement to the orientation materials presently utilized by the courts.

In addition, the DC Jury Project recommends that the courts increase staff presence during orientation to provide prospective jurors with the information described above. An increase in staff presence would humanize the juror service experience and also provide a forum for questions to be asked and answered. The increased presence of helpful court staff at the beginning of jury service would also serve to alleviate anxiety about the process.

04 THE DC JURY PROJECT RECOMMENDS THE UTILIZATION OF A CALL-IN AND/OR ONLINE CHECK-IN SYSTEM FOR PETIT JURORS IN DC SUPERIOR COURT TO DECREASE JUROR “WAIT TIME” AND INCREASE JUROR SATISFACTION AND WILLINGNESS TO SERVE.

A frequent complaint that citizens who are called for jury service make is the amount of idle “wait-time” spent during their time in the courthouse. Specifically, potential jurors often get discouraged over the amount of time they spend waiting to be assigned to a courtroom for voir dire and, in many instances, with the fact that they end an entire day of jury service without ever being sent to a courtroom at all. To alleviate part of the frustration with the amount of wait-time jurors experience, the DC Jury Project recommends the implementation of a telephone and/or online check-in system for petit jury service in Superior Court. These are time-tested methods for decreasing juror wait-time, which may increase overall satisfaction and willingness to serve on petit juries.

The DC Jury Project applauds the Superior Court for achieving a jury utilization rate of 78% for CY 2014, as reported in the District of Columbia Courts Statistical Summary 2014.⁶ However, this report also indicated for CY 2014 that while, on average, 169 jurors reported for service, only 131 were sent to voir dire each day. Consequently, on average, approximately 38 jurors, or 22.5% of jurors who reported each day, spent the day waiting and were never sent to a courtroom for voir dire.

A proven, successful method for the reduction of juror wait-time is the implementation of a telephone call-in system, an online reporting system, or a combination of both call-in and online systems for juror summoning. Pre-

viously known as a “standby” juror system, call-in/online check-in systems require summoned jurors to call an automated telephone system or to check in online through the court’s website after 5:00 pm the night before the juror’s assigned service date to determine whether he or she is required to appear. Upon entering the juror identification number that appears on the summons, an automated telephone message or online notice indicates which citizens do not need to report for duty.⁷

In its 1998 report, *Juries for the Year 2000 and Beyond*, the Council for Court Excellence encouraged the courts to investigate the implementation of such a standby juror system as one method of decreasing juror wait-time during the pre-trial phase of jury selection and improving overall juror satisfaction by eliminating unnecessary trips to the courthouse.⁸

The call-in/online check-in system for juror reporting is prevalent in most state court systems. A 2006 National Center for State Courts (NCSC) study revealed that nearly two thirds of state courts nation-wide employed a call-in system; and in jurisdictions with populations of 100,000 to 500,000 (similar to the District of Columbia), 82.4% of these jurisdictions utilized a telephone call-in system (while 22.3% also utilized online reporting technologies through the courts’ jury websites).⁹ Currently,



It would have been more convenient if DC had a call ahead system, like they do in other states.”

—An Anonymous Juror

⁷ Jurors summoned to report on a Monday would be instructed to call or check in online after 5:00 pm on the Friday prior to their Monday report date.

⁸ Council for Court Excellence (1998) District of Columbia Jury Project, *Juries for the Year 2000 and beyond: Proposals to Improve the Jury Systems in Washington*, DC RECOMMENDATION 13, p.16.

⁹ Hon. Gregory E. Mize (ret.), Paula Hannaford-Agor, J.D. & Nicole Waters, Ph.D. The State-of-the-States Survey of Jury Improvement Efforts: Compendium Report, Table 14 (2007). <http://www.ncsc-jurystudies.org/~media/Microsites/Files/CJS/SOS/SOSCompendium-Final.ashx>

⁶ Data from the District of Columbia Courts Statistical Summary 2014: Case Activity for CY 2014. <http://www.dccourts.gov/internet/documents/2014-Statistical-Summary-FINAL-02-12-15.pdf>, p. 21.

most US District Courts, including the US District Court for the District of Columbia, utilize a call-in/online jury notification service.¹⁰ Similar services are also present in nearby urban state jurisdictions, such as Fairfax County, VA, and Montgomery County, MD, as well as the City of Baltimore, MD which handles a case-load similar to DC Superior Court.¹¹

The DC Superior Court website's eJuror Services currently is a technology that might be adjusted to include an online check-in component. Currently, eJuror Services permits summoned jurors to complete their juror questionnaire form online and to defer jury service for up to 90 days from the date of the original (as well as additional services, such as looking up a juror's last or next date for jury service).¹² The Jury Administration Office indicates that the majority of citizens summoned for jury service in the Superior Court of the District of Columbia currently utilize eJuror Services to complete their juror qualification questionnaires.¹³ The DC Jury Project recommends that the DC Superior Court Jury Administration Office investigate ways to expand eJuror Services to include an online notification system for petit jurors such that on the night before their service, summoned jurors can check in to determine whether they will need to report. The DC Jury Project also recommends that the Jury Administration Office investigate the implementation of an automated telephone call-in system for those citizens who do not have regular internet access.

The DC Jury Project recognizes that the Jury Administration Office staff in Superior Court currently evaluates the need for jurors each day through their daily morning check-in emails and coordinates with the presiding and

deputy presiding judges for each of the Criminal and Civil Divisions, who notify the Jury Administration Office as to the names of the judges and courtrooms for their respective divisions that will be requesting jurors for trial and the number of jurors needed per courtroom. This coordination between the presiding judges and deputy presiding judges of each division and the Jury Administration Office presently occurs in the morning of each trial day; the DC Jury Project recommends that this coordination occur in the afternoon prior to the court day for which jurors would be needed for voir dire and jury selection (currently Monday –Thursday) to facilitate an appropriate automated telephone and internet announcements that would be available to summoned petit jurors through the Jury Administration Office or online on eJuror Services after 5:00 pm. Such a procedure would allow summoned jurors to confirm whether to appear for jury service the following day (on Friday after 5:00 pm for jurors scheduled to appear on a Monday).

The American Bar Association's American Jury Project's Principles for Juries and Jury Trials, Principle 2 D, Sections (1) and (2) respectively, state that "courts should coordinate jury management and calendar management to make effective use of jurors. Courts should determine the minimally sufficient number of jurors needed to accommodate trial activity. This information and appropriate management techniques should be used to adjust both the number of persons summoned for jury duty and the number assigned to jury panels."¹⁴ The one-day/one-trial (OD/OT) jury service term, as currently utilized by the DC Superior Court, aims to make effective use of juror time, since it only requires one day of a juror's life in accordance with the principles set forth by the ABA American Jury Project and the goals and best practices pursued by most urban court systems. Utilization of a call-in/online check in system by jurors would further maximize court efficiency, decrease juror wait-time and would address juror frustrations and concerns such as those reported by jurors in this study.¹⁵

10 As confirmed by email correspondence 04/14/2015 with Regina Larry, Jury Administrator, USDC for the District of Columbia.

11 Through telephone and email correspondence (04/03/15) with Melissa Monroe, acting manager of the Jury Division of the Circuit Court of the Circuit Court for Baltimore City learn this court has 33 sitting judges, summons 1200 jurors per day and sends up to 300 jurors to courtrooms per day for both criminal and civil jury trials.

12 <http://www.dccourts.gov/internet/jurors/usingejuror.jsf>

13 In the April 24, 2015 meeting between members of the Jury Administration staff and representatives of the DC Jury Project, the Jury Administration office of Superior Court has estimated that close to 70% of citizens summoned for jury service in Superior Court already utilize Superior Court of DC eJuror Services to complete the Juror Qualification Form and defer jury service.

14 <http://www.americanbar.org/content/dam/aba/migrated/jury/projectstandards/principles.authcheckdam.pdf>

15 Regarding the responses of surveyed jurors who indicate that jury service interferes with work (53.5%) and is inconvenient (42.3%). See Council for Court Excellence Jury Project. Survey of recent jurors (2015).

05 THE DC JURY PROJECT RECOMMENDS THAT DC COURTS MAKE FURTHER USE OF TECHNOLOGY TO COMMUNICATE AND INTERACT WITH JURORS.

The DC Jury Project recommends that DC Courts use and/or expand the use of email, text messages, and social media to communicate with jurors and prospective jurors in at least four ways: (1) reminders about service; (2) scheduling changes; (3) expressions of appreciation for service; and (4) the creation of an online and/or automated telephone call-in system at the Superior Court (See Recommendation #4). The Jury Project also recommends that the Courts consider the expanded use of technology to include automated juror check-in kiosks at the Courts. These recommendations are based on research regarding innovations and best practices in other jurisdictions, as well as the results of the Jury Project's surveys of jurors and those present at a show cause hearing and juror focus groups.¹⁶

Several jurisdictions are already using these technology tools. New Jersey, for example, implemented a Jury Online System (JOS) in 2010, which allows prospective jurors to opt-in to receive email or text message reminders.¹⁷ The first reminder is sent four days prior to the juror's service date, and another is sent the day before. The day-before reminder also serves as a notification of reporting status, meaning that jurors who do not need to report do not have to check the website themselves,

but are instead alerted automatically.¹⁸ Jefferson County, Texas has plans to implement an I-Jury System that allows residents to fill out their questionnaires online and also allows prospective jurors to block out any dates in a three-month window when they will be unavailable for service.¹⁹ Racine County, Wisconsin, has also implemented an online and text message reminder system, which includes the ability to check on the status of rescheduled service.²⁰ San Joaquin County, California, allows jurors to sign up for text message alerts regarding their reporting status.²¹ The county also allows jurors to check in at a kiosk, bypassing lines and reducing the burden on the jury office.

The DC Superior Court should be commended for its use of Twitter to thank and encourage citizens who serve on juries. Twitter has also been useful in alerting prospective jurors of unexpected court closures and in monitoring for impermissible communications by jurors. The Jury Project recommends that the use of Twitter be expanded in both Courts. The DC Superior Court should also be commended for implementing an online chat feature where prospective jurors can ask questions and for the creation of a special email address where prospective jurors can send their questions. The DC Jury Project recommends that the District Court employ similar methods to allow prospective jurors to communicate with the Court.

CCE's survey of show cause hearings

4 out of 20 said they missed their original service date because they forgot

7 out of 20 indicated that they would have liked some kind of reminder about their service

16 Council for Court Excellence Jury Project. Survey of recent jurors (2015).

17 Rabner, Stuart. "Using Technology to Improve Jury Service." *Trends in State Courts* (2014): 39-42. http://www.ncsc.org/~media/Microsites/Files/Future%20Trends%202014/Using%20Technology%20to%20Improve%20Jury%20Service_Rabner.ashx. If a similar system were introduced in D.C., prospective jurors would be provided detailed information in their mailed summons about the various functions of the JOS. The summons would also include the instructions for providing the Court with their electronic contact information, should they choose to opt-in. See recommendation on augmenting the summons. http://www.njd.uscourts.gov/court-info/faq/ejuror_summons

18 *Id.* at 41.

19 Henderson, Chelsea. "County Considers Adopting I-Jury." *Port Arthur News* (2015). <http://m.panews.com/2015/06/01/county-considers-adopting-i-jury/>.

20 Bauter, Alison. "Jury Duty Reminders Now Available Online, Via Text Message." *Journal Times* (2013). http://journaltimes.com/news/local/jury-duty-reminders-now-available-online-via-text-message/article_5f850d30-1a0c-11e3-82d7-0019bb2963f4.html.

21 Mumma, Linda. "San Joaquin County Using Text Messages to Notify Jurors." *KCRA* (2015). <http://www.kcra.com/news/san-joaquin-county-using-text-messages-to-notify-jurors/33053480>.

06 THE DC JURY PROJECT RECOMMENDS THAT THE DC COUNCIL AND DC COURTS IMPLEMENT CHANGES TO JUROR COMPENSATION FUNDS FOR THE BETTERMENT OF JURORS, THE COURTS, AND THE COMMUNITY.

The DC Jury Project recommends that the DC Superior Court and US District Court for DC allow jurors to elect to waive the compensation that is ordinarily paid to jurors and have it designated for juror-related programs at the courts. This could be a source of revenue for the courts' jury infrastructure improvements, and it is also one means of empowering jurors.²²

In Maryland, Arizona, and Texas, jurors are allowed to donate their compensation to the court for jury services and amenities as well as to local charities.²³ In Prince George's County, Maryland, jurors have the option of donating their stipend to the Department of Social Services to help children in need.²⁴ The Texas Attorney General recently approved an expansion of eligible organizations to include organizations that may not directly benefit jurors.²⁵ The DC Jury Project recommends that waived juror compensation be directed toward increas-

ing the current transportation subsidy for all jurors and/or for court improvements that relate to jury service. Such funds could also be dedicated to a "lengthy trial" fund to support jurors who undertake substantial service commitments.

The DC Jury Project also recommends that the DC Courts consider establishing a lengthy trial fund, to be used to provide additional compensation to jurors in the rare circumstance when they are required to serve on a long trial. This fund would be available only for those jurors who are assigned to lengthy trials and who are not being paid their regular wages by their employer. This would lessen the financial burden on jurors and decrease the number of prospective jurors claiming financial hardship to judges and the jury office. The Arizona lengthy trial fund reimburses jurors who lose earnings while serving as a juror, up to \$300 per day, with proof of employment and income.²⁶ Unemployed jurors, or those who earn less than \$40 a day, are eligible for \$40 per day.²⁷ Revenue for the fund is generated from a \$15 filing fee applied to civil complaints, answers to civil complaints, and motions to intervene filed in Arizona's Superior Court.²⁸ Jurors become eligible to apply for the fund after serving for five days. A similar program in Oklahoma sets a 10-day service requirement.²⁹

Finally, the DC Jury Project recommends that the Superior Court and the DC Council increase the current transportation subsidy in order to cover the minimum cost for round-trip travel to the courthouses during peak travel times. Jurors and prospective jurors typically must travel to the courthouse during peak hours on public

22 While it is a self-selecting group, several participants in Jury Project juror focus groups noted that they thought of jury service as a civic duty. Therefore, some argued that pay was unnecessary. Similarly-minded jurors might appreciate the ability to return their pay to the court or donate it to charity. Several jurors also specifically mentioned wanting to donate their pay, as they were aware of the practice being allowed in other jurisdictions.

23 Arizona Jury Service Brochure: <http://www.superiorcourt.maricopa.gov/JuryServices/docs/JuryDutyGuide2.pdf>; also see American Legislative Exchange Council, Model Jury Patriotism Act: <http://www.alec.org/model-legislation/jury-patriotism-act/>.

24 Juror Donation Fund Prince George's County: <http://www.prince-georgescountymd.gov/sites/circuitcourt/JuryDuty/GenerousJuror/Pages/default.aspx>

25 Some of the organizations added to the list include: Central Texas Sickle Cell Anemia Association, Brazos Education Foundation, Fuzzy Friends Rescue, Meals on Wheels, YMCA of Central Texas, Big Brothers Big Sisters, State Crime Victim's Fund, and the Humane Society of Central Texas.

26 2008 Arizona Lengthy Trial Fund Report: <http://www.azcourts.gov/Portals/15/Jury/2008LTFReport.pdf> (compensation is limited to the difference between the regular juror stipend and the amount the juror makes from employment wages, with a cap set at \$300). Also see Arizona Claim Form in Exhibit B.

27 *Id.*

28 *Id.* The fund is not supplemented with appropriations from the legislature.

29 Oklahoma Jury Patriotism Act: <http://www.ncsc.org/topics/jury/jury-selection-trial-and-deliberations/state-links.aspx?cat=Juror%20Pay#Oklahoma>

transportation.³⁰ According to WMATA, peak hours include 5:00 am-9:30 am, and 3:00 pm-7:00 pm.³¹ The current transportation subsidy provided by the Superior Court to jurors and prospective jurors is \$4.00. The District Court provides jurors and prospective jurors with a \$7.00 transportation subsidy.³² A round-trip Metro train ride during peak hours (even one going only one stop) is \$4.30.³³ A round-trip ride on a Metro bus during peak hours is \$3.50. The Express Bus costs \$8.00 during peak hours.³⁴ A considerable number of those citizens who are summoned or who serve as jurors must take train rides longer than one stop or must transfer between public transportation methods. The Jury Project recommends that the transportation subsidy be increased to offset these costs, and that subsequent increases be made automatically, in accordance with increases to the cost of Metro mass transit.

“

The compensation should be commensurate with the rising Metro fare. What we got only paid for a one way Metro trip.

—An Anonymous Juror

³⁰ Prospective jurors summoned to Superior Court are requested to arrive for either the 8:30 am or 10:30 am orientation and check-in sessions. Most trials at both courts begin between 9:00 am and 10:00 am. Prospective jurors at the Superior Court who are being dismissed pursuant to the one day/one trial system are typically dismissed after 2:30 pm, meaning they will also likely be traveling during peak times. Those on a voir dire panel or serving on a jury will likely be traveling later, but still during peak travel times.

³¹ WMATA metro information: <http://www.wmata.com/rail/?-forcedesktop=1>

³² DC District Court Juror F.A.Q.: <http://www.dcd.uscourts.gov/dcd/sites/dcd/files/jury-FAQ.pdf>

³³ DC Courts Juror Subsidy information: <http://www.dccourts.gov/internet/jurors/gettingpaid/main.jsf>. Metro Calculator for trains and buses: http://www.wmata.com/rider_tools/calculator/calculator.cfm

³⁴ *Id.*

EXHIBIT A

SAMPLE JUROR FORMS

County Auditor's Form 346 Harris County, Texas (REV. 10/13)		
JUROR'S DONATION AUTHORIZATION FORM		
INSTRUCTIONS		
1. Complete this form ONLY if you wish to donate all or a portion of your reimbursement money. 2. Please print or verify your name, the beginning date of service, and your juror number. 3. Designate the amount you wish to donate – all or a specified dollar amount. 4. Designate the program to which you wish to donate. (Select only one applicable for trial duration.) 5. Return the completed and signed form to the Court Clerk on the last date of your jury service.		
NOTE: Incomplete or unsigned forms will result in automatic payment to the juror.		
Juror's Reimbursement Available for Donation: \$ _____ for _____ day(s) served. I, _____, authorize Harris County to donate <input type="checkbox"/> All or <input type="checkbox"/> \$ _____ of my juror reimbursement for service beginning _____, to the Program indicated below.		
PROGRAM NAME AND BRIEF DESCRIPTION		
Preferred Program	Program Name	Program Description
<input type="checkbox"/>	<i>Victims of Crime Fund</i>	Provides assistance to eligible innocent victims of crime who have resulting expenses that cannot be reimbursed from insurance or other sources. This fund provides compensation on approved claims such as the following: <ul style="list-style-type: none"> • Reasonable medical, counseling, prescription, and rehabilitation expenses • Certain funeral expenses • Partial loss of earning and support • Child care to enable a victim or spouse, or the surviving spouse of a deceased victim, to continue employment The Office of the Attorney General administers the fund and is committed to helping victims who qualify under the statutory guidelines of the Texas Victims' Compensation Act (Chapter 56 - Subchapter B, Texas Code of Criminal Procedure).
<input type="checkbox"/>	<i>Children's Protective Services Child Welfare Service Fund</i>	Responsibilities of this program include accepting all child abuse and neglect referrals, working with families toward the goal of resolving family problems and preventing the removal of children from the home, placing a child in appropriate substitute care or adoption when necessary, providing casework services to status offenders and children in need of supervision, and providing children in agency custody with adequate medical care. The executive director is responsible to the Children's Protective Services Board, which is appointed by Commissioners Court in accordance with Texas Family Code §264.005.
<input type="checkbox"/>	<i>Child Advocates, Inc.</i>	Mobilizes court appointed volunteers to break the cycle of child abuse and speak up for and guide abused children into safe environments where they can thrive. This organization trains and supports volunteers assigned to the cases of children who have been victims of life-threatening abuse or neglect and, as a result, have been placed in protective custody. Volunteers serve children involved in the juvenile court system once appointed to a child's case by a juvenile court judge, and have the legal status of "guardians ad litem," giving them the power to affect real change in the life of a child.
<input type="checkbox"/>	<i>Crime Stoppers of Houston, Inc.</i>	Mission is to solve and prevent crime in the Greater Houston area in partnership with citizens, media, and the criminal justice system.
<input type="checkbox"/>	<i>Casa De Esperanza De Los Niños, Inc.</i>	Provides residential care for abused, abandoned, neglected, medically fragile, and HIV affected infants and young children.
<input type="checkbox"/>	<i>Tejano Center for Community Concerns, Inc.</i>	Mission is to improve life opportunities of low-income children and families through the provision of education, social and health services, and community development initiatives.
<input type="checkbox"/>	<i>The 100 Club</i>	Mission is to provide assistance to dependents of certified peace officers and firefighters who are killed in the line of duty while protecting our lives and property, to provide law enforcement agencies with life protecting equipment that cannot be secured through budgeted funds, and to provide law enforcement with educational opportunities.
<input type="checkbox"/>	<i>ESCAPE Family Resource Center</i>	Mission is to prevent child abuse and neglect before a child is hurt by providing intervention, education, and support programs to families in crisis.
JUROR AUTHORIZATION		
_____ Signature of Juror	_____ Juror Number	_____ Date

Juror Badge # _____

ARIZONA LENGTHY TRIAL FUND JUROR CLAIM FORM

The following information is needed to process your claim. The information you provide will be used for administrative purposes only and will not be open to public inspection.

Complete either Section A, B or C of this form, depending on your employment status. Everyone must complete Section D. Everyone must sign this form under oath or affirmation. If you complete Section B, Part 1, you must submit the form to your employer for completion of Section B, Part 2. **If you complete Section C, you must sign in the presence of a Notary Public or Clerk of Court.** If you complete either Section B or C, you must attach documentation to support your claim such as copies of recent pay stubs or your IRS Form 1040 income tax return for the prior year.

Submit your completed claim form and supporting documentation to the Jury Commissioner for processing.

Section A – JURORS WHO ARE UNEMPLOYED OR RETIRED SHOULD COMPLETE THIS SECTION AND THEN GO TO SECTION D.

1. I, [print full name] _____, do hereby claim payment from the Arizona Lengthy Trial Fund for my recent jury service on a trial that lasted more than five days.
2. Check the one box that applies to you:
 - a. ☐ I am currently unemployed and therefore request the minimum payment allowed by statute.
 - b. ☐ I am retired and therefore request the minimum payment allowed by statute.

Go to Section D.

Section B, Part 1 – JURORS WHO ARE PAID A REGULAR HOURLY WAGE OR A REGULAR SALARY SHOULD COMPLETE THIS SECTION. SUPPORTING DOCUMENTATION MUST BE ATTACHED.

1. I, [print full name] _____, do hereby claim payment from the Arizona Lengthy Trial Fund for my recent jury service on a trial that lasted more than five days. My employer does not pay me for all of the time I missed work due to my jury service.
2. (Check the one box that applies to you):
 - ☐ I have attached a copy of my employer's jury service policy.
 - ☐ My employer does not have a written jury service policy.

To determine the amount of your claim, complete the information below. Attach additional pages if you need to explain overtime pay or if your work schedule varies.

3. The following describes how I am paid (choose a or b.):
 - a. I am paid by the hour and normally work _____ hours per day. I earn \$_____ per hour.
 I normally work the following days of the week (circle all that apply):
 Sunday Monday Tuesday Wednesday Thursday Friday Saturday
 -I am paid by the hour and normally work _____ hours of overtime per day for which I am paid \$_____ per hour.
 I normally work overtime the following days of the week (circle all that apply):
 Sunday Monday Tuesday Wednesday Thursday Friday Saturday
 - b. I am paid a salary and normally earn \$_____ per pay period in gross wages.

(Continued on next page)

SECTION B, PART 1 (CONTINUED)

4. My normal workday begins at _____ (AM/PM) and ends at _____ (AM/PM).

5. My pay period is (circle the one that applies to you):

Daily

Weekly

Biweekly

Semimonthly

Monthly

6. I was NOT paid by my employer for the following dates of my jury service (Please indicate whether or not you lost an entire shift due to jury service, the amount of pay you lost on each date, and whether or not you were able to make up your missed shift at another time.): _____

7. I will continue to lose \$ _____ per day for the following dates of my jury service: _____
 _____ (Note: If this amount changes, you **must** submit a revised juror claim form.)

8. I have attached copies of my last two pay stubs or (identify other records attached as supporting documentation)

Have your employer complete **Section B, Part 2**, then go to **Section D**.

SECTION B, PART 2 – TO BE COMPLETED BY YOUR EMPLOYER.

1. Company name: _____

2. Company address: _____

3. Contact person to verify the employment information in Section B, Part 1: [print name, title, phone number, address]

I have read the information provided in Section B, Part 1 and swear or affirm under penalties of perjury that it is true and correct.

Signature of employer or authorized agent _____

Date _____

SECTION C – JURORS WHO ARE CONTRACT OR TEMPORARY EMPLOYEES, SELF-EMPLOYED, OR WHO ARE PAID COMMISSIONS ONLY SHOULD COMPLETE THIS SECTION. SUPPORTING DOCUMENTATION MUST BE ATTACHED.

1. I, [print full name] _____, do hereby claim payment from the Arizona Lengthy Trial Fund for my recent jury service on a trial that lasted more than five days. Due to my service as a juror, I lost the following earnings that I would otherwise have made: \$ _____ per day.

2. My claim is based on the following explanation: _____

3. I have attached a copy of my last year's 1040 income tax return (do not include income tax schedules), SE Form or (identify the records you have attached) _____
 to support my claim (additional documentation may be required).

Go to **Section D**.

Section D – MUST BE COMPLETED IN FULL BY JUROR BEFORE PAYMENT CAN BE ISSUED.

1. My Social Security Number is: _____. (This information is being collected pursuant to 26 U.S.C. §6109 to provide you and the Internal Revenue Service with a FORM 1099 statement if applicable. It will not be used for any other purpose.)

2. Send my payment to the following address:

3. Daytime Phone Number _____

I swear or affirm under penalty of perjury under the laws of the State of Arizona that the information I have provided herein is true and accurate to the best of my knowledge and belief.

Pursuant to A.R.S. § 21-222(D)(3), if you reported income from self-employment or you reported compensation other than wages, you must sign this form in the presence of a notary.

Signature of claimant _____

_____ Date

State of Arizona)

) ss.

County of _____)

Subscribed and sworn (or affirmed) before me on this _____ day of _____, 20_____.

My commission expires: _____

Notary Public or Clerk of Court

FOR COURT USE ONLY:

Case No. _____ Number of ALTF-eligible trial days: _____

☐ Claim approved in the amount of \$40/day from day 4 through the last day of this juror's service in the case listed above.

☐ Claim approved in the amount of \$_____.

☐ Claim disapproved.

07 THE DC JURY PROJECT RECOMMENDS THAT THE COURTS CONSIDER ENHANCING PROCEDURES RELATING TO THE STRESS ASSOCIATED WITH JURY SERVICE.

The DC Jury Project recommends that the District Court and the Superior Court consider implementing structural and procedural changes that are designed to prevent and alleviate stress related to jury service. Jurors may experience moderate stress during a trial, and approximately 10% of jurors may experience significant amounts of stress.³⁵ This service-related stress could be caused by a number of factors, including missing work, possible loss in pay, disruption of normal routine, information overload, and the elements of a case that are particularly gruesome or sensitive.³⁶ Moreover, nationwide studies by the National Center for State Courts have shown that jurors often feel underappreciated for their service, as well as upset, because internet access in jury lounges is lacking, restrooms are generally not well maintained, and they feel generally unappreciated.³⁷ The DC Jury Project recommends that the courts seek to address juror stress in various ways, including by enhancing juror lounges and deliberation rooms, creating a more welcoming environment for jurors arriving at the courthouse, and providing coping mechanisms for use after service has been completed.

When the courts next consider renovating, painting, or otherwise updating physical facilities, the DC Jury Project recommends that the courts consider these renovations as opportunities to improve the experience

of jurors. In addition, the DC Jury Project suggests providing refreshments or breakfast items for jurors who are sitting through orientation and waiting for instructions. We applaud the US District Court for providing jurors with refreshments during trials as appreciation for their service. We recommend that the DC Bar create a fund to help provide these services to the courts, especially in lengthy civil trials, to aid jurors in remaining attentive and to help them feel appreciated.

The DC Jury Project also encourages judges and clerks to recommend that jurors leave the building during breaks and lunch to clear their minds and relieve stress.

Finally, the DC Jury Project recommends offering jurors in certain cases information about coping mechanisms once their service is complete. Multiple states, including Arizona and Wisconsin, provide coping tips to jurors in every case through a pamphlet that also addresses common symptoms of stress.³⁸ Arizona also gives jurors access to six free counseling sessions to help cope with the effects of particularly difficult trials. This is known as “critical incident debriefing,” and is provided through the Employee Assistance Program for all jurors who serve.³⁹ In Washington State, several courts have licensed mental health counselors who serve as “jury debriefers” to help jurors deal with stress and trauma and transition back to normal life after an intense trial.⁴⁰ We recommend the courts plan ahead for mitigating juror stress if they know a case will be particularly sensitive or disturbing.

The DC Jury Project has created a sample pamphlet, which the courts may wish to use or modify. It can be found in Exhibit B.

35 Paula Hannaford-Agor. *Jury News, The Court Manager*, 26(2), 50-52 (2011). See also, e.g., <http://www.9news.com/story/news/health/2015/04/13/emotional-toll-of-being-a-juror/25728697/>.

36 J. Chris Nordgren. Unified Justice System. *Practical Tips on Coping with the Stress of Jury Duty*. (1999). <http://ujsjurors.sd.gov/stress.html>.

37 National Center for State Courts. *Through the Eyes of the Juror: A Manual for Addressing Juror Stress* (1998). <http://www.ncsc-jury-studies.org/What-We-Do/~media/Microsites/Files/CJS/What%20We%20Do/THROUGH%20THE%20EYES%20OF%20THE%20JUROR.ashx>

38 Section of pamphlet used at the Superior Court of Arizona, Maricopa County. “Tips for Coping After Jury Duty”. Paula Hannaford-Agor. *Jury News, The Court Manager*, 26(2), 50-52 (2011). <http://www.ncsc-jurystudies.org/~media/Microsites/Files/CJS/Jury%20News/A%20New%20Option%20for%20Addressing%20Juror%20Stress.ashx> and Wisconsin general brochure for stress: <http://www.doj.state.wi.us/sites/default/files/ocvs/specialized/jury-stress-brochure.pdf>

39 Paula Hannaford-Agor. *Jury News, The Court Manager*, 26(2), 50-52 (2011).

40 Libby Denkmann, *Guilty or innocent, debriefers help jurors recover from trauma after verdict*, Mynorthwest.com, KIRO Radio, April 10, 2015: <http://mynorthwest.com/11/2744794/Guilty-or-innocent-debriefers-help-jurors-recover-from-trauma-after-verdict>.

EXHIBIT B**SAMPLE AFTER SERVICE PAMPHLET**

"I consider trial by jury as the only anchor ever yet imagined by man, by which a government can be held to the principles of its constitution" – Thomas Jefferson

[COURT NAME]
[CHIEF JUDGE]
COURTHOUSE:
[NAME]
[ADDRESS]

PH: [PHONE]

[WEBSITE]

Now What? How to Cope After Jury Service



After Service Information

Thank You

Thank you for fulfilling your civic responsibility by serving on a jury. Jury service is an essential part of our justice system and can be very rewarding.²⁷ You were asked to listen to evidence and examine facts. Although coming to a conclusion may have been difficult, we appreciate your participation and understanding.²⁸

Serving on a jury is not an everyday task, so some stress may occur. Some jurors experience moderate levels of stress as one point or another.²⁹ There is no guarantee that you will experience stress after service, but if you do, know that you are not alone.

Signs You Might Be Stressed³⁰

Physical reaction: muscle tension, changes in sleep patterns or lack of energy.

Mental reaction: difficulty concentrating or remembering things or having a hard time making decisions.

Emotional reaction: moodiness, guilt, fear or dwelling on the details of the case.

Behavioral reaction: isolation, an increased desire to be alone, changes in eating habits or increased drug/alcohol use.

Coping Tips

Although stress is a normal reaction to jury service, and the symptoms usually subside in due time, there are some ways to cope.

- Understand that unless desired, you do not have to speak about the trial to anyone.³¹
- Stick to your normal routine as best as possible.³²
- Avoid caffeine, alcohol, and nicotine as they increase anxiety and can increase problems.³³
- Try relaxation techniques such as meditation, yoga, and relaxed breathing.³⁴
- Exercise and take care of your body as healthy habits can decrease stress.³⁵
- Speaking to family members, friends, or fellow jurors may be helpful to alleviate stress and remind yourself that you were part of a group and are not alone. Avoid negative thoughts about the verdict in these discussions.³⁶

Need More Assistance?

You are not alone when it comes to experiencing stress after jury service. This is a normal reaction to a stressful event. If signs of distress persist for two weeks after the jury service has ended consider contacting your physician to speak about alternate coping options.³⁷

²⁷ After Your Jury Service. Wisconsin Juror Brochure: <http://www.doj.state.wi.us/sites/default/files/ocvs/specialized/jury-stress-brochure.pdf>

²⁸ Tips For Coping After Jury Duty, Arizona Brochure: <http://www.ncsc-jurystudies.org/~media/Microsites/Files/CJS/Jury%20News/A%20New%20Option%20for%20Addressing%20Juror%20Stress.ashx>

²⁹ *Id.*

³⁰ After Your Jury Service. Wisconsin Juror Brochure: <http://www.doj.state.wi.us/sites/default/files/ocvs/specialized/jury-stress-brochure.pdf>

³¹ *Id.*

³² After Your Jury Service. Wisconsin Juror Brochure: <http://www.doj.state.wi.us/sites/default/files/ocvs/specialized/jury-stress-brochure.pdf>

³³ Tips For Coping After Jury Duty, Arizona Brochure:

<http://www.ncsc-jurystudies.org/~media/Microsites/Files/CJS/Jury%20News/A%20New%20Option%20for%20Addressing%20Juror%20Stress.ashx> and After Your Jury Service. Wisconsin Juror Brochure:

<http://www.doj.state.wi.us/sites/default/files/ocvs/specialized/jury-stress-brochure.pdf>

³⁴ *Id.*

³⁵ *Id.*

³⁶ Tips For Coping After Jury Duty, Arizona Brochure:

<http://www.ncsc-jurystudies.org/~media/Microsites/Files/CJS/Jury%20News/A%20New%20Option%20for%20Addressing%20Juror%20Stress.ashx>

³⁷ *Id.*

08 THE DC JURY PROJECT RECOMMENDS THAT JUDGES CONSIDER ADJUSTING TRIAL SCHEDULES WHERE FEASIBLE TO MINIMIZE JUROR INCONVENIENCE.

Many judges do not hold trials on Fridays, instead holding initial scheduling conferences and attending to other matters. The DC Jury Project recognizes that non-trial days are critical to the management of the courts' docket. However, the DC Jury Project recommends that when the Court's schedule permits, judges consider holding trials on Fridays when doing so would result in the trial ending on that Friday, thus eliminating the need for the jury to return the next week for a single day. The DC Jury Project recognizes that many judges already consider rescheduling their other matters and hold trial on Fridays when doing so will mean that the trial will not need to continue into the next week and applauds them for doing so.

09 THE DC JURY PROJECT RECOMMENDS THAT THE COURTS IMPLEMENT FORMAL AND OFFICIAL MEANS OF THANKING POTENTIAL AND EMPANELED JURORS FOR THEIR SERVICE, INCLUDING SERVICE AS ALTERNATES.

The DC Jury Project recommends that the District Court and the Superior Court thank jurors formally and officially by communicating with them directly after service. Jurors play an important role in our judicial system; those who answer a summons to serve should be made to feel appreciated, including those who never go through the voir dire process and those who serve as alternate jurors.

The Committee's research indicates that courthouse staff and judges do not universally thank jurors for their service. The DC Jury Project recommends that thanking jurors in person be made a standard practice in the DC courts.⁴¹ Staff should thank prospective jurors during orientation and at the conclusion of the day, when they are dismissed, on behalf of the court. Similarly, judges should take care to thank jurors at the start and end of each day of voir dire or trial, and should also thank jurors upon the conclusion of a trial.

The courts should also issue standard-form thank you notes, signed by a judge, to every citizen who responds to a summons and reports to the courthouse for duty. (See Exhibit C for sample thank you letters for use as models.) As a way to distribute these letters, we recommend that these letters be made readily available to the jury office for distribution to jurors when they return their

badges upon dismissal.⁴² The DC Jury Project further recommends creating a rotation for non-seated judges to thank jurors who were not empanelled for trial. The judges on this rotation should thank the jurors in the jury lounge when they are dismissed from their service for the day.

Finally, the DC Jury Project recommends notifying jurors who were selected as alternates and dismissed from the trial prior to deliberation about case outcomes. In several focus group sessions, former alternate jurors expressed their frustration with not being made aware of the case outcome after devoting so much of their time and effort to the process. Similarly, alternates who were notified reported being much more satisfied with their service.



We had to take off our job, I had to get someone to take care of my daughter. I felt like a number, not appreciated. If you don't get picked you don't get paid. If someone had just come out and told us what was going on, I would have felt better about it. Someone could have just come into the room and thanked us.

—An Anonymous Juror

⁴¹ As the court moves toward communicating with jurors via email, the DC Jury Project recommends considering this medium as a way to thank jurors as well.

⁴² Distribution in this manner might mitigate some of the administrative concerns that several judges have expressed regarding the amount of time and effort that would be required to address and mail personal letters to jurors.

EXHIBIT C

SAMPLE LETTERS OF THANKS

[FOR LONG TRIALS]

[date]

Dear [Mr.] [Ms.] _____:

I would like to express my formal appreciation to you, individually, for your service to our Court in the recent [civil] [criminal] case of [caption]. You have made a significant contribution to the fair and impartial administration of justice in our community by your performance of duty on this jury. While jury duty always imposes a sacrifice for each person whose routine schedule is disrupted, the trial in this case took longer than many trials do. I especially appreciated your patience, understanding, good humor, spirit of cooperation, and commitment to the process.

Without good citizens like you, we judges could not fairly administer justice. Thank you so very much for your service on this jury. It was a pleasure to meet you and your colleagues.

Sincerely,

Paul L. Friedman

[DATE]

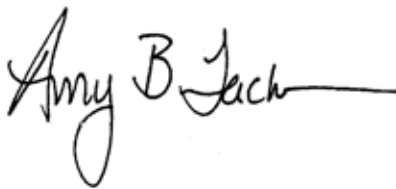
JUROR NAME
ADDRESS

Dear Mr./Ms. _____:

I am writing to thank you for your service as a juror in *United States v. XX* this week. Although the trial ultimately did not move forward, your willingness to participate as a juror helped ensure the defendant's right to a jury trial, which is a fundamental part of our system of justice. The system would not work at all if members of the community were unwilling to participate, and I appreciate the attention and patience you showed in these proceedings.

You have made a valuable contribution to the Court and to the community. Thank you again for your service.

Sincerely,

A handwritten signature in black ink that reads "Amy B. Jackson". The signature is written in a cursive, flowing style. The first name "Amy" is written with a large, looped 'A'. The middle initial "B." is written in a smaller, simpler script. The last name "Jackson" is written with a large 'J' and a long, horizontal flourish extending to the right.

Amy Berman Jackson
U.S. District Court Judge

[Letterhead on Stationary]

[Date]

[Juror Name]

Dear Mr./Ms. [Juror Name]:

On behalf of the United States District Court for the District of Columbia, I want to personally thank you for the time and service you have provided to the Court as a juror. Your participation was essential to the resolution of the case in which you were a juror.

When the Constitution of the United States was adopted, and at various times thereafter, the founding fathers of our country and the Congress of the United States decided that certain legal disputes should be decided by jurors. Like any system of justice that mankind has ever devised, our system is not infallible. Nevertheless, I firmly believe that America has developed a system of justice that rivals any system that operates in the world today. In fact, having had the opportunity to examine and observe first hand many other systems of justice in other countries, I can confidently conclude that the United States stands far above virtually all other systems in providing quality justice to all individuals who enter the doors of our Nation's courthouses.

Your service as a juror contributed tremendously to the country's ongoing effort to ensure that all who access the courts of our Nation are treated fairly and receive equal protection under our laws. I commend you for your contribution to those goals and I hope that you will be willing and able to serve as a juror again when called upon by one of the courts of our Nation to do so.

Sincerely,

Reggie B. Walton
United States District Judge

[FOR SHORT TRIALS]

[date]

Dear [Mr.] [Ms.] _____:

I would like to express my formal appreciation to you, individually, for your service to our Court in the recent [civil] [criminal] case of [caption]. Jury duty always imposes a sacrifice for each person whose routine schedule is disrupted. So I very much appreciated your patience, understanding, attention, spirit of cooperation, and commitment to the process.

Without good citizens like you, we judges could not fairly administer justice. Thank you so very much for your service on this jury. It was a pleasure to meet you and your colleagues.

Sincerely,

Paul L. Friedman

JURY POOL AND SUMMONING WORKING GROUP

The current response rate to a jury summons in the courts of the District of Columbia is about 22%. The principal focus for consideration by the Jury Pool and Summoning Working Group was the question of how we can increase that response rate. If more citizens responded to their summons, individuals would be summoned less frequently, and the burden on those who respond would be lessened, as would the burden on the courts. The Working Group considered a variety of important and interesting proposals, including additions to the juror source lists, cooperation between the local and federal courts to avoid double booking of jurors, and juror summons and failure to appear. As explained below, two broad themes permeated our discussions.

As a first theme, we reflected on the need for a legal, business and community culture of support for the jury system. We believe that the overall response of citizens to jury service reflects that culture. Broad dissemination of information about jury service helps create a supportive culture. We discussed the ways in which we might improve the support of the business community and employers for attendance at the Court when potential jurors are summoned. We also considered whether and how to approach the Council of the District of Columbia about compliance with the requirement of the *Jury Trial Improvements Act of 2006* that agencies providing lists of names to the court for jury service update those lists annually. We believe also that allowing people to volunteer to serve may mitigate the problem of low summons response rates.

Second, the advance of technology opens new avenues for improving participation. We support expanding the use of technology in the court system to take advantage of relevant innovations developed in the private sector. Technological advances may enable great improvement in the collection, automation, and accuracy of juror source list creation and summoning. Increased utilization of technology tools may allow jurors to call in, get text message reminders, consult websites, and receive emails regarding their jury summons, resulting in a greater response rate from those who actually receive their summons. Political campaigns and the private sector are

successfully using data to pinpoint demographic targets and interests, which could help improve the accuracy of source lists.

Our work also considered the earlier studies and recommendations on this topic. In 2006, the Council for Court Excellence published a report, *Improving Juror Response Rates in the District of Columbia*. Much like our own work, this report was in part a look backwards at the recommendations made by the 1998 Jury Project. In brief, the report recommended four methods to improve response rates: 1. Improve automation support; 2. Improve the master jury list; 3. Expand the follow-up program for non-responders; 4. Revisit the 10-year hold-out for convicted felons. CCE staff and interns have been tracking the implementation of the 1998 Jury Project's recommendations. In part, the task of the Working Group was to assess the level of implementation of the previous recommendations, determine whether there is still room for improvement in a recommendation's area, and advise whether the recommendation should be re-introduced or modified.

We know the courts are committed to improving the "yield" for jury summoning, and we hope our recommendations will aid that effort.



Rodney F. Page
Bryan Cave
Jury Pool and Summoning Working Group Chair

10 THE DC JURY PROJECT RECOMMENDS AMENDING THE DC CODE SO THAT AGENCIES THAT PROVIDE THE COURT WITH SOURCE LISTS HAVE TO CERTIFY THAT THE LISTS HAVE BEEN ACCURATELY UPDATED.

The DC Jury Project does not believe that penalties for non-compliance need to be included in the legislation, as the DC Council's oversight power and the Superior Court's jurisdiction are sufficient.

The DC Jury Project commends CCE for its efforts to draft and pass the *Jury Trial Improvements Act of 2006*.⁴³ Among other things, the act amended Section 3, Title 16 of the DC Code to include § 16-5104 (District of Columbia government agency source lists), providing that:

Any agency or instrumentality of the District of Columbia government required to provide names and addresses of individuals to the Court pursuant to § 111905 for purposes of summoning individuals for jury service shall take all reasonable steps to ensure that the names and addresses are accurate, including:

- (1) Entering into a memorandum of understanding with the Court for the prompt sharing of complete and accurate information; and
- (2) The purging of inaccurate name and address information by the provider agency or instrumentality not less than once every calendar year.

The DC Jury Project recommends that this section be amended to add the following third provision:

- (1) Certifying via signed declaration by the agency head and the inclusion of a "change log," documenting differences in the new list as compared to the old list, that the agency completed all due diligence to ensure that the list was accurately updated.

⁴³ Jury Trial Improvements Act of 2006, DC Law 16-272 (Mar. 14, 2007). <http://dcclims1.dccouncil.us/images/00001/20070108174433.pdf>.

11 THE DC JURY PROJECT RECOMMENDS DRAWING FROM ADDITIONAL SOURCE LISTS TO INCREASE THE ACCURACY AND REPRESENTATIVE NATURE OF THE MASTER JURY LISTS AT DC COURTS.

The DC Jury Project applauds the DC Superior Court for its efforts to implement CCE's previous recommendation to increase the number of source lists used.⁴⁴ According to the most recent Superior Court Jury Plan, the Court currently uses lists from the following sources:

(1) the list of voters registered in the District of Columbia; (2) the list of drivers, eighteen (18) years or older, licensed in the District of Columbia; (3) the list of residents of the District of Columbia, eighteen (18) years or older, who have received a non-driver's identification card from the District of Columbia; (4) the most recent list of individuals to whom District of Columbia personal tax income forms have been sent by the DC Department of Finance and Revenue, as well as the most recent list of individuals who have filed personal income tax forms in the District of Columbia; (5) the most recent list of individuals who have qualified to receive any type of public assistance benefits in the District of Columbia; (6) the most recent list of persons who have become naturalized citizens in the District of Columbia since the previous master jury list was created; (7) such other source lists as may become available.⁴⁵

The DC Jury Project first recommends that the list of newly naturalized citizens be supplied to the Court by the United States Citizenship and Immigration Services, as set forth in the Court's jury plan. The DC Jury Project believes that CCE and its partners could help facilitate this exchange.

The DC Jury Project further recommends that, in addition to the six sources listed above, the Superior Court seek other source lists pursuant to the seventh provision of the Jury Plan. In particular, we recommend obtaining a list of 18-year-olds from DC Public Schools to ensure adequate representation of DC youth in the jury pool.

The US District Court for the District of Columbia uses fewer source lists than the Superior Court to create its master jury wheel. The District Court currently uses lists from the following sources:

The judges of the Court find, pursuant to 28 U.S.C. § 1863(b)(2), that while the Registered Voters Master File of the DC Board of Elections represents a fair cross-section of the community in this District, an even greater number of citizens will be eligible for jury service if supplemental sources are also employed. In order to broaden the base from which potential jurors shall be chosen, the Court approves a source list compiled by merging the Registered Voters Master File of the DC Board of Elections or its supporting computer tape file, the computer tape file maintained by the DC Department of Motor Vehicles of individuals 18 years and older who hold a driver's license, learner's permit, or valid identification card issued by the DC Department of Motor Vehicles, and the list of all individuals of the District of Columbia whose income tax forms are



I generally get called every two years. I have some friends who have never been called.

—An Anonymous Juror

⁴⁴ See *Council for Court Excellence, Juries for the Year 2000 and Beyond* (1998) at Recommendation 6.

⁴⁵ Jury Plan for the Superior Court of the District of Columbia, Effective November 9, 2013. http://www.dccourts.gov/internet/documents/Jury-Plan-effective_11-9-2013.pdf.

filed with the DC Department of Finance and Revenue. This merged list will hereafter be referred to as the "Source List."⁴⁶

The DC Jury Project recommends that the US District Court expand the number of source lists used to include newly naturalized citizens, DC Public Schools, and others that would help to ensure that its master jury wheel is as representative of the population of DC as possible.

⁴⁶ Jury Selection Plan for the United States District Court for the District of Columbia for the Random Selection of Grand and Petit Jurors (As Amended Through October 2012) at Section B. <http://www.dcd.uscourts.gov/dcd/sites/dcd/files/JSPFinal120612.pdf>.

12 THE DC JURY PROJECT RECOMMENDS THAT THE DC COURTS EXAMINE THE POSSIBILITY OF IMPROVING JURY SUMMONING RATES BY USING BIG DATA RESOURCES TO IDENTIFY MORE ACCURATE ADDRESSES AND CONTACT INFORMATION FOR POTENTIAL JURORS.

In 2014, the Superior Court of the District of Columbia sent out over 150,000 summonses to potential jurors.⁴⁷ Of that number, approximately 22,000 summonses were returned to the Court as “undeliverable.”⁴⁸ An additional 70,000 summonses were registered as “failure to respond.”⁴⁹ New data collection services exist that can help to update contact information for potential jurors who live in the District of Columbia.

These information services companies – colloquially known as “big data” or public records companies – collect mailing addresses, email addresses, telephone numbers, and other public as well as private information about individuals in all 50 states across the United States. Big data companies can provide cost-effective services to update the source lists that the DC Courts use to identify qualified individuals who may be summoned to serve as potential jurors. The companies can also check the accuracy of current contact information the courts possess. This updated contact information could be utilized to supplement existing court strategies for improving the accuracy of receipt of the summons by residents, including permitting the implementation of an email notification system whereby courts could send the initial summons to a juror in digital format,

and send follow-up reminders to the juror with the date and time of their service (See Recommendations #4 and #5). Thus, the use of big data resources offers an opportunity to minimize the number of undeliverable and unknown responses, and to develop more effective ways to communicate with potential jurors, which would ultimately save the courts time, money, and effort.

By way of example, one potential service provider (LexisNexis) has a “Batch Service” that can update the court’s existing list of names and addresses for jurors with current mailing addresses, email addresses, and telephone numbers for the individuals whose summonses have been returned or who have no contact information. This updated information would provide the court with data about jurors who no longer live at the mailing address, and as a result, the court would avoid sending future summonses to the old addresses. The service could also verify that jurors who have not responded to a summons do, in fact, live at the address to which the summons was mailed. Both pieces of information could help the court improve its jury yield rate.⁵⁰

The DC Jury Project Committee recommends that the courts undertake an examination of the feasibility of utilizing big data services, recognizing that any issues regarding cost and security should be addressed prior to the implementation of any such services. The Committee suspects that personal privacy concerns are likely to be minimal, given that only public records are being used, and the only proposed use is to update addresses that the court already has permission to have and utilize.

⁴⁷ Interview with Superior Court Jury Officer Suzanne Bailey-Jones, Judge Melvin Wright, and Mr. Herbert Rouson, Special Operations Division, at DC Superior Court on April 23, 2015.

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ The DC Superior Court is currently undertaking a trial of LexisNexis Accurant Batch to evaluate the benefit of utilizing such a big data or public records service.

13 THE DC JURY PROJECT RECOMMENDS THAT CITIZENS BE PERMITTED TO PROVIDE INFORMATION FOR INCLUSION IN THE MASTER JUROR SOURCE LIST IN DC IN ORDER TO ENSURE THAT THE SOURCE LIST INCLUDES CITIZENS WHO ARE QUALIFIED BUT WHO ARE NOT OTHERWISE INCLUDED.

Citizens should be permitted to provide information for inclusion in the master juror source list. Such information could include updated addresses and contact information, as well as an indication of when the individual would best be able to serve. To create this opportunity, the Courts could utilize an online form; have paper forms available in public places, such as libraries and the DMV; or create an automated telephone hotline.

Permitting this practice could expand the jury pool, as well as increase its representativeness, while preserving the random selection of jurors (See Recommendation #11). Additionally, it furthers the important goal of court accessibility, and it helps to ensure that the juror source list includes citizens who are qualified to serve as jurors in DC Superior Court and the US District Court for DC, but who are not otherwise listed on one of the juror source lists.⁵¹

Citizens should not be permitted to volunteer to serve at a particular time, but they should be allowed to indicate to the courts the most optimal time for jury service, which would be added to the jury pool information, and could still allow the courts to make targeted random

selections from the master list.⁵² This practice would increase the summons response rate overall, and it would not skew the jury pool because the source lists would continue to be generally sorted and randomized.

This practice is currently permitted in four states: New York, Pennsylvania, Alaska and Maine.⁵³ As these jurisdictions have found, this practice helps capture and engage those citizens who are willing to take a proactive approach with regard to jury service.

⁵² A targeted random selection means drawing from the master jury wheel a group of prospective jurors, some of whom have indicated a certain time period is easier for them and some who have not done so, and then sending this mixed group a summons for service during a period that falls during the preferential period. This mixed group would be available for all of the jury trials taking place during that period and would also be subject to voir dire. The practical effect is the same as allowing prospective jurors to postpone their service to a later date.

⁵³ In New York, the Jury Information Line (a toll-free telephone number) prompts citizens to volunteer to be on the jury list. If qualified, these citizens are placed on the jury list from which jurors are randomly selected. See <http://www.nyjuror.gov/juryQandA.shtml#Q2>. In Pennsylvania, procedures for a citizen having their name included on the master juror list are addressed by the jury commission for each county. In Alaska, citizens may contact the administrative director of the Alaska Court system to provide the information the administrative director may require so they are included on the juror source list. Alaska Statute 09.20.050(d). In Maine, citizens can contact the clerk of court in their county of residence to be listed on the juror source list.

⁵¹ This recommendation was also made by CCE in 1998, but was not implemented. See *Council for Court Excellence, Juries for the Year 2000 and Beyond* (1998) at Recommendation 7.

14 THE DC JURY PROJECT RECOMMENDS THAT THE SUPERIOR COURT REVISE ITS JURY PLAN SO AS TO REDUCE THE TEN-YEAR RESTRICTION ON PEOPLE WITH FELONY CONVICTIONS BEING CALLED TO SERVE ON A PETIT JURY.

The DC Superior Court currently requires felons who have completed their incarceration, probation, parole, or supervised release to wait ten years before they are permitted to serve on a jury.⁵⁴ This requirement greatly surpasses the limitation that the District of Columbia Code sets in Section 11-1906(B), which states that people with felony convictions who have completed their sentencing requirements must wait only one (1) year before they may serve on a jury.⁵⁵ We recommend that the DC Superior Court revisit its rule and implement changes so that the court's requirement conforms with the one year limitation in the legislation. This would help to increase the size and inclusiveness of the petit jury pool.

There are several reasons why people with felony convictions should be allowed to serve on a jury soon after they have completed their sentences and have reintegrated back into society. First, like voting, serving on a jury is an important Constitutional and civic act. In DC, a felon's right to vote is automatically reinstated,⁵⁶ due in no small part to the growing recognition that a key element of rehabilitation is permitting felons to participate in the civic life of their community.⁵⁷ Second, the increased juror pool would help ensure that the overall

jury venire is representative of DC's population. And third, allowing felons to serve on juries within a shorter period of time after they have completed their sentences would have the practical effect of easing burdens on the court by increasing the pool of prospective jurors and simplifying the management of source lists, which now undergo an extensive purging process necessitated by the ten-year restriction.

Finally, the arguments against allowing felons to serve on juries are unpersuasive. For example, there is often no meaningful distinction between felons (who are excluded for ten years) and those who are convicted of misdemeanors (who are not excluded at all), given that misdemeanor convictions often involve similar criminal conduct and result from plea bargaining rather than any real difference in the culpability of the offender.⁵⁸ Similarly, once the punishment handed down is served, requiring ex-felons to continue to be excluded from the jury pool for lengthy amounts of time does not advance the purposes of punishment in any way.⁵⁹ Opponents of felon inclusion cite issues of inherent bias, presumption of character, and impact on reintegration and criminal desistance as reasons for exclusion.⁶⁰ However, research indicates that having a felony conviction is no more predictive of a pro-defense bias in a criminal case than several other factors.⁶¹ There is also no support for the contention that being a felon degrades one's character to the point at which he or she could not be added to the jury pool and go through the same voir dire pro-

⁵⁸ *Id.*

⁵⁹ See American Bar Association, Principles for Juries and Jury Trials (2005) at Principle Two: <http://www.americanbar.org/content/dam/aba/migrated/juryprojectstandards/principles.authcheckdam.pdf>.

⁶⁰ See James Binnall, *Convicts in Court: Felonious Lawyers Make a Case for Including Convicted Felons in the Jury Pool*, 73 Alb. L. Rev. 1379 (2010); James Binnall, *A Field Study of the Presumptively Biased: Is there Empirical Support for Excluding Convicted Felons from Jury Service?*, 36 U. Denv. L. & Pol'y 1 (2014); James Binnall, *A jury of none: an essay on the last acceptable form of civic banishment*, 34 Dialectical Anthropology 533 (2010); James Binnall, *Sixteen Million Angry Men: Reviving a Dead Doctrine to Challenge the Constitutionality of Excluding Felons from Jury Service*, 17 Va. J. Soc. Pol'y & L. 1 (2009); James Binnall, *A Felon Deliberates: Policy Implications of the Michigan Supreme Court's Holding in People v. Miller*, 87 U. Det. Mercy L. Rev. 59 (2009).

⁶¹ See *id.*; see also *The Exclusion of Felons From Jury Service*, 53 Am.U.L. Rev. 65 (2003).

⁵⁴ DC Superior Court Jury Plan Effective November 9, 2013. Section 6(g). http://www.dccourts.gov/internet/documents/Jury-Plan-effective_11-9-2013.pdf.

⁵⁵ DC Code §11-1906(B). <http://law.justia.com/codes/district-of-columbia/2013/division-ii/title-11/chapter-19/section-11-1906/>.

⁵⁶ National Conference of State Legislatures. Felon Voting Rights. <http://www.ncsl.org/research/elections-and-campaigns/felon-voting-rights.aspx>; also see http://www.nonprofitvote.org/voting-as-an-ex-offender/#District_of_Columbia.

⁵⁷ See *The Exclusion of Felons From Jury Service*, 53 Am.U.L. Rev. 65 (2003).

cess as any other prospective juror.⁶² Lastly, studies in Maine, where there are no restrictions on felons serving on juries, indicate that felons were excited about their opportunity to fulfill their civic duty and viewed service as a unique element of their reentry into society.⁶³

⁶² See *Id.*

⁶³ See James Binnall, *A Field Study of the Presumptively Biased: Is there Empirical Support for Excluding Convicted Felons from Jury Service?*, 36 U. Denv. L. & Pol'y 1 (2014).

15 THE DC JURY PROJECT RECOMMENDS THAT EMPLOYERS ADOPT POLICIES THAT ENCOURAGE THEIR EMPLOYEES TO SERVE ON JURIES AND THAT MAKE EXPLICIT THE CONSTITUTIONAL AND CIVIC NATURE OF JURY SERVICE.

A survey of 72 DC-area employers indicates that practices regarding leave for jury service vary from employer to employer, including how time spent serving is classified and whether and for how long employees are paid their regular wage while serving.⁶⁴ Because serving on a jury is an important civic act with direct Constitutional ties, the DC Jury Project recommends that employers adopt specific jury duty leave policies, and that such policies be as permissive and encouraging of jury service as possible.

To this end, the DC Jury Project has drafted the following model “Civic Leave” policy that it recommends be adopted by area employers:

Serving on a jury and voting are two of the most important civic acts a citizen in a democracy can take. In recognition of that fact, and to encourage participation in the democratic process by our employees, [ORGANIZATION] provides employees summoned to jury service, or wishing to vote in an election, paid time off, classified as Civic Leave, to do so.

Voting in an election: Supervisors are encouraged to schedule later starts, earlier dismissals, and longer lunches on election days. No employee will be prevented from voting. Neither the time spent traveling to and from a polling place nor the time spent voting will be deducted from an employee’s hourly wage or treated differently in any way from normally scheduled working time. Employees are

encouraged to work with their supervisors to schedule time to vote.

Jury service: An employee’s position will be held with similar hours, benefits, and salary until the completion of service. Similarly, an employee summoned for jury service will be paid for the duration of their service at their normal rate of pay. Compensation from the court can be kept or returned. Employees must notify their supervisor that they have been summoned for jury duty and must provide proof of summons.

See Exhibits D through F for model jury service policies from other jurisdictions.

The DC Jury Project also recommends that the DC government and courts encourage the adoption of jury service policies, and that good corporate citizens—businesses that adopt policies that are permissive when it comes to leave for jury service—should be recognized for their efforts and civic contributions in this area.

53.5% of those surveyed at the Superior Court said that jury service interfered with their work.

Employer Policies

(Does your employer have a jury service policy?)
Percent of Respondents Answering “Yes”

	Employment Status		
	Part Time (n=24)	Fulltime (n=371)	Self-Employed (n=37)
Employer has jury service policy	25.0%	79.6%	16.2%
Employer pays for jury service	29.2%	86.8%	16.2%
Satisfied with compensation	37.5%	68.5%	51.4%

⁶⁴ See employer service policy results in the Methodology and Data Collection section.

EXHIBIT D

KENTUCKY DEPARTMENT FOR LIBRARIES AND ARCHIVES MODEL EMPLOYER JURY DUTY POLICY

Sample Policy #1

Employees subpoenaed for jury duty by the court will receive straight time earnings for the day or days served. The Library Director must be appropriately notified. Employees will be expected to work any hours before and after their jury duty service. Court duty leave does not apply if the employee is a party to any non-library related civil or criminal litigation.

Sample Policy #2

An employee will be granted necessary time off, with pay, to perform jury duty as required by law. The employee shall notify the Library Director immediately, in writing, of the requirement for this leave along with a copy of the notice of report for jury duty.

An employee who reports for jury duty and is excused from serving before noon must report to work for the afternoon, according to the work schedule of his or her department. However, the combination of jury duty and Library work shall not amount to more than a normal workday.

Part-time employees and employees in the introductory period summoned for jury duty will be granted time off with pay for the first three days of jury duty and unpaid time off for additional days in accordance with state and federal laws

Sample Policy #3

Jury Duty

Jury Duty is recognized as a civic responsibility and staff members are encouraged to fulfill this obligation. Employees will be granted time off (regular work schedule) with pay to serve on a jury or as a witness when subpoenaed. The Library Director may request a copy

of such official notice before leave is granted. If jury or court appearance does not require a full workday, the employee is expected to return to work. Staff members will be permitted to retain the jury compensation. Court appearances by employees of a personal business nature will be counted as vacation time or personal days.

Sample Policy #4

Jury Duty

_____ encourages you to fulfill your civic responsibilities by serving jury duty if you get a summons. Employees in an eligible classification will be granted paid leave for jury duty for that period they are required to serve on a jury.

If you are eligible for jury duty, you will be paid at your base rate of pay for the number of hours you would normally have worked that day. Employees in the following classifications are eligible for paid jury duty leave:

- Regular full-time employees
- Regular part-time employees

If you get a jury duty summons, show it to your supervisor as soon as possible. This will help us plan for your possible absence from work. We expect you to come to work whenever the court schedule permits.

Either you or _____ may ask the court to excuse you from jury duty if necessary. We may ask that you be relieved from going on jury duty if we think that your absence would cause serious operational problems for _____.

Subject to the terms, conditions, and limitations of the applicable plans, _____ will continue to provide health insurance benefits for the full period of jury duty leave.

Your vacation, sick leave, and holiday benefits will continue to accrue during jury duty leave.

EXHIBIT E

SELECTED STATE LAWS REGARDING JURY SERVICE

Model State Policy for Employers:

American Legislative Exchange Council, "Jury Patriotism Act"

Under the "Rights of Petit Jurors" section there are points for job preservation, benefits protection, length of service, frequency of service, and small business protection.

Under the "Lengthy Trial Fund" there are multiple points regarding pay of jurors from government or employer, and how to determine what is best for the circumstances.

<http://www.alec.org/model-legislation/jury-patriotism-act/>

This policy has been implemented by over 14 states.

Maryland:

Employers cannot force employees to use annual or sick leave for service. They cannot fire an employee because of jury service. Employer also cannot require an employee to work on the days they are scheduled for service.

<http://www.courts.state.md.us/jury-service/pdfs/employersandjury-service.pdf>

Section 8-501, Employment loss. Section 8-502, Leave. If these sections are violated there is a potential fine of no more than \$1,000.

<http://www.mdcourts.gov/jury-service/pdfs/employer-sandjury-service-laws.pdf>

Virginia:

Your employer cannot fire, demote, or otherwise penalize you for missing work while performing jury service. If you have been summoned and appear for jury duty for four or more hours in one day, including travel time, your employer may not require you to start any work shift that begins at or after 5:00 p.m. on the day you appeared for jury duty, or to start any work shift that begins before 3:00 a.m. on the day following the day you appeared for jury duty. Many employers will continue to pay your salary while you are in jury service. Contact your employer to find out what the policy is at your job.

<http://www.courts.state.va.us/courts/circuit/jury.pdf>

If any employer violates these provisions they are guilty of a Class 3 Misdemeanor.

<https://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+18.2-465.1>

Employer is not required to pay employee during jury duty.

<http://www.employmentlawhandbook.com/leave-laws/state-leave-laws/virginia/#4>

District of Columbia:

§ 11-1913. Protection of Employment of Jurors.

If any employer violates these terms they are guilty of criminal contempt. Subject to \$300 fine and/or 30 days imprisonment for first offense, and \$5,000 and/or 180 days imprisonment for subsequent offenses.

<http://dccode.org/simple/sections/11-1913.html>

Pennsylvania:

Employer cannot fire or penalize employee because of jury service.

<http://www.blr.com/Compensation/Benefits-Leave/Jury-Duty-Court-Appearance-in-Pennsylvania>

If an employer penalizes employee due to jury service, the employee may bring civil action against employer to recover wages and benefits. Employee may also sue for reinstatement under certain circumstances.

This does not apply to retail or service industry employers who have fewer than 15 employees or manufacturing industry with less than 40 employees.

<http://law.justia.com/codes/pennsylvania/2010/title-42/4563>

EXHIBIT F

OTHER MODEL JURY DUTY POLICIES

MODEL POLICY⁶⁵

_____ recognizes jury duty as an important civic responsibility and highly encourages employees to partake when they are called to serve the community. Participating in jury duty will not be held against the employee in any way. They will maintain all benefits and wages agreed upon before being called for jury duty. When an employee is called for jury duty, they must inform their employer immediately after receiving the summons from the court.⁶⁶

What to give Employer:

Copy of jury duty summons

Date required to report

Days of work being missed (if known)

PAY WHILE SERVING

According to federal law, _____ is not required to provide payment to employees while they are on jury duty.⁶⁷ However, _____ pays most employees while they are serving jury duty. If an employee continues to be paid while on jury duty, any money received from the court can be kept or returned to the court.

Who Qualifies:⁶⁸

Full-time Employees
(30 hours a week or more)

Part-time Employees
(If lost hours cannot be rescheduled)

Seasonal Employees
(Length of employment exceeding 3 months)

JURY DUTY LEAVE

_____ employees are given jury duty leave when they are summoned. This leave is considered paid time off, but is its own form of leave. Employees will not use sick leave, personal days, or vacation days to serve on a jury. Employees are expected to report to court for jury duty on the days requested. If the employee does not have jury duty (for any reason) on a day they are scheduled to work, the employee must report to work. If jury duty ends before 12:00 pm and the employee had been scheduled to work, they are expected to report to work.⁶⁹ Employees must inform their employer when their jury service has been completed, and report to work on their next scheduled day.

_____ maintains the right to send a letter to the court asking for said employee to be excused from jury duty if the business is in danger of experiencing major setbacks without that employee.⁷⁰ Please note that there is no guarantee that the court will grant this request. The employee is not to use potential loss of pay as an excuse to get out of jury duty.

⁶⁵ AboutMoney. Use This Jury Duty Policy To Craft Your Own Policy (2015). <http://humanresources.about.com/od/policysamplesik/g/jury-duty.htm>.

⁶⁶ Kentucky Model Employer Policy #2. See Exhibit B.

⁶⁷ United States Department of Labor. Leave Benefits. <http://www.dol.gov/dol/topic/benefits-leave/juryduty.htm>.

⁶⁸ CBIA Human Resources. If Your Employee Is Called to Jury Duty (2015). <http://www5.cbia.com/hr/if-your-employee-is-called-to-jury-duty-2/>.

⁶⁹ Kentucky Model Employer Policy #2. See Exhibit B.
⁷⁰ *Id.*

16 THE DC JURY PROJECT RECOMMENDS THAT THE SUPERIOR COURT AND THE DISTRICT COURT MODIFY THEIR JURY PLANS TO STATE EXPLICITLY THAT THEY WILL EXCUSE PROSPECTIVE JURORS WHO HAVE SERVED ON A PETIT OR GRAND JURY WITHIN THE PAST TWO YEARS.

The Superior Court of the District of Columbia and the US District Court of the District of Columbia both currently excuse prospective jurors from service if they have served as jurors in that court within the last two years.⁷¹ The DC Jury Project commends both courts for achieving this and recognizes the progress that has been made since *Juries for the Year 2000* recommended service no more frequently than every two years as an aspirational goal.⁷² The DC Jury Project recommends that the DC Courts modify their jury plans consistent with this recommendation and make this change known to the public. The questionnaire that arrives with the jury summons should list service within the last two years at either court as a permissible excuse from jury service. The two courts should work together to share records and verify previous service.

⁷¹ Superior Court Jury Plan Section 15, DC Code § 11-1911 (“In any twenty-four (24) month period an individual shall not be required to serve more than once as a grand juror or petit juror except as may be necessary by reason of the insufficiency of the Master Jury List or as ordered by the Court.”). http://www.dccourts.gov/internet/documents/Jury-Plan-effective_11-9-2013.pdf; District Court for the District of Columbia Jury Selection Plan H(2), 28 U.S.C. § 1866(e) (“The following class of persons shall be excused from jury service... Persons who have served as grand or petit jurors in the US District Court for the District of Columbia within two years as specified in 28 U.S.C. § 1866(e)”). <http://www.dcd.uscourts.gov/dcd/sites/dcd/files/JSPFinal120612.pdf>.

⁷² *Council for Court Excellence, Juries for the Year 2000 and Beyond* (1998) at Recommendation 9 (recommending service not more frequently than every two years, stated in part “while this recommendation may be impractical at this time... [the courts should] set a goal to this effect”).

TRIAL STRUCTURE WORKING GROUP

The Trial Structure Working Group was comprised of a range of practitioners in the DC Superior Court and US District Court for the District of Columbia, including prosecutors, representatives of the Office of the Federal Public Defender and the Public Defender Service for DC as well as civil attorneys. Because of the diversity of practices, the group was able to identify a broad range of issues affecting prospective jurors, sitting juries and the litigants who depend upon them for decisions in their cases. The majority of jury trials occur in the Superior Court, so our work spotlighted the practices in that court as it provided a rich resource of practical experience. However, we also examined how federal court procedures differ from those in the Superior Court, reflecting that though federal trials are less frequent, they are often more lengthy and complex than the Superior Court cases and thus present different problems for jurors, lawyers and administrators.

The Trial Structure Working Group began examining the issues present in CCE's 1998 report and supplemented these issues with additional topics that became evident as our work progressed. Changes in technology and communications since the last CCE report caused us to examine issues that did not arise in the earlier study. The personal observations of practitioners well familiar with the operations of our courts including criminal law and civil practitioners were supplemented with information gathered by CCE staff members and by volunteer law students. In addition, several Committee members participated in round-table meetings with US District Court and Superior Court judges to discuss unwritten but important practices developed in the crucible of an active docket. The results of this information gathering enabled us to start down the arduous road of drafting recommendations. Along the way, we also surveyed practices in other jurisdictions that were described in the literature of court administrative journals. This process illuminated the multi-faceted issues we faced and enabled us to refine our thoughts into the recommendations that appear in this report.

Examining familiar issues is not enough in a rapidly changing world, so the Working Group considered how the development of social media, the internet and rapidly evolving communications have affected the conduct of jurors and of the court and how technology could be employed to promote the efficiency of the jury selection process. The intersection of many views in our Committee meetings made for spirited discussions enabling us to see important issues from many perspectives and thus to refine our recommendations to take account of the varying interests expressed by practitioners. For example, we examined and debated the practice followed by some -- but not all -- judges to invite jurors to submit questions to the court during the trial to supplement examinations by counsel; we looked at the post-trial communications between counsel and the jurors; we examined the proper limits of using social media in selecting jurors and in observing their conduct while serving on a jury. We also scrutinized the detailed and important mechanics of how jurors are screened for service by the *voir dire* process in an attempt to balance fairness to the litigants with the efficiency that jurors expect of our system.

Most of our recommendations were presented to the Plenary Committee as the unanimous view of the Trial Structure Working Group except with respect to the submission of questions by jurors in criminal cases. There, the strongly held views of some criminal defense attorneys focusing chiefly on the prosecution's burden of proving its case collided with the views of other Committee members who emphasized engaging jurors in a search for truth more as participants than spectators. The outcome of this disagreement was the submission of a dissenting view.

We hope and trust that these recommendations will improve the functioning of our jury system since it is an essential pillar to our system of justice.



Peter Kolker
Zuckerman Spaeder
Trial Structure Working Group Chai

17 THE DC JURY PROJECT RECOMMENDS THAT LAWYERS AND THEIR AGENTS BE PERMITTED TO RESEARCH POTENTIAL JURORS AND TO MONITOR SELECTED JURORS BY LOOKING AT THE PUBLICLY AVAILABLE PORTION OF SOCIAL MEDIA SITES SUBSCRIBED TO BY THOSE JURORS. HOWEVER, DIRECT CONTACT BETWEEN AN ATTORNEY OR AGENT AND A POTENTIAL OR SELECTED JUROR SHOULD CONTINUE TO BE PROHIBITED.

Collecting information about prospective jurors is a time-honored method of evaluating the potential fact-finders in a case about to begin trial. A traditional method of resorting to public records is not problematic. In the digital age, however, there are many more methods of learning about jurors. Many websites, such as Facebook and Twitter, enable users to make some information publicly available, while other information can be restricted to certain individuals designated by the user. Although attorneys and their agents can view information that is designated as publicly available, they should not make specific requests of a juror through social media that would allow them to view information that is not available to the general public. Doing so would constitute a prohibited communication between the attorney (or the attorney's agent) and a potential juror.

However, when viewing publicly available information on social media websites, some websites provide no feedback to the prospective juror regarding who has reviewed that information, whereas others may provide both notice that someone has viewed the publicly available profile as well as the identity of the viewing party.

The DC Jury Project adopts the opinion of the American Bar Association's Standing Committee on Ethics and Professional Responsibility, which expressed in a Formal Opinion⁷³ that a notification of this type does not constitute a communication between a lawyer and a juror or potential juror. In this formal opinion, the Committee refers to Model Rule 3.5(b),⁷⁴ which provides, in part, that:

A lawyer shall not:

- (a) seek to influence a judge, juror, prospective juror or other official by means prohibited by law;
- (b) communicate ex parte with such a person during the proceeding unless authorized to do so by law or court order;
- (c) communicate with a juror or prospective juror after discharge of the jury if:
 - (1) the communication is prohibited by law or court order;
 - (2) the juror has made known to the lawyer a desire not to communicate; or
 - (3) the communication involves misrepresentation, coercion, duress or harassment . . .

The ABA has determined that merely viewing an individual's public profile (which the ABA defines as "passively viewing" an individual's social media presence), even if that individual is informed of the identity of the viewer, does not constitute such a communication.⁷⁵ However, any effort to reach out to a potential juror through social media, even if limited to a request to be added to the potential juror's social network, would be considered a

⁷³ American Bar Association *Formal Opinion 466: Lawyers Reviewing Jurors' Internet Presence*: ckdarn. http://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/formal_opinion_466_final_04_23_14.authche.pdf

⁷⁴ Rule 3.5 of the District of Columbia Rules of Professional Conduct is to the same effect.

⁷⁵ As discussed in depth in ABA Formal Opinion 466, the Association of the Bar of the City of New York Committee on Professional Ethics and the New York County Lawyers' Association Committee on Professional Ethics have found that a passive notification of this type may violate the rules of ethics. As of the drafting of this recommendation, the District of Columbia Bar has not issued any opinions addressing the topic.

prohibited communication.

The Association of the Bar of the City of New York Committee on Professional Ethics (ABCNY), in Formal Opinion 2012-2 has taken a position contrary to the ABA. The ABCNY concluded that a “passive notification” to a juror with a social media account that an attorney had viewed his/her publicly-available social media profile constituted a prohibited communication with the juror. The ABCNY found that this was a communication because it entailed “the process of bringing an idea, information or knowledge to another’s perception—including the fact that they have been researched.” The ABCNY did include a caveat, and found that the communication would be prohibited only “if the attorney was aware that her actions” would cause such a notification to be sent to the juror. The New York County Lawyers’ Association Committee on Professional Ethics (NYCLA) in Formal Opinion 743 subsequently agreed with ABCNY’s opinion and stated, “If a juror becomes aware of an attorney’s efforts to see the juror’s profiles on websites, the contact may well consist of an impermissible communication, as it might tend to influence the juror’s conduct with respect to the trial.” These opinions are discussed in-depth in the ABA’s opinion, included as Exhibit G. The Committee has chosen to adopt the rule set forth by the ABA, rather than that set forth by the ABCNY and NYCLA.

The researching of jurors may also provide an opportunity to courts to ensure jurors are maintaining impartiality. Researching jurors can provide a path for courts to obtain critical information not divulged during voir dire.⁷⁶ See *Johnson v. McCullough*, 306 S.W.3d 551 (Mo. Banc 2010) (granting motion for a new trial when an empanelled juror did not respond in the affirmative when asked during voir dire if he had been a party to previous lawsuits and a background check conducted by attorneys after the completion of trial found that the juror had been a party in multiple lawsuits)⁷⁷; *Khoury v. ConAgra Foods, Inc.*, 368 S.W.3d 189 (Mo. Ct. App.

2012) (holding the plaintiff suffered no prejudice when a juror was removed prior to opening statements after the defense researched the juror’s social media profile and found comments that would have been potentially detrimental to their case)^{78,79}; see also *Carino v. Muenzen*, 13 A.3d 363 (N.J. Super. Ct. App. Div. 2011) (holding that the trial court abused its discretion in preventing an attorney from researching jurors online because he had not informed the court or opposing counsel of his intent to do so in advance)⁸⁰; Missouri Supreme Court Rule 69.025 (requiring the court to allow litigants an opportunity to conduct an investigation, through case.net, of potential jurors’ litigation history).

See Exhibit G for the full text of ABA Formal Opinion 466.

76 Hoffmeister, T. Investigating Jurors in the Digital Age: One Click at a Time: https://law.ku.edu/sites/law.drupal.ku.edu/files/docs/law_review/v60/03_Hoffmeister_Final.pdf

77 *Johnson v. McCullough* 306 S.W.3d 551 (Mo. Banc 2010): <https://cases.justia.com/missouri/supreme-court/sc90401-37456.pdf>

78 *Khoury v. ConAgra Foods, Inc.*, 368 S.W.3d 189 (2012): https://scholar.google.com/scholar_case?case=185478726455672785&q=K-houry+v.+ConAgra+Foods&hl=en&as_sdt=20006&as_vis=1
79 Browning, J. (2013). As Voir Dire Becomes Voir Google, Where Are the Ethical Lines Drawn: <http://www.thejuryexpert.com/2013/05/as-voir-dire-becomes-voir-google/>
80 *Carina v. Muenzen*, 13 A.3d 363 (N.J. Super. Ct. App. Div. 2011) (table opinion): <http://www.leagle.com/decision/in%20njco%2020100830280.xml>

18 THE DC JURY PROJECT RECOMMENDS THAT JUDGES CONSIDER ORDERING THE GOVERNMENT TO SHARE WITH DEFENSE ATTORNEYS THE RESULTS OF CRIMINAL RECORD CHECKS OF POTENTIAL JURORS IN CRIMINAL CASES UNLESS PROHIBITED BY LAW FROM DOING SO.

The DC Jury Project notes that a unique consideration related to researching jurors is the Government's access to the criminal records of jurors. Prosecutors are able to access the criminal records of jurors in ways that defense counsel are not because prosecutors often have access to non-public databases and resources that criminal defense attorneys do not. This may include the ability to simultaneously search multiple jurisdictions using databases that, while consisting of public records, are not available to criminal defense attorneys or the public. To conduct a similar search, defense attorneys would have to perform multiple searches on multiple databases, or dispatch agents to multiple jurisdictions. Accordingly, to ensure fairness, judges should consider ordering the prosecutor to share with the defense the results of any criminal records checks on potential jurors.⁸¹

⁸¹ See, e.g., *State v. Bessenecker*, 404 N.W.2d 134, 138-39 (Iowa 1987) ("We agree with the reasoning of those courts that generally have allowed defendants equal access to jurors' rap sheets obtained by the county attorney. We believe that considerations of fairness and judicial control over the jury selection process requires this result.")

19 THE DC JURY PROJECT MAKES FOUR RECOMMENDATIONS REGARDING THE JURY SELECTION PROCESS:

First, the committee recommends that prospective jurors be provided with questionnaires that request additional biographical information when they arrive for jury service and that these questionnaires be made available to counsel and the litigants when a panel arrives in the courtroom.

Second, the committee recommends that judges use the index-card method, or some similar technique, for voir dire screening that permits counsel both to offer additional questions and to make reasonable follow-up inquiries at the bench.

Third, the committee recommends that a jury panel be called in the superior court only after all preliminary trial matters have been resolved and that the number of jurors to be utilized for a venire should be limited to those prescribed by the court's protocol, unless special circumstances warrant a larger pool.

Fourth, the committee recommends that the number of strikes permitted to litigants not be reduced below that now provided by statute and by rule in federal and superior court.

CCE's 1998 study of jury functioning in the District of Columbia evaluated the manner by which petit juries were selected and seated in DC Superior Court and in US District Court. A number of suggested recommendations were made in that study, and many of them have been implemented in DC Superior Court where the majority of DC jury trials take place. The 2015 DC Jury Project addressed the voir dire process in a variety of ways; to wit—by reviewing the recommendations in the prior report⁸²; by conducting in-court observations of the process by which jurors are screened, challenged,

and selected; by meeting with US District Court and DC Superior Court judges; and by interviewing attorneys who practice frequently in both federal and local court. In addition, the Committee reviewed relevant literature that a number of groups that have studied the operation of various jury systems have produced. Based on these data points, the Committee note the following:

(1) Juror Information and the Use Of Questionnaires

Jurors appearing in routine cases in Superior Court and in US District Court do not typically receive a case-specific juror questionnaire in advance of their service, although the opposite is often true for high-profile cases or for prolonged trials in federal court. Information relating to the backgrounds and attitudes of potential jurors can provide important data for an attorney deciding whether to exercise a peremptory challenge. However, a questionnaire particularized to the individual case is not feasible for routine cases, which comprise the bulk of the DC Superior Court jury trial caseload.⁸³ Providing jurors with a questionnaire on background issues when they arrive for jury service could provide valuable additional information to counsel. These questionnaires could then be correlated with each juror's designated juror number, and the information could be provided in written form to counsel and the litigants, along with the jury panel list, at the start of jury selection.

(2) Requesting the Venire

The size of the panel to be sent to a courtroom from the juror lounge in DC Superior Court, and the timing of doing so, are important factors in minimizing the inconvenience to prospective jurors and avoiding prolonged and unnecessary waiting periods. The DC Superior Court administration has established procedures designed to take account of the prospective jurors' time by designating protocols to implement these procedures. Specifically, a judge trying a misdemeanor calendar with jury cases

⁸² Recommendations 17 - 32 made in the 1998 report were the focus of this aspect of the 2015 study.

⁸³ Recommendation 19 of the 1998 DC Jury Project suggested completion of a written questionnaire by all jurors, presumably on the day of their service, but it is not clear that the mechanics of that task could be efficiently implemented or could provide a better alternative to the furnishing of additional information at the time of summons response.

and a judge with a felony II calendar are limited in the size of the venire normally sent to the courtroom to 54 panel members.⁸⁴ The size of the panel is determined by the number of peremptory strikes allowed (three per side for misdemeanors; ten per side for felony cases, with possible additional strikes for alternate jurors and/or for multi-defendant cases). For civil cases, most of which involve juries of six, plus one alternate, the jury panel typically consists of twenty-four persons (consistent with the rule allowing three peremptory challenges per side). These normative levels of jury panel size can be exceeded only with the permission of the administrative judge for the criminal or civil division if the trial judge requests a larger panel because of a high-publicity case or a case involving sensitive matters that are likely to elicit emotional reactions from panel members.

Moreover, a request for a panel should only be made to the jury officer when the trial judge is ready to actually begin the voir dire process. That is, preliminary matters that must be conducted out of the presence of the jury must have concluded before the prospective jurors are sent to the courtroom in order to avoid having jurors stand in the corridors outside of the courtroom to avoid hearing preliminary matters which are not appropriate for juror consideration. The Committee is aware of instances in which a trial judge has sought to “reserve” a panel by calling for one before the completion of preliminary matters, resulting in unnecessary waiting by panel members. The Committee recommends that this practice not continue.

In addition, it is important that members of the jury panel understand that they have contributed to the functioning of the jury system even if they are not selected for service as the development of an acceptable panel depends upon eliminating jurors whom the litigants or the court elect to challenge with peremptory or “for cause” challenges.

(3) Peremptory Strikes

The ability to exercise peremptory strikes has long been considered “one of the most important rights” for a criminal defendant,⁸⁵ and has been a feature of the jury selection process that has been recognized as essential to ensure fairness.⁸⁶ Section 11-1908(b)(2) of the DC Code provides for the peremptory challenge, and Superior Court Criminal Rule 24 (b) specifies ten peremptory challenges per side for felonies and three per side for misdemeanors. Additional peremptory challenges are allowed for alternates, the number of challenges varying with the number of alternates. Rule 24 of the Federal Rules of Criminal Procedure provides for the same number. Three peremptory challenges per side are permitted in both Superior Court and federal court civil cases.⁸⁷

Peremptory strikes are used after obtaining information from prospective jurors about sensitive issues. An efficient method of obtaining this information from individual jurors has evolved at Superior Court and some, but not all, judges use it. The process involves seating each prospective juror by reference to his or her place on the jury panel list provided by the jury office and identifying the prospective juror only by his or her number for public purposes on an index card provided by the court to panel members. (Litigants are made aware of the names, addresses, and other basic information for the jurors, and this information could be augmented by the responses to questionnaires, as proposed above.) The judge conducts the basic voir dire by asking questions already reviewed with the lawyers. A juror with a positive response indicates the question number on his or her index card. The judge then interviews each such juror at the bench about those responses after all of the voir dire questions have been posed to the jurors. The conversation is on the record but is not heard by others in the courtroom, as the bench conference is shielded by the court’s “husher” (a “white-noise” machine controlled by

⁸⁴ Felony I trials involve the most serious crimes, often resulting in lengthy trials. Because of this and because the serious offenses are sometimes difficult for prospective jurors to hear, Felony I judges are given greater leeway to request a larger venire panel, typically 70 persons.

⁸⁵ *Pointer v. United States*, 151 US 396 (1894).

⁸⁶ *Wells, et al. v. United States*, 516 A.2d 1108 (DC 1986).

⁸⁷ SCR-Civil, Rule 47-I; F. R. Civ. P., Rule 47(b); 28 U.S.C. § 1870.

the judge).⁸⁸ Some judges believe that it is beneficial to speak with each prospective juror -- including those who have not given a positive response to any of the voir dire questions -- as some prospective jurors seem reluctant to respond positively even when the questions do raise concerns for them. When probed individually, sometimes these concerns come to the surface,⁸⁹ and the Committee therefore recommends that each prospective juror be interviewed at the bench.

In addition, many believe that attorney-conducted voir dire is beneficial to the litigants and can be managed without substantial additional time. Therefore, the Committee encourages this practice as well, and even when attorney-led voir dire is not permitted, counsel should be permitted to make follow-up inquiries of prospective jurors who respond positively to the court's voir dire and who are called to the bench for examination. Although this is frequently allowed, the practice among Superior Court judges is not consistent.

(4) Number of Peremptory Challenges

The number of peremptory challenges is fixed by statute or court rule, as stated above.⁹⁰ The 1998 Jury Project considered reducing the number of peremptory challenges as a method of reducing the size of the panels sent to the courtroom and ultimately the number of jurors summoned. However, there was division among the 1998 Committee on this subject, and no change in the statutory number or the number fixed by rule was recommended, nor has any such change occurred.

Many frequent litigators are of the view that peremptory challenges serve the vital function of selecting a jury that the litigants consider to be fair.⁹¹ Because court approval of "for-cause" challenges tends to be spare, the use of peremptory challenges provides the best safety valve for

litigants who question the fairness of particular prospective jurors on their panel.⁹² Therefore, the Committee does not favor reducing or eliminating peremptory challenges even though reducing peremptory challenges would reduce the number of jurors to be summoned. Any change is considered unnecessary in light of the other procedural improvements that have streamlined the process of selecting jurors and have reduced the number of prospective jurors called to a courtroom in the venire panel.

⁸⁸ Use of the husher has been validated by the DC Court of Appeals. *Copeland v. United States*, 111 A.3d 627 (DC # 13-CO-746, decided 3/12/15). Criminal defendants are able to hear the colloquy and thereby participate in this phase of the trial by remaining at counsel table with ear phones.

⁸⁹ See, *Be Cautious of the Quiet Ones*, Hon. Gregory Mize (Ret.), 10 Voir Dire 1 (2013).

⁹⁰ See SCR-Civil, Rule 47-I; F. R. Civ. P., Rule 47(b); 28 U.S.C. § 1870 and accompanying text, *supra*.

⁹¹ *Wells, et al. v. United States*, 515 A.2d 1108 (DC 1986).

⁹² The Committee is mindful of the need to ensure that peremptory challenges are not exercised in a manner that offends the principle of fairness established in *Batson v. Kentucky*, 476 US 79 (1986) prohibiting challenges that have the intent or effect of discriminating against jurors for racial or other improper reasons.

20 THE DC JURY PROJECT RECOMMENDS THAT BEFORE THE TRIAL BEGINS, THE COURT INSTRUCT THE JURY REGARDING RESTRICTIONS ON THE USE OF SOCIAL MEDIA WHILE SERVING AS JURORS.

The DC Superior Court has model jury instructions for criminal cases that admonish jurors:

In this age of electronic communication, I want to stress that you must not use electronic devices or computers to talk about this case, including tweeting, texting, blogging, e-mailing, posting information on a website or chat room, or any other means at all. Do not send or accept messages, including email and text messages, about your jury service. You must not disclose your thoughts about your jury service or ask for advice on how to decide any case.⁹³

The thrust of these instructions is a warning to jurors that they are prohibited from using social media during trial to conduct research about the case, disclose thoughts about the case, or seek advice on how to decide the case. The DC Jury Project recommends that the Court instruct potential jurors regarding the use of social media early in the proceedings, and in most cases even before trial begins.

Moreover, although the standard criminal jury instruction technically applies only to criminal cases, the DC Jury Panel believes that the standard criminal jury instruction is appropriate and should be used in civil cases as well.

The relevant text of the criminal jury instruction, as modified to add a new last paragraph, is attached in Exhibit H.

93 DC Superior Court Mode Criminal Jury Instructions 1.102

EXHIBIT G

AMERICAN BAR ASSOCIATION FORMAL OPINION 466

Formal Opinion 466 April 24, 2014

Lawyer Reviewing Jurors' Internet Presence

Unless limited by law or court order, a lawyer may review a juror's or potential juror's Internet presence, which may include postings by the juror or potential juror in advance of and during a trial, but a lawyer may not communicate directly or through another with a juror or potential juror.

A lawyer may not, either personally or through another, send an access request to a juror's electronic social media. An access request is a communication to a juror asking the juror for information that the juror has not made public and that would be the type of ex parte communication prohibited by Model Rule 3.5(b).

The fact that a juror or a potential juror may become aware that a lawyer is reviewing his Internet presence when a network setting notifies the juror of such does not constitute a communication from the lawyer in violation of Rule 3.5(b).

In the course of reviewing a juror's or potential juror's Internet presence, if a lawyer discovers evidence of juror or potential juror misconduct that is criminal or fraudulent, the lawyer must take reasonable remedial measures including, if necessary, disclosure to the tribunal.

Juror Internet Presence

The Committee has been asked whether a lawyer who represents a client in a matter that will be tried by a jury may review the jurors' or potential jurors' Internet presence leading up to and during trial, and, if so, what ethical obligations the lawyer might have regarding information discovered during the review. Jurors may and often will have an Internet presence through elec-

tronic social media or websites. General public access to such will vary. For example, many blogs, websites, and other electronic media are readily accessible by anyone who chooses to access them through the Internet. We will refer to these publicly accessible Internet media as "websites."

For the purposes of this opinion, Internet-based social media sites that readily allow account-owner restrictions on access will be referred to as "electronic social media" or "ESM." Examples of commonly used ESM at the time of this opinion include Facebook, MySpace, LinkedIn, and Twitter. Reference to a request to obtain access to¹ Formal Opinion 466 to another's ESM will be denoted as an "access request," and a person who creates and maintains ESM will be denoted as a "subscriber."

Depending on the privacy settings chosen by the ESM subscriber, some information posted on ESM sites might be available to the general public, making it similar to a website, while other information is available only to a fellow subscriber of a shared ESM service, or in some cases only to those whom the subscriber has granted access. Privacy settings allow the ESM subscriber to establish different degrees of protection for different categories of information, each of which can require specific permission to access. In general, a person who wishes to obtain access to these protected pages must send a request to the ESM subscriber asking for permission to do so. Access depends on the willingness of the subscriber to grant permission.²

This opinion addresses three levels of lawyer review of juror Internet presence:

1. passive lawyer review of a juror's website or ESM that is available without making an access request where the juror is unaware that a website or ESM has been reviewed;

¹ Unless there is reason to make a distinction, we will refer throughout this opinion to jurors as including both potential and prospective jurors and jurors who have been empaneled as members of a jury.

² The capabilities of ESM change frequently. The Committee notes that this opinion does not address particular ESM capabilities that exist now or will exist in the future. For purposes of this opinion, key elements like the ability of a subscriber to control access to ESM or to identify third parties who review a subscriber's ESM are considered generically.

2. active lawyer review where the lawyer requests access to the juror's ESM; and
3. passive lawyer review where the juror becomes aware through a website or ESM feature of the identity of the viewer.

Trial Management and Jury Instructions

There is a strong public interest in identifying jurors who might be tainted by improper bias or prejudice. There is a related and equally strong public policy in preventing jurors from being approached *ex parte* by the parties to the case or their agents. Lawyers need to know where the line should be drawn between properly investigating jurors and improperly communicating with them.³ In today's Internet saturated world, the line is increasingly blurred.

For this reason, we strongly encourage judges and lawyers to discuss the court's expectations concerning lawyers reviewing juror presence on the Internet. A court order, whether in the form of a local rule, a standing order, or a case management order in a particular matter, will, in addition to the applicable Rules of Professional Conduct, govern the conduct of counsel.

Equally important, judges should consider advising jurors during the orientation process that their backgrounds will be of interest to the litigants and that the lawyers in the case may investigate their backgrounds,

including review of their ESM and websites. If a judge believes it to be necessary, under the circumstances of a particular matter, to limit lawyers' review of juror websites and ESM, including on ESM networks where it is possible or likely that the jurors will be notified that their ESM is being viewed, the judge should formally instruct the lawyers in the case concerning the court's expectations.

Reviewing Juror Internet Presence

If there is no court order governing lawyers reviewing juror Internet presence, we look to the ABA Model Rules of Professional Conduct for relevant strictures and prohibitions. Model Rule 3.5 addresses communications with jurors before, during, and after trial, stating:

A lawyer shall not:

- (a) seek to influence a judge, juror, prospective juror or other official by means prohibited by law;
- (b) communicate *ex parte* with such a person during the proceeding unless authorized to do so by law or court order;
- (c) communicate with a juror or prospective juror after discharge of the jury if:
 - (1) the communication is prohibited by law or court order;
 - (2) the juror has made known to the lawyer a desire not to communicate; or
 - (3) the communication involves misrepresentation, coercion, duress or harassment.

Under Model Rule 3.5(b), a lawyer may not communicate with a potential juror leading up to trial or any juror during trial unless authorized by law or court order. See, e.g., *In re Holman*, 286 S.E.2d 148 (S.C. 1982) (communicating with member of jury selected for trial of lawyer's client was "serious crime" warranting disbarment).⁴

³ While this Committee does not take a position on whether the standard of care for competent lawyer performance requires using Internet research to locate information about jurors that is relevant to the jury selection process, we are also mindful of the recent addition of Comment [8] to Model Rule 1.1. This comment explains that a lawyer "should keep abreast of changes in the law and its practice, including the benefits and risks associated with relevant technology." See also *Johnson v. McCullough*, 306 S.W.3d 551 (Mo. 2010) (lawyer must use "reasonable efforts" to find potential juror's litigation history in Case.net, Missouri's automated case management system); N. H. Bar Ass'n, Op. 2012-13/05 (lawyers "have a general duty to be aware of social media as a source of potentially useful information in litigation, to be competent to obtain that information directly or through an agent, and to know how to make effective use of that information in litigation"); Ass'n of the Bar of the City of N. Y. Comm. on Prof'l Ethics, Formal Op. 2012-2 ("Indeed, the standards of competence and diligence may require doing everything reasonably possible to learn about jurors who will sit in judgment on a case.").

⁴ Judges also may choose to work with local jury commissioners to ensure that jurors are advised during jury orientation that they may properly be investigated by lawyers in the case to which they are assigned. This investigation may include review of the potential juror's Internet presence.

A lawyer may not do through the acts of another what the lawyer is prohibited from doing directly. Model Rule 8.4(a). See also *In re Myers*, 584 S.E.2d 357 (S.C. 2003) (improper for prosecutor to have a lay member of his “jury selection team” phone venire member’s home); cf. S.C. Ethics Op. 93-27 (1993) (lawyer “cannot avoid the proscription of the rule by using agents to communicate improperly” with prospective jurors).

Passive review of a juror’s website or ESM, that is available without making an access request, and of which the juror is unaware, does not violate Rule 3.5(b). In the world outside of the Internet, a lawyer or another, acting on the lawyer’s behalf, would not be engaging in an improper ex parte contact with a prospective juror by driving down the street where the prospective juror lives to observe the environs in order to glean publicly available information that could inform the lawyer’s jury-selection decisions. The mere act of observing that which is open to the public would not constitute a communicative act that violates Rule 3.5(b).⁵

It is the view of the Committee that a lawyer may not personally, or through another, send an access request to a juror. An access request is an active review of the juror’s electronic social media by the lawyer and is a communication to a juror asking the juror for information that the juror has not made public. This would be the type of ex parte communication prohibited by Model Rule

3.5(b).⁶ This would be akin to driving down the juror’s street, stopping the car, getting out, and asking the juror for permission to look inside the juror’s house because the lawyer cannot see enough when just driving past.

Some ESM networks have a feature that allows the juror to identify fellow members of the same ESM network who have passively viewed the juror’s ESM. The details of how this is accomplished will vary from network to network, but the key feature that is relevant to this opinion is that the juror-subscriber is able to determine not only that his ESM is being viewed, but also the identity of the viewer. This capability may be beyond the control of the reviewer because the notice to the subscriber is generated by the ESM network and is based on the identity profile of the subscriber who is a fellow member of the same ESM network.

Two recent ethics opinions have addressed this issue. The Association of the Bar of the City of New York Committee on Professional Ethics, in Formal Opinion 2012-27⁷, concluded that a network-generated notice to the juror that the lawyer has reviewed the juror’s social media was a communication from the lawyer to a juror, albeit an indirect one generated by the ESM network. Citing the definition of “communication” from Black’s Law Dictionary (9th ed.) and other authority, the opinion concluded that the message identifying the ESM viewer was a communication because it entailed “the process of bringing an idea, information or knowledge to another’s perception— including the fact that they have

5 Or. State Bar Ass’n, Formal Op. 2013-189 (“Lawyer may access publicly available information [about juror, witness, and opposing party] on social networking website”); N.Y. Cnty. Lawyers Ass’n, Formal Op. 743 (2011) (lawyer may search juror’s “publicly available” webpages and ESM); Ass’n of the Bar of the City of N.Y. Comm. on Prof’l Ethics, supra note 3 (lawyer may use social media websites to research jurors); Ky. Bar Ass’n, Op. E-434 (2012) (“If the site is ‘public,’ and accessible to all, then there does not appear to be any ethics issue.”). See also N.Y. State Bar Ass’n, Advisory Op. 843 (2010) (“A lawyer representing a client in pending litigation may access the public pages of another party’s social networking website (such as Facebook or MySpace) for the purpose of obtaining possible impeachment material for use in the litigation”); Or. State Bar Ass’n, Formal Op. 2005-164 (“Accessing an adversary’s public Web [sic] site is no different from reading a magazine or purchasing a book written by that adversary”); N.H. Bar Ass’n, supra note 3 (viewing a Facebook user’s page or following on Twitter is not communication if pages are open to all members of that social media site); San Diego Cnty. Bar Legal Ethics Op. 2011-2 (opposing party’s public Facebook page may be viewed by lawyer).

6 See Or. State Bar Ass’n, supra note 5, fn. 2, (a “lawyer may not send a request to a juror to access non-public personal information on a social networking website, nor may a lawyer ask an agent to do so”); N.Y. Cnty. Lawyers Ass’n, supra note 5 (“Significant ethical concerns would be raised by sending a ‘friend request,’ attempting to connect via LinkedIn.com, signing up for an RSS feed for a juror’s blog, or ‘following’ a juror’s Twitter account”); Ass’n of the Bar of the City of N.Y. Comm. on Prof’l Ethics, supra note 3 (lawyer may not chat, message or send a “friend request” to a juror); Conn. Bar Ass’n, Informal Op. 2011-4 (friend request is a communication); Mo. Bar Ass’n, Informal Op. 2009-0003 (friend request is a communication pursuant to Rule 4.2). But see N.H. Bar Ass’n, supra note 3 (lawyer may request access to witness’s private ESM, but request must “correctly identify the lawyer . . . [and] . . . inform the witness of the lawyer’s involvement” in the matter); Phila. Bar Ass’n, Advisory Op. 2009-02 (lawyer may not use deception to secure access to witness’s private ESM, but may ask the witness “forthrightly” for access).

7 Ass’n of the Bar of the City of N.Y. Comm. on Prof’l Ethics, supra, note 3.

been researched.” While the ABCNY Committee found that the communication would “constitute a prohibited communication if the attorney was aware that her actions” would send such a notice, the Committee took “no position on whether an inadvertent communication would be a violation of the Rules.” The New York County Lawyers’ Association Committee on Professional Ethics in Formal Opinion 743 agreed with ABCNY’s opinion and went further explaining, “If a juror becomes aware of an attorney’s efforts to see the juror’s profiles on websites, the contact may well consist of an impermissible communication, as it might tend to influence the juror’s conduct with respect to the trial.”⁸

This Committee concludes that a lawyer who uses a shared ESM platform to passively view juror ESM under these circumstances does not communicate with the juror. The lawyer is not communicating with the juror; the ESM service is communicating with the juror based on a technical feature of the ESM. This is akin to a neighbor’s recognizing a lawyer’s car driving down the juror’s street and telling the juror that the lawyer had been seen driving down the street.

Discussion by the trial judge of the likely practice of trial lawyers reviewing juror ESM during the jury orientation process will dispel any juror misperception that a lawyer is acting improperly merely by viewing what the juror has revealed to all others on the same network.

While this Committee concludes that ESM-generated notice to a juror that a lawyer has reviewed the juror’s information is not communication from the lawyer to the juror, the Committee does make two additional recommendations to lawyers who decide to review juror social media. First, the Committee suggests that lawyers be aware of these automatic, subscriber-notification features. By accepting the terms of use, the subscriber notification feature is not secret. As indicated by Rule 1.1, Comment 8, it is important for a lawyer to be current with technology. While many people simply click their agreement to the terms and conditions for use of an ESM network, a lawyer who uses an ESM network in his practice should review the terms and conditions,

including privacy Formal Opinion 466 6 features – which change frequently – prior to using such a network. And, as noted above, jurisdictions differ on issues that arise when a lawyer uses social media in his practice.

Second, Rule 4.4(a) prohibits lawyers from actions “that have no substantial purpose other than to embarrass, delay, or burden a third person . . .” Lawyers who review juror social media should ensure that their review is purposeful and not crafted to embarrass, delay, or burden the juror or the proceeding.

Discovery of Juror Misconduct

Increasingly, courts are instructing jurors in very explicit terms about the prohibition against using ESM to communicate about their jury service or the pending case and the prohibition against conducting personal research about the matter, including research on the Internet. These warnings come because jurors have discussed trial issues on ESM, solicited access to witnesses and litigants on ESM, not revealed relevant ESM connections during jury selection, and conducted personal research on the trial issues using the Internet.⁹

In 2009, the Court Administration and Case Management Committee of the Judicial Conference of the United States recommended a model jury instruction that is very specific about juror use of social media, mentioning many of the popular social media by name.¹⁰ The recommended instruction states in part:

I know that many of you use cell phones, Blackberries, the internet and other tools of technology. You also must not talk to anyone at any time about this case or use these tools to communicate electronically with anyone about the case . . . You may

⁹ For a review of recent cases in which a juror used ESM to discuss trial proceedings and/or used the Internet to conduct private research, read Hon. Amy J. St. Eve et al., *More from the #Jury Box: The Latest on Juries and Social Media*, 12 *Duke Law & Technology Review* no. 1, 69-78 (2014), available at <http://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=1247&context=dltr>.

¹⁰ Judicial Conference Committee on Court Administration and Case Management, *Proposed Model Jury Instructions: The Use of Electronic Technology to Conduct Research on or Communicate about a Case*, USCOURTS.GOV (June 2012), <http://www.uscourts.gov/uscourts/News/2012/juryinstructions.pdf>.

⁸ N.Y. Cnty. Lawyers’ Ass’n, *supra* note 5.

not communicate with anyone about the case on your cell phone, through email, Blackberry, iPhone, text messaging, or on Twitter, through any blog or website, including Facebook, Google+, My Space, LinkedIn, or YouTube. . . . I expect you will inform me as soon as you become aware of another juror's violation of these instructions.

These same jury instructions were provided by both a federal District Court and state criminal court judge during a three-year study on juries and social media. Their research found that "jury instructions are the most effective tool to mitigate the risk of juror misconduct through social media."¹¹ As a result, the authors recommend jury instruction on social media "early and often" and daily in lengthy trials.¹²

Analyzing the approximately 8% of the jurors who admitted to being "tempted" to communicate about the case using social media, the judges found that the jurors chose not to talk or write about the case because of the specific jury instruction not to do so.

While juror misconduct via social media itself is not the subject of this Opinion, lawyers reviewing juror websites and ESM may become aware of misconduct. Model Rule 3.3 and its legislative history make it clear that a lawyer has an obligation to take remedial measures including, if necessary, informing the tribunal when the lawyer discovers that a juror has engaged in criminal or fraudulent conduct related to the proceeding. But the history is muddled concerning whether a lawyer has an affirmative obligation to act upon learning that a juror has engaged in improper conduct that falls short of being criminal or fraudulent.

Rule 3.3 was amended in 2002, pursuant to the ABA Ethics 2000 Commission's proposal, to expand on a lawyer's previous obligation to protect a tribunal from criminal or fraudulent conduct by the lawyer's client to also include such conduct by any person.¹³

¹¹ Id. at 66.

¹² Id. at 87.

¹³ Ethics 2000 Commission, Model Rule 3.3: Candor Toward the Tribunal, AMERICAN BAR ASSOCIATION, http://www.americanbar.org/groups/professional_responsibility/policy/ethics_2000_commission/e2k_rule33.html (last visited Apr. 18, 2014).

Model Rule 3.3(b) reads:

(b) A lawyer who represents a client in an adjudicative proceeding and who knows that a person intends to engage, is engaging or has engaged in criminal or fraudulent conduct related to the proceeding shall take reasonable remedial measures including, if necessary, disclosure to the tribunal.

Comment [12] to Rule 3.3 provides:

Lawyers have a special obligation to protect a tribunal against criminal or fraudulent conduct that undermines the integrity of the adjudicative process, such as bribing, intimidating or otherwise unlawfully communicating with a witness, juror, court official or other participant in the proceeding, unlawfully destroying or concealing documents or other evidence or failing to disclose information to the tribunal when required by law to do so. Thus, paragraph (b) requires a lawyer to take reasonable remedial measures, including disclosure if necessary, whenever the lawyer knows that a person, including the lawyer's client, intends to engage, is engaging or has engaged in criminal or fraudulent conduct related to the proceeding.

Part of Ethics 2000's stated intent when it amended Model Rule 3.3 was to incorporate provisions from Canon 7 of the ABA Model Code of Professional Responsibility (Model Code) that had placed an affirmative duty upon a lawyer to notify the court upon learning of juror misconduct:

This new provision incorporates the substance of current paragraph (a)(2), as well as ABA Model Code of Professional Responsibility DR 7-102(B)(2) ("A lawyer who receives information clearly establishing that a person other than the client has perpetrated a fraud upon a tribunal shall promptly reveal the fraud to the tribunal") and DR 7-108(G) ("A lawyer shall reveal promptly to the court improper conduct by a venireperson or juror, or by another toward a venireperson or juror or a member of the venireperson's or juror's family, of which the lawyer has knowledge"). Report-

er's Explanation of Changes, Model Rule 3.3.¹⁴

However, the intent of the Ethics 2000 Commission expressed above to incorporate the substance of DR 7-108(G) in its new subsection (b) of Model Rule 3.3 was never carried out. Under the Model Code's DR 7-108(G), a lawyer knowing of "improper conduct" by a juror or venireperson was required to report the matter to the tribunal. Under Rule 3.3(b), the lawyer's obligation to act arises only when the juror or venire person engages in conduct that is fraudulent or criminal.¹⁵ While improper conduct was not defined in the Model Code, it clearly imposes a broader duty to take remedial action than exists under the Model Rules. The Committee is constrained to provide guidance based upon the language of Rule 3.3(b) rather than any expressions of intent in the legislative history of that rule.

By passively viewing juror Internet presence, a lawyer may become aware of a juror's conduct that is criminal or fraudulent, in which case, Model Rule 3.3(b) requires the lawyer to take remedial measures including, if necessary, reporting the matter to the court. But the lawyer may also become aware of juror conduct that violates court instructions to the jury but does not rise to the level of criminal or fraudulent conduct, and Rule 3.3(b) does not prescribe what the lawyer must do in that situation. While considerations of questions of law are outside the scope of the Committee's authority, applicable law might treat such juror activity as conduct that triggers a lawyer's duty to take remedial action including, if necessary, reporting the juror's conduct to the court under current Model Rule 3.3(b).¹⁶

14 Ethics 2000 Commission, Model Rule 3.3 Reporter's Explanation of Changes, AMERICAN BAR ASSOCIATION, http://www.americanbar.org/groups/professional_responsibility/policy/ethics_2000_commission/e2k_rule33rem.html (last visited Apr. 18, 2014).

15 Compare MODEL RULES OF PROF'L CONDUCT R. 3.3(b) (2002) to N.Y. RULES OF PROF'L CONDUCT, R. 3.5(d) (2013) ("a lawyer shall reveal promptly to the court improper conduct by a member of the venire or a juror....").

16 See, e.g., *US v. Juror Number One*, 866 F.Supp.2d 442 (E.D. Pa. 2011) (failure to follow jury instructions and emailing other jurors about case results in criminal contempt). The use of criminal contempt remedies for disregarding jury instructions is not confined to improper juror use of ESM. *US v. Rowe*, 906 F.2d 654 (11th Cir. 1990) (juror held in contempt, fined, and dismissed from jury for violating court order to refrain from discussing the case with other jurors until after jury instructions delivered).

While any Internet postings about the case by a juror during trial may violate court instructions, the obligation of a lawyer to take action will depend on the lawyer's assessment of those postings in light of court instructions and the elements of the crime of contempt or other applicable criminal statutes. For example, innocuous postings about jury service, such as the quality of the food served at lunch, may be contrary to judicial instructions, but fall short of conduct that would warrant the extreme response of finding a juror in criminal contempt. A lawyer's affirmative duty to act is triggered only when the juror's known conduct is criminal or fraudulent, including conduct that is criminally contemptuous of court instructions. The materiality of juror Internet communications to the integrity of the trial will likely be a consideration in determining whether the juror has acted criminally or fraudulently. The remedial duty flowing from known criminal or fraudulent juror conduct is triggered by knowledge of the conduct and is not preempted by a lawyer's belief that the court will not choose to address the conduct as a crime or fraud.

Conclusion

In sum, a lawyer may passively review a juror's public presence on the Internet, but may not communicate with a juror. Requesting access to a private area on a juror's ESM is communication within this framework.

The fact that a juror or a potential juror may become aware that the lawyer is reviewing his Internet presence when an ESM network setting notifies the juror of such review does not constitute a communication from the lawyer in violation of Rule 3.5(b).

If a lawyer discovers criminal or fraudulent conduct by a juror related to the proceeding, the lawyer must take reasonable remedial measures including, if necessary, disclosure to the tribunal.

EXHIBIT H

MODEL CIVIL JURY INSTRUCTIONS BASED ON SUPERIOR COURT MODEL CRIMINAL JURY INSTRUCTIONS 1.102

Between now and when you are discharged from jury duty, you must not provide to or receive from anyone, including friends, co-workers, and family members, any information about your jury service. You may tell those who need to know where you are, that you have been picked for a jury, and how long the case may take. However, you must not give anyone any information about the case itself or the people involved in the case. You must also warn people not to try to say anything to you or write to you about your jury service or the case. This includes face-to-face, phone, or computer communications.

In this age of electronic communication, I want to stress that you must not use electronic devices or computers to talk about this case, including tweeting, texting, blogging, e-mailing, posting information on a website or chat room, or any other means at all. Do not send or accept messages, including email and text messages, about your jury service. You must not disclose your thoughts about your jury service or ask for advice on how to decide any case.

You must decide the facts based on the evidence presented in court and according to the legal principles about which I will instruct you. You are not permitted, during the course of the trial, to conduct any independent investigation or research about the case. That means, for example, you cannot use the Internet to do research about the facts or the law or the people involved in the case. Research includes something even as simple or seemingly harmless as using the Internet to look up a legal term or view a satellite photo of the scene of the alleged crime.

I want to explain the reasons why you should not con-

According to CCE trial observers, the US District Court was consistent in the use of admonitions concerning juror use of social media, repeating the admonition periodically during the trial. DC Superior Court, in contrast, gave the admonition in less than two-thirds of the trials, usually at the beginning of the trial and, in half the trials, at the end of the trial.

Social Media Admonitions

	USDC	DCSC	
Social media admonition given	100%	58%	*
Beginning of trial	100%	61%	
During trial	100%	28%	***
End of trial	100%	50%	
Compliance confirmation	0%	12%	

* $p < .1$

** $p < .05$

*** $p < .01$

duct your own investigation. All parties have a right to have the case decided only on evidence and legal rules that they know about and that they have a chance to respond to. Relying on information you get outside this courtroom is unfair because the parties would not have a chance to refute, correct, or explain it. Unfortunately, information that we get over the Internet or from other sources may be incomplete or misleading or just plain wrong. It is up to you to decide whether to credit any evidence presented in court and only the evidence presented in court may be considered. If evidence or legal information has not been presented in court, you cannot rely on it.

Moreover, if any of you do your own research about the facts or the law, this may result in different jurors basing their decisions on different information. Each juror must make his or her decision based on the same evidence and under the same rules.

In some cases, there may be reports in the newspaper or on the radio, Internet, or television concerning the case while the trial is ongoing. If there should be such

media coverage in this case, you may be tempted to read, listen to, or watch it. You must not read, listen to, or watch such reports because you must decide this case solely on the evidence presented in this courtroom. If any publicity about this trial inadvertently comes to your attention during trial, do not discuss it with other jurors or anyone else. Just let me or my clerk know as soon after it happens as you can, and I will then briefly discuss it with you.

Finally, if you become aware that another juror may be violating my instructions, please let me or my clerk know as soon as you become aware so we can discuss it.

21 THE DC JURY PROJECT RECOMMENDS THAT THE SUPERIOR COURT PROVIDE AN EXPEDITED JURY TRIAL OPTION FOR CIVIL TRIALS. SHORTENING TRIALS SAVES LITIGANTS AND THE COURT TIME AND MONEY AND REDUCES THE BURDEN OF SERVICE ON JURORS.

The DC Jury Project recommends creating an optional expedited civil jury trial program in DC Superior Court. This could reduce the amount of time that is spent on cases prior to and during trials, thereby reducing the burden of jury service. It is suggested that DC Superior Court also make an informational document available to parties contemplating the expedited trial process.⁹⁴ An example of such a document can be found in Exhibit I to this recommendation.

We commend DC Superior Court for implementing the Track System that was previously suggested by the Council for Court Excellence in 2002.⁹⁵ The DC Jury Project recommends expanding the current Track System⁹⁶ to add an expedited option for all civil jury trials. We further recommend revisiting the “Time to Disposition” performance standards that the Court implemented in 2007 in order to adhere more closely to an expedited trial program.⁹⁷ It is recommended that the expedited trial program include provisions that limit discovery, peremptory challenges, and trial time for parties that opt for the expedited trial track. In exchange for these mutually

agreed-upon concessions, the case would advance on the trial calendar on a more expedited basis than even the Track I cases.

Multiple states, including California, Texas, Delaware, and Utah have implemented a type of expedited civil jury trial program.⁹⁸ Texas recently established an expedited trial program with multiple limitations on discovery. To be compatible with an expedited trial program, we recommend that discovery for each party be limited to a total of fifteen (15) interrogatories, requests for production, and requests for admissions.⁹⁹ We also recommend the courts consider allotting one (1) hour for voir dire, and three (3) to fifteen (15) hours for each party to present evidence; including the examination of witnesses.¹⁰⁰

While the bulk of civil trials in Superior Court relate to auto accident cases, other disputes may also be amenable to the fast track approach that could be incorporated into the DC Superior Court’s current tracking system.



One of the lawyers did an hour long closing statement. The lawyer-based time wasting was frustrating.

—An Anonymous Juror

⁹⁴ See Exhibit A. California Expedited Jury Trial Information Sheet: <http://www.courts.ca.gov/documents/ejt010info.pdf>:

⁹⁵ See CCE, Superior Court Success Story: Civil Case Reform in the District of Columbia, Appendix E: DC Superior Court Civil Actions Case Processing Diagram (2002). http://www.courtexcellence.org/uploads/files/Superior_Court_Success_Story_2002.pdf

⁹⁶ Civil Rule 16 and Form CA 113 outline the tracking system now in force.

⁹⁷ Superior Court of the District of Columbia Administrative Order 07-18 (Performance Measures-Time to Disposition and Excludable Time). <http://www.dccourts.gov/internet/documents/07-18.pdf>

⁹⁸ NCSC report: Short, Summary & Expedited the Evolution of Civil Jury Trials. Document available upon request.

⁹⁹ Howell, A. A Close Look at Texas’ New Expedited Trial Rules: <http://www.zelle.com/news-publications-237.html>

¹⁰⁰ Utah Courts Expedited Jury Trial Requirements and Waivers: http://www.utcourts.gov/howto/civil/expedited_jury_trial/ and California Courts General Order Number 64 Attachment A. file:///C:/Users/Intern.CCE-DT7-06/Downloads/GO64.pdf: See Exhibit B.

EXHIBIT I

SAMPLE CALIFORNIA JURY TRIAL INFORMATION SHEET

THE COMMITTEE PROVIDES THIS EXHIBIT FOR INFORMATIONAL PURPOSES
BUT DOES NOT ENDORSE ALL OF THE PROVISIONS HEREIN

EJT-010-INFO**Expedited Jury Trial Information Sheet**

This information sheet is for anyone involved in a civil lawsuit who is considering taking part in an **expedited jury trial**—a trial that is shorter and has a smaller jury than a traditional jury trial. Taking part in this type of trial means you give up your usual rights to appeal. **Please read this information sheet before you agree to have your case tried under the expedited jury trial procedures.**

This information sheet does not cover everything you may need to know about expedited jury trials. It only gives you an overview of the process and how it may affect your rights. **You should discuss all the points covered here and any questions you have about expedited jury trials with your attorney. If you do not have an attorney, you should consult with one before agreeing to an expedited jury trial.**

1 What is an expedited jury trial?

An expedited jury trial is a short trial, generally lasting only one day. It is intended to be quicker and less expensive than a traditional jury trial.

As in a traditional jury trial, a jury will hear your case and will reach a decision about whether one side has to pay money to the other side. An expedited jury trial differs from a regular jury trial in several important ways:

- **The trial will be shorter.** Each side has 3 hours to put on all its witnesses, show the jury its evidence, and argue its case.
- **The jury will be smaller.** There will be 8 jurors instead of 12.
- **Choosing the jury will be faster.** The parties will exercise fewer challenges.
- **All parties must waive their rights to appeal.** In order to help keep down the costs of litigation, there are no appeals following an expedited jury trial except in very limited circumstances. These are explained more fully in (5).

2 Will the case be in front of a judge?

The trial will take place at a courthouse and a judge, or, if you agree, a temporary judge (a court commissioner or an experienced attorney whom the court appoints to act as a judge) will handle the trial.

3 Does the jury have to reach a unanimous decision?

No. Just as in a traditional civil jury trial, only three-quarters of the jury must agree in order to reach a decision in an expedited jury trial. With 8 people on the jury, that means that at least 6 of the jurors must agree on the verdict in an expedited jury trial.

4 Is the decision of the jury binding on the parties?

Generally, yes, but not always. A verdict from a jury in an expedited jury trial is like a verdict in a traditional jury trial. The court will enter a judgment based on the verdict, the jury's decision that one or more defendants will pay money to the plaintiff or that the plaintiff gets no money at all.

But parties who agree to take part in expedited jury trials are allowed to make an agreement before the trial that guarantees that the defendant will pay a certain amount to the plaintiff even if the jury decides on a lower payment or no payment. That agreement may also put a cap on the highest amount that a defendant has to pay, even if the jury decides on a higher amount. These agreements are known as "high/low agreements." You should discuss with your attorney whether you should enter into such an agreement in your case and how it will affect you.

5 Why do I give up most of my rights to appeal?

To keep costs down and provide a faster end to the case, all parties who agree to take part in an expedited jury trial must agree to waive the right to appeal the jury verdict or decisions by the judicial officer concerning the trial unless one of the following happens:

- Misconduct of the judicial officer that materially affected substantial rights of a party;
- Misconduct of the jury; or
- Corruption or fraud or some other bad act that prevented a fair trial.

In addition, parties may not ask the judge to set the jury verdict aside, except on those same grounds. Neither you nor the other side will be able to ask for a new trial on the grounds that the jury verdict was too high or too low, that legal mistakes were made before or during the trial, or that new evidence was found later.



EJT-010-INFO**Expedited Jury Trial Information Sheet****6 How else is an expedited jury trial different?**

The goal of the expedited jury trial process is to have shorter and less expensive trials. The expedited jury trial rules set up some special procedures to help this happen. For example, the rules require that several weeks before the trial takes place, the parties show each other all exhibits and tell each other what witnesses will be at the trial. In addition, the judge will meet with the attorneys before the trial to work out some things in advance.

The other big difference is that the parties can make agreements about how the case will be tried so that it can be tried quickly and effectively. These agreements may include what rules will apply to the case, how many witnesses can testify for each side, what kind of evidence may be used, and what facts the parties already agree to and so do not need to take to the jury. The parties can agree to modify many of the rules that apply to trials generally or even to expedited jury trials (except for the four rules described in 1).

7 Who can have an expedited jury trial?

The process can be used in any civil case that the parties agree may be tried in a single day. To have an expedited jury trial, both sides must want one. Each side must agree that it will use only three hours to put on its case and agree to all the other rules in 1 above. The agreements between the parties must be put into writing in a document called a Proposed Consent Order Granting an Expedited Jury Trial, which will be submitted to the court for approval. The court must issue the consent order as proposed by the parties unless the court finds good cause why the action should not proceed through the expedited jury trial process.

8 Can I change my mind after agreeing to an expedited jury trial?

No, unless the other side or the court agrees. Once you and the other side have agreed to take part in an expedited jury trial, that agreement is binding on both sides. After you enter into the agreement, it can be changed only if **both** sides want to change it or stop the process or if a court decides there are good reasons the expedited jury trial should not be used in the case. This is why it is important to talk to your attorney **before** agreeing to an expedited jury trial.

You can find the law and rules governing expedited jury trials in Code of Civil Procedure sections 630.01–630.12 and in rules 3.1545–3.1552 of the California Rules of Court. You can find these at any county law library or online. The statutes are online at www.leginfo.ca.gov/calaw.html. The rules are at www.courts.ca.gov/rules.

EXHIBIT J

SAMPLE GENERAL ORDER FOR EXPEDITED TRIAL PROCEDURES (CALIFORNIA)

**THIS SAMPLE IS NOT ENDORSED BY
THE COMMITTEE BUT IS PROVIDED
TO ILLUSTRATE THE CONCEPT**

GENERAL ORDER NO. 64 — ATTACHMENT A

PROCEDURE FOR EXPEDITED TRIALS

1. Expedited Trial Procedure

The court encourages parties to agree to an expedited trial. The Expedited Trial Procedure is meant to offer an abbreviated, efficient and cost-effective litigation and trial alternative. Subject to the approval of the assigned judge, the following procedures shall govern. “Expedited Trial” means a consensual, binding trial before a jury or before a judge with limited discovery and limited rights to appeal.

2. Effective Date

The parties shall file a written agreement, using the court form titled “Agreement for Expedited Trial and Request for Approval.” Neither the agreement nor its existence shall be disclosed to the jury. The time schedule for expedited procedures and trial shall begin on the date the agreement is approved by the court.

3. Termination of Agreement

The agreement may be terminated by the court upon a showing that one or more parties have not participated in good faith with the provisions of this General Order or that previously undisclosed facts have been discovered that make it inappropriate to proceed pursuant to the agreement.

4. Applicable Rules

The provisions of the Expedited Trial Agreement, as approved by the court, shall supersede and govern over any inconsistencies or conflicts that arise between it and the Federal Rules of Civil Procedure or the Local Rules of this Court. Otherwise, all Federal Rules of Civil Procedure, Rules of Evidence, and Local Rules of this Court shall apply.

5. Initial Disclosures

If initial disclosures have not been exchanged, or if they are not yet due, the disclosures required by Rule 26(a) (1) (A) shall be exchanged within seven (7) days after the agreement is approved by the court.

6. Expedited Trial Conference

Immediately upon the filing of the agreement, plaintiff shall contact the courtroom deputy for the assigned judge and request an initial expedited trial conference. The conference shall occur no later than thirty (30) days after the filing of the agreement. Upon request of any party, the court shall permit counsel to appear by telephone. A Joint Expedited Trial Statement shall be filed seven (7) days before the conference addressing all of the topics set forth in the O No. 64 Attachment A page 2 Standing Order for All Judges of the Northern District of California Joint Expedited Case Management Statement, found on the Court’s website: www.cand.uscourts.gov.

A case management order shall be issued following the conference. Unless otherwise ordered by the court, the order shall require the parties to exchange the documents described in Rule 26(a) (3) of the Federal Rules of Civil Procedure no later than fifteen (15) days before the pretrial conference and shall require the parties to complete all discovery no later than ninety (90) days after the expedited trial conference. All Rule 12 and pleading issues shall be resolved by the court at the expedited trial conference, except as provided in section 10 of this General Order. The court may determine the extent, if any, that previous case management orders on matters subject to the expedited rules shall supersede or be combined with any previous orders.

7. Pretrial Conference

The pretrial conference shall be held no later than one hundred fifty (150) days after the agreement is approved by the court.

8. Discovery

Unless otherwise ordered by the court or by agreement of the parties, discovery shall be limited to ten (10) interrogatories per side, ten (10) document requests, ten (10) requests for admission, and fifteen (15) hours of depositions, per side. The parties may agree or the court may order, that the time for response to written discovery be shortened. Deposition time limits are inclusive of fact witnesses and expert witnesses.

9. Expert Witnesses

No party shall call more than one expert witness to testify, unless permitted by the court or by agreement of the parties.

10. Pretrial Motions

No pretrial motion shall be filed without leave of court, which shall be sought by a letter not to exceed one page. If leave is granted, the motion shall be in letter form, filed with the clerk, unless otherwise ordered. The response to the motion shall be by letter filed with the clerk not later than seven calendar days after receipt of the motion. Unless otherwise permitted, no letter shall exceed three pages. A letter reply, not to exceed one page may be filed within three days after receipt of opposition. The court may decide the motion without a hearing. If the court finds that a hearing is necessary, it may establish a briefing schedule and order further briefing. Pendency of a dispositive motion shall not stay any other proceedings. O No. 64 Attachment A page 3

11. Trial Date

Unless otherwise ordered, trial shall be held no later than six months after the agreement is approved by the court.

12. Trial

Jury trial will be before six jurors and may proceed before a five-person jury if a juror is unable to serve through conclusion of trial and deliberations. The court shall conduct all voir dire and shall determine time limits for opening statements and closing argument. Each side shall have three hours to present evidence, not including time for opening statement and time for closing argument. There shall be no findings of fact or conclusions of law in non-jury trials. In multi-party trials, plaintiffs shall divide the three hours among themselves, and defendants shall divide the three hours among themselves. If the parties cannot agree to a division of trial time, the judge shall order a division.

13. Post-trial Motions

(a) Post-trial motions shall be limited to determination of costs and attorney's fees, correcting a judgment for clerical error, conforming the verdict to the agreement, enforcement of judgment and motions for a new trial.

(b) Within ten (10) court days after notice of entry of a jury verdict, a party may file with the clerk and serve on each adverse party a notice of intention to move for a new trial on any of the grounds specified in section 13(c) of these procedures. The notice shall be deemed to be a motion for a new trial.

(c) Grounds for motions for a new trial shall be limited to: (1) judicial misconduct that materially affected the substantial rights of a party; (2) misconduct of the jury; (3) corruption, fraud, or other undue means employed in the proceedings of the court or jury. [this provision is not recommended by the Committee]

14. Judgment

Judgment shall be entered within 30 days after a bench trial, except as ordered by the court for good cause.

15. Appeal [this provision is not recommended by the Committee]

Before filing an appeal, a party shall make a motion for a new trial pursuant to paragraph 13 of these procedures. If the motion for a new trial is denied, the party may appeal the judgment and seek a new trial only on grounds specified in subsection 13(c). All other grounds for appeal shall be waived and are not permitted, unless the parties agree otherwise.

22 THE DC JURY PROJECT RECOMMENDS THAT THE COURTS TAKE SPECIAL CARE TO PROVIDE AFFIRMATIVE INSTRUCTIONS TO JURORS SO THAT JURORS ARE AWARE THAT THEY ARE PERMITTED TO TAKE NOTES DURING THE TRIAL.

It is standard practice in the DC Courts for jurors to be permitted to take notes.¹⁰¹ As part of its effort to assess the implementation of recommendations that CCE made in its *Juries for the Year 2000* report, the DC Jury Project undertook to evaluate this practice (and others) by conducting an extensive survey of judges, attorneys, and jurors, and also by holding both roundtable discussions with DC judges and focus groups with former jurors.¹⁰² The resulting data indicate that all of the surveyed judges permit jurors to take notes, but not all of the jurors or attorneys who were surveyed report the same.

The following questions and corresponding results were obtained via surveys:

Judges were asked:

Please indicate whether the following jury practices were used in your last trial:

- ☐ Jurors were provided with note-taking materials by the court
- ☐ Jurors were provided with exhibit notebooks containing descriptions of trial exhibits

¹⁰¹ Indeed, DC Superior Court Criminal Jury Instruction 1.105 explicitly permits note-taking by jurors.

¹⁰² The DC Jury Project surveyed over 600 jurors at both courts, over 180 attorneys, and over 30 judges at both courts. Additionally, 10 jurors participated in three focus groups and 14 judges participated in three roundtable discussions. In both the surveys and discussions all parties were asked about note-taking by jurors. See Data Collection and Methodology section. *Juries for the Year 2000* made recommendation number 20, recommending “that jurors be permitted to take notes during trials and that they be advised that they may do so.”

- ☐ Jurors were permitted to ask questions of witnesses
- ☐ Jurors were given a written copy of the jury instructions

The DC Jury Project found that 100% of the judges who answered this question reported that jurors were provided with note-taking materials by the court.

Attorneys were asked:

Please indicate whether the following jury practices were used in your last trial:

- ☐ Jurors were provided with note-taking materials by the court
- ☐ Jurors were provided with exhibit notebooks containing descriptions of trial exhibits
- ☐ Jurors were permitted to ask questions of witnesses
- ☐ Jurors were given a written copy of the jury instructions

The DC Jury Project found that 67% of the attorneys who answered this question reported that jurors were provided with note-taking materials by the court.

Jurors in Superior Court were asked:

The following are practices used by some judges. Did your judge allow the jurors to:

Take notes during the trial

- ☐ Yes ☐ No ☐ Don't know

Submit questions to witnesses during trial

- ☐ Yes ☐ No ☐ Don't know

Submit questions during deliberation

- ☐ Yes ☐ No ☐ Don't know

The DC Jury Project found that 48% of jurors in civil trials in Superior Court who answered this question reported being allowed to take notes, while 53% of the responding jurors in criminal trials in the Superior Court reported being allowed to take notes.

These survey results were similar to the experiences expressed in the roundtables and focus groups. That is, each of the judges at roundtable discussions reported allowing their jurors to take notes, while several of the jurors who participated in the focus groups reported not being provided with note-taking materials or not being told that they could take notes. Thus, while it is true that jurors may have been permitted to take notes, it also appears to be true that at least some jurors may not understand that they are being provided with note-taking materials and that they have permission to use them during trial.

These results have led the DC Jury Project Committee to recommend that judges and the courts take special care to correct any misperception that jurors might have about note-taking, and thereby ensure that jurors are aware of their ability to take notes during trial.

23 THE DC JURY PROJECT RECOMMENDS THAT JUDGES IN THE DC COURTS, IN THE EXERCISE OF THEIR DISCRETION IN APPROPRIATE CIVIL CASES, PERMIT JURORS TO SUBMIT WRITTEN QUESTIONS FOR WITNESSES SO LONG AS THE COURT INSTRUCTS THE JURY THAT: (1) THE COURT WILL DETERMINE WHETHER IT IS PROPER TO POSE THE QUESTION TO THE WITNESS; (2) THE JUROR SHOULD NOT DISCUSS ANY UNASKED QUESTION WITH THE JURY AND SHOULD NOT DRAW ANY INFERENCE FROM THE JUDGE'S DECISION NOT TO POSE THE QUESTION TO THE WITNESS; AND (3) THE QUESTIONS AS POSED BY THE TRIAL JUDGE SHOULD BE DESIGNED TO ASSIST THE JURY IN REACHING AN IMPARTIAL DETERMINATION OF THE FACTS AND NOT TO SERVE AS ADVOCACY FOR EITHER SIDE IN THE TRIAL.

BECAUSE NO MODEL JURY INSTRUCTION FOR CIVIL CASES SIMILAR TO CRIMINAL JURY INSTRUCTION 1.106 CONCERNING QUESTIONS FROM JURORS IN CRIMINAL CASES CURRENTLY EXISTS, THE DC JURY PROJECT RECOMMENDS THE CREATION AND ADOPTION OF A SIMILAR INSTRUCTION IN THE MODEL CIVIL JURY INSTRUCTIONS.

Within the last 20 years, trial and appellate courts in the District of Columbia have recognized that allowing jurors to submit proposed written questions to the trial judge to be asked of witnesses while they are on the stand testifying may have substantial benefits to the administration of justice and to the jurors' thorough consideration of the case. Jurors may be confused by technical jargon or by what they consider gaps in the evidence. Allowing the judge to ask proper and permissible juror-submitted questions may benefit not only the jurors in reaching a well-considered decision but also benefit trial counsel who thereby become aware of certain juror concerns. Allowing questions may heighten the jurors' attention to the case by making them feel a part of the process rather than merely spectators. It may also leave the jurors feeling more satisfied with their experience, which if communicated to others, may encourage others to be more willing to serve.

The submission of written questions by jurors in civil cases is currently permitted by certain judges in DC Superior Court and may also be followed in federal courts. Those judges who allow the practice instruct jurors at the beginning of the case that, after a witness has completed his or her testimony, the juror may submit a written question to the judge who, after consultation with counsel, will decide whether to ask the question. The judge

instructs jurors not to consider the question if it was not asked or to speculate on the reason the judge chose not to ask it or on what the answer might have been. Jurors are instructed that they are not to become advocates for either side by submitting questions.

While there are concerns in criminal cases (discussed in the following recommendation) as to whether the submission of questions by jurors sometimes reduces the prosecutor's burden of proof, those concerns are not in play in civil cases.¹⁰³ Accordingly, the Committee encourages trial judges in both Superior Court and US District Court to exercise their discretion to allow jurors to submit written questions in appropriate civil cases.

The Committee is mindful of the absence of a civil jury instruction concerning questions submitted by jurors and is aware that efforts are underway to develop a civil version of the Model Criminal Jury Instruction 1.106 and the Committee endorses completion of that project. Until that instruction has been finalized, the Committee recommends that the Model Criminal Jury Instruction be adapted on a case-by-case basis for use in civil trials.

103 E.g., American Bar Association, Principles for Jury Trials, August 2005, Principle 13 (C)) and related commentary, noting that there are concerns to jurors asking questions in criminal cases which do not arise in civil cases.

23 (CONTINUED) THE DC JURY PROJECT RECOMMENDS THAT JUDGES IN DC COURTS, IN THE EXERCISE OF THEIR DISCRETION IN APPROPRIATE CRIMINAL CASES, PERMIT JURORS TO SUBMIT WRITTEN QUESTIONS FOR WITNESSES SO LONG AS THE COURT INSTRUCTS THE JURY IN ACCORDANCE WITH DC CRIMINAL JURY INSTRUCTION 1.106, THAT: (1) THE COURT WILL DETERMINE WHETHER IT IS PROPER TO POSE THE QUESTION TO THE WITNESS; (2) THE JUROR SHOULD NOT DISCUSS ANY UNASKED QUESTION WITH THE JURY AND SHOULD NOT DRAW ANY INFERENCE FROM THE JUDGE'S DECISION NOT TO POSE THE QUESTION TO THE WITNESS; AND (3) THE QUESTIONS AS POSED BY THE TRIAL JUDGE SHOULD BE DESIGNED TO ASSIST THE JURY IN REACHING AN IMPARTIAL DETERMINATION OF THE FACTS AND NOT TO SERVE AS ADVOCACY FOR EITHER SIDE IN THE TRIAL.

Majority View:

The practice of allowing jurors in criminal cases to submit written questions for the trial judge's consideration has been approved by the appellate courts in both our local and federal courts. In *Yeager v. Greene*, 502 A. 2d 980 (DC 1985), the District of Columbia Court of Appeals authorized the submission of questions by jurors to the court in a criminal case. Later cases repeatedly reaffirmed the practice, which is followed by a number of, but not all, Superior Court judges.¹⁰⁴

In *United States v. Rawlings*, 522 F.3d 403 (DC Cir. 2008), the US Court of Appeals for the DC Circuit held that a trial judge in a criminal case, with proper instructions and cautions, may allow juror questions to be asked by the Court. However, the Court of Appeals observed that there were dangers in the practice and suggested it be used sparingly and only in appropriate cases. In *Rawlings*, the Court of Appeals observed, as several other Circuits have, that the practice of allowing jurors to submit written questions for the court's consideration may provide substantial benefits, noting "it can help focus the jurors, clear up confusion, alert counsel to evidentiary lacunae and generally ensure that jurors have the information needed to reach a reasoned verdict."¹⁰⁵ But it also observed that the practice carries significant risks, such as potentially removing jurors from their appropriate role as neutral fact finders; causing jurors to evaluate prematurely the evidence and adopting a position before hearing all of the facts; delaying the trial; and potentially undermining counsel's litigation strategies. The *Rawlings* Court also noted that if a question is not asked a juror may feel that his or her pursuit of truth has been thwarted or, if asked, the question may assume too much importance by the other jurors. Some members of the DC Jury Project noted a concern that allowing jurors to submit questions may skew the burden of proof required of the government in criminal or in forfeiture cases by aiding the government in the identification of potential weaknesses in the prosecution's case. While empirical evidence of such an effect has not come to our attention,

¹⁰⁴ See *Timms v. United States*, 25 A.3d 29 (DC 2011); *Hinton v. United States*, 979 A.2d 663 (DC 2009); *Plummer v. United States*, 870 539 (DC 2005).

¹⁰⁵ *Id.* at 407.

the concern is worth noting and our conversation with judges reflects that this concern is shared by some of those who decline to use the practice. Taking account of the potential perils of allowing questions, the Court of Appeals concluded that, "To minimize these risks, a District judge who decides to permit questioning by jurors in a given case should implement specific precautionary procedures."¹⁰⁶

A large majority of states and all of the federal circuits that have entertained the question (all but the 10th Circuit, where the matter has not arisen) have agreed that permitting jurors to ask questions in this fashion in criminal cases is within the sound discretion of the trial court. A recent article in the American Journal of Trial Advocacy, after surveying all of the states and federal courts, concluded that "juror questioning ... as a recognized trial procedure is complete" and is "an innovation whose time has fully arrived."¹⁰⁷ The article concluded that "every one of the empirical studies have verified the benefits juror questioning" and "strong statistical evidence exists when judges and attorneys use juror questioning their perceptions of this procedure change for the better."¹⁰⁸ Interviews of judges in our Superior Court and the federal District Court who have used this procedure for the past decade have confirmed that most of them agree with that perception. A study by the American Bar Association and the National Center for State Courts has found that in 28% of all state court trials and in 18% of federal court trials, jurors were permitted to ask questions.

We believe that the proper precautions are set forth in Model Jury Instruction 1.106 of the Criminal Jury Instructions for the District of Columbia which is used frequently by Superior Court judges in criminal cases. (See Exhibit K.) It emphasizes that the juror must be an impartial judge of the facts, not an advocate for either side. It makes clear that jurors may not ask questions orally. It states that questions will only be permitted when both sides' lawyers have concluded their examina-

tion, but before the witness leaves the stand. And most importantly, it makes clear that the judge will make the determination of whether to ask the witness the question after receiving input from counsel and will only do so if the judge deems it proper. It instructs the jury not to guess about what the answer would have been to an unasked question and not to discuss the unasked question with the other members of the jury.

In order to improve the administration of justice and enhance juror satisfaction and confidence in its verdicts, we urge trial courts to exercise their discretion in appropriate cases to allow jury questions in criminal trials in Superior Court and in Federal Court applying the cautionary suggestions embodied in the model jury instruction.

Jurors Asking Questions in Criminal Cases: Minority View:

The DC Jury Project Committee's recommendation that judges permit jurors to ask questions of witnesses in criminal cases was not unanimously agreed on by the entire Committee. In particular, both the Federal Public Defender and the Public Defender Service for DC, along with a substantial number of other members of the Committee, oppose the Committee's ultimate recommendation. Although case law permits the practice,¹⁰⁹ both public defender agencies assert that this practice is not without flaws.

The fact that both the local and federal courts of appeal in DC have held that juror questioning is allowed does not mean that the procedure is uncontroverted. The DC Circuit, in its opinion on the subject, *United States v. Rawlings*, 522 F.3d 403 (DC Cir. 2008), devoted substantial discussion to the reality that the "practice carries significant risk."¹¹⁰ The court noted, with regard to the specific facts in the case, that "this case illustrates just how perilous it can be for the court to routinely solicit and ask juror questions."¹¹¹ The court observed that the case "highlights the risk of allowing jury questions during trial and demonstrates why other circuits have advised that they be used only sparingly. To limit such risk in the

¹⁰⁶ *Rawlings* at 408.

¹⁰⁷ Frank, An Interdisciplinary Examination of Juror's Questioning of Witnesses at Trial, 38 American Journal of Trial Advocacy, 1, 7, 26 (2014).

¹⁰⁸ *Id* at 48-49.

¹⁰⁹ See, e.g., *Timms v. United States*, 25 A.3d 29 (DC 2011).

¹¹⁰ *Id.* at 408.

¹¹¹ *Id.* at 409.

future, we, as have our sister circuits, advise trial judges to consider on a case-by-case basis whether and to what extent jury questions are appropriate, balancing the potential benefit of such questions against the dangers they pose.”¹¹² The court concluded that “[p]ermitting juror questions as a matter of course is ill-advised.”¹¹³ The DC Circuit’s view is hardly a blanket endorsement of the practice, and trial courts should not therefore presume that juror questions benefit the trial process.

The DC Circuit is far from isolated in its concerns. As part of its research, members of this Committee sampled 16 states that permitted juror questions by court decision.¹¹⁴ They also found three federal circuit courts of appeal that allowed questions by decision.¹¹⁵ As part of their analysis, they found four states that prohibited juror questions by decision¹¹⁶ and one federal circuit (the Second Circuit) that similarly prohibited juror questions by court decision. Concerning the permissive states and federal circuits, which number 19 in total, though, the *majority* of them (ten) acknowledge there are dangers inherent in the practice. Aside from our own federal circuit court in *United States v. Rawlings*, *supra*, the Fourth Circuit observed that “juror questioning is a course fraught with peril for the trial court. No bright-line rule is adopted here, but the dangers in the practice are very considerable.”¹¹⁷ The concerns are perhaps best summarized by the Alabama Supreme Court in *Ex Parte Malone*, 12 So.3d 60 (Ala. 2008). There, the court held that soliciting juror questions is not error *per se*, but “the practice should be disfavored and that a trial court should not promote or encourage the practice because it risks ‘altering the role of the jury from a neutral fact-finder to inquisitor and advocate.’”¹¹⁸

Judges should not rely on the Frank article cited in the

Committee’s recommendation.¹¹⁹ Although its conclusions are broad and sweeping, a closer reading of the article reveals its numerous shortcomings. The article itself acknowledges that some think “[p]ermitting jurors to question witnesses violates a defendant’s Sixth Amendment right to an impartial jury by transforming the jury into an active, partial decision-making body Although there may be problems with the jury system, juror questioning is not the solution. Trial courts should not continue to violate a criminal defendant’s right to a fair trial. In the future, jurors should remain silent.”¹²⁰ Indeed, the Frank article recognizes that the “transition from neutral to advocate was a significant concern” in allowing juror questioning, and acknowledges that no study has adequately addressed this issue.¹²¹ Despite the passage of two decades, the Eighth Circuit’s recognition of the pitfalls inherent in juror questions remain: “[T]he fundamental problem with jury questions lies in the gross distortion of the adversary system and the misconception of the role of the jury as a neutral factfinder in the adversary process. Those who doubt the value of the adversary system or who question its continuance will not object to distortion of the jury’s role. However, as long as we adhere to an adversary system of justice, the neutrality and objectivity of the juror must be sacrosanct.”¹²² Indeed, in a very recent article by United States District Judge Mark Bennett, “Reinvigorating and Enhancing Jury Trails Through an Overdue Juror Bill of Rights: WWJW—What Would Jurors Want?—A Federal Trial Judge’s View,”¹²³ he describes jury questioning in civil cases as a “superb innovation” that he now requires in all civil jury trials. He goes on to state, however, that despite being an ardent supporter of questioning in civil cases, he does not allow juror questioning in criminal cases “based on the problems that could arise with the presumption of innocence and shifting the burden of proof.” The Committee simply notes these important issues as a “concern.”

112 *Id.*

113 *Id.*

114 Alabama, Arkansas, Arizona, Colorado, the District of Columbia, Georgia, Hawaii, Maryland, Massachusetts, Missouri, New Jersey, New York, Nevada, Tennessee, Vermont, and Virginia.

115 Those circuits are: D.C., 6th, and 4th Circuit Courts of Appeal.

116 Minnesota, Mississippi, Nebraska, and Texas.

117 *DeBenedetto v. Goodyear Tire & Rubber Co.*, 754 F.2d 512, 517 (4th Cir. 1985).

118 *Id.* at 65-66 (citing *United States v. Ajmal*, 67 F.3d 12, 15 (2nd Cir. 1995)).

119 *An Interdisciplinary Examination of Juror’s Questioning of Witnesses at Trial*, 38 American Journal of Trial Advocacy 1 (2014).

120 Frank at 11, n.38 (internal citations omitted).

121 Frank at 14.

122 *United States v. Johnson*, 892 F.2d 707, 711 (8th Cir. 1989) (emphasis in original) (internal citation omitted).

123 38 Ariz. St. L.J. ____ (2016) (forthcoming), available at: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2652216.

A substantial minority of members of this Committee believe that there is sufficient controversy in allowing juror questions, and these members do not endorse the recommendation of the entire Committee. In particular, the public defender agencies have observed first-hand, over many years, the practice at work. Their opposition to this recommendation is based not only on the studies, articles, and cases that the Committee has considered, but also on their experiences as indigent criminal defense attorneys. The issue for them is one of fundamental fairness for their clients, in ensuring that they receive a fair trial, which is in turn grounded in the Sixth Amendment concerns articulated in the cases above. For these reasons, the minority view is that the DC benches should not adopt a practice that benches in other jurisdictions have approached, at best, with caution.

EXHIBIT K

CRIMINAL JURY INSTRUCTIONS FOR THE DISTRICT OF COLUMBIA,
INSTRUCTION 1.106, QUESTIONS BY JURORS

1-19

Instruction 1.106

Instruction 1.106 QUESTIONS BY JURORS

Generally, only the lawyers and I ask witnesses questions. Occasionally, however, a juror thinks that an important question has not been asked. As a juror, you must be an impartial judge of the facts, not an advocate for either side in this proceeding. While I am not encouraging any of you to pose questions to the witnesses, if during the course of the trial you feel an important question has not been asked, you may write out that question on a piece of paper. You may not ask a question orally at any time during a trial. In addition, you may not discuss the questions with any fellow jurors or anyone else. You should submit your question to the court after the lawyers are finished with their questioning of the witness, but before the witness leaves the witness stand. Once a witness has left the witness stand and been excused, that witness will not be recalled to respond to a juror's question.

After consulting with the lawyers, I will determine whether the question relates to a fact or facts about which the witness can properly testify. If it is proper, I will ask the question. If I do not ask the question, that means I have decided that the question is not a legally proper one. The juror posing it should not guess or speculate about what the answer might have been, and must not consider the question or discuss it with other jurors during deliberations. If I decide the question relates only to a legal issue, I may decide to wait until final instructions and answer the question then.

Comment:

In the Fifth Edition, the Committee retained the admonition to jurors that they must remain impartial but deleted the rest of the final paragraph of the instruction which had informed the jurors that their questions were only to help understand the testimony, clarify evidence, or seek information; but not to discredit or argue with a witness. The Committee decided that portion of the paragraph was misleading in that it set up a false dichotomy between "getting information" and assessing the credibility of the witness who is providing the information. *See Davis v. Alaska*, 415 U.S. 308, 316 (1974) ("truth" of a witness's testimony is ascertained not only by "delving into the witness' story" but also by assessing whether the witness should be discredited, for reasons of bias or otherwise).

In *Yeager v. Greene*, 502 A.2d 980 (D.C. 1985), the District of Columbia Court of Appeals upheld a trial court's exercise of discretion to permit jurors to pose written questions to witnesses. Thus, a trial court in the District of Columbia Superior Court has discretion to permit jurors to pose written questions to witnesses during trial. Other federal and state courts have also approved this practice. *See* Opinion of Superior Court Judge Henry Greene in *Yeager*, 502 A.2d 980 at n.18; *see generally Plummer v. U.S.*, 870 A.2d 539, 543 (D.C. 2005)

(“procedures used by the trial judge . . . including her explanation of the process to the jurors, were essentially the same as those used by the judge in *Yeager*, and at least implicitly approved by this court”; noting that it might have been better if the court had decided not to ask certain questions but finding no reversible error). The U.S. Court of Appeals for the D.C. Circuit addressed this issue in *U.S. v. Rawlings*, 300 U.S. App. D.C. 380, 522 F.3d 403 (D.C. Cir. 2008), and advised trial judges to permit this practice only sparingly and to consider on a

(Rel. 12-9/2014 Pub.1278)

Instruction 1.106

1-20

case-by-case basis whether and to what extent jury questions are appropriate, balancing the potential benefit of such questions against the dangers.

The Committee recommends that if a juror’s question is posed by the court, the attorneys be permitted to ask follow-up questions.

24 THE DC JURY PROJECT RECOMMENDS THAT POST-TRIAL COMMUNICATIONS AMONG JURORS WILLING TO SPEAK WITH COUNSEL AND THE COURT SHOULD BE ENCOURAGED IN ORDER TO IMPROVE THE ADMINISTRATION OF THE JURY SYSTEM.

Case law and rules of court permit post-trial communications with jurors by counsel and by the court, but the practices differ between the US District Court and the Superior Court. In its 1998 report, *Juries for the Year 2000 and Beyond*, the Council for Court Excellence encouraged the courts to “regularly seek the feedback of jurors” and to tabulate the results for review by judges, jury administrators and court policy makers.”¹²⁴ The 1998 Report also encouraged “trial judges to join jurors at the close of a trial in order personally and informally to thank them for their service, to answer questions about the court and jury system, and to provide assistance for any juror who may have experienced extreme stress caused by the trial.”¹²⁵ In federal court, post-trial communications between jurors and counsel are permitted only when leave of court has been sought and granted.

¹²⁶ By contrast, the Superior Court does not provide a similar rule, and accordingly a different practice has

¹²⁴ Council for Court Excellence, *Juries for the Year 2000 and Beyond* (1998), Recommendation 16.

¹²⁵ Council for Court Excellence, *Juries for the Year 2000 and Beyond* (1998) Recommendation 32

¹²⁶ Local Criminal Rule 24.2(b) of the US District Court provides: (b) *After trial.* After a verdict is rendered or a mistrial is declared but before the jury is discharged, an attorney or party may request leave of Court to speak with members or the jury after their discharge. Upon receiving such a request, the Court shall inform the jury that no juror is required to speak to anyone but that a juror may do so if the juror wishes. If no request to speak with jurors is made before discharge of the jury, no party or attorney shall speak with a juror concerning the case except when permitted by the Court for good cause shown in writing. The Court may grant permission to speak with a juror upon such conditions as it deems appropriate, including but not limited to a requirement that the juror be examined only in the presence of the Court. Local Civil Rule 47.2(b) is identical.

evolved, where some judges note that counsel may speak with jurors after they have been excused if the jurors wish to have such communication whereas others do not discuss the issue. The overwhelming majority of the Committee believes such post-trial communications with jurors can occur without judicial supervision and that such communications should be encouraged, provided that jurors are advised they are free to decline requested interviews. However, a minority of the Committee believes that post-trial communications should have judicial oversight in both courts.

As was true of the 1998 Committee, the current Committee continues to believe that post-trial communications between jurors and the court and counsel can be instructive not only with regard to the particular case but also in a systemic way as jurors can point out problems they encountered that could be ameliorated by further adjustments. Encouragement of post-trial communications involving the court with jurors is also supported by the American Bar Association, but under certain conditions.¹²⁷ The ABA recommended that any discussions between court and jurors following the conclusion of trial and the completion of the jurors’ service be conducted “only on the record and in open court with counsel having the opportunity to be present.”¹²⁸ Although this recommendation pertains to criminal cases, the Committee does not foresee the necessity of having post-trial discussions with the jury on the record in civil or criminal cases, nor does the Committee consider that conversations must take place in the courtroom. Moreover, post-trial communications between jurors and counsel is not covered by the ABA Standards, and the Committee is of the view that these communications may generally take place without judicial supervision unless required by court rule, as in federal court.

But there can be problems with post-verdict communications with jurors in criminal cases, where sentencing takes place months after the verdict is rendered. In *Harris v. United States*, 738 A.2d 269 (DC 1999), the District of Columbia Court of Appeals described a well-intentioned

¹²⁷ ABA Standards for Criminal Justice Discovery and Trial by Jury, 119 (3d ed. 1996); see, also, American Bar Association, *Principles for Juries and Jury Trials*, Principle 18 and associated commentary.

¹²⁸ *Id.* at 227 – Standard 15-4.3

meeting of the trial judge with the jurors following the verdict, the purpose of which was to answer questions the jurors might have had and to determine if any improvements in the system might benefit the jurors. Counsel for the government and the defendant were not invited to participate in the conversation, and through the unpredictable evolution of the discussion, information came to the attention of the trial judge concerning the deliberations. At sentencing, the same trial judge described his conversation with the jurors and sought to assure defense counsel that the communications did not affect his sentencing decision.¹²⁹ Nevertheless, the Court of Appeals concluded that the trial judge, though inadvertently, had violated Canon 3(A)(4) of the ABA Model Code of Judicial Conduct¹³⁰ by having *ex parte* communications with the jurors.

To avoid the problem highlighted by the *Harris* court, the Committee, while encouraging post-trial communications between the court and jurors if they wish to participate in them, recommends that counsel be present during such communications. However, we do not believe it is necessary for such conversations -- or others with counsel and jurors but not the court -- to be on the record nor is it necessary for the trial judge to participate in these discussion, though they may certainly do so.

The Rules of Professional Conduct in force in DC do not preclude post-trial communications with jurors if there is no law, court order or rule barring such communications.¹³¹ Thus, in the Superior Court, where no rule bars post-trial communications between counsel and the jurors, those communications may proceed with those jurors who chose to speak with counsel. This is

true in both civil and criminal cases. As noted above, different Superior Court judges have different practices respecting such communications, with some allowing the communications to occur off the record in the jury room in the presence of both counsel, and others allowing the communications to occur in the courthouse corridors in the presence of one or both counsel. Still others do not express a view about such conversations.

On the other hand, the federal court local criminal rule 24.2 (b) and civil rule 47.2(b), cited above, clearly require a communication with discharged jurors to be preceded by an approved request to the court for leave to undertake such a conversation. The Committee urges federal judges to exercise their discretion by permitting such conversations when requested, and provided that jurors are informed of their right to decline requests for interviews and are cautioned to refrain from discussing the deliberation process.

In any event, courts have validated restrictions on the post-trial communications with jurors, particularly in criminal cases, but with some restrictions. In *United States v. Harrelson*¹³² the Court of Appeals for the Fifth Circuit validated a rule imposing the following conditions on post-trial communications with jurors conducted by the press. There restrictions are sometimes applied by courts to conversations between counsel and jurors. The cautions that the *Harrelson* court recommended follow:

1. No juror has any obligations to speak to any person about this case, and may refuse all interviews or comment.
2. No person may make repeated requests for interviews or questioning after a juror has expressed his or her desire not to be interviewed.
3. No interviewer may inquire into the specific vote of any juror other than the juror being interviewed.
4. No interview may take place until each juror in this case has received a copy of this order, mailed simultaneously with the entry of this order.¹³³

129 738 A.2d 269, 276-278

130 This Canon provides: "A judge should accord to every person who is legally interested in a proceeding or his [or her] lawyer, full right to be heard according to law, and, except as authorized by law, neither initiate nor consider *ex parte* or other communications concerning a pending or impending proceeding." See also, *Foster v. United States*, 615 A.2d 213, 216 (DC 1992)

131 Rule 3.5 of the Rules of Professional Conduct provides, in pertinent part that "A lawyer shall not... (c) Communicate, either *ex parte* or which opposing counsel, with a juror or prospective juror after discharge of the jury if: (1) The communication is prohibited by law or court order; (2) The juror or prospective juror has made known to the lawyer a desire not to communicate or (3) The communication involves misrepresentation, coercion, duress or harassment..."

132 713 F.2d 1114 (5th Cir. 1983)

133 *United States v. Harrelson*, 713 F.2d 1114, 1116 (5th Cir. 1983)

The Committee does not believe that a *Harrelson*-type order is necessary for post-trial counsel/juror communications in the routine case and that such an order be issued only in cases that attract publicity or where the press has expressed a serious interest.

Moreover, there are sound reasons to caution counsel to avoid seeking to gain information from jurors aimed at impeaching the verdict by casting doubt on the jury's deliberations, as those are considered sacrosanct.¹³⁴

Taking these cautions into consideration, the Committee is of the view that in civil and criminal cases in the Superior Court, post-trial communications between counsel and jurors who wish to discuss the trial, but without inquiring specifically into the deliberations should be encouraged. In addition, communications between willing jurors and the Court, in the presence of counsel, aimed at determining jurors' perception of their experience and how those experiences could be improved is healthy and should be approved.

¹³⁴ See. *Tanner v. United States*, 483 US 107, 117 S.Ct. 2739 (1987); *Warger v. Shauers*, 574 US ___, 135 S.Ct. 521 (2014). Also, note that Rule 606(b)(1) of the Federal Rules of Evidence precludes a juror from testifying "about any statement made or incident that occurred during the jury's deliberations, the effect of anything on that juror's or another juror's vote or any juror's mental processes concerning the verdict or indictment." Additionally, the Court may not consider an affidavit treating such matters.

25 THE DC JURY PROJECT RECOMMENDS THAT CCE ADVOCATE FOR THE IMPLEMENTATION OF THE RECOMMENDATIONS IN THIS REPORT BY CONDUCTING AN EDUCATION CAMPAIGN THAT PUBLICIZES THE REPORT'S FINDINGS, ENCOURAGES CITIZENS TO SERVE ON JURIES, AND IMPROVES THE PERCEPTION AND REALITY OF JURY SERVICE.

The DC Jury Project recommends that upon publication of this report, CCE conduct an education and implementation campaign. The publicity and outreach efforts should focus on at least two areas: juror appreciation and promoting service.

Juror Appreciation

CCE should spearhead a variety of initiatives designed to demonstrate appreciation for jurors and jury service. These efforts could include videos of former jurors, civic and community leaders, and members of the judiciary talking about jury service. Videos would be made available online, on television, at libraries, schools, and other venues. Posters of a similar nature describing the importance of jury service and its connection to our Constitution could also be distributed. Additionally, forums and panel discussions with former jurors should be held. Finally, the publicity and outreach plan should strive to think creatively, and to consider not only raising the profile of jury service in the community but also generating tokens of appreciation for jurors, such as free or discounted meals with proof of service from corporate sponsors.

Promoting Service

CCE should also develop education initiatives designed to raise awareness of the important constitutional and civic nature of jury service. To that end, courts could host open houses and moderated panels regarding jury service, and there could be special programming at schools. Additionally, posters and other materials can be created, such as an "introduction to civic life" fact sheet for graduating high school students.

Social Media

Outreach efforts should make use of social media to promote jury service and raise awareness. Campaigns could feature #JurorVoices, #Iserved, service by celebrities and recognizable public servants, and first-person articles about service.

Strategic Partners

In implementation and education efforts, the assistance of CCE's partners will be essential. CCE should work with the courts, the DC Council, non-profits focused on civics, WMATA, local law schools and universities, pro-jury organizations like Save Our Juries (ABOTA), local schools, the American Bar Association, and others.

Implementation

The DC Jury Project recommends that CCE work with the project Committee and its partners to determine an outreach and community education plan that includes the order and methodology for raising awareness and interest and for implementing any of the Committee's recommendations.

Report Roll-Out Events

The publication of this report should coincide with a roll-out campaign designed to raise awareness of the report's recommendations, encourage discussion of jury service, and generate media coverage of the Committee's work. CCE should organize a media strategy, panel discussions, and events for the roll-out campaign.

ISSUES TO WATCH

This section includes ideas that relate directly to the modern realities of jury service, but about which the Committee is not yet able to make recommendations. These ideas relate to the core concerns of the Committee – expanding the jury pool, making juries more inclusive, and/or making the experience of service more enjoyable – but more information is needed, or the situation is changing and uncertain, or there is some other reason why making a recommendation at this time would be imprudent.

Service by Non-Citizens

Over the last several decades, the immigrant population in the United States has been steadily growing, resulting in an increase in the number of legal non-citizens living in DC and elsewhere. The inclusion of legal permanent residents in the jury pool could make the pool more representative. It is also potentially in line with the District's tradition of inclusiveness in democratic acts, particularly given recent movements relating to voting rights for legal permanent residents and the District's history of allowing people with felony criminal records to vote.¹³⁵ In 2013, the California legislature passed a bill that would have allowed legal permanent residents to serve on juries.¹³⁶ While the bill was ultimately vetoed by Governor Brown, his veto did not address the substantive arguments put forth by the bill's proponents.¹³⁷ However, unlike in California, the number of legal permanent residents living in DC is relatively small. In 2012, the Department of Homeland Security calculated that 2,811 legal

permanent residents declared the District of Columbia as their place of residence.¹³⁸

The Committee believes that, given the relatively small number of legal permanent residents in the District, and the Constitutional concerns raised by many Committee members, it would be imprudent to recommend any action on this issue without more study. As the demographics of the District change, the Committee believes that this issue will be worth watching.

Juror Security Line

The Committee has become aware of other jurisdictions that grant jurors access to a special security line or otherwise lets jurors bypass security checks at the courthouse entrance. The Committee agrees that jurors should be afforded such small conveniences, both as a means to make serving more pleasant and to minimize trial delays.

The Committee cannot presently recommend this practice because of the current physical layout of the Superior Court security lines and the inherent difficulties and costs associated with an attempt to re-organize them. The Committee, therefore, does not make any recommendation on this topic presently, but does recommend that this issue not be forgotten as the Courts renovate their facilities or otherwise reassess their security procedures.

Implicit Bias

Implicit bias refers to the positive or negative unconscious racial stereotypes that impact the human decision-making process.¹³⁹ Implicit bias is present to some degree in all people, regardless of their individual demographics.¹⁴⁰ These stereotypes are ingrained in people through their everyday lives via media sources,

¹³⁵ There is a movement in DC and other jurisdictions to grant legal permanent residents the right to vote. http://www.washingtonpost.com/local/should-legal-immigrants-have-voting-rights/contentious-issue-comes-to-dc-other-cities/2015/02/09/85072440-ab0f-11e4-ad71-7b9eba0f87d6_story.html. Per the DC Code, voting rights are restored upon completion of sentencing requirements. DC Code § 11-1906(B). <http://law.justia.com/codes/district-of-columbia/2013/division-ii/title-11/chapter-19/section-11-1906/>.

¹³⁶ CA AB-1401 Jury duty: eligibility. http://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=201320140AB1401.

¹³⁷ The veto message, in nearly its entirety, reads: "Jury service, like voting, is quintessentially a prerogative and responsibility of citizenship. This bill would permit lawful permanent residents who are not citizens to serve on a jury. I don't think that's right." Governor Brown's veto message. http://gov.ca.gov/docs/AB_1401_2013_Veto_Message.pdf.

¹³⁸ US Department of Homeland Security. 2012 Yearbook of Immigration Statistics. https://www.dhs.gov/sites/default/files/publications/ois_yb_2012.pdf.

¹³⁹ Anthony G. Greenwald and Linda Hamilton Krieger. *Implicit Bias: Scientific Foundations*. California Law Review. <http://perma.cc/SN25-QZXF>.

¹⁴⁰ *Id.*

cultural beliefs, and family norms, among other influences.¹⁴¹ These biases are so automatic that they are activated unconsciously.¹⁴² The Committee recognizes that implicit biases may play a role in jury trials. For example, several studies have shown that criminal defendants with afro-centric facial features generally receive more severe punishments as compared to other criminal defendants.¹⁴³ Another study showed that ambiguous actions by African Americans were interpreted more negatively than the same actions by other races, which has implications for juror decision-making.¹⁴⁴

The Committee believes that to formulate a recommendation on this topic would require more information and time than is presently available. In particular, any recommendation would require a thorough review of the scientific literature on both the phenomenon and potential fixes, neither of which is fully developed at this time.

Group Decision-Making Techniques

Making a decision as a group can be difficult. This is especially true for juries, where the issues being discussed are complicated, the repercussions of the group's decision are serious, and the people conducting the discussion are strangers who are often untrained in decision-making techniques. As such, some social scientists and legal scholars have begun advocating for courts to take a more active role in training jurors about group decision-making techniques.¹⁴⁵ These advocates

argue that it is important for jurors to speak about group decision-making strategies in an effort to understand the goals and tendencies of all group members and to establish norms and rules for their discussion. Otherwise, minority views may be unadvanced or even forgotten if not directly addressed.¹⁴⁶ This is especially common in situations where the group never discusses decision-making strategies for the group until a norm has been violated.¹⁴⁷ Scholars have also conducted preliminary research that indicates that courts should encourage jurors to use an evidence-driven approach instead of a verdict-driven approach in deliberations. Evidence-driven deliberations exist when jurors focus on the story of the trial and the best account of facts. Verdict-driven deliberations entail jurors stating their individual verdicts prior to beginning discussion.¹⁴⁸ These studies suggest that an evidence-driven, rather than verdict driven, approach would be more beneficial to trial outcomes because jurors focus on all of the evidence to compile a story.¹⁴⁹ These same studies discovered that most juries conducted verdict-driven deliberations.¹⁵⁰

At this time, the Committee believes that more study on this topic is needed. There is considerable research into group decision-making techniques in other contexts, but examinations of juries specifically are still preliminary and small in number. The Committee believes that there may be merit to the idea that jurors could benefit from being provided guidance in how to make their decisions, either through the judge, a handout describing decision-making techniques, or some sort of flow chart. However, the Committee believes that research into the best method for providing this guidance is still preliminary, and it would be premature to advocate for a particular method at this time.

141 Northwestern University Law Review. *Hidden Racial Bias: Why We Need to Talk with Jurors About Ferguson*. <http://colloquy.law.northwestern.edu/main/2015/02/hidden-racial-bias.html>.

142 Isabel Wilkerson. *No, You're Not Imagining It*. <https://www.questia.com/read/1P3-3060466141/no-you-re-not-imagining-it> (quoting leading implicit bias researcher David R. Williams that "this bias is so automatic that it kicks in before a person is ever aware it exists").

143 Jerry Kang. *Implicit Bias A Primer for Courts*. http://www.americanbar.org/content/dam/aba/migrated/sections/criminaljustice/PublicDocuments/unit_3_kang.authcheckdam.pdf.

144 *Id.* at 4.

145 Indiana Law Review. *All Together Now: Using Principles of Group Dynamics to Train Better Jurors*. <http://scholars.law.unlv.edu/cgi/viewcontent.cgi?article=1919&context=facpub>; Jerry J. Fang. *12 Confused Men: Using Flowchart Verdict Sheets to Mitigate Inconsistent Civil Verdicts*. Full PDF available upon request; Joan Kessler. *The Social Psychology of Jury Deliberations*. http://joanbkessler.com/images/SOCIAL_PSYCHOLOGY_OF_JURY.PDF.

146 Indiana Law Review. *All Together Now: Using Principles of Group Dynamics to Train Better Jurors*. <http://scholars.law.unlv.edu/cgi/viewcontent.cgi?article=1919&context=facpub>

147 *Id.* at 452.

148 National Center for State Courts. *Are Hung Juries a Problem?* <http://www.ncsc-jurystudies.org/What-We-Do/~media/Microsites/Files/CJS/What%20We%20Do/Are%20Hung%20Juries%20A%20Problem.ashx>.

149 *Id.* at 13.

150 *Id.*

DATA COLLECTION AND METHODOLOGY

Research Design

This report represents the broadest and deepest data collection effort about jury service in DC in decades. The data include surveys of those summoned for jury service, those ordered to show cause for failure to appear, judges, attorneys, and employers. The data also includes roundtable discussions with District and Superior Court judges, focus group discussions with jurors, and observations of voir dire and trial proceedings at the District and Superior Court. Finally, best practices and current procedures were researched through discussions with jury office administrators, attendance at jury conferences, an extensive literature review, and other research activities. The data were collected over a one year period, from July 2014 to July 2015, and build on CCE's and the DC Jury Project Committee's existing knowledge, derived from years of jury reform work and from Committee members' experiences as trial attorneys, judges, consultants, former jurors, and members of the original Jury Project Committee in 1998.

Survey Methodology

The DC Jury Project Committee created nine surveys that were mostly quantitative in nature, but did allow for some open ended answers.

At the District Court, prospective jurors present for voir dire and selected jurors were surveyed in separate surveys, per the Court's request. The Court distributed the surveys at the courthouse once the prospective juror or juror had completely finished their service and were no longer subject to being on call. The Court also placed a link to those surveys on their website. Judges at the District Court were surveyed twice via emailed link, with the second survey as a follow-up containing additional issues raised during DC Jury Project Committee meetings. The District Court provided helpful feedback on the questions used to survey judges, prospective jurors, and jurors. The Court also granted requests to send reminder emails about the survey to judges.

At the Superior Court, those summoned for jury service were surveyed in person by CCE staff and interns. The Court granted a one month period during which CCE conducted the survey.

Judges at the Superior Court were surveyed only once via emailed link. Requests to send a reminder e-mail were declined, and the Court requested that several questions be omitted from the surveys.

In addition, the Superior Court granted a request to survey those appearing at an Order to Show Cause Hearing. CCE staff and interns conducted the survey among hearing attendees once they were released by replicating the procedure described above to survey jurors.

Attorneys were surveyed via emailed link. DC Jury Project Committee members, the CCE Board of Directors, and various bar associations and email list servers were utilized to attain a wide distribution.

Employers were surveyed via emailed link. DC Jury Project Committee members and the CCE Board of Directors were both asked to distribute this survey to their networks. Various human resources associations were also asked, but declined. Several attempts to receive assistance from the DC Chamber of Commerce were similarly unsuccessful.

Focus Groups and Roundtables Methodology

The DC Jury Project Committee convened three juror focus groups over lunch on three separate days, hosted by several Committee members' law firms. The Committee developed several pages of questions on topics of interest to all three Working Groups. A Committee member served as a moderator at each session, with CCE staff on hand to take notes. One session was video recorded, with the consent of the participants. Participants agreed that the Committee could quote them in the report anonymously, but any quotes given with attribution required permission.

Roundtable discussions with judges at the District and Superior Court were arranged with the assistance of the Chief Judges of both Courts and their staffs. As with the

juror focus groups, the Committee developed several pages of questions on topics of interest to all three Working Groups. Two Committee members served as moderators for each session, with CCE staff on hand to take notes. The roundtables were held over lunchtime at both courts, twice at the District Court and once at the Superior Court.

Court Observation Methodology

The Committee created two court observation forms, one for observing voir dire and one for observing a trial. The forms were designed to capture quantitative and qualitative information. Committee members and court administrators provided CCE staff with information on upcoming trials, and a team of student volunteers from George Washington University Law School, the University of the District of Columbia David A. Clarke School of Law, and Howard University Law School, as well as CCE interns and the occasional DC Jury Project Committee member, conducted observations. Observers were instructed to not observe the same proceeding. Observations at the Superior Court were usually arranged by sending a volunteer to the courthouse in the morning to check the trial schedule, as only the criminal calendar is available online, and trials are often rescheduled. The District Court trial schedule is published on-line, but it too is subject to change at the last minute, so volunteers were instructed to check the calendar frequently online and at the courthouse.

Methodological Considerations

The Committee believes that, taken in conjunction with research and personal experiences, it can make generalizable assumptions about jury service in the District of Columbia from this data, but recognizes that more data would have been useful. In particular, it would have been helpful to have had more time to survey jurors at the Superior Court, where the most jury trials occur. The Committee similarly wishes that it had been able to observe more show cause hearings. The Committee did its best to conduct a broad survey of employers, but recognizes that the responses over-represent the legal industry. Finally, regarding focus groups, roundtable discussions, and court observations, the Committee again believes that these were useful and informative undertakings, but with more time could have perhaps been conducted in greater number and with more participants.

SUMMARY OF DATA COLLECTION

Superior Court Respondents

Jurors and Prospective Jurors: 573

Judges: 17

Order to Show Cause Hearing Attendees: 18

District Court Respondents

Selected Jurors and Prospective Jurors Not Selected during Voir Dire: 66

Judges: 17

Follow Up Survey of Judges Regarding Jurors Asking Questions and Post-Trial Communication: 9

Judge Roundtables: 2

Additional Respondents

Trial Attorneys: 183

DC Area Employers: 72

Juror Focus Groups: 3

Court Observations

Trials: 24

Voir Dire Proceedings: 26

REPRESENTATIVE SURVEY INSTRUMENT

DC Superior Court Jury Service Survey (Combined)

Thank you for taking the time to complete this brief anonymous survey about your experience with jury service in the DC Superior Court. Your response will be collected and analyzed by the Council for Court Excellence (CCE), a 32-year-old DC non-profit that promotes justice system reform.

The CCE is not a government agency and will not share your personal information with anyone.

Name (optional): _____

1. Do you recall your date(s) of service?

☐ Yes (please indicate the dates: _____) ☐ No

2. Using the scale below, please indicate your agreement or disagreement for each statement.

	Completely Agree	Agree	Neither agree/ disagree	Disagree	Completely disagree
I expected jury service to be inconvenient to me	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
I thought that jury service would be a financial burden	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
I thought that jury service would interfere with my work	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
I thought jury service would be boring	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

3. Does your employer have an established policy for jury service?

☐ Yes ☐ No ☐ Don't know

4. Does your employer continue to pay you while you are on jury duty?

☐ Yes ☐ No ☐ Don't know

5. Were you satisfied with the compensation you received for jury service?

☐ Yes ☐ No

6. How many days did you report to the courthouse? _____

7. How many times were you sent to a courtroom for jury selection? _____

8. When sent to a courtroom, did the judge explain the jury selection process clearly?

(If sent multiple times for jury selection, please indicate your response for each jury selection you attended).

Jury Selection 1	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Don't know/don't recall
Jury Selection 2	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Don't know/don't recall
Jury Selection 3	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Don't know/don't recall

9. Were you in jury selection for a civil or criminal case?

(If sent multiple times, please indicate the number of times for each category).

☐ Criminal _____ ☐ Civil _____ ☐ Don't know

10. Using the scale below, indicate your level of satisfaction or dissatisfaction:

	Completely Satisfied	Satisfied	Neither Satisfied/ dissatisfied	Dissatisfied	Completely Dissatisfied
Staff assistance	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Adequate space in juror registration area	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Physical comfort of Jurors Lounge	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Treatment by court personnel	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Online eJuror services system	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Juror orientation video	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Information on delays and scheduling	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Information on transportation, parking, and directions	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>



If you **have not served** on a jury trial, please **SKIP to question #17**.

If you **have served** on a jury trial, please **continue** to answer all questions.

11. The following practices are used by some judges. Did the judge allow jurors to:

- Take notes during the trial ☐ Yes ☐ No ☐ Don't know
- Submit questions to witnesses during trial ☐ Yes ☐ No ☐ Don't know
- Submit questions during deliberation ☐ Yes ☐ No ☐ Don't know

12. During the trial, did the judge tell you what the schedule would be, and to follow that schedule?

- ☐ Yes ☐ No ☐ Don't know

13. If your jury was having trouble reaching a verdict, did the judge:

- ☐ Speak to you ☐ Permit the lawyers to restate their closing arguments ☐ Don't know

14. Did the judge speak to you after the jury finished its deliberations?

- ☐ Yes ☐ No ☐ Don't know

15. Did you have any difficulty:

- Understanding the evidence of the case? ☐ Yes ☐ No ☐ Don't know
- Understanding instructions by the judge? ☐ Yes ☐ No ☐ Don't know

16. Did the judge tell you what to do if a member of the media contacted you?

- ☐ Yes ☐ No ☐ Don't know

17. Do you use social media (e.g., Facebook, Twitter, Instagram, LinkedIn, etc.)?

- ☐ Yes ☐ No

18. If yes, please indicate which social media platforms that you use.

- ☐ Facebook ☐ Twitter ☐ Instagram ☐ LinkedIn ☐ Other (please specify) _____

19. Using the scale below, indicate your level of agreement or disagreement for each statement.

	Completely Agree	Agree	Neither agree/ disagree	Disagree	Completely disagree
In general, my attitude toward jury service is favorable	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
The jury system is an efficient process	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
If summoned in the future, I would be eager to serve	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Jury service was inconvenient to me	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Jury service was a financial burden for me	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Jury service interfered with my work	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

20. Would you be willing to participate in a focus group led by the Council for Court Excellence (CCE) to discuss your jury experience?

☐ Yes ☐ No

If yes, please provide:

Name _____

Email _____ Phone _____

Demographics (optional)—please check the answer that fits you best.

21. Gender ☐ Male ☐ Female

22. Age

☐ 18-22 ☐ 23-32 ☐ 33-42 ☐ 43-52 ☐ 53-62 ☐ 63-72 ☐ Over 72

23. Marital Status

☐ Single ☐ Married ☐ Divorced ☐ Widowed

24. Ethnicity

☐ Hispanic or Latino ☐ Not Hispanic or Latino

25. Race

☐ American Indian or Alaska Native ☐ Asian ☐ Black or African American
☐ White ☐ Native Hawaiian or Pacific Islander
☐ Other (please specify) _____

26. How many years of school have you completed?

☐ Less than a high school degree ☐ High School degree or GED
☐ One to three years of college ☐ Associate's degree
☐ Bachelor's degree or higher

27. What was your approximate household income in 2013?

☐ Under \$16,500 (min. wage of \$8.25/hour or less) ☐ \$50,001 - \$70,000
☐ \$16,501- \$30,000 (min. wage to \$15/hour) ☐ \$70,001 - \$120,000
☐ \$30,001- \$50,000 (hourly wage from \$15 to \$25) ☐ Over \$120,000

28. Job Status

- | | | |
|---|---|--|
| <input type="checkbox"/> Employed full-time | <input type="checkbox"/> Employed part-time | <input type="checkbox"/> Self-employed |
| <input type="checkbox"/> Student | <input type="checkbox"/> Unemployed | <input type="checkbox"/> Retired |

For questions, please contact Zachary Zarnow

Phone: 202-785-5917

Email: zarnow@courtexcellence.org

Council for Court Excellence (CCE)

1111 14th Street, NW, Suite 500

Washington, DC 20005

Website: www.courtexcellence.org

SUPERIOR COURT SURVEY RESPONDENTS

DC Superior Court Jurors and Prospective Jurors

Demographics

DEMOGRAPHIC CHARACTERISTICS	TRIAL JURORS	JURY PANEL	JURY POOL
N =	97	408	572
GENDER			
Male	46.4%	35.5%	35.5%
Female	43.3%	51.5%	53.1%
Unknown	10.3%	12.9%	11.2%
AGE			
18-22	6.2%	2.7%	3.1%
23-32	29.9%	26.7%	27.6%
33-42	19.6%	21.1%	20.8%
43-52	15.5%	14.5%	14.5%
53-62	14.4%	16.4%	16.8%
63-72	9.3%	8.3%	7.7%
Over 72	0.0%	1.5%	1.0%
Unknown	6.2%	9.8%	8.4%
MARITAL STATUS			
Single	61.9%	47.1%	49.5%
Married	24.7%	36.5%	35.5%
Divorced	5.2%	4.9%	5.1%
Widowed	2.1%	1.7%	1.6%
Unknown	6.2%	9.8%	8.4%
Ethnicity			
Hispanic/Latino	4.1%	4.2%	4.5%
Not Hispanic/Latino	51.6%	53.9%	55.1%
Unknown	44.3%	41.9%	40.2%
RACE			
White	41.2%	55.4%	55.2%
Native American	0.0%	0.7%	0.9%
Asian	5.2%	2.9%	2.8%
Black	38.1%	23.3%	25.2%
HPI	1.0%	0.5%	0.5%
Other	2.1%	2.7%	2.1%

Unknown	12.4%	14.2%	12.9%
EDUCATION			
Less than HS	3.1%	1.5%	1.6%
HS or GED	12.4%	6.1%	7.0%
1 to 3 Years College	12.4%	7.6%	8.0%
AA/AS Degree	3.1%	2.5%	2.3%
BA/BS or Higher	61.9%	73.0%	73.1%
Unknown	7.2%	9.3%	8.0%
HOUSEHOLD INCOME			
Under \$16,500	8.2%	3.9%	4.2%
\$16,501 to \$30,000	7.2%	4.7%	4.9%
\$30,001 to \$50,000	17.5%	11.5%	11.7%
\$50,001 to \$70,000	13.4%	9.1%	10.5%
\$70,001 to \$120,000	21.6%	21.6%	22.6%
More than \$120,000	19.6%	33.3%	32.2%
Unknown	12.4%	15.9%	14.0%
EMPLOYMENT STATUS			
Unemployed	7.2%	5.6%	5.4%
Student	6.2%	4.2%	4.4%
Employed Part time	4.1%	3.7%	4.2%
Employed Fulltime	63.9%	65.7%	65.0%
Self-employed	4.1%	5.6%	6.5%
Retired	7.2%	6.1%	5.9%
Unknown	7.2%	9.1%	8.6%
SOCIAL MEDIA USE			
	62.8%	74.1%	73.4%

Expectations

	Completely Agree / Agree	Neutral	Disagree / Completely Disagree
I expected jury service to be inconvenient	62.4%	19.8%	17.7%
I thought jury service would be a financial burden	17.3%	19.8%	62.9%
I thought jury service would interfere with work	61.5%	11.5%	26.6%
I thought jury service would be boring	42.8%	25.0%	31.9%

Notes: Compared to persons not selected as trial jurors, persons selected were marginally less likely to agree that jury service would be inconvenient and significantly less likely to agree that it would interfere with work. Otherwise, there was no difference between persons selected and not selected.

Employer Policies (Does your employer have a jury service policy?)

Percent of Respondents Answering "Yes"

	Employment Status		
	Part Time (n=24)	Fulltime (n=371)	Self-Employed (n=37)
Employer has jury service policy	25.0%	79.6%	16.2%
Employer pays for jury service	29.2%	86.8%	16.2%
Satisfied with compensation	37.5%	68.5%	51.4%

Trial Practices

	Civil Trials (n=23)	Criminal Trials (n=66)
Judge permitted juror notetaking	47.8%	53.0%
Judge permitted juror questions to witnesses	4.3%	12.1%
Judge permitted juror questions during deliberations	39.1%	31.8%
Judge followed schedule	56.5%	69.7%
Judge spoke with jury after verdict	30.4%	36.4%
Difficulty with evidence	17.4%	6.1%
Difficulty with instructions	4.3%	9.1%
Guidance on media contact	8.7%	30.3%
Judge assisted with jury deadlock by ...		
Speaking to jury	60.9%	34.8%
Permitting lawyers to restate closing arguments	13.0%	6.1%

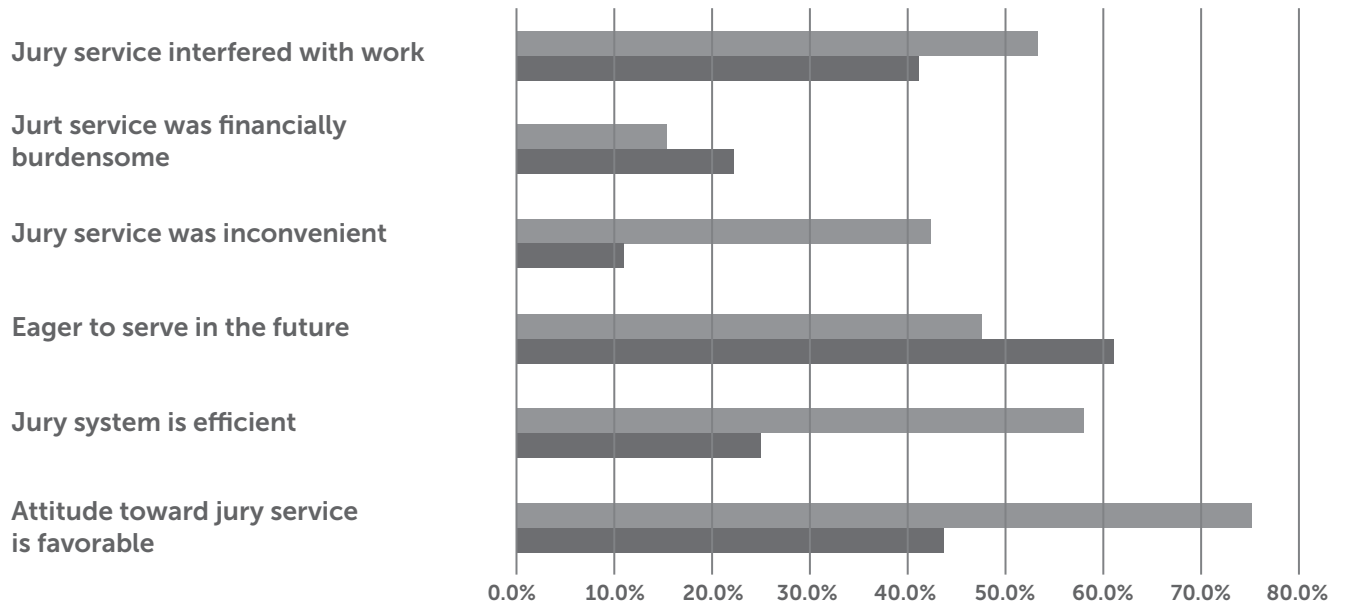
Experience Serving

	Completely Agree / Agree	Neutral	Disagree / Completely Disagree
Attitude toward jury service is favorable	75.2%	16.1%	8.4%
Jury system is efficient	58.2%	24.0%	17.8%
Eager to serve in the future	47.6%	34.0%	18.3%
Jury service was inconvenient	42.3%	27.5%	30.2%
Jury service was financially burdensome	15.4%	21.0%	63.6%
Jury service interfered with work	53.5%	15.3%	31.2%

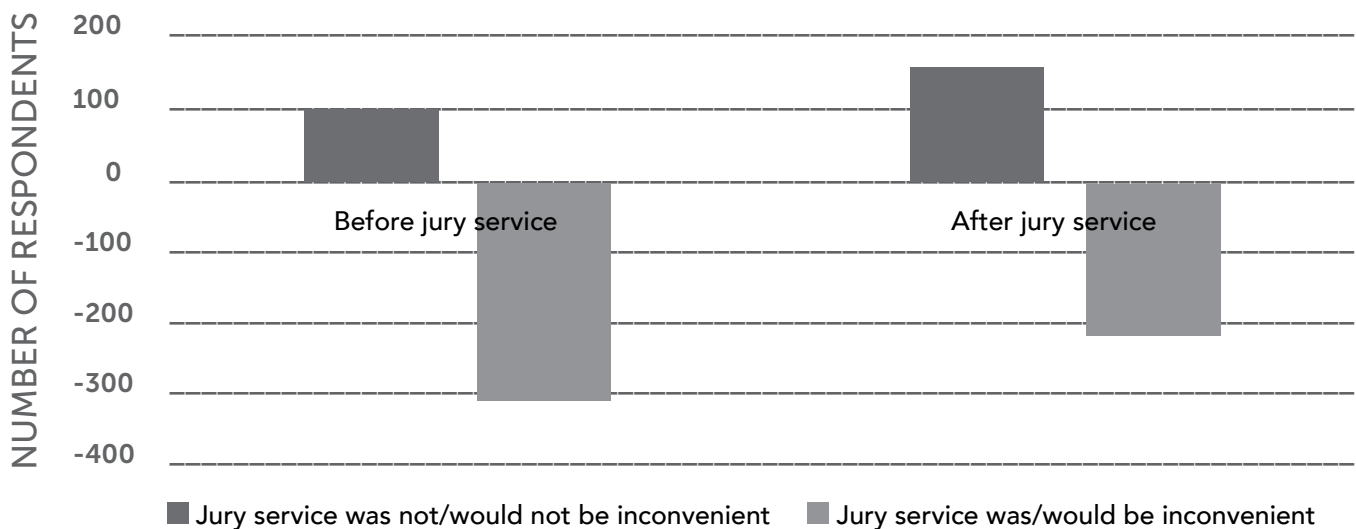
Note: Persons selected as trial jurors were significantly more likely to view the jury system as efficient, and significantly more likely to report that jury service was financially burdensome. There were no other statistically measurable differences between trial jurors and persons not selected as trial jurors.

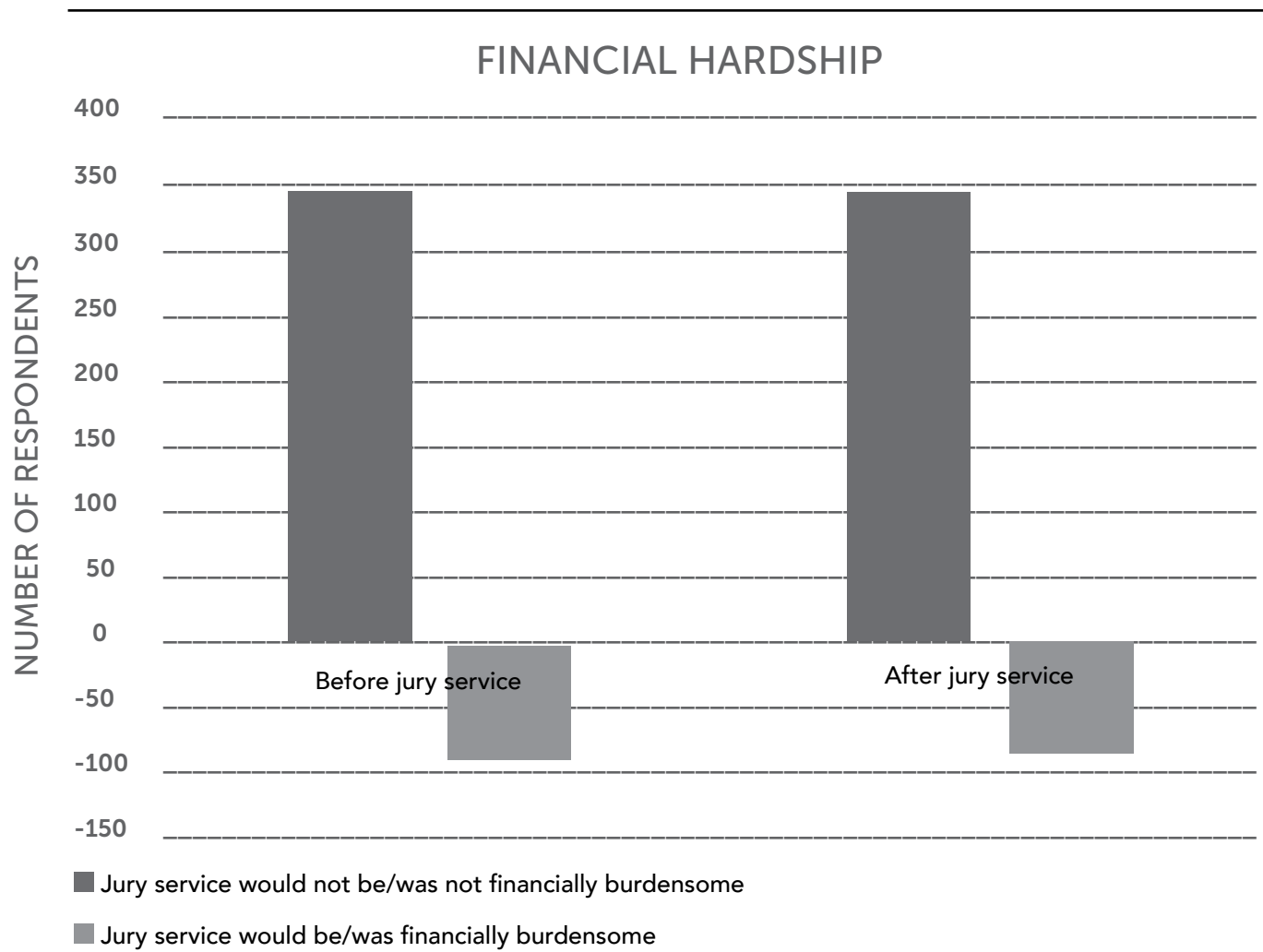
Attitudinal Changes

PERCENT OF JURORS AGREEING OR STRONGLY AGREEING

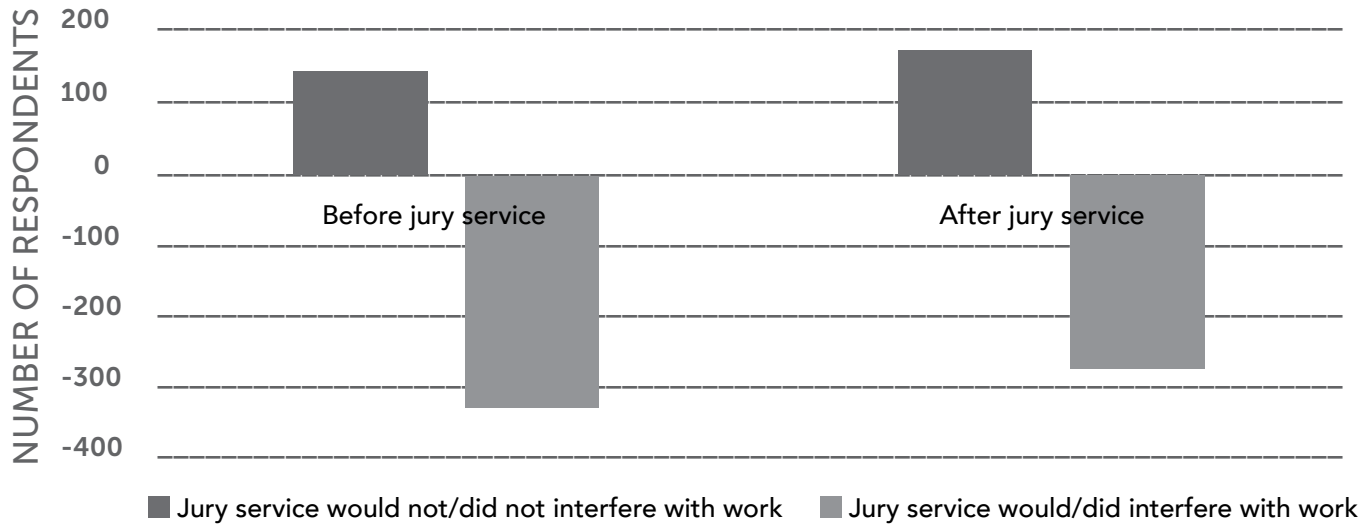


CONVENIENCE OF JURY SERVICE

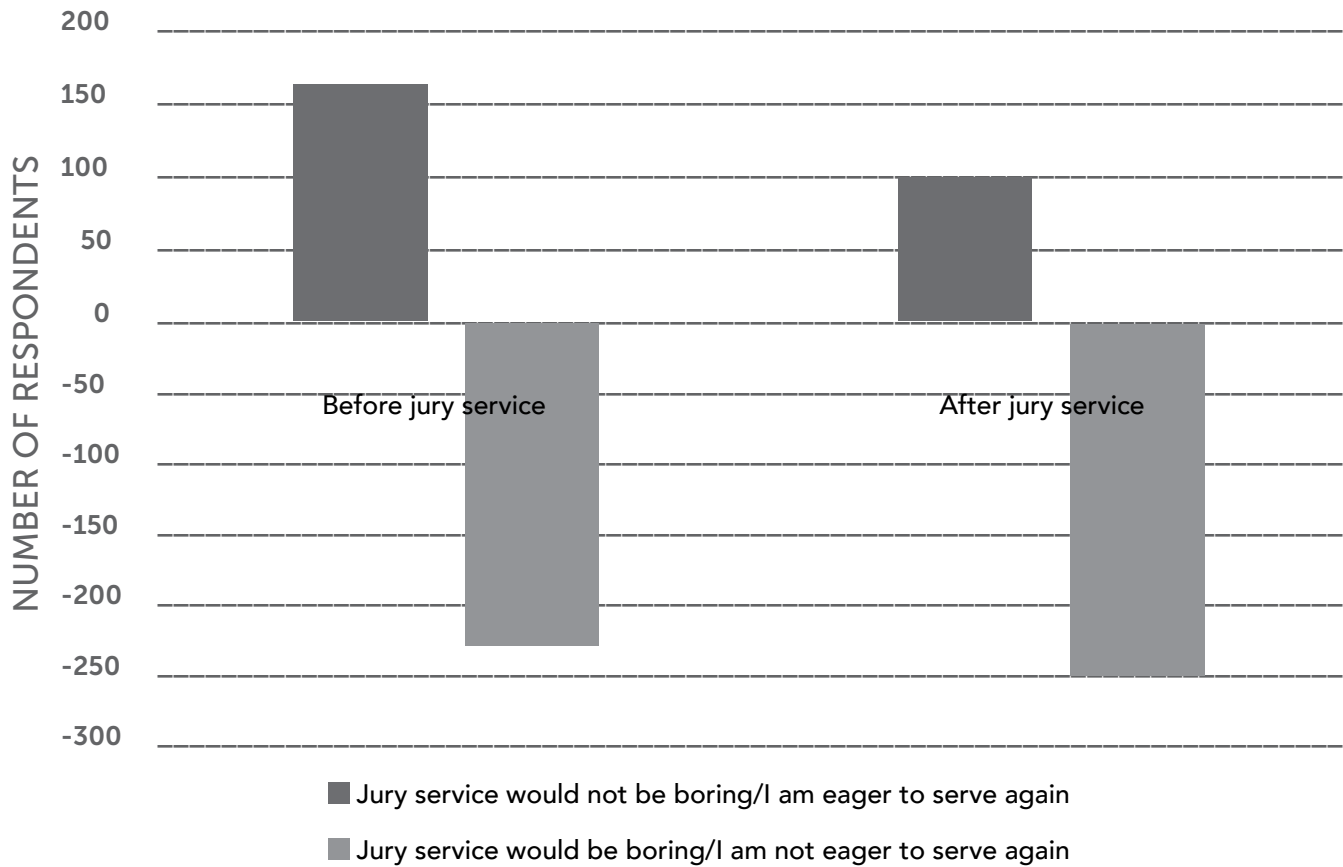




WORK DISRUPTION



JURY SERVICE IS BORING



Juror Ratings

	Completely satisfied / Satisfied	Neither Satisfied nor Dissatisfied	Dissatisfied / Completely Dissatisfied
Staff assistance	93.10%	4.10%	2.80%
Juror registration area	90.8%	5.5%	3.7%
Jurors' Lounge	81.6%	10.6%	7.8%
Treatment by court personnel	94.4%	3.7%	1.9%
Online eJuror system	71.4%	22.8%	5.8%
Orientation video	71.1%	21.2%	7.5%
Information on delays/scheduling	74.2%	21.9%	4.0%
Information on transportation/parking and directions	75.1%	20.7%	4.3%

Note: no difference in satisfaction rates based on whether respondent was sent to a courtroom for voir dire or whether the respondent was selected as a trial juror.

Superior Court Judges

Please indicate whether the following jury practices were used in your last trial:

Answer Options	Response Percent	Response Count
Jurors were provided with note-taking materials by the court	93.8%	15
Jurors were provided with exhibit notebooks containing descriptions of trial exhibits	18.8%	3
Jurors were permitted to ask questions of witnesses	25.0%	4
Jurors were given a written copy of the jury instructions	93.8%	15
answered question		16
skipped question		1

Superior Court Order to Show Cause Hearing Participants

Your feelings toward attendance: Why did you miss jury service?

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	22 Other	7	38.9	38.9	38.9
	7 Too busy at work	2	11.1	11.1	50.0
	9 Personal illness	2	11.1	11.1	61.1
	2 Forgot	1	5.6	5.6	66.7
	4 Family illness	1	5.6	5.6	72.2
	10 Looking for work	1	5.6	5.6	77.8
	11 Lack of child care	1	5.6	5.6	83.3
	14 Lack of transportation	1	5.6	5.6	88.9
	17 Unaware of responsibilities	1	5.6	5.6	94.4
	21 More than one reason	1	5.6	5.6	100.0
	Total	18	100.0	100.0	

Your feelings toward attendance: Comments

		Frequency	Percent	Valid Per- cent	Cumulative Per- cent
Valid		10	55.6	55.6	55.6
	"I Forgot"	1	5.6	5.6	61.1
	"Rescheduled - Who arrived was not on list"	1	5.6	5.6	66.7
	"School"	1	5.6	5.6	72.2
	"Tried to defer. Told I couldn't until I was accepted"	1	5.6	5.6	77.8
	Change of Address	1	5.6	5.6	83.3
	Didn't Receive Notice	1	5.6	5.6	88.9
	Maternity Leave - Breastfeeding	1	5.6	5.6	94.4
	Misinterpreted Summons	1	5.6	5.6	100.0
	Total	18	100.0	100.0	

Order to Show Cause Hearing participants were more likely than surveyed Superior Court jurors to say that jury service interfered with work or was inconvenient, and they were less likely to say that they were eager to serve in the future. However, they were also more likely to say that jury service was efficient, that they had a favorable attitude toward jury service, and that they were less likely to say that jury service was financially burdensome. These findings are surprising, but given the small sample size of Order to Show Cause Hearing participants these data might just reflect the idiosyncratic views of the respondents.

US DISTRICT COURT FOR DC

Selected Jurors and Prospective Jurors Not Selected during Voir Dire

Demographics

DEMOGRAPHIC CHARACTERISTICS	TRIAL JURORS
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N = 66

GENDER

Male	30.3%
Female	39.1%
Unknown	30.3%

AGE

18-22	0.0%
23-32	12.1%
33-42	16.7%
43-52	15.2%
53-62	12.1%
63-72	10.6%
Over 72	3.0%
Unknown	30.3%

MARITAL STATUS

Single	28.8%
Married	28.8%
Divorced	6.1%
Widowed	1.5%
Unknown	34.8%

ETHNICITY

Hispanic/Latino	4.5%
Not Hispanic/Latino	40.9%
Unknown	54.5%

RACE

White	27.3%
Native American	0.0%
Asian	6.1%
Black	28.8%
HPI	1.8%
Other	3.0%
Unknown	33.3%

EDUCATION

Less than HS	0.0%
HS or GED	6.1%
1 to 3 Years College	6.1%
AA/AS Degree	4.5%
BA/BS or Higher	51.5%
Unknown	30.3%

HOUSEHOLD INCOME

Under \$16,500	1.5%
\$16,501 to \$30,000	3.0%
\$30,001 to \$50,000	7.6%
\$50,001 to \$70,000	12.1%
\$70,001 to \$120,000	16.7%
More than \$120,000	21.2%
Unknown	37.9%

EMPLOYMENT STATUS

Unemployed	1.5%
Student	0.0%
Employed Part time	1.5%
Employed Fulltime	53.0%
Self-employed	0.0%
Retired	10.6%
Unknown	33.3%

SOCIAL MEDIA USE

62.8%

Expectations

	Completely Agree / Agree	Neutral	Disagree / Com- pletely Disagree
I expected jury service to be inconvenient	51.6%	27.4%	20.9%
I thought jury service would be a financial burden	12.9%	19.4%	67.7%
I thought jury service would interfere with work	54.8%	19.4%	25.8%
I thought jury service would be boring	22.6%	32.3%	45.1%

Employer Policies

Percent of Respondents Answering "Yes"

	Employment Status	
	Part Time (n=1)	Fulltime (n=29)
Employer has jury service policy	0.0%	71.4%
Employer pays for jury service	0.0%	62.9%
Satisfied with compensation	100.0%	77.1%

Service Days

NUMBER OF DAYS REPORTING (N=66)

One	9.1%
Two	0.0%
Three to five	39.4%
More than 5	45.4%
Unknown	6.1%

NUMBER OF COURTROOMS FOR JURY SELECTION (N=66)

None	4.5%
One	80.3%
Two	4.5%
Three to five	3.0%
More than 5	1.5%
Unknown	6.1%

CASE TYPES (N=406)

Civil	63.6%
Criminal	28.8%
Don't Know	7.6%

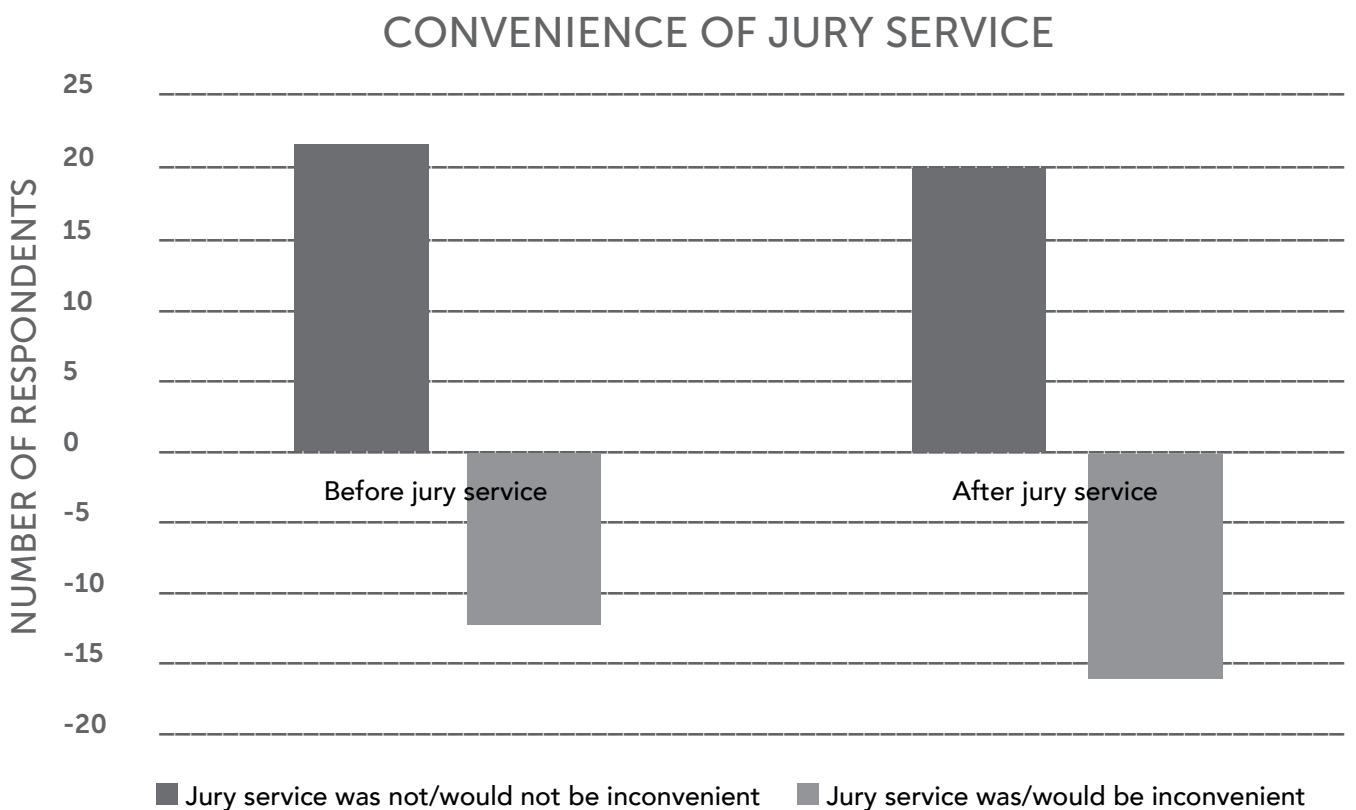
Trial Practices

	Civil Trials (n=42)	Criminal Trials (n=19)
Judge permitted juror notetaking	69.0%	100.0%
Judge permitted juror questions to witnesses	11.1%	7.1%
Judge permitted juror questions during deliberations	64.3%	78.9%
Judge followed schedule	78.6%	94.7%
Judge spoke with jury after verdict	66.7%	89.5%
Difficulty with evidence	23.8%	10.5%
Difficulty with instructions	7.1%	15.8%
Guidance on media contact	33.3%	78.9%
Judge assisted with jury deadlock by ...		
Speaking to jury	11.9%	63.2%
Permitting lawyers to restate closing arguments	4.8%	0.0%

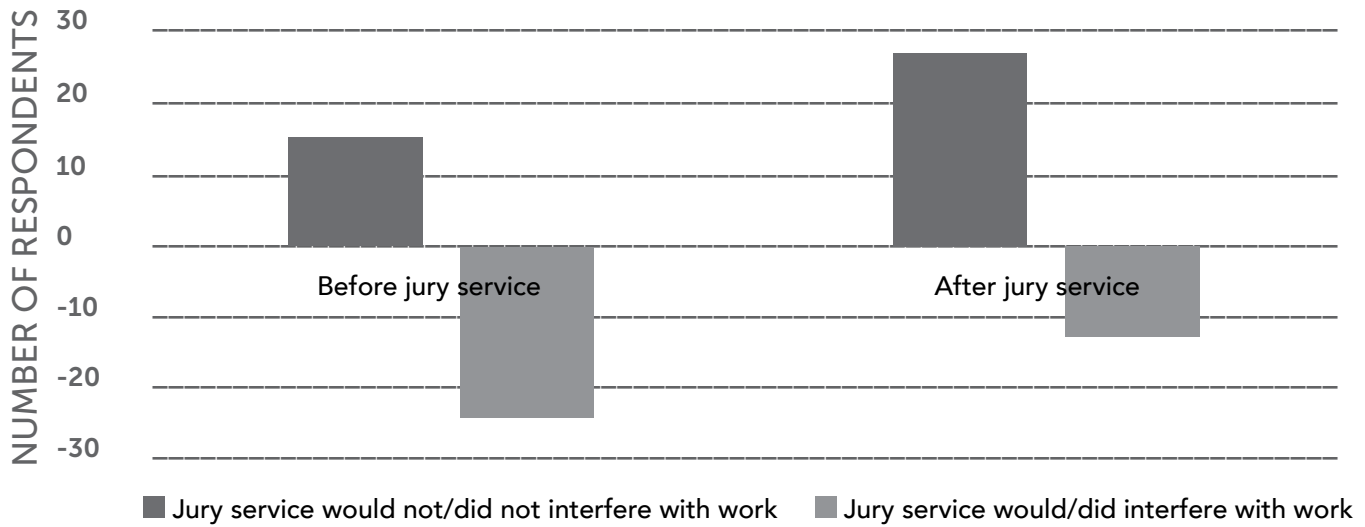
Experience

	Completely Agree / Agree	Neutral	Disagree / Completely Disagree
Attitude toward jury service is favorable	95.7%	4.3%	0.0%
Jury system is efficient	72.3%	19.1%	8.5%
Eager to serve in the future	52.9%	34.0%	12.8%
Jury service was inconvenient	46.8%	19.1%	34.0%
Jury service was financially burdensome	8.5%	12.8%	78.7%
Jury service interfered with work	58.7%	10.9%	30.4%

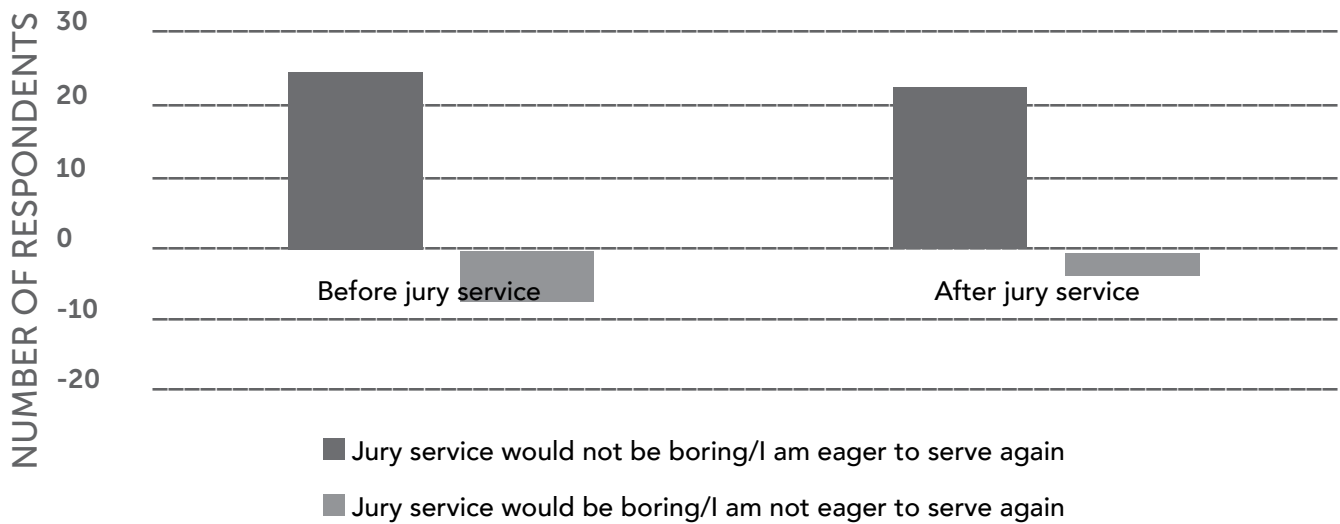
Attitudinal Changes



WORK DISRUPTION



JURY SERVICE IS BORING



District Court Judges

Would you say the jury in your last jury trial was:

Answer Options	Completely Agree	Agree	Neither agree/ disagree	Disagree	Completely disagree	Response Count
Highly engaged and focused during the trial	13	4	0	0	0	17
Able to understand the facts in the case	14	3	0	0	0	17
Able to understand the law in the case	12	5	0	0	0	17
answered question						17
skipped question						0

Please indicate whether the following jury practices were used in your last trial:

Answer Options	Response Percent	Response Count
Jurors were provided with note-taking materials by the court	100.0%	17
Jurors were provided with exhibit notebooks containing descriptions of trial exhibits	17.6%	3
Jurors were permitted to ask questions of witnesses	17.6%	3
Jurors were given a written copy of the jury instructions	94.1%	16
answered question		17
skipped question		0

Have you experienced jurors who used technology, including social media (e.g., Facebook, Twitter, Instagram, etc.), in an unauthorized way to:

Answer Options	Yes	No	Don't Know	Response Count
Seek out information about the case or its elements?	8	8	1	17
Disclose information about the case or the juror's view on the case prior to the verdict?	1	12	2	15
answered question				17
skipped question				0

Did you specifically discuss the unauthorized use of technology and social media with jurors in your last jury trial?

Answer Options	Response Percent	Response Count
Yes	100.0%	17
No	0.0%	0
Don't Know	0.0%	0
answered question		17
skipped question		0

Please rate the importance of the following proposals to increase juror turnout and satisfaction:

Answer Options	Most important	Important	Neither un/important	Unimportant	Least important	Response Count
Improving child care at the courthouse	3	4	2	1	1	11
Raising juror pay	4	2	5	0	0	11
Raising the transportation allowance	3	6	2	0	0	11
Improving facilities for jurors	2	2	4	3	0	11
Reducing the number of jurors who arrive for service	3	1	4	2	0	10
Improving the ability of jurors to schedule their jury duty	4	7	1	0	0	12
Increasing the amount of information provided to jurors when called for service	3	5	4	0	0	12
Creating a smartphone app to give information to jurors prior to their service	3	3	5	1	0	12
Launching a campaign promoting jury service	4	2	4	0	0	10
Launching a jury appreciation advertising campaign	4	4	2	1	0	11
Increasing enforcement against jurors who ignore summons	3	4	1	2	0	10
Encouraging employers to adopt more jury-friendly policies	5	8	0	0	0	13
answered question						13
skipped question						4

Follow-up Survey of District Court Judges Regarding Jurors Asking Questions and Post-Trial Communications

Please indicate whether you permit jurors to submit questions to the court to ask witnesses:

Answer Options	Response Percent	Response Count
Only in civil trials	11.1%	1
Only in criminal trials	0.0%	0
In both civil and criminal trials	11.1%	1
I do not permit jurors to submit questions	44.4%	4
Comments?	33.3%	3
answered question		9
skipped question		0

When you permit jurors to submit questions do you give the instruction in the “red book”:

Answer Options	Response Percent	Response Count
In criminal cases only	0.0%	0
In civil cases only	25.0%	2
In both civil and criminal cases	0.0%	0
I do not permit jurors to submit questions	62.5%	5
Other (please specify)	12.5%	1
answered question		8
skipped question		1

Consistent with your answers to the previous questions, when you do permit jurors to submit questions, do you do so:

Answer Options	Response Percent	Response Count
Routinely	0.0%	0
Only when asked to do so by a party to the case	12.5%	1
Only when asked by the jurors if they are permitted to ask questions	0.0%	0
Only in complex cases	12.5%	1
Not applicable (I never allow jurors to ask questions)	62.5%	5
Other (please specify)	12.5%	1
answered question		8
skipped question		1

In your experience, has permitting jurors to submit questions aided one side in litigation more consistently than the other? (select all that apply)

Answer Options	Response Percent	Response Count
In criminal cases it more consistently aides the prosecution	0.0%	0
In criminal cases it more consistently aides the defendant	0.0%	0
In civil cases it more consistently aides the plaintiff	12.5%	1
In civil cases it more consistently aides the defendant	0.0%	0
Neither side is more consistently aided in criminal cases	12.5%	1
Neither side is more consistently aided in civil cases	25.0%	2
Not applicable (I do not allow jurors to ask questions)	62.5%	5
Other (please specify)	0.0%	0
answered question		8
skipped question		1

Do you typically grant requests by counsel to engage in post-trial communications with jurors?

Answer Options	Response Percent	Response Count
I typically grant such requests	44.4%	4
I typically do not grant such requests	11.1%	1
Other (please specify)	44.4%	4
answered question		9
skipped question		0

When you do grant requests for post-trial communications, do you:

Answer Options	Response Percent	Response Count
Observe but not participate in the discussion	0.0%	0
Observe and participate in the discussion	33.3%	3
Not observe, but require the presence of a clerk or court employee	55.6%	5
Not observe	11.1%	1
Other (please specify)	22.2%	2
answered question		9
skipped question		0

Do you believe the District Court rule requiring Court approval for such communications should continue?

Answer Options	Response Percent	Response Count
Yes	100.0%	9
No	0.0%	0
Comments?		2
answered question		9
skipped question		0

Attorneys

Percent of respondents who indicated that ...

Jurors were given notetaking materials	67%
Jurors were given an notebook	18%
Jurors were permitted to ask questions of witnesses	12%
Jurors were given written jury instructions	45%

Jurors in civil trials were marginally more likely to be given notetaking materials, and significantly more likely to be given copies of jury instructions

Jurors who were given notetaking materials were marginally more likely to be perceived as engaged and focused during the trial

Jurors who were given written jury instructions were significantly more likely to be perceived as engaged and focused during the trial.

NOTE: No effect of decision-making aids on perceptions of juror comprehension of the facts or the law

Percent of respondents who reported that ...

	Yes	No	DK
I have experienced jurors using technology to research the case	9%	31%	60%
I have experienced jurors using technology to disclose information about the case	3%	34%	62%
Jurors were instructed about inappropriate use of technology in my last jury trial	61%	16%	22%

No difference based on respondent court type.

Compared to respondents in civil trials, respondents in criminal trials were significantly more likely to report that jurors were instructed about inappropriate use of technology in their last jury trial.

Criminal defense attorneys were the most likely to report that they had experienced jurors using technology inappropriately (42% research, 27% disclosing information); all other respondent types were 20% or lower .

	No	Yes
--	----	-----

Jury reflected demographic diversity of DC	44%	55%
--	-----	-----

Respondents who practice in USDC were significantly more likely than respondents who practice in DCSC to report that the jury venire reflected the demographic diversity of DC.

There was no difference in respondent reports based on trial type.

Average rating of importance of jury improvement efforts

Encourage juror-friendly employment policies	4.12
Improving juror scheduling ability	3.87
Enforce jury summons (FTA follow up)	3.60
Juror compensation	3.57
Transportation allowance	3.57
Launch a public education campaign	3.55
Increased information about jury service	3.43
Childcare	3.36
Develop a smartphone app for jury service	3.26
Launch a juror appreciation campaign	3.20
Juror facilities	3.16
Reducing number of jurors reporting	2.95

Respondents who practice in USDC rated the importance of reducing the number of jurors who report for service and increasing the amount of information about jury service marginally higher, and rated increasing the transportation allowance marginally lower, than respondents who practice in DCSC.

Civil attorneys were the least likely to rate childcare as an important effort; judges were the most likely to rate FTA enforcement as an important effort.

EMPLOYERS

<i>What type of employer are you?</i>		
Answer Options	Response Percent	Response Count
Food Service	2.8%	2
Non-profit	30.6%	22
Government	5.6%	4
Retail	1.4%	1
Health Care	1.4%	1
Legal	34.7%	25
Utility	0.0%	0
Construction	0.0%	0
Manufacturing	0.0%	0
Transportation	1.4%	1
Finance/Banking	1.4%	1
Insurance	2.8%	2
Real Estate	0.0%	0
Science/Technology	1.4%	1
Education	4.2%	3
Arts/Entertainment	0.0%	0
Agriculture	0.0%	0
Other (please specify)	12.5%	9
answered question		72
skipped question		0

How many employees do you have?

Answer Options	Response Percent	Response Count
1-5	16.7%	12
5-10	8.3%	6
10-15	5.6%	4
15-20	2.8%	2
20-30	0.0%	0
30-40	2.8%	2
40-50	4.2%	3
50-60	1.4%	1
60-70	2.8%	2
70-80	1.4%	1
80-90	1.4%	1
90-100	2.8%	2
100-200	11.1%	8
200-400	9.7%	7
≥400	0.0%	0
≥500	0.0%	0
≥700	5.6%	4
≥1,000	23.6%	17
answered question		72
skipped question		0

Do you have an established policy regarding employees summoned for jury duty?

Answer Options	Response Percent	Response Count
Yes	88.4%	61
No	8.7%	6
Don't Know	2.9%	2
answered question		69
skipped question		3

How do you inform employees about the jury duty policy?

Answer Options	Response Percent	Response Count
Employee handbook	63.8%	44
New-employee orientation	5.8%	4
Upon request by employee	10.1%	7
Other (please specify)	20.3%	14
answered question		69
skipped question		3

Which classifications of employees are compensated for days absent from work for jury duty?

Answer Options	Response Percent	Response Count
All	81.7%	49
Full-time salaried	10.0%	6
Full-time hourly	0.0%	0
Part-time hourly	0.0%	0
Part-time salaried	0.0%	0
Other (please specify)	8.3%	5
answered question		60
skipped question		12

What portion of employees' regular wages does the jury duty policy cover for days absent?

Answer Options	Response Percent	Response Count
None	4.6%	3
Half	1.5%	1
Full	80.0%	52
Other (please specify)	13.8%	9
answered question		65
skipped question		7

Are employees required to forfeit to the company any compensation received from the Court for jury service?

Answer Options	Response Percent	Response Count
Yes	34.4%	21
No	65.6%	40
If yes, please describe what percentage and any exceptions		12
answered question		61
skipped question		11

How many days will employees be paid while they are absent for jury duty?

Answer Options	Response Percent	Response Count
None	1.5%	1
1	4.6%	3
2	1.5%	1
3	1.5%	1
4	3.1%	2
5	6.2%	4
More than five (please specify)	81.5%	53
answered question		65
skipped question		7

Do you require employees to provide proof that they were summoned for jury duty?

Answer Options	Response Percent	Response Count
Yes	81.5%	53
No	10.8%	7
Don't know	7.7%	5
answered question		65
skipped question		7

How do you categorize days employees are absent for jury duty?

Answer Options	Response Percent	Response Count
Unpaid vacation time	0.0%	0
Paid vacation time	3.1%	2
Administrative leave	44.6%	29
Holiday	0.0%	0
Sick leave	0.0%	0
Other (please specify)	52.3%	34
answered question		65
skipped question		7

Court Observations

Findings from Voir Dire Observations

Court observers watched 26 jury selections, four in the US District Court and 22 in the DC Superior Court. Twelve of the trials were criminal trials; 14 were civil trials. The average length of jury selection was just under 2 hours for civil trials (112 minutes), but nearly 3.5 hours for criminal trials (209 minutes). This was a statistically significant difference ($F=8.021$, $p=.012$). The longest jury selection recorded was nearly 5 hours (285 minutes) for two cases (one civil case in the District Court, one criminal case in the Superior Court).

The data included information 10 cases about the amount of time that passed from when the jury panel left the jury assembly room to when jury selection officially began in the courtroom. Fifty percent of the jury selections began 20 minutes or less after the jury panel left the jury assembly room in the courthouse. Only 2 cases began more than 30 minutes later (35 minutes, and 60 minutes, respectively).

The court observers took note of the apparent gender, race, and ethnicity of jurors on the jury panels. Although not generally the most accurate method for assessing demographic identification, observers did not have access to demographic information recorded in the courts' jury management systems. Table 1 shows the average demographic composition of the jury pools based on those observations. Jury panels in the US District Court had a much greater proportion of women compared to men (61% versus 39%) while the gender breakdown was approximately equal in the DC Superior Court. The difference in gender breakdown for the two courts was statistically significant. Jury panels in the DC Superior Court had marginally greater proportions of white jurors, but it is unknown whether this is an actual difference or resulted from errors on the part of the courtroom observers. No other statistically significant differences were observed for other races/ethnicities.

Table 1: Demographic Composition of Jury Panels

	USDC	DCSC	
Male	39%	51%	**
Female	61%	49%	**
White	52%	62%	*
Black	38%	31%	
Asian	4%	3%	
Other	0%	2%	
Hispanic	5%	3%	

* $p < .1$

** $p < .05$

The vast majority of judges (88%) in these trials adequately explained the jury selection process.¹ Table 2 describes the observers' assessments of courtroom management during jury selection. Judges in both courts were rated very highly (generally good or excellent) on all measures. Although observers rated the US District Court somewhat higher, only the assessments of the explanation of rules and procedures was marginally different between the two courts; differences for all other assessments were not statistically significant.

¹ Only three observers reported that the judge did not explain voir dire. All of these cases were criminal trials in the DC Superior Court.

Table 2: Observer Assessments of Voir Dire Management
(mean rating on a scale of 1-5, with 5 being highest)

	USDC	DCSC	
Control of Courtroom	5.0	4.7	
Time Management	4.5	4.2	
Politeness	5.0	4.5	
Explanation of Rules/Procedures	5.0	4.3	*

$p < .1$

In 23 of the 26 trials, the judge summarized the case for the jurors at the beginning of jury selection; this information was missing for the remaining three trials. Most judges provided paper and writing utensils for jurors to use during voir dire, and approximately two-thirds (69%) provided index cards for jurors to signal affirmative answers to questions. Very few judges used preprinted forms, juror questionnaires, or electronic aids during jury selection. Table 3 summarizes the materials provided to jurors for conducting voir dire.

Table 3: Proportion of trials in which materials were provided to jurors for voir dire

Paper	81%
Writing utensils	89%
Index cards	69%
Forms	12%
Questionnaires	15%
Electronic aids	4%

In both courts, judge-conducted voir dire dominated the jury selection process (81% of trials). Most of the voir dire questions were delivered orally (85%). Two-thirds of the jurors (69%) responded in a bench conference and slightly more than one-quarter (27%) responded orally. In a small proportion of trials, judges asked prospective jurors to write their answers on index cards, which were then shared with the judge and attorneys during bench conferences.

When bench conferences were conducted, two-thirds of judges (69%) used noise machines to mask the conversation from the public, and more than half (55%) provided headphones to defendants to be able to listen to the bench conferences. At the conclusion of voir dire, 58% of judges thanked the jurors selected for trial, and 62% thanked the jurors who were not selected.

Findings from Trial Observations

Court observers watched 24 trials, five in the US District Court and 19 in the DC Superior Court. Sixteen of the trials were criminal trials; eight were civil trials. The average trial length was 3 days for both civil and criminal trials; the longest trial was 8 days (criminal trial in the DC Superior Court).

Table 4 shows the demographic composition of the impaneled juries. Like the jury pools from which they were selected, the juries in the US District Court have a much greater gender imbalance than those of the DC Superior Court. Interestingly, Hispanic representation in the District Court juries is considerably greater (13%) than that in the jury pools from which they were selected (5%). In the DC Superior Court, the racial demographics of the impaneled juries are considerably close to that of the local community than would be expected given the demographics of the jury pools. However, this is a small sample of trials and may not reflect the demographic composition of most juries in these courts.

Table 4: Demographic Composition of Juries

	USDC	DCSC	
Male	36%	54%	**
Female	64%	46%	**
White	36%	47%	
Black	31%	38%	
Asian	5%	2%	
Other	3%	1%	
Hispanic	13%	2%	***

* $p < .1$

** $p < .05$

*** $p < .01$

Table 5 shows the proportion of trials in which various jury trial innovations were employed. The US District Court appears to be more consistent across trials concerning these procedures than the DC Superior Court, but there was no statistically significant difference in the use of these procedures.

Table 5: Trial Procedures

	USDC	DCSC
Judge explained voir dire	100%	82%
Judge followed trial schedule	100%	88%
Jurors were given notetaking materials	100%	100%
Jurors were permitted to take notes	100%	100%
Juror questions to witnesses permitted	0%	26%
Juror questions during deliberations permitted	50%	50%
Judge gave interim summations	100%	89%
Attorneys gave interim summations	50%	65%
Written copies of jury instructions	75%	53%
Copies of witness photographs	0%	6%
Electronic exhibits displayed	100%	95%
Electronic exhibits available during deliberations	0%	0%

The US District Court was also consistent in the use of admonitions concerning juror use of social media, repeating the admonition periodically during the trial. The DC Superior Court, in contrast gave the admonition in less than two-thirds of the trials, usually at the beginning of the trial and, in half the trials, at the end of the trial. See Table 6.

Table 6: Social Media Admonitions

	USDC	DCSC	
Social media admonition given	100%	58%	*
beginning of trial	100%	61%	
during trial	100%	28%	***
end of trial	100%	50%	
compliance confirmation	0%	12%	

* $p < .1$

** $p < .05$

*** $p < .01$

Overall, observers gave judges in both courts relatively high ratings concerning trial management practices. See Table 7.

Table 7: Observer Assessments of Trial Management
(mean rating on a scale of 1-5, with 5 being highest)

	USDC	DCSC	
Control of Courtroom	5.0	4.7	
Time Management	5.0	4.5	*
Politeness	4.6	4.6	
Explanation of Rules/Procedures	4.2	4.2	

$p < .1$

HELPFUL RESOURCES

ORGANIZATIONS

National Center for State Courts (NCSC)

<http://www.ncsc.org/>

American Board of Trial Advocates (ABOTA)

<https://www.abota.org/>

American Bar Association

<http://www.americanbar.org/aba.html>

American Judicature Society

<https://www.ajs.org>

PUBLICATIONS

"Juries for the Year 2000 and Beyond"

Council for Court Excellence

District of Columbia Jury Project

<http://www.courtexcellence.org/uploads/publications/Juries2000.pdf>

"Short, Summary and Expedited: The Evolution of Civil Jury Trials"

National Center for State Courts

[http://www.ncsc.org/~media/Files/PDF/Information%20and%20Resources/Civil%20cover%20sheets/](http://www.ncsc.org/~media/Files/PDF/Information%20and%20Resources/Civil%20cover%20sheets/ShortSummaryExpedited-online%20rev.ashx)

[ShortSummaryExpedited-online%20rev.ashx](http://www.ncsc.org/~media/Files/PDF/Information%20and%20Resources/Civil%20cover%20sheets/ShortSummaryExpedited-online%20rev.ashx)

"The State-of-the-States Survey of Jury Improvement Efforts: A Compendium Report"

National Center for State Courts

<http://www.ncsc-jurystudies.org/~media/Microsites/Files/CJS/SOS/SOSCompendiumFinal.ashx>

Voir Dire Magazine

American Board of Trial Advocates

<https://www.abota.org/index.cfm?pg=voirdire>

"Be Cautious of the Quiet Ones"

Gregory E. Mize

Voir Dire Magazine

<http://www.thefederation.org/documents/36%20-%20Mize4.pdf>

"The Exclusion of Felons from Jury Service"

Brian C. Kalt

American University Law Review

<http://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?article=1090&context=aulr>

"Principles for Juries and Jury Trials"

American Bar Association

<http://www.americanbar.org/content/dam/aba/migrated/juryprojectstandards/principles.authcheckdam.pdf>

"Dialogue on the American Jury: We the People in Action"

American Bar Association

http://www.americanbar.org/groups/judicial/american_jury/resources/dialogue_on_the_american_jury.html

"Why Jury Duty Matters: A Citizen's Guide to Constitutional Action"

Andrew Ferguson

"Juror Reactions to Jury Duty: Perceptions of the System and Potential Stressors"

Behavioral Sciences and the Law

<http://digitalcommons.unl.edu/cgi/viewcontent.cgi?article=1159&context=psychfacpub>

"Reluctant Jurors: What Summons Responses Reveal About Jury Duty Attitudes"

Susan Carol Losh; Adina W. Wasserman; Michael A. Wasserman

Judicature, Volume 83, Number 6 (2000)

"Why Citizens Don't Respond to Jury Summonses and What Courts Can Do About It"

Robert G. Boatright

Judicature, Volume 82, Number 156 (1999)

MISCELLANEOUS

Jur-E Bulletin

National Center for State Courts

<http://www.ncsc.org/jure>

Jury Service FAQ

United States District Court for the District of Columbia

<http://www.dcd.uscourts.gov/dcd/sites/dcd/files/jury-FAQ.pdf>

Jury Service FAQ

DC Superior Court

<http://www.dccourts.gov/internet/faqlocator.jsf>

DC Superior Court Jury Orientation Video

DC Superior Court

<http://www.dccourts.gov/internet/jurors/petitjury/main.jsf>



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