Public Service and Trust Commission

Jury Committee

Report and Recommendations

PUBLIC SERVICE AND TRUST COMMISSION

JURY COMMITTEE

REPORT AND RECOMMENDATIONS

June 15, 2009

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Acknowledgment

We acknowledge the diligent and thoughtful work of all the members of the committee, the time they devoted to this project and their enthusiasm and interest.

We thank the dedicated support staff, Esther Harris, court planner, Attorney Irene Mikol, court planner, and Karen Noguera Roman, administrative assistant, for their tireless efforts in assisting the chairs, the subcommittees and the committee as a whole. We also want to thank Attorney Karen (Kay) Berris, the Jury Administrator, Shari DeLuca, court planner and outreach coordinator, and Gregory J. Pac, caseflow statistician, for their assistance. Without their efforts, this report could not have been completed.

Hon. Linda K. Lager, Chair
Hon. Frank M. D'Addabbo, Jr., Co-Chair

PUBLIC SERVICE AND TRUST COMMISSION

JURY COMMITTEE

REPORT AND RECOMMENDATIONS

I. INTRODUCTION: THE COMMITTEE CHARGE AND PROCESS

PUBLIC SERVICE AND TRUST COMMISSION

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INTRODUCTION

The purpose of this report is to detail the work of the Jury Committee of the Public Service and Trust Commission and to set forth certain recommendations to be considered for implementation by the Office of the Chief Court Administrator and the Chief Justice. The report is organized as follows: Section I discusses the Committee's charge and process; Section II provides certain background information about jury service in Connecticut; Section III sets forth the recommendations of the subcommittees of the Jury Committee and the recommendations of the chairs; Section IV sets forth areas for further study, recommendations for training and recommendations for post-report projects; Section V contains relevant appendices.

I. THE COMMITTEE'S CHARGE AND PROCESS

The Jury Committee of the Public Service and Trust Commission was established pursuant to recommendations outlined in the "Strategic Plan for the Judicial Branch". Specifically, Goal III of the Plan addresses "Delivery of Services" and provides that "The Judicial Branch will provide effective, uniform and consistent delivery of services by enhancing the management of court practices." In relationship to Connecticut's jury system, Strategy III.2 of the Implementation Plan goal is to "Improve juror's participation and experience in jury service." The Implementation Plan then set forth two recommended activities.[1]

The Jury Committee had 32 individuals appointed to serve on it and was chaired by the Hon. Linda K. Lager, Administrative Judge for the Judicial District of New Haven, and co-chaired by the Hon. Frank M. D'Addabbo, Jr., Administrative Judge for the Judicial District of New Britain. The Jury Committee met for the first time as a whole on December 4, 2008. The Jury Committee defined its Mission Statement as follows:

> "To determine whether the Judicial Branch uses best practices for summoning, notification, management and utilization of jurors and to recommend new approaches and initiatives."

The committee was organized into four subcommittees designed to focus on the various

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[1] Public Service and Trust Commission" "Implementation of the Strategic Plan"; 1998 at p. 43:
Activity III.2.1 calls for "Using jury surveys to determine juror comfort and satisfaction"; and,
Activity III.2.2 calls for "Developing user-friendly technology to educate jurors on their role, to provide them with clear information on jury service, and to automate the process involved in jurors managing and scheduling their service."

stages of juror service which represent "the life cycle of a juror." Each subcommittee was asked to identify current relevant practices in Connecticut, measure those practices in relation to the American Bar Association's PRINCIPLES FOR JURIES & JURY TRIALS (August 2005)[2] and other indicia of best practices, discuss the perceived advantages and disadvantages of the practice under consideration, and make recommendations consistent with best practices.

The four subcommittees and their areas of responsibility were:

I. **Before Court Appearance**: Chair, Attorney Karen A. Berris; Co-chair, Attorney William Sadek, Members: Hon. Robert J. Devlin, Jr., Hon. Julia DiCocco Dewey, Hon. Aaron Ment, Attorney Jay Sandak. Judge Lager served as a liaison to this subcommittee
This subcommittee met five times and focused on areas that included

- Qualification
- Juror Publications
- Juror Questionnaire
- Scheduling Issues
- Summoning and Notification

II. **Arrival**: Chair, Attorney Ralph Monaco; Co-Chair, Hon. Dan Shaban, Members: Attorney Kyle Harrell, Attorney Jessica Torres, Attorney Lawrence Tytla and Mr. David Ward. Judge D'Addabbo served as liaison to this subcommittee. This subcommittee met three times and looked at some of the following areas:

- Facilities and Logistics
- Orientation Issues
- Videos
- Pre-screening

III. **Voir Dire**: Chair, Hon. Carl J. Schuman; Co-Chair, Hon. Barbara N. Bellis, Members: Attorney Timothy Patrick Brady, Attorney Michael Corsello, Hon. Maureen M. Keegan, Attorney Daniel E. Ryan, III, Attorney Richard Silver. Judge Lager served as liaison to this subcommittee. This subcommittee met three times and examined voir dire practices in the context of the following areas:

- Comparing practices in civil and criminal jury selection
- Facilities and Accommodations
- Management
- Utilization
- Selected vs. Not Selected

IV. **Selected Jurors**: Chair, Dean Brad Saxton, Quinnipiac University School of Law; Co-Chair, Hon. Nicola E. Rubinow, Members: Attorney Karen A. Goodrow, Attorney Ernest Mattei, Attorney Cesar Noble, Hon. Michael R. Sheldon, Attorney Michael Walsh. Judge D'Addabbo

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[2] The ABA's Principles for Juries & Jury Trials was a result of many months of investigation by a task force appointed under the auspices of the "American Jury Project." The Preamble to the ABA Principles states, in part, at VII, that the principles "define our fundamental aspirations for the management of the jury system. Each Principle is designed to express the best of current-day jury practices in light of existing legal and practical constraints."

served as liaison to this subcommittee. This subcommittee met seven times and its areas of focus included:

- Trial Orientation including information on trial schedule and procedures for trial days
- Expectations, Transparency, Security
- Innovative Trial Practices
- Accommodations
- Post Verdict Issues

The subcommittees reviewed their areas of focus and went through a process of identifying specific recommendations. A meeting of the committee as a whole was held on March 26, 2009 and the chairs of each subcommittee reported on their work in progress. Further work continued during the month of April and on May 14, 2009, the committee met as a whole again for the purpose of allowing members to comment on the recommendations of subcommittees on which they had not served. The final recommendations of the subcommittees were submitted to the co-chairs on June 4, 2009 and will be presented in part III of this report.

PUBLIC SERVICE AND TRUST COMMISSION

JURY COMMITTEE

REPORT AND RECOMMENDATIONS

II. JURY SERVICE IN CONNECTICUT

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The right to a trial by jury is guaranteed in Connecticut by Article I, §§ 8 and 19 of the Connecticut Constitution as well as by the Sixth Amendment to the United States Constitution.[3] The Connecticut "constitutional guarantee of trial by an impartial jury incorporates two common-law rights derived from English law: (1) the right to trial by a jury that is properly selected from a venire panel composed of a representative cross section of the community, which right is secured by 'challenges to the array'; and (2) the right to a trial by jury composed of individuals capable of deciding the case solely on the basis of the evidence and in accordance with the law, which right is secured by 'challenges to the polls,' i.e., in modern terminology, challenges for cause." State v. Griffin, 251 Conn. 671, 694 (1999). Prospective jurors in both civil and criminal cases have an independent interest in participating in the trial process and the parties have third party standing to assert the right of prospective jurors not to be improperly excluded from participating in a trial on the basis of a discriminatory challenge. *Edmondson v. Leesville Concrete Co.*, 500 U.S. 614 (1991); *State v. Patterson*, 230 Conn. 385, 393-94 (1994). These rights must be protected by manner in which jurors are summoned to serve in Connecticut, the manner in which they are selected to serve and by the way the trial is conducted.

The statutes provide for the appointment of a Jury Administrator who is "responsible for qualifying, summoning, selecting, managing and utilizing jurors in the Superior Court." General Statutes § 51-219a. Attorney Karen A. Berris is the Jury Administrator for the State of Connecticut. She has held this position since October, 1999 and she supervises of staff of 29 people. Qualifications for an individual to serve as a juror are set forth in General Statutes § 51-217. "It has long been accepted that the Constitution does not forbid the States to prescribe relevant qualifications for their jurors. The States remain free to confine the selection to citizens, to persons meeting specified qualifications of age and educational attainment, and to those possessing good intelligence, sound judgment, and fair character." *Carter v. Jury Commission*, 396 U.S. 320, 332 (1970).

The Connecticut Judicial Branch summons jurors to 19 court locations throughout the state. To meet the needs of these diverse court locations, state law requires the Jury Administrator each year to assemble a Master List of potential jurors from four different sources,

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[3] Connecticut Constitution, Art. I, § 8: "In all criminal prosecutions, the accused shall have a right . . . in all prosecutions by indictment or information, to a speedy, public trial by an impartial jury."
Connecticut Constitution, Art. I, § 19: "The right of trial by jury shall remain inviolate, the number of such jurors, which shall not be less than six, to be established by law; but no person shall, for a capital offense, be tried by a jury of less than twelve without his consent. In all civil and criminal actions tried by a jury, the parties shall have the right to challenge jurors peremptorily, the number of such challenges to be established by law. The right to question each juror individually by counsel shall be inviolate." (Sequestered individual voir dire is provided for by statute in civil cases, General Statutes § 51-240(a), and criminal cases, General Statutes § 54-82f, as are the number of permitted peremptory challenges. General Statutes §§ 54-82b(c) 54-82g, 54-82h (criminal cases) and General Statutes §§ 51-241, 51-243 (civil cases).)
United States Constitution, Amendment VI: "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed . . ."

namely, licensed motor vehicle operators obtained from the Department of Motor Vehicles; unemployment recipients obtained from the Department of Labor; state income tax filers obtained from the Department of Revenue Services; and, registered voters obtained from the Central Voter Registry of the Secretary of the State. The four lists are combined and duplicate records are removed to create a single master file from which potential jurors are randomly selected. The jury year runs from September 1st to August 31st each year.

Jury Administration issues summonses to potential jurors and qualifies individuals for jury service pursuant to General Statutes § 52-217(a). To process and manage potential jurors, Jury Administration maintains a toll free information line and a web site, http://www.jud.ct.gov/jury , and permits responses via U.S. Mail, e-mail and on line. The Jury Administration office also schedules and postpones potential jurors.

Each juror who is scheduled for service receives a reminder notice and handbook with detailed instructions as to where to report and a standby number to call the night before serving. Attendance status may also be checked on the web site, which also contains much other useful information for prospective jurors to view. Jurors who are canceled by the court prior to serving are excused for the remainder of the court year. Jurors who serve at lease one day may be excused for up to three years after the date that they serve. Connecticut uses a "one day, one trial" system which means that anyone who is not selected for a trial when they are appear on the day specified in the summons, or on a rescheduled appearance date, is deemed to have served.

In the 2008 court year, also known as the jury year, which ran from September 2007 through August 2008, 610,120 individuals were summoned for jury service statewide. There were 98,831 individuals who served. The majority of those individuals completed their service in one day.[4] In that same court year, statewide there were 402 civil cases, 9 complex litigation cases and 208 criminal cases in which jury selection commenced.[5]

Individuals report to a jury assembly room in the courthouse to which they have been summoned, where they are processed by a jury clerk, view one or more videos about jury service and are welcomed by a judge. Remarks made during juror orientation must be "recorded in a manner approved by the Office of the Chief Court Administrator," and the parties or their counsel, in any civil or criminal case have "right to examine any written materials, audio-visual materials, recordings or transcription of oral remarks made or given to the juror pool during orientation which describe the responsibilities of jurors, describe the procedures in the courts and discuss the laws of this state. The court may permit counsel to be present during the orientation of the juror pool." General Statutes § 51-243a. Individual panels of prospective jurors are then created for the cases in which jury selection is taking place and the prospective jurors undergo voir dire. While a judge must preside over voir dire in criminal cases, *State v. Patterson*, 230

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[4] Of the 98,831 individuals who served, 93% served one day, 2% served two days, 1% served three days, 1% served four days, 1% served five days, less than 1% served six days, less than 1% served seven days, and 1% served more than seven days. Data on summoning and utilization statistics can be found in Appendix A.

[5] See Appendix B.

Conn. 385, 397-400 (1995), the manner in which voir dire in civil cases is conducted varies considerably throughout the state. By law, the judge and counsel receive copies of the statutorily required "confidential juror questionnaire" for use during voir dire. General Statutes § 51-232 (c). The nature of the questions that may be asked during voir dire is proscribed largely by caselaw. Voir dire has two purposes – to allow the court to determine if potential jurors are qualified to serve and to allow the parties to determine whether to exercise peremptory challenges. *State v. Hodge*, 248 Conn. 207, 216-17 , cert. denied, 528 U.S. 969 (1999); *State v. Robinson*, 237 Conn. 238, 248 (1996); *Rozbicki v. Huybrechts*, 218 Conn. 386, 395 (1991).

Once jurors are selected, they will serve for the duration of the trial, unless they are alternate jurors.[6] Service is counted even if the case settles before a verdict is rendered. The assigned trial judge is responsible for manner in which the selected jurors are oriented and instructed as part of his or her duties to conduct the trial in a fair and orderly manner. Following the conclusion of the trial, the selected jurors are discharged from their service.

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[6] Alternate jurors may be substituted for regular jurors at any time before deliberation in both civil and criminal cases. General Statutes §§ 51-243(d) (civil cases); 54-82h(c) (criminal cases). However, civil jurors must be dismissed from service once the case is submitted for deliberation, General Statutes § 51-243(e), while criminal jurors may be retained in service and seated as substitute during deliberations, provided "that deliberations shall begin anew." General Statutes § 54-82h(c).

PUBLIC SERVICE AND TRUST COMMISSION

JURY COMMITTEE

REPORT AND RECOMMENDATIONS

III. RECOMMENDATIONS

III. RECOMMENDATIONS

This section of the report contains the following information: an executive summary of the recommendations of the subcommittees prepared by the chairs, the full recommendations of the subcommittees and recommendations of the chairs. Given the time constraints under which this report was prepared, the subcommittee recommendations were not put to a vote of the full committee. However, as noted previously, all members of the committee were given an opportunity to comment on the recommendations of subcommittees other than their own. In addition, minority viewpoints of subcommittee members are indicated in the full recommendations of the subcommittees.

More than one subcommittee identified the following topics as significant: pre-screening of jurors, methods of providing information to jurors and orienting jurors, and juror confidentiality and privacy. As a result, there are overlapping recommendations for these significant topics. The executive summary also cross-references to related recommendations of other subcommittees.

EXECUTIVE SUMMARY OF RECOMMENDATIONS

Before Court Appearance (BCA) Subcommittee

I. Permanent Master File

Maintain the current practice of annually creating the Master File. Study ways to improve the quality of the data received from the source list provider agencies. Study whether technology could overcome the disadvantages of a Permanent Master File.

II.. Improve Juror Utilization

Implement techniques statewide based to reduce daily number of requested jurors to achieve a utilization rate of 60% based on practices of court locations with high utilization rates, cancellation rates and scheduled trials and monitor the impact of reducing daily numbers.

III. Improve Information re Employment Issues

Expand and update information about rights of employed and unemployed jurors. Hold focus groups of former jurors to determine what information would be helpful. See also BCA Recommendation V.

IV. Jury Service

Substitute the term "jury service" for "jury duty" and ensure all forms of communication (summons, notices, publications, website, videos and oral) conform to the changed terminology. Also see BCA Recommendation V.

V. Maintain and Update Forms, Publications, Website, Video and Orientation Materials

Create a formal mechanism (a committee, dedicated staff or a combination) to develop procedures and to review, maintain, update and recommend revisions, according to an established schedule, of forms, publications, website, video and orientation remarks and

materials in order to provide accurate and timely information regarding jury service, to ensure accurate translations into languages other than English, to ensure uniform and proper use of terminology throughout the cycle of jury service and to respond to jurors' questions. Hold focus groups of former jurors to determine what information would be helpful. See also BCA Recommendation III, Selected Jurors Recommendation I.

VI. Refinement of Summoning Procedures

Study the legality of changing the summons calculation formula based on population within a zip code and the stability of population within a zip code. If studies prove favorable, pursue legislative changes to implement such a change in order to enhance the representativeness of the array.

VII. Addressing Specific Juror Concerns About Service

Create a uniform process for jurors with specific concerns about their ability to serve, such as economic hardship or past experiences, by which those concerns can be confidentially communicated to jury administration staff before appearing and to a judge on the day of appearance. See also BCA Recommendation V, Arrival Recommendation I, II.

VIII. Excusing Jurors Who Have Served on Exceptionally Long Trials

Continue to permit judges to exercise their discretion to excuse jurors from future service for a period greater than three years if the circumstances warrant and the juror wishes to be excused.

Arrival Subcommittee

I. Juror Orientation

Create and provide a uniform outline of points to be covered in the orientation remarks made by judges to jurors who have arrived for jury service. See also BCA Recommendation V, VII.

II. Pre-Screening

Implement a pre-screening process to be used upon arrival or during the orientation process that identifies prospective jurors with bona fide reasons to be excused from service before they are selected for a voir dire panel. See also BCA Recommendation VII, Voir Dire Recommendation I and II.

III. Facilities and Logistics

Ensure comfortable seating arrangements and quiet areas for waiting jurors. Explore providing wi-fi or internet access, with instructions as to proper use during jury service. Consider these needs in planning construction of courthouses in the future. See also Voir Dire Recommendation VI, Selected Jurors Recommendation XVI.

IV. Orientation Video

Create a new updated video, approximately 20 minutes long, that includes relevant points culled from the existing videos. Mandate that the video be shown in all locations. See also BCA

Recommendation V.

Voir Dire Subcommittee

I. Judicial Supervision of All Voir Dire

Require that a judge, either the assigned trial judge or a judge trial referee, preside over voir dire in civil cases in the same manner that judges presently preside over voir dire in criminal cases.

II. Pre-screening

Require that all jurors be pre-screened by a judge prior to individual questioning by counsel in order to excuse jurors who have hardships, conflicts or special difficulties hearing the case of the type on trial or who otherwise satisfy the requirements for an excusal for cause. See also BCA Recommendation VII, Arrival Recommendation II, Voir Dire Recommendation I, III, V, VI.

III. Voluntary Use of Panel Voir Dire

Allow and facilitate the use of panel voir dire on a purely voluntary basis in any case in which all the parties request it and pertinent statutory and constitutional rights are properly waived.

IV. Retention and Destruction of the "Confidential Juror Questionnaire"

Adopt a specific formal and uniform policy, as recommended by the subcommittee in IV.3, regarding the retention and destruction of the statutorily required "confidential juror questionnaire." Require judges to inform prospective jurors about the use and privacy of the questionnaires and the retention and destruction policy. See also Voir Dire Recommendation VI.4, Selected Jurors Recommendation XV.

V. Reusing Excused Jurors

Adopt a uniform policy that requires jurors who are excused, following either pre-screening or voir dire questioning, to return to the jury assembly room to be available for inclusion on a panel for another case, taking into account, among other things, the time of day and the basis for the excusal. See also Voir Dire Recommendations I, II, III.. Re-use of jurors for another voir dire panel should enhance overall juror utilization. See BCA Recommendation II.

VI. Improving Juror's Comfort

Provide an adequate and suitable environment for jurors awaiting questioning. See also Arrival Recommendation III. Minimize waiting time by implementing methods to expedite the process such as photocopying the confidential juror questionnaire for counsel, using pre-screening techniques, and allowing venire members to report at specified times for questioning. See also Voir Dire Recommendation II, III, Selected Jurors Recommendation XII.

VII. Alternate Jurors

Study methods for selection and better use of alternate jurors that are more consistent

with ABA Principles for Juries and Jury Trials, Principle 11.G.2 and G.3. Conform the practices used in civil and criminal cases and seek appropriate legislative changes to do so. See also Selected Jurors Recommendation XIII.

Selected Jurors Subcommittee

I. Post-Selection Orientation

The trial judge should provide specific orientation materials to selected jurors that address important aspects of trial service including juror conduct requirements and other key information. See also Selected Jurors Recommendation XII, XVI.

II. Juror Note Taking

Permit jurors to take notes during the evidentiary stages of a trial with the trial judge providing appropriate instructions about the procedures to be used.

III. Clear Jury Instructions

Instruct jurors in plain and understandable language regarding the applicable law and the conduct of jury deliberations and make the formulation of such clear language instructions a priority for the civil and criminal jury instruction committees.

IV. Copies of Instructions

Provide jurors with a copy of the jury instructions for use while the jury is being instructed, or alternatively use technology to display the instructions, and also provide each juror with a written copy of the instructions to use during deliberations.

V. Exhibit Index

Provide an appropriately redacted index of full exhibits for use during deliberations.

VI. Responding to Juror Questions and Requests for "Readback" of Testimony

Continue to follow the current practice, as set forth in relevant practice book sections, with sensitivity to concerns of fairness, completeness and accuracy of responses.

VII. Innovative Trial Practices – Recommended

With agreement of counsel and the court, use juror exhibit binders/notebooks and/or expanded preliminary instructions in appropriate cases.

VIII. Innovative Trial Practices – Not Recommended

Do not permit the use of the following innovative trial practices – discussion of evidence during the trial of civil cases, sequential expert testimony; specific suggestions regarding the selection of a foreperson and the conduct of deliberations.

IX. Juror Questions for Witnesses

Permit jurors in civil cases to submit questions to witnesses with agreement of counsel and the court, in a prescribed manner and as currently permitted by Connecticut law. Although Connecticut law also permits the practice in criminal cases, the subcommittee recommends

against that practice.

X. Counseling for Jurors in Stressful Cases

Provide free appropriate counseling to jurors who report mental health challenges as a result of their jury service.

XI. Jurors' Certificates of Appreciation

Prepare a standard letter of appreciation to be sent to jurors at the conclusion of the case.

XII. Efficient Use of Jurors' Time and Communications regarding Scheduling

Manage trials in a manner that avoids wasting jurors' time and keep jurors apprised of the trial schedule, any necessary changes to the schedule and the reasons for necessary delays. See also Selected Jurors Recommendation I, Voir Dire Recommendation VI.

XIII. Alternate Jurors

Conform the practices used in civil and criminal cases. See Voir Dire Recommendation VIII.

XIV. Juror Privacy: Post-Verdict Instructions

Require judges to instruct jurors about post-service contacts from others and to explain their rights regarding speaking about their service. Consider establishing a secure juror service phone line for post-discharge complaints and issues. See also Selected Jurors Recommendation X, Voir Dire Recommendation IV.

XV. Juror Privacy: Juror Questionnaire and Personal Information

Conduct a study to determine if juror privacy may be protected in ways consistent with the ABA's Principles. See also Voir Dire Recommendation IV for a more specific proposal regarding the confidential juror questionnaires.

XVI. Use of Smartphones (E-Mail, Voice Mail)

Prohibit use of smartphones and similar electronic devices in the courtroom and during trial for specific purposes (conducting research, gathering information, communicating with others about the case). Study whether the prohibition should be extended to recesses and lunch breaks. Provide explicit guidance about the use of such devices and the reasons for any restrictions the court may impose. See Selected Jurors Recommendation I, Arrival Recommendation III.

PUBLIC SERVICE AND TRUST COMMISSION

JURY COMMITTEE

REPORT AND RECOMMENDATIONS

RECOMMENDATIONS OF THE BEFORE COURT APPEARANCE SUBCOMMITTEE (BCAS)

Jury – Before Court Appearance Subcommittee (BCAS)

Recommendation I: Permanent Master File

1. Current Practice

Creation of the Jury Master File pursuant to Conn. Gen. Stat. § 51-222a. The Jury Administrator is responsible for creating the Master File or list from which potential jurors are randomly selected.

2. Discussion

Each year, the Jury Administrator obtains source lists form the state Departments of Revenue Services, Labor and Motor Vehicles along with the central voter registry from the Secretary of the State. These four lists are combined, records are matched and duplicates are removed to create a single file from which jurors are chosen at random to meet the needs of the courts. The current statute (C.G.S. 51-222a (d)) requires that the previous year's file be discarded and an entirely new file be created using the new source lists. Annually re-creating the Master File results in the loss of data gathered by Jury Administration throughout the year when potential jurors contact the office to report changes in their information such as new addresses or corrections to a name. While initial discussion of this issue revealed some aspects of this practice to be inconvenient to both Jury Administration and the public, upon further review the benefits currently outweigh the disadvantages.

3. Best Practice Finding

The current Jury Master File process is in line with ABA Principle 10. A. 1., namely that: "the names of potential jurors should be drawn from a jury source list compiled from two or more regularly maintained source lists of persons residing in the jurisdiction. These source lists should be updated at least annually."

The BCAS has discussed the possibility of modifying current practice to maintain a permanent file of potential jurors to be matched against the four source lists obtained each year from the different state agencies.

4. Advantages and Disadvantages of a Permanent Master File

Pros

- Maintenance of data gathered from jurors throughout the year with no loss of information
- In some cases, may provide more current information than source list
- Better public relations – no need to tell jurors that they must contact list owner (state agency)

Cons

- Disqualification status may change, requiring annual updating by Jury Administration and potential for wrongful disenfranchisement
- Increase in duplicate summonses where records can not match
- No means of improving the quality of the source list -- Currently potential jurors contact DMV, Labor, Registrars and DRS to correct their records.
- Costly and time consuming programming requirement
- Jurors would not necessarily notify Jury Administration of a change in address or name as they now do with DMV, Revenue Services and the Registrars of Voters.

5. Recommendation

Maintain the current practice for the annual creation of the Master File, but study ways to further improve the quality of the data received from the source list provider agencies. In addition, all jury staff should be periodically re-trained in providing clear, concise explanations to potential jurors regarding anomalies in their records as well as an effective means of resolving these issues.

Study whether the use of technology could overcome the disadvantages of a permanent Master File so that the Branch may be able to maintain the data gathered from jurors throughout the court year.

Jury – Before Court Appearance Subcommittee (BCAS)

Recommendation II: Improve Juror Utilization

1. Current Practice

Each year the Jury Administrator asks court clerks to provide an estimate of the number of jurors they would require each day during the coming court year. According to Connecticut General Statutes § 51-219b, this estimate should be based on factors such as types of cases that will come to trial, number of judges assigned to jury trials and the experience of the court location in regard to the number of jurors who actually serve in relation to the number of jurors who are summoned for service.

2. Discussion

Jury Administration issued 610,120 summonses for the 2008 court year, which resulted in 316,978 individuals being scheduled to serve. Of those scheduled to serve, only 98,831 served at least one day. Of the total that were scheduled to serve, 177,461, or 56 percent of the jurors were canceled. The National Center for State Courts recommends a juror utilization rate of at least 40 percent. Connecticut's statewide utilization rate was 31 percent of all jurors scheduled to appear. Those who were not canceled or excused by the court were no-show jurors.

Many court locations canceled well in excess of the statewide average. Two locations canceled more than 90 percent of their scheduled jurors.

When more jurors than necessary are summoned, the state incurs unnecessary expense in postage; printing and staff resources used to process each juror. Of even greater concern is the inconvenience to potential jurors who must make personal arrangements with employers, daycare providers or clients. The result of excess cancellations is wasted resources and understandable frustration felt by those who have made an effort to comply only to be told at the last moment that they were not needed.

3. Best Practice Finding

The current practice is not in line with ABA Principle 2 D, namely that: "Courts should respect jurors' time by calling in the minimum number deemed necessary and by minimizing their waiting time"; ABA Principle 2 D 1, namely that: "Courts should coordinate jury management and calendar management to make effective use of jurors," and ABA Principle 2 D 2 that: "Courts should determine the minimally sufficient number of jurors needed to accommodate trial activity."

With so many locations canceling more than half of the jurors scheduled to appear, it is clear that an excessive number of individuals are being called.

4. Advantages and Disadvantages of Calling Fewer Jurors

Pros

- Cost savings of $1.73 per scheduled juror and $1.31 per disqualified/excused juror. (The difference results from an additional notice that is issued to scheduled jurors)
- Increases the likelihood that scheduled jurors will actually serve
- Less inconvenience to the public
- More efficient processing time resulting from fewer jurors to check in, indoctrinate, etc.
- Improved utilization
- Greater public trust and confidence in the process

Cons

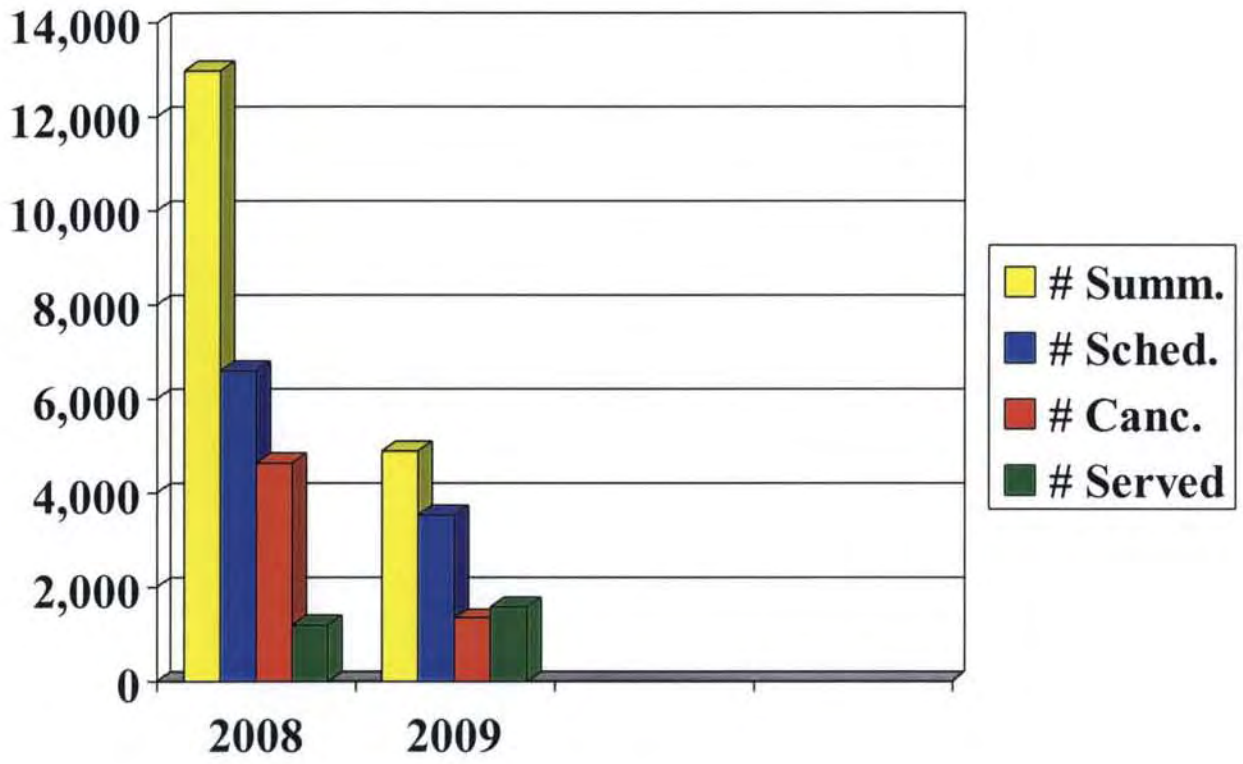
- Occasional shortages on days when fewer people appear
- Requires more coordination between caseflow, the jury office and the courtroom
- Possible reduced flexibility in granting postponements to jurors
- Requires a change in perception of "recycled jurors"
- Because it is difficult to know in advance when there is a need to cancel jurors, a reduction will not always prevent cancellations.

5. Recommendations

I. Continue to monitor the impact of reduced summoning in locations that have decreased their daily need.
II. Study utilization practices in courts with high utilization rates (greater than 40 percent)
III. Set the Branch's juror utilization goal at 60 percent as a minimum acceptable level. This is higher than the NCSC minimum recommendation.
IV. Request that all locations reduce their daily need (requested jurors) for a trial period. Base reductions on cancellation rates and other factors such as scheduled trials.
V. Encourage courts to consider smaller venire panels and perform a study of the most efficient sized panels for different case types.
VI. Conduct training for jury staff and clerks offices on how to interpret utilization statistics for a more accurate assessment of the number of jurors needed.

See attached statistical report.

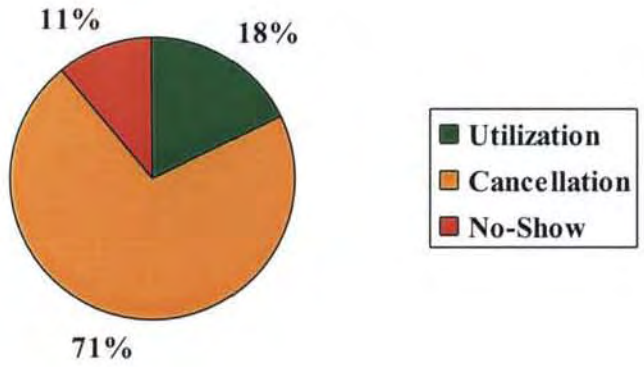
Comparison of summonses mailed and jurors who served at one court location during two 32 day periods in early 2008 and 2009



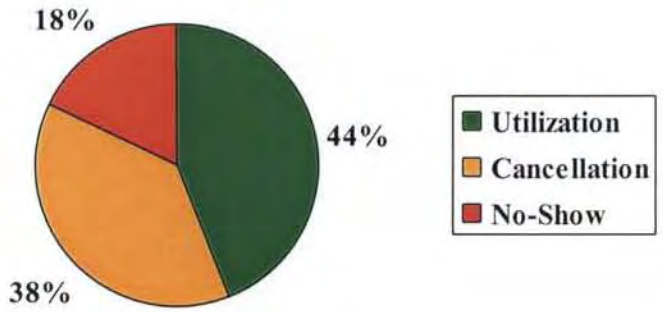
Discussion: Jury Administration compared utilization statistics for a single court location that reduced summoning by two thirds during a 32 day period in 2009. Despite issuing fewer summonses, more jurors actually served and fewer were canceled when compared to the same time period in 2008.

Juror utilization comparison for a single court location for two 32 day periods in early 2008 and 2009

2008



2009



Utilization equals the percentage of jurors scheduled who serve at least one day.

Jury – Before Court Appearance Subcommittee (BCAS)

Recommendation III: Improve employment information provided to jurors

1. Current Practice

The publication JDP-JA-27 was developed by Jury Administration in conjunction with the Department of Labor to provide basic information about employment issues arising from jury service. Beginning at the end of 2007, this publication has been continuously mailed to all prospective jurors with the summons. Additionally, the FAQs section of the Judicial Branch website includes information for employees.

2. Discussion

Courts have reported that jurors arrive at court not knowing whether they will be paid for jury service beyond the five days required by statute. Additionally, the recent economic downturn has resulted in an increase in questions regarding the impact that jury service will have on unemployment compensation.

3. Best Practice Finding

Providing information about employment and payment issues finds support in ABA Principle 2 F 1-3, which deals with reimbursement for expenses and obligations of employers. Informing jurors of Connecticut's laws and regulations is an integral part of ensuring that these standards are being met.

4. Advantages of Providing Additional Employment-Related Information

- Increases chances that jurors will come to court prepared with information about their employment circumstances
- Reduces the likelihood that employers will harass their employees about their jury service
- Increases the likelihood that jurors will be willing to serve
- Saves time questioning jurors

5. Recommendations

I. Hold a focus group of former jurors to obtain feedback on current publications and determine what additional information would be helpful.

II. Update the current publication to more prominently feature the recommendation that potential jurors discuss their upcoming juror service with their employers.

III. Update current publication for consistency in web address.

IV. Update current publication to include a more prominent recommendation that jurors discuss their jury service with their employers prior to arriving at court and to include information about third shift as provided in PA 08-103.

V. Expand the employment information to include clarification of the rights of unemployed jurors, including whether jurors will continue to receive unemployment benefits and how they will be impacted by the jury fee.

JURY – BEFORE COURT APPEARANCE SUBCOMMITTEE (BCAS)

Recommendation IV: "Jury **Service**"

1. Current Practice

   All publications currently describe the experience of serving on a jury as "jury duty." In addition, the FAQ section of the Judicial Branch website bears the heading, "Frequently Asked Questions about Jury Duty."

2. Discussion

   Regrettably, some people view service as a juror as something to avoid. Using the terminology jury "**duty"** may reinforce this negative connotation.

3. Best Practice Finding

   The ABA Principles for Juries and Jury Trials generally uses the term jury "service" as does New York. [Need to check on terminology used by other states.]

4. Advantages and Disadvantages of Changing Terminology

   Pros

   Substituting the term "Jury Service" for "Jury Duty" emphasizes the positive aspects of jury service. It tends to reinforce the aspect of public service and communicate the notion that jurors make an important contribution to their communities.

   Cons

   Many publications and the website currently use the "jury duty" terminology and would have to be changed.

5. Recommendations

   I. Revise publications and the website to substitute the term "jury service" for "jury duty."
   II. Encourage court personnel to use "jury service" terminology.

Jury – Before Court Appearance Subcommittee (BCAS)

Recommendation V. Maintain and Update Information on Jury Service appearing on the Jury Website, Including the Frequently Asked Questions (FAQs) Section; in Jury Publications, on all Jury Forms and in the Video Utilized During Juror Orientation.

1. Current Practice

The Judicial Branch website (which includes juror information and Frequently Asked Questions sections) is maintained by a Web Board with input from the various operating divisions whose information is posted on the site. Jury Administration information is updated when a new publication is published, a new feature such as enhanced e-mail capability is added or a statute changes. Occasionally, changes are recommended from the field when parking instructions or directions to courthouses change.

Publications and forms undergo periodic forms review which is triggered by a low stock notice -- when stored publications drop below a specified number, requiring a reprint. The Branch's Legal Services Division submits the publication to the Jury Administrator for comment or revision prior to ordering the reprint. Any proposed changes are reviewed and approved prior to reprinting.

At this time there is no formal mechanism in place to review the juror orientation videos.

2. Discussion

At this time, there is no fixed schedule for reviewing the Jury Web page to ensure that information continues to be accurate and is updated in a timely manner. Additionally, the Frequently Asked Questions (FAQs) section was developed more than 10 year ago and may need updating. While members of the public and judicial employees periodically make suggestions for improvement, a more efficient system would ensure the maintenance of accurate and helpful information for jurors.

While publications undergo periodic review, there is no coordinated effort to compare language on all publications to ensure consistency of style and other data such as phone numbers and website addresses.

Finally, there is currently no established means of obtaining feedback from former jurors and members of the public regarding any jury publications or other media.

3. Best Practice Finding

Maintaining helpful and accurate publications, forms, website information and videos is addressed in ABA Principle Number 6, namely, "Courts should educate jurors regarding the essential aspects of a jury trial."

4. Advantages of Regularly Updating and Maintaining Publications, Forms, the Jury Website and Video

- Increases chances that jurors will come to court prepared with accurate information
- Reduces anxiety about serving
- Increases the likelihood that jurors will be willing to serve
- Saves time questioning jurors
- May reduce telephone calls to the court and Jury Administration offices
- Fosters a more polished and professional public image
- Improves responsiveness to specific needs for information
- Maintains accuracy of information provided to the public

5. Recommendations

I. Hold a focus group of former jurors to obtain feedback on the current website and determine what additional information would be helpful.

II. Dedicate jury staff to routinely review the jury website and Frequently Asked Questions Sections, jury publications, video and forms to determine whether changes and updates should be recommended.

III. Make proposed changes to jury summons form and reminder notice. See Appendix C.

IV. Develop procedures to recommend the changes and ensure that revisions are undertaken according to an established schedule.

V. Take steps to ensure that the Spanish language translation for the FAQs and other sections are updated whenever the main page is updated.

VI. Study whether a need exists to translate sections of the website and juror publications into languages other than Spanish.

Jury – Before Court Appearance Subcommittee (BCAS)

Recommendation VI: Refinement of Summoning Procedures

1. Current Practice

Calculation of the number of jurors to be summoned for juror service from each town is based on a formula required by Conn. Gen. Stat. § 51-220. The statute requires that the most recent published census be the source from which population data for each town are derived. Jurors are selected in numbers proportionate to each town's population compared to the population of the Judicial District as a whole. For example:

The Superior Court for the Judicial District of Oz will need 60 jurors to meet its need for the coming court year. The total population of the Judicial District of Oz is 1,000. Anytown is a city located within the Judicial District of Oz. Anytown's population according to the last published US Census is 200. Therefore, Anytown's population is 20 percent of the population of the Judicial District of Oz. A total of 12 individuals (or 20 percent of 60 jurors) will be randomly selected from Anytown.

2. Discussion

The current practice utilized for summoning jurors was developed to ensure to the greatest extent possible that the jury array is representative of a fair cross section of the community. In towns or cities with multiple zip codes, it may be possible to enhance representativenesss by summoning in proportion to the population residing within a particular zip code.

3. Best Practice Finding

ABA Principle 10 A. 2. reads "The source list and assembled jury pool should be representative and inclusive of the eligible population in the jurisdiction. The source list and the assembled jury pool are representative of the population to the extent the percentages of cognizable group members on the source list are reasonably proportionate to the corresponding percentages in the population."

In jurisdictions where courts have found that cognizable groups were under-represented, increasing the numbers of summonses mailed to certain geographic areas has been implemented as a remedy.

While the Connecticut Supreme Court in *State v. Gibbs*, 254 Conn. 578, 586-600 (2000), upheld the sufficiency of summoning procedures utilized by the Judicial Branch, the work of the Jury Committee affords the Branch with an opportunity to be proactive and ensure that the best and fairest possible practices are utilized when calculating the number of individuals to be selected for juror service.

4. Advantages and Disadvantages of Changing the Summons Calculation Formula

Pros

- Enhances the perception that the Judicial Branch is doing everything possible to ensure a fair cross section of the community.
- This method may provide more accurate figures on which summons calculations may be based while preserving the requirement that jurors be selected at random.

Cons

- Zip code population counts may vary more widely between each U.S. Census than town or city population counts.
- Will require a statutory change
- A programming change will be required
- New zip codes are periodically added to towns and cities.

5. Recommendation

The Judicial Branch should seek a legal opinion as to whether summoning based on the population within a zip code would in any way jeopardize the requirement that jurors be selected at random and that the jury pool reflects a fair cross section of the community. Additionally, the stability of the population within a zip code over a ten year period as compared to the stability of the population of a town or city should also be evaluated. If these studies prove favorable, then the Branch should pursue legislation that would permit populations within each zip code to be used to determine the number of individuals to be summoned for each Judicial District.

Jury – Before Court Appearance Subcommittee (BCAS)

Recommendation VII: Addressing Juror Concerns About Serving Before They Appear in Court

1. Current Practice

Some potential jurors have specific concerns about serving such as economic hardship, having been a crime victim, childcare, and transportation to name a few. When these concerns are reported to Jury Administration staff and/or jury staff in the courts, they are addressed on a case-by case basis. All jurors appropriate for disqualification pursuant to C.G.S. § 51-217 (a) are disqualified prior to appearing at court. All who have demonstrated an extreme hardship pursuant to C.G.S. § 51-217 (b) are excused by the Jury Administrator or her designee prior to appearing at court. Potential jurors who may not be disqualified or excused are advised by the Jury Administrator to appear at court and explain their circumstances on their appearance date.

2. Discussion

If potential jurors bring specific concerns to the attention of a Jury Administration staff member answering the toll free information line, then the matter may be addressed according to the applicable statute.

For example, an individual reporting that he or she has been the victim of a violent crime would be advised that there is an opportunity to bring this matter to the attention of a judge on the appearance date. If the juror reports that he or she would experience anxiety or other debilitating symptoms as a result of even reporting to court, a Jury Administration staff member would advise the individual to seek a medical excuse pursuant to C.G.S. § 51-217 (a) (8). If, as often is the case, a juror is merely seeking information as to whether someone is disqualified because he or she is a crime victim, that individual would be advised that crime victims are not specifically disqualified by statute. The individual would be advised that he or she would be asked about their experience during the voir dire process, if it is relevant to the particular case. As explained above, the individuals are instructed that they may report their concerns to a judge on the day they report to court.

It has happened that jurors have written information about their status as crime victims on the confidential questionnaires in the belief that this will prevent them from having to undergo voir dire. Because the questionnaire is intended for use during voir dire, it is not used as a means of screening individuals out of a voir dire on a particular case. Additionally, jurors may not be aware that court staff and judges will be able to address their concerns on the day they report for service..

In addressing juror concerns, the courts must strike a balance between the concerns of the jurors and the interest of maintaining a representative pool of individuals

qualified to serve. It is important to distinguish between those who are truly unable to serve and those who are able to serve, but may have reservations about doing so.

3. Best Practice Finding

ABA Principle 2 B. states in part: "Eligibility for jury service should not be denied or limited on the basis of race, national origin, gender, age, religious belief, income, occupation, disability, sexual orientation, or any other factor that discriminates against a cognizable group in the jurisdiction. . ."

ABA Principle 10 C states: "Exemptions, excuses and deferrals should be sparingly used."

ABA Principle 7 A. states: "Courts should inform jurors that they may provide answers to sensitive questions privately to the court, and the parties."

In keeping with the principles, any effort to adopt a procedure whereby jurors may, before arriving at court, bring their concerns about serving to the attention of court staff must also take care not to systematically exclude classes of persons from serving. The Branch should also take care not to encourage otherwise qualified jurors from seeking to be excused.

Therefore, any information provided in advance to jurors regarding grounds for excusal from service must take into account that only those who are truly unable to serve under any circumstances and in any case should be excused and that generally, a judge is in the best position to evaluate an individual's suitability for service if that individual is not disqualified by statute.

4. Advantages and Disadvantages of Addressing Juror Concerns About Serving Before They Appear in Court

Pros

- May facilitate pre-screening as recommended by the Arrival and Voir Dire Subcommittees
- May ease juror apprehension
- Improves overall quality of information provided to jurors
- Informs jurors of the appropriate way to express their concerns about service

Cons

- May encourage potential jurors to seek to be excused
- May cause jurors to become frustrated if they are not excused
- May create confusion regarding grounds for excusal

5. Recommendation

- The Judicial Branch should add language to its publication: "Your Guide to Jury Duty – *An obligation and an honor*" (JDP-JA-5) that describes the process that will take place when they arrive in court and directs potential jurors to bring their concerns to the attention of a judge when they arrive.

It is recommended that the following language be inserted in the handbook:

"Q: I have concerns that pressing issues in my life or a past experience I have had will affect my ability to serve. What should I do?

A: If you have concerns about your ability to serve you may call our toll free number 1-800-842-8175 and speak to a member of our jury staff before your court appearance. When you arrive in court, you will have an opportunity to speak privately with a judge following orientation remarks to communicate your concerns about serving.

Many people have concerns about whether they are able to serve. They may have pressing issues such as childcare responsibilities and economic concerns or they may believe a past experience like having been the victim of a crime may make them unable to serve. If you are having these concerns, you are not alone. However, many potential jurors find that they are able to serve after they bring their concerns to the attention of our staff. Our jury system depends on the participation of people like you. "

- All jury staff should be trained to assess these concerns on a case by case basis and to refer such matters to the a judge, if delivering orientation remarks.

- Judges who greet jurors or give orientation remarks should be trained, and provided with a script, to implement this process.

- Changes to the language in the brochure, as well as training for jury staff should be consistent with the recommendations of the Arrival Subcommittee's concerning pre-screening procedures, or with any procedures recommended by the Chair and Co-Chair of the Jury Committee.

- Finally, any information expressed to jury Administration and any court staff must be kept confidential and potential jurors must be advised that it will be kept confidential. Care should be taken to ensure that any information provided by a potential juror does not become a matter of court record, unless a judge determines it is necessary to go on the record regarding the juror's reasons for seeking an exemption from service.

Jury – Before Court Appearance Subcommittee (BCAS)

Recommendation VIII: Excusing Jurors who have Served on Exceptionally Long Trials

1. Current Practice

Section 51-217a permits jurors who have served at least one day in a state court to be excused for a period of three court years following the date of their service.

Jurors who have served after October 1, 2009 will not be summoned for the three court years following their service unless they notify the Jury Administration in writing of their desire to remain eligible for service.

2. Discussion

It has been recommended that individuals who serve on exceptionally long cases (there months or longer) be excused for longer than the period allowed by statute. This option would affect a very small percentage of all jurors who serve. For example, in Court Year 2007 jurors serving more than five days numbered 1,681, or two percent of the 110,024 jurors who served at all.

3. Best Practice Finding

A.B.A. Principle 10 C. 2. b. states that jurors should be excused from serving when "Their service would be an undue hardship or they have served on a jury during the two years preceding their summons."

4. Advantages and Disadvantages

Pros

- Acknowledges the extraordinary sacrifice made by citizens who serve in lengthy trials
- May promote greater willingness to serve on a longer trial
- Distinguishes between individuals who have served as little as one day and those who have served longer

Cons

- Connecticut's previous service exemption period of three years is already more generous than the ABA standard
- More difficult to administer and program than a uniform standard
- Requires additional record keeping
- Not all jurors view their service as a negative experience.

5. Recommendation

Current statute and the Practice Book allow judges the discretion of entering an order that would excuse jurors from serving for a period greater than three years, in situations where they believe it is warranted and in which the juror wishes to be so excused. It is recommended that judges continued to be allowed to exercise their own discretion in this matter and that new judges be instructed that they have this option.

PUBLIC SERVICE AND TRUST COMMISSION

JURY COMMITTEE

REPORT AND RECOMMENDATIONS

RECOMMENDATIONS OF THE ARRIVAL SUBCOMMITTEE

Sub-Committee on: Arrival – Recommendation I . Juror Orientation

A. Juror Orientation

1. Identify the practice or practice-related issue: **Juror Orientation**

2. Current Practice in Connecticut

There exists in Connecticut a lengthy orientation statement that is available to judges. There is a lack of uniformity in the use of this statement, and a lack of uniformity regarding the information communicated to the venire panel. Most judges utilize their own practice in conducting juror orientation.

3. Alternative "Best Practice"

Our subcommittee discussed the variations in jury orientation that we have experienced around the State of Connecticut. We discussed the possibility of preparing an outline of important points that judges should make during orientation. We discussed the goal of reducing juror anxiety, attempting to get people excited or at least interested in serving, and providing prospective jurors with answers to frequently asked questions. (e.g. length of service, compensation, prior experience or knowledge not necessary).

We also discussed the merits of uniformity in the juror orientation. The subcommittee also discussed the importance of the judge's tone in conducting the orientation.

4. Advantages and Disadvantages of the Alternative

The advantage of providing judges with an outline as opposed to a formal script is creating greater uniformity in all judicial districts, yet respecting the judge's independence. Outlining key points will ensure that jurors consistently receive the same information. Lawyers will benefit by knowing the information that is communicated to jurors, thereby reducing the time spent in voir dire. For example if the panel is aware of the time commitment, lawyers will not have to repeatedly discuss this topic with each venire person. An outline permits judges to conduct the orientation according to the judge's personal style.

5. "Best Practice" Recommendation

The sub-committee recommends providing to judges an outline of important points and encouraging judges to adhere to the outline. We believe orientation should be used to streamline voir dire by answering frequently asked questions. This in turn will assist in reducing juror anxiety. In addition, we recommend that judges use orientation to generate interest to participate in the

American jury system. We believe that uniformity around the State of Connecticut is critical to ensure that all jurors receive the same information and provides lawyers confidence that jurors will receive certain basic information during orientation. Lawyers should not have to address mundane issues such as juror compensation during voir dire. The subcommittee feels that it is important to excuse venire people early in the process who clearly cannot serve.

Sub-Committee on: Arrival – Recommendation II. Pre-Screening

B. Pre-Screening

1. Identify the practice or practice-related issue: **Pre-Screening**

2. Current Practice in Connecticut

Few, if any, judicial districts conduct a written pre-screening when jurors arrive to serve. Limited excusals for hardship may be made before venire panels are composed.

3. Alternative "Best Practice"

The sub-committee focused on the problem of prospective jurors with bona fide excuses sitting around a courthouse all day and not being excused until late in the day, thus instilling a negative impression of our judicial system. One way to avoid this problem is to solicit bona fide reasons that may justify an early excusal, such as medical reasons, pre-paid vacations during the trial, self-employment, and caring for an immediate family member. This solicitation may be achieved by the use of a pre-screening document or process. After the introduction of the case by the lawyers and/or judge, jurors could complete a pre-screening form. Outside the presence of the venire panel, but on the record in criminal cases, the judge would discuss the pre-screening forms that were submitted from any person requesting excusal for one of the commonly accepted reasons.

4. Advantages and Disadvantages of the Alternative

The advantage of pre-screening is early excusal of people who have a bona fide excuse. A further advantage is the process may identify people who do not have bona fide excuses, but are trying desperately to be excused.

The disadvantage of pre-screening is that it will require an on the record discussion in criminal matters due to constitutional requirements. An on the record discussion may be required in civil cases as well. Another disadvantage is the cost of providing forms and materials to the panel, and the cost of maintaining confidentiality in the storage or disposal of the forms. The other disadvantage is that some individuals may be "encouraged" to make an excuse when presented with the form.

5. "Best Practice" Recommendation

The sub-committee recommends using a pre-screening process in civil and criminal cases. We feel that people with bona fide reasons for excusal should be excused as early in the day as

possible. Common bona fide excuses are medical reasons, pre-paid vacations during the trial, self-employment, and caring for an immediate family member. The sub-committee recommends the pre-screening process be conducted on the record in criminal cases. In civil cases the process does not need to be on the record (and may be conducted by the lawyers and if necessary by a judge, similar to when challenges are made for cause), but it may be advisable to conduct it on the record.

CHAIRS' COMMENT: The Chairs note that General Statutes §§ 51-240 and 54-82f, and Practice Book §§ 16-6 and 42-12, state that "the right of examination shall not be abridged by requiring questions to be put to any juror in writing and submitted in advance of the commencement of the action," but juror pre-screening is permitted under *State v. Faust*, 237 Conn. 454 (1996). See Voir Dire Subcommittee Recommendation II. The Chairs believe all pre-screening should be done on the record in civil as well as criminal cases. See Voir Dire Subcommittee Recommendation I. The Chairs note a distinction between pre-screening and addressing specific juror concerns. See BCAS Recommendation VII.

Sub-Committee on: Arrival - Recommendation III. Facilities and Logistics

C. Facilities and Logistics

1. Identify the practice or practice- related issue: **internet access and new facilities.**

2. Current practice in Connecticut:

   Some courthouses have wi-fi or other internet access, some do not.

   Most courthouses have auditorium style seating arrangements in the jury assembly rooms.

3. Alternative "Best Practice"

   Provide prospective jurors with wi-fi or other internet access while they are waiting in the courthouse during the voir dire process.

   Construction of all new courthouses should include state of the art facilities for jurors, including more comfortable seating.

4. Advantages and Disadvantages of the Alternative

   Many people who come for jury service want to utilize their "down time" by staying connected to their personal business affairs. Venire people should have access to the internet so that they can check their email, access their work computer, or attend to personal matters in their life. The subcommittee believes that a preliminary page should appear on the wi-fi network notifying jurors that they may not use the wi-fi access for illegal or improper purposes, such as researching the cases that they may hear.
   The disadvantage is jurors may use the internet for improper purposes such as researching the cases that they may hear.

   When individuals appear for jury service, most of their time will be spent seated. Seating in the jury rooms should be made as comfortable as possible to accommodate the long wait times that will sometimes occur during this process. The disadvantage would be the additional cost to the overall construction and maintenance of the areas.

5. "Best Practice" Recommendation

The sub-committee recommends providing wi-fi or other internet access to jurors, provided that they are instructed regarding the proper use during their jury service. As a

practical matter, many people currently have wireless access to the internet through devices such as a Blackberry or I-Phone, which access is not regulated by the judicial branch. Moreover, people may have wi-fi access if the courthouse is near a public wi-fi location. An additional benefit of affording jurors with internet access is reinforcing the charge given to jurors that they may not investigate or research cases that are before them.

This sub-committee also recommends that future construction of all new courthouses include more comfortable seating arrangements in the jury rooms. Regular seating with couches or sofa chairs should be added. A room or walled off section should be included for individuals who would like to simply read, relax or do some work without the interruption of noise from the television and other conversations. This would also accommodate people having to use laptops, etc while waiting.

Sub- Committee on: Arrival - Recommendation IV. Orientation Video

D. Orientation Video

1. Identify the practice or practice-related issue: orientation video

2. Current Practice in Connecticut

The current practice is to make available two videos to each judicial district. One video is entitled "We the People- The Pursuit of Justice", which is available on the Judicial Branch website, and the other is entitled "Judicial Branch- Voir Dire", which is not available on the website. Most judicial districts use both videos, but a few use only one. The districts that use only one video assert "not enough time" as their reason for not showing both. Both videos are about 15 minutes each. According to both videos they have a copyright of "2004", but they appear older.

3. Alternative "Best Practice"

The subcommittee reviewed both videos and discussed them in detail. Interestingly, some of the lawyers on the subcommittee had not seen the videos in the past. We discussed making these videos more easily available to lawyers and the public.

The subcommittee feels that both videos are very good. We discussed whether the videos should be combined, and whether the overall length should be shortened. Combining the videos will create uniformity among the districts. The current total length of the videos is a concern.

Additionally, if a new video is created some consideration may need to be given to the "best practice" of having judges on the video, as opposed to a neutral person or professional actor. Sometimes a judge may have subsequent problems or be the subject of some controversy or may have passed away since the production of the video, making viewing of the video uncomfortable or problematic.

4. Advantages and Disadvantages of the Alternative

As stated above, the subcommittee believes that viewing both videos is important for prospective jurors. The "We the People- Pursuit of Justice" video is an excellent basic civics type lesson. It is also contains excellent patriotic themes and music that should make jurors feel good about their jury service. The "Voir Dire" video is more of a nuts and bolts of the voir dire process, and should be effective in reducing juror anxiety regarding the process.

Combining the two videos has the advantage of effectively mandating them in all judicial districts. Shorting the videos will reduce the chance of people becoming distracted and losing attention.

The disadvantage of combining and shortening the videos is possibly eliminating important information. However, with proper study and guidance, this risk will be minimized.

5. "Best Practice" Recommendation

The subcommittee recommends combining and shortening the two videos. We believe that the best practice is to require one video in all judicial districts. Prior to revising these videos, however, both videos should be made available on the judicial website, and the revised video should be uploaded to the website when it is produced. As for the revised video, the subcommittee recommends a single video of approximately 20 minutes in length. This length of time balances the time pressure on jury clerks and an appropriate average attention span for the average juror. The subcommittee recommends that additional research be conducted on attention spans and that the people in charge of the revision take this research into consideration.

In addition, the subcommittee recommends that lawyers become familiar with the video so as to reduce the amount of time spent during voir dire.

PUBLIC SERVICE AND TRUST COMMISSION

JURY COMMITTEE

REPORT AND RECOMMENDATIONS

RECOMMENDATIONS OF THE VOIR DIRE SUBCOMMITTEE

Public Service and Trust Commission
Jury Committee
Voir Dire Subcommittee

Recommendation I : Judicial Supervision of all Voir Dire

1. This recommendation discusses Voir Dire Management (from the point in time when venire persons have reported to a courtroom for a specific case), and recommends judicial supervision of voir dire in civil cases, consistent with the practice in criminal.

2. In criminal cases, judges statewide remain on the bench throughout the entire voir dire process.[1, 2] In civil cases, with the exception of challenges for cause which require judicial intervention, the current practice in Connecticut with respect to the judge's role in the voir dire process varies widely. Depending on the jurisdiction, the custom and practice ranges from voir dire conducted exclusively by the attorneys without any introduction or orientation by a judge to a more proactive judicial involvement with the judge remaining on the bench for some period of time and pre-screening by the judge through the use of oral or written questions. In some jurisdictions, the same judge will handle the case, from voir dire through verdict; in other jurisdictions, any number of judges, in addition to the trial judge, may be involved in the introduction of the case, if any, and challenges for cause. Additionally, voir dire may or may not be recorded, court staff such as clerks and court reporters/monitors may or may not be present, and, informal agreements of attorneys to excuse potential jurors may or may not be allowed. These varied practices affect the venire persons, attorneys, parties, litigants, court staff, and judges.

   The ABA Principles for Juries and Jury Trials recommend the following:

   - The court should provide further orientation and information when jurors report to a particular courtroom for voir dire.
   - Voir dire should be on the record.
   - Judges should ensure that juror privacy is reasonably protected, explain how the juror information that has been provided will be retained/utilized, inform jurors that they may provide answers to sensitive questions privately to the court and parties, and take a proactive role to ensure that the questions are consistent with the purpose of voir dire.

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[1] See *State v. Patterson*, 230 Conn. 385 (1994) (requirement that trial judge remain on bench during voir dire process cannot be waived in a criminal case).

[2] Typically, in criminal cases the trial judge will be the judge present during the voir dire.

The voir dire procedures followed in criminal cases statewide, measured against the practices of other states and the ABA principles, qualify as a "best practice." However, based on the lack of uniformity across the state, non-compliance with the ABA principles, and comparisons to the rest of the country,[3] the voir dire procedures in civil cases do not qualify as "best practices" and improvements are recommended.

3. Ample research is available with respect to judicial oversight of voir dire; no further research is recommended at this time. The following "best practices" are recommended with respect to civil cases:

- The trial judge should provide a brief orientation/introduction to the venire persons upon their reporting to the courtroom, addressing, inter alia, juror privacy issues and the rationale of sensitive questions. This will serve to enhance juror confidence, with the added benefit of increased juror candor (Alternative: if the trial judge is unavailable, another judge may step in.)

- All voir dire should be on the record, with the judge, clerk, and reporter/monitor present. There is no substitution for meaningful judicial oversight. This recognizes the court's responsibility to prevent any abuse of the voir dire process and reinforces to the potential juror that the questions posed are all proper questions. (Alternative: if a judge has other pressing obligations, a judge may consider remaining on the bench initially, in order to establish parameters,[4] and may wish to excuse the reporter/monitor. At a minimum, however, a clerk should be present to oversee the voir dire procedure).

- Informal agreements of counsel to excuse potential jurors may be allowed, at the discretion of the trial judge, but only to the extent it will not prevent qualified jurors from having an opportunity to serve, and will not delay jury selection. This recognizes that while under Connecticut law, jurors may be excused based on the exercise of a peremptory strike, or on a successful challenge for cause, efficiency and judicial economy will be served by identifying jurors who are not qualified to serve on a particular case, and by returning them to the jury pool at an earlier stage, where they can be available to serve on another panel. In addition to promoting uniformity across the state, this will serve to protect the important interest of a prospective juror

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[3] Without respect to length of time, Connecticut ranks 50th, with a median length of voir dire in civil trials at 16 hours; California ranks 49th, at 4.0 hours. Gregory E. Mize, Paula Hannaford-Agor, and Nicole L. Waters, The State-of-the States Survey of Jury Improvement Efforts: A Compendium Report (2007). Connecticut also ranks 50th, as the state with the most attorney-dominated voir dire. Id.

[4] A party has a right to examine a venire person as to his qualifications to sit as a juror in the action, his interest, if any, in the subject matter of the action, and as to his relations with the parties. Conn. Gen. Stat. § 51-240(a). Additionally, case law recognizes the right of a party to inquire as to a potential juror's predispositions.

to participate in the democratic process and to be selected to serve where qualified.

4. The advantages of these proposed "best practices" are that the voir dire process will be efficient, will not unreasonably invade the privacy of the potential juror, will reinforce the importance of the proceedings via the judge's presence, will protect the interest of the potential juror in participating in the democratic process, and will enhance juror confidence and candor. The disadvantage is that the judge and staff present in the court room during the voir dire will not be able to tend to matters that they otherwise would have been handling

5. The "best practices" recommendation is that the trial judge in civil matters conduct voir dire as it is presently being conducted in criminal matters.

   Additionally, this subcommittee is recommending that judge trial referees be authorized to preside over jury selection in civil cases.[5] This will be consistent with the practice in criminal jury cases. It will have the additional benefit of having more judges available to actively supervise the voir dire process, based on this subcommittee's other recommendations. This would require statutory and rule changes.

CHAIRS' NOTE: The data relied on in this Recommendation is appended, with the permission of the National Center for State Courts. See Appendix D.

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[5] In criminal cases, other than Class A, Class B, or capitol felony cases, judge trial referees may preside over jury selection, "unless good cause is shown." Conn. Gen. Stat. § 52-434 (a)(1); Conn. Practice Book § 44-19.

Public Service and Trust Commission
Jury Committee
Voir Dire Subcommittee

Recommendation II : Pre-screening of all Jurors

1. This recommendation discusses the practice of prescreening of jurors by a judge, prior to individual questioning by counsel, for the purpose of excusing jurors who have hardships, conflicts, or special difficulties in hearing a case of the type on trial, or who are unable to be fair and impartial.

2. The current practice in Connecticut varies widely. In some cases, no prescreening takes place. This approach occurs particularly in civil cases for which there is no judicial supervision of voir dire in the first place. Other judges, during the group introduction of the case, have jurors raise hands to indicate claimed hardships or conflicts and then conduct brief interviews of these jurors to determine whether the claim merits excusal. Still other judges submit a written questionnaire concerning ability to serve to jurors after they have learned about the case in a group session and then meet with counsel, either on or off the record, to attempt to agree on which jurors to excuse. Some judges use a combination of written questionnaires and group questioning.

To the extent that no prescreening of jurors takes place, this practice does not qualify as the best practice. The authority for prescreening of jurors in Connecticut is clear. In *State v. Faust*, 237 Conn. 454, 462 (1996), our Supreme Court stated: "A trial court may pose questions to entire venire panels prior to individual voir dire . . . and may dismiss for cause any panel member whose answers to the court's questions reveal bias." See also General Statutes § 51-217a (b) ("The court shall have authority to excuse a juror from juror service, upon a finding of extreme hardship."); Practice Book § 42-11 ("Preliminary Proceedings in Jury Selection"; "The judicial authority may excuse any prospective juror for cause.") In general, the trial court is vested with wide discretion in conducting the examination of jurors. *Childs v. Blesso*, 158 Conn. 389, 394 (1969).

In the vast majority of states, judges participate in questioning potential jurors. See N. Vidmar & V. Harris, American Juries: The Verdict, p. 89 (2007). The ABA Principles for Juries and Jury Trials (ABA Principles) similarly provide: "Questioning of jurors should be conducted initially by the court, and should be sufficient, at a minimum, to determine the jurors' legal qualification to serve in the case." ABA Principles, Principle 11.B.1.

Prescreening of jurors by the court has significant advantages over a system that allows lawyers to question every juror in the panel. The main and obvious advantage is to increase the efficiency of the jury selection process. The theory is that, if some jurors will almost certainly

end up being excused, we ought to identify and excuse them as soon as possible. Prescreening, as the word suggests, takes place before the lengthier individual voir dire process begins. Prescreening should take place by the court, rather than by lawyers, because the court is neutral and will presumably be unlikely to excuse or retain jurors for partisan reasons. A court focused on identifying jurors who are not able to serve is in a much better position to accomplish that task than lawyers who seek to preserve their peremptories or force their opponent to use them.

The prompt dismissal of jurors who have conflicts, hardships, or bias in a particular case allows those jurors to become readily available for another case, or to return home or to work with minimal interruption in their lives and duties. The immediate result is to leave the lawyers with a subset of the original panel comprised of people who are ready, willing, and able to serve. The end result is that jury selection finishes sooner, which is better for the court, the lawyers, their clients, and the public.

3. As suggested above, there are various ways to prescreen jurors for eligibility in a particular case. Many judges will feel most comfortable asking the panel of jurors in the introductory group session basic questions about whether they might have a hardship or familiarity with any of the trial participants or the case. These judges will ordinarily follow up with brief interviews of those jurors who provided affirmative responses. In some cases, especially depending on the availability of fully eligible jurors, counsel may agree to excuse all jurors who indicated a hardship or conflict without the necessity of conducting interviews.

The practice of using a written questionnaire is not widely understood, but can be very effective. One method being used is to have jurors identify possible hardships, conflicts, special difficulties with the subject matter, or biases on a short questionnaire. The lawyers and the court then review the questionnaires and attempt to reach agreement on who to excuse. The review can take place in court or, if counsel agree, in chambers followed by the court's summary of the process on the record.

Experience with the written questionnaire has been very encouraging. Most jurors have provided responsive answers in writing. (For those jurors who appear not to have understood the questionnaire, the court retains the option of interviewing them in court.) The answers are sometimes very candid, especially with regard to possible bias, and reveal thoughts that the juror might not want to express verbally in open court. The process of eliminating ineligible jurors based on the questionnaire is not lengthy and can sometimes take less time than if the court had to conduct individual interviews. It is essentially color blind. And the result has been that counsel are left with a solid and diverse cadre of jurors who are fully eligible to serve and generally agreeable to doing so.

4. There is no need, however, to prescribe a uniform approach, as long as the chosen method of prescreening accomplishes the basic objective of sorting out, to the maximum extent possible, jurors who have actual hardships, conflicts, or bias before individual voir dire begins. See also

State v. Faust, supra, 237 Conn. 462-65 (During introductory group session, follow up questions by the court of the jurors that required elaboration beyond an affirmative or negative response should have been reserved for subsequent individual questioning.) Regardless of the specific method chosen, prescreening, as mentioned, has the advantage of improving the efficiency of the voir dire process. There are no significant disadvantages. Judges may have to become more involved in jury selection at the outset, but such involvement will essentially serve as an investment in a procedure that shortens the entire voir dire process for the court and all other participants.

5. The subcommittee therefore recommends that we adopt prescreening of jurors as a best practice for the jury selection process. In order to insure that all judges will employ a prescreening method, and to give counsel and their clients fair notice that the court will do so, an amendment to the civil and criminal Practice Book rules to codify the practice of prescreening is probably necessary.

Some attorneys have objected to the use of a written questionnaire in criminal cases under Practice Book § 42-12, which provides in pertinent part: "The right of such [voir dire] examination shall not be abridged by requiring questions to be put to any juror in writing and submitted in advance of the commencement of trial." The response is that this provision seems intended to prevent the court from requiring counsel to submit written questions to the court for its review prior to individual voir dire, but not to prevent the court on its own from using a written questionnaire as a prescreening device. The Rules Committee has passed an amendment to clarify the rule's meaning in that way. Although not necessary, it may also be helpful to enact similar amendments to clarify Practice Book § 16-6 and General Statutes § 51-240 (c), pertaining to civil cases, and § 54-82f , pertaining to criminal cases, which contain language similar to that in Practice Book § 42-12.

Public Service and Trust Commission
Jury Committee
Voir Dire Subcommittee

Recommendation III: Allowing and Encouraging the Voluntary Use of Panel Voir Dire in all Jury Trials

1. This recommendation discusses the voluntary use of panel or box voir dire in all civil and criminal jury trials and recommends that the judicial branch continue to encourage this practice.

2. The current practice in Connecticut is for individually sequestered voir dire unless the parties and the court agree to conduct a panel or box voir dire. The current practice is set by statute and rule. General Statutes § 51-240 provides: "In any civil action tried before a jury, either party shall have the right to examine, personally or by his counsel, each juror outside the presence of other prospective jurors as to his qualifications to sit as a juror in the action, or as to his interest, if any, in the subject matter of the action, as the judge determines." Practice Book § 16-6 provides similarly. General Statutes § 54-82f and Practice Book § 42-12 contain the same provision for criminal cases. In practice, individually sequestered voir dire means that counsel will interview jurors one by one outside the presence of other jurors. These interviews range from several minutes each to over an hour.

The language requiring selection of a juror "outside the presence of other jurors" first came into our law in 1977, with the passage of Public Act No. 77-255. Prior to that, there was no specific provision in our law for individually sequestered jury selection and the court had discretion to employ the box voir dire method. See *Childs v. Blesso*, 158 Conn. 389, 393-94 (1969). In 1972, Connecticut enacted an amendment to article first, § 19 of the state constitution that permitted mandatory six person juries in place of twelve person juries in certain circumstances while at the same time guaranteeing that parties would have the right to challenge jurors peremptorily and "[t]he right to question each juror individually by counsel . . . ." Conn. Const., art. I, § 19. See *Rozbicki v. Huybrechts*, 218 Conn. 386, 391-92 (1991). The state representative who introduced the amendment stated that the provision regarding voir dire "preserves the valuable rights of litigants to have their perspective [sic] jurors individually questioned by their counsel and apart from other veniremen." (Internal quotation marks omitted.) *Rozbicki v. Huybrechts*, supra, 392 n.1 (quoting 14 H.R. Proc., Pt. 5, 1971 Sess., p. 2367, remarks of Representative Robert G. Oliver). However, our Supreme Court commented that "[t]here is no indication that the passage of the relevant part of the 1972 amendment to article first, [§] 19, was intended to accomplish anything more than to assure that the 'right to question each juror individually by counsel' would be 'inviolate'" and that "the constitution guarantee is satisfied by the discretionary use of a 'box voir dire.'" *State v. Burns,* 173 Conn. 317, 321-22 (1977).

The legislative history of the 1977 Public Act, which added the phrase "outside the presence of other jurors," is sparse. The bill passed by consent in both the state house and the

senate. The only specific comment in favor of the bill came before the judiciary committee from the president of a lawyers' association who remarked that, with the box voir dire method, there is a risk that one juror would make statements that could prejudice the entire panel, and also that the use of individually sequestered would save time. Conn. Joint Standing Committee Hearings, Judiciary, 1977 Sess., Pt. 2, p. 586.

In approximately 2004, the judicial branch developed a set of procedures for the voluntary use of panel voir dire in civil cases. Since that time, some judicial districts have used the voluntary panel jury selection method on a regular basis. There is no comparable initiative for criminal cases.

Under the civil procedures, both counsel or parties waive their right to individually sequestered voir dire on the record. An introductory group session then takes place that resembles the standard introductory session in a criminal case. After appropriate introductions to a panel of jurors, the court conducts a prescreening procedure in which the court identifies jurors with possible hardships, conflicts, or circumstances that may make it especially difficult for them to serve as fair and objective jurors in that particular case. Typically, the judge will question jurors individually who indicate a possible concern.

After dismissal of jurors with hardships, conflicts, or other special difficulties, the remaining members of the panel return to the jury box for questioning by counsel. Counsel can alternate asking questions in an agreed-upon fashion. Counsel might, for example, ask for a showing of hands on a particular question or, alternatively, ask the question of selected jurors. If a panelist indicates, or the court or counsel believe, that answers to a particular question or line of questions would be more forthcoming if the juror answered outside of the presence of the other jurors, the court can effectuate that procedure.

After the completion of questioning, counsel take a recess to allow them to review the jurors' responses and evaluate which jurors they would like to accept and which they would prefer to excuse. Counsel then meet with the judge, either in chambers or in court, and alternate either selecting or excusing jurors until exhaustion of the panel or peremptories, or until counsel have completed jury selection.

Voluntary box voir dire in criminal cases would be essentially no different. Perhaps the only difference is that the court must be especially scrupulous in insuring, by means of a thorough canvass of the defendant personally, that the defendant's waiver of his right to individually sequestered voir dire is voluntary, knowing, and intelligent. See *State v. Gore,* 288 Conn. 770 (2008).[1]

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[1]As stated above, the Connecticut Supreme Court has held that the state constitution does not guarantee individually sequestered voir dire and that a box voir dire in which counsel have the right to question jurors individually satisfies the state constitution. See *State v. Burns*, 173

3. The system of individually sequestered voir dire undoubtedly has benefits. Counsel have the opportunity to spend a considerable amount of time questioning each juror, thereby learning much about that juror's background and outlook. Some contend that jurors are more frank about prejudices, bias, or other nonconforming views when questioned individually outside the presence of other jurors. Counsel can use this information in carefully exercising peremptory challenges and challenges for cause.

The relevant portion of the ABA Principles for Juries and Jury Trials provides as follows: "Following initial questioning by the court, each party should have the opportunity, under the supervision of the court and subject to reasonable time limits, to question jurors directly, both individually and as a panel." ABA Principles, Principal 11.B.2. The commentary notes studies showing that focused examination of the venire members by the court and counsel in a more private setting than an open courtroom can yield invaluable information regarding disqualifying conditions. Accordingly, the ABA Principles "[encourage] questioning of prospective jurors both as a panel and individually." ABA Principles, p. 75.

But Connecticut's system of mandated individually sequestered voir dire of prospective jurors does not conform to the actual practice nationally. To our knowledge, no other state in the nation or federal jurisdiction requires individually sequestered voir dire. See *State v. Robinson*, 237 Conn. 238, 247 n.9 (1996). Ironically, our experience with the time it takes to conduct individual voir dire has been the exact opposite of that predicted before the Judiciary Committee in 1977. Indeed, Connecticut ranks last in the nation in the time it takes to select a jury. More tellingly, Connecticut is not even close to the next slowest state. According to a survey conducted by the National Center for State Courts in 2007, Connecticut takes ten hours on average to pick a jury for serious criminal trials and sixteen hours for civil trials. The next slowest states take five and four hours, respectively. See "Delayed Decision: Jury Selection Process Slower than Other States," Stamford Advocate (May 7, 2007).[2] For similar reasons, Connecticut is apparently the only state in the country in which counsel must select or excuse a juror in isolation from the other jurors yet to be interviewed, about whom counsel knows very little.

Conn. 317, 320-22 (1977); accord *State v. Thergood*, 33 Conn. Supp. 599, 601-02 (App. Sess. 1976). Thus, waiver of the right to individually sequestered voir dire does not involve the waiver of a constitutional right. Rather, it involves the waiver of the statutory right under General Statutes § 54-82f to question jurors "outside the presence of other prospective jurors." Accord Practice Book § 42-12. Nonetheless, because of the importance of this right, the court's canvass of the defendant should be thorough.

[2]Another large national survey reported that the average time for jury selection for felony cases was 3.8 hours in state court and 3.6 hours in federal court; for civil cases, 3.1 hours in state court and 2.3 hours in federal court. See N. Vidmar & V. Hans, American Juries: The Verdict, p. 89 (2007).

The protracted time it takes to select a jury in Connecticut has important and undesirable consequences. Many prospective jurors must stay at the courthouse most of the day or all day awaiting their individual interview, thus taking them away from their family responsibilities or their job, in the latter case reducing work productivity. Jury selection that typically lasts several days for one case also imposes significant additional attorney's fees on privately represented parties. Attorneys must spend time in court that could be spent preparing for the case or tending to other business. And each day that jury selection takes place, at least in criminal cases, requires the staffing of a courtroom with a judge, prosecutor, public defender when needed, clerk, monitor, and marshals, with all the attendant costs to the public. We also doubt that public confidence in our judicial system is enhanced when jury selection alone can take over a week, or when, as is often the case, jury selection takes longer than the evidentiary portion of the trial. See *State v. Anthony*, 172 Conn. 172, 175 (1976).

The practice of individual voir dire questioning by counsel can also take an emotional toll on the jurors. Many jurors feel nervous or intimidated sitting in a courtroom witness chair being asked questions by counsel with a judge presiding. Some jurors have reported feeling as if they were ones on trial. This feeling is exacerbated by the fact that the questions from counsel are often complicated, repetitious, unnecessary, or unduly personal. See "Expectations of Privacy? Jurors' Views of Voir Dire Questions," 85 Judicature, No. 1, p. 10 (July-Aug. 2001). It is usually possible to determine whether a juror will be attentive, objective, and fair during the first few minutes of questioning. The remaining time spent by counsel is often aimed subtly, and improperly, at attempting to educate the jurors about counsel's case. See *State v. Anthony*, supra, 172 Conn. 175. Further, jurors' time - not to mention judicial time - is often wasted as counsel engage in gamesmanship by attempting to convert a basis for a peremptory into a basis for a challenge for cause. See *State v. Herwood,* supra, 33 Conn. Supp. 602 (the practice of individually sequestered voir dire "has been frequently abused by protracting unduly the process of jury selection.")

Finally, counsel conducting individual interviews with jurors do not get the benefit of seeing how jurors interact with each other, which is ultimately what the jurors will have to do when they deliberate on a case. Counsel instead receive a picture of the juror in isolation on the witness stand, which is not necessarily reflective of the personality of the juror in a jury room. Further, counsel must select or excuse jurors in isolation, without the advantage of knowing who comes next. In contrast, in a box voir dire format, counsel will learn what issues seem to trouble the panel. They will also see how jurors respond and interact when confronted with controversial opinions. Counsel cannot obtain these benefits from individually sequestered voir dire. As Judge Robert Satter has stated in his book "Doing Justice," "Nobody has ever shown that our state juries are any fairer than the federal court juries." R. Satter, Doing Justice; A Trial Judge at Work, p. 83 (American Lawyer Books 1990).

One of the leading criticisms of box voir dire is that jurors will not express any feelings of bias or prejudice in front of other jurors. It is not clear, however, that jurors will be more

candid if they are put in a witness chair and questioned individually while everyone in the courtroom watches. In any event, the court can identify many jurors who harbor strong feelings that are incompatible with the objectivity needed for a particular case by employing effective prescreening methods, such as a written questionnaire. (See this committee's separate memorandum on that subject). Further, the court should permit any juror who feels embarrassed by a particular question to answer in the absence of other jurors. See *Childs v. Blesso*, 158 Conn. 389, 393-94 (1969).

Another criticism of box voir dire is that the panel may become tainted by a juror who blurts out a prejudicial remark. There is undeniably some risk that this event may occur and, if it does, the court may have to excuse the entire panel. This concern, however, does not appear to have become so prominent as to prevent every other jurisdiction in the country to mandate box voir dire. Further, the court can minimize the risk of a prejudicial remark by instructing the panel to answer counsel's questions with a yes or no answer when called upon or to ask for a side bar if any question requires a controversial response.

4. For these reasons, we conclude that box voir dire, as described herein, is the best practice based on national standards.[3] We nonetheless recognize that individually sequestered voir dire has been the practice in Connecticut since at least 1977, when Public Act 77-255 guaranteed that voir dire occur "outside the presence of other prospective jurors." 1977 Public Acts, No. 77-255. Accordingly, we recommend that panel or box voir dire take place on a purely voluntary basis at this time.

There is no reason, however, not to extend the voluntary use of box voir dire from civil to criminal cases and to encourage its use in all such cases. The same advantages, discussed above, of box voir dire apply equally to both types of cases. Indeed, box voir dire is the predominant method of jury selection in criminal cases across the nation. As long as the court's canvass of the defendant's waiver of his right to individually sequestered voir dire is thorough, there is no barrier to the voluntary use of box voir dire in criminal cases.

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[3]Some members of our subcommittee disagree with this statement and believe that individually sequestered voir dire is the best practice.

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Recommendation IV: Ensuring the Proper Confidentiality, Use, and Retention of Jury Questionnaires

1. This recommendation discusses the protection of the information given by prospective jurors during the voir dire process. It recommends primarily that the Judicial Branch adopt a policy for the retention and destruction of the statutorily mandated "Confidential Juror Questionnaire" and that trial judges inform venire panels of the practices concerning privacy of their information.

2. Prior to coming to court for jury service, venire persons receive a form in the mail entitled "Confidential Juror Questionnaire." General Statutes § 51-232. The form instructs the venire person to bring the completed form to court on their day of service. General Statutes §51-232(c) requires that the questionnaire include questions "eliciting the juror's name, age, race and ethnicity, occupation, education and information usually raised in voir dire examination." The form also seeks information regarding place of employment, spouse's place of employment, prior jury service and any relations to the court system. The statute provides that "[c]opies of the completed questionnaire shall be provided to the judge and counsel for use during voir dire or in preparation therefore." "Counsel shall be required to return such copies to the clerk of the court upon completion of voir dire." The statute also specifically requires that "except for disclosure made during voir dire or unless the court orders otherwise, information inserted by jurors shall be held in confidence by the court, the parties, counsel and their authorized agents".

   Statewide compliance with the statutory requirement that the juror information be held in confidence exists but there is no statewide policy within the Judicial Branch for a common method. There is broad discrepancy among the judicial districts as to length of time the information is kept. Only one district informs the potential jurors that the questionnaires are strictly confidential. See Appendix E.

The ABA Principles for Juries and Jury Trials, Principle 11.A.2 recommend the following:

> "Jurors should be advised of the purpose of any questionnaire, how it will be used and who will have access to the information."

This principle seeks to encourage honesty among jurors in completing questionnaires and to enhance the value of these questionnaires by having the court advise jurors of their purpose and use.

An inquiry was posted through the National Association of State Courts as to the practices in other states for the retention and destruction of confidential juror information. Although the response was limited, it did reveal that other courts do have a formal retention/destruction policy. See Appendix E.

On its face, our statute is in compliance with the "best practice" espoused by the ABA, as the form states that "the information which you provide will be used by the judge, lawyers and litigants during the selection of a jury and will be held confidential unless the judge orders it disclosed". There is, however, a lack of statewide policy within the Judicial Branch as to the retention and destruction of the questionnaires under §51-232, and no policy as to questionnaires created by counsel and/or the court. Accordingly, we cannot guarantee compliance with our statutory mandate that the information will be "held in confidence." Our statute also does not provide compliance with the best practices of the ABA that the court inform potential jurors about the questionnaire and its uses. Finally, on a related note, there is discrepancy among jurisdictions as to compliance with the mandatory language of §51-232(c) regarding provision to counsel and the court of the information from the jury questionnaires.

3. The following "best practices" are recommended with respect to informing jurors as to the use of the confidential information:

- The State of Connecticut Judicial Branch should adopt a formal and uniform policy regarding the retention and destruction of the juror confidential questionnaires; namely, that all confidential juror questionnaires will be collected daily and put into a file marked with a "destroy by" date. Said date shall be twenty days after the verdict or, if applicable, the sentence unless an appeal has been filed, in which case the questionnaires shall be retained until there is a final judgment in the case. Destruction will be by depositing the envelope in a locked shredding bin. This policy should apply to all questionnaires, whether created pursuant to the statute or by the parties and/or court.

- The trial judge, in his/her introduction to the prospective jurors upon their reporting to the courtroom, should address, inter alia, the state's policy regarding the use, privacy, retention, and destruction of any questionnaires. This will serve to enhance juror confidence, with the added benefit of increased juror candor. This proposal is dependent on the adoption of another proposed "best practices" change; namely, judicial oversight in civil jury selection.

The following is recommended with respect to the uniform compliance with the provision of §51-232(c) regarding provision of juror information to counsel and the court:

- The Judicial Branch will ensure compliance, by means of a memorandum to all chief clerks and their staff, with the provision of §51-232(c) that copies of the questionnaire shall be provided to the judge and counsel for their use during voir dire or in preparation for voir dire.

4. The advantages of these proposed "best practices" are that the Branch will now have a uniform, statewide process for the retention and destruction of these forms, the potential juror will have a sense of comfort knowing the parameters of the use of the information provided, there will be greater protection of the interest of the potential juror in participating in the democratic process, and there will be enhanced juror confidence and candor. The disadvantage is that the judge and staff present in the court room during the voir dire will not be able to tend to matters that they otherwise would have been handling.

5. The "best practices" recommendation is that the Judicial Branch adopt the proposed policy, described in § 3 above, regarding the retention and destruction of all confidential juror questionnaires, which policy will then be communicated to venire persons during the jury selection process and to the legal community through a standing order by the Chief Court Administrator's office. In addition, the Judicial Branch should, as also stated in § 3, ensure compliance with the statutory requirement to make information from the questionnaire available to counsel and the court.

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Recommendation V : Reusing Excused Jurors

1. This recommendation discusses the practice of having an excused juror returned to the jury assembly room (jury pool) upon being excused from service on a particular case. This practice is compared with the alternative of sending an excused juror home.

Consideration of this issue is motivated by the fact that a juror excused from sitting on a certain type of case may very well be appropriate for service on another type of matter. A juror may, for personal reasons be inappropriate or unable to sit in judgment on a DWI or Sexual Assault case, yet be well suited for a personal injury matter. Likewise, due to personal or business concerns a potential juror may be unable to serve on a six week trial. However, the same juror may be available and could be an appropriate choice for a trial lasting for a shorter period of time.

If a juror is sent home during the process of screening a venire panel, the juror is lost for the day. This not only deprives a potential juror of the opportunity to serve but depletes the size of the jury pool. This causes delay and inefficiency. Delay and inefficiency occurs when during the course of jury selection, a panel is exhausted. Often, a request is made for an additional panel but it is learned that there is an insufficient number of potential jurors left in the assembly room to justify indoctrinating a new panel. Jury selection obviously does not continue and is postponed for the following day. This usually results in the case being adjourned for the day. The delay and inefficiency this causes is manifest and problematic.

2. Currently, the prevailing, although not exclusive, practice in Connecticut is to excuse for the day (send home) a potential juror who has been excused from service during the process of screening venire panels. As stated above, this depletes the number of jurors available for service and results in inefficiency. Although the ABA Standards Relating to Juror Use and Management do not specifically address the issue of re-using jurors, subdivision A encourages the efficient use of jury resources. The prevailing practice does not appear to efficiently use juror resources and therefore, does not qualify as a "best practice."

3. The only practical manner to improve the current practice requires pre-screening to be conducted by a trial Judge in all cases (civil and criminal). The decision as to whether to instruct an excused juror to return to the pool or go home should be left to the discretion of the trial Judge. The decision should be made after voir dire with the participation of counsel has taken place, unless the Judge decides to return the venire person after pre-screening. Often, trial Judges are not present during the civil voir dire. An effective policy requires uniformity in criminal and civil matters. Assuming an appropriate pre-screening practice is put in place, the re-use of jurors would be a practice consistent with the goal of delivering effective, efficient services of potential jurors and the public.

3a. The Judicial Branch should remain flexible in implementing the practice of reusing jurors. If there are no undue administrative burdens, a Judicial District courthouse might stagger the start of jury selection for different cases so that, for example, jurors prescreened at 10:00 a.m. but unavailable for that case might be sent to a jury selection starting at 11:00 a.m. and be willing and able to serve in that case.

4. One disadvantage could occur if the re-use policy is applied blanketly, regardless of the geographic location of the trial versus the courthouse where the jury assembly room is located, although this problem is limited to only a few judicial districts. If, for example, a juror is excused in Norwalk and instructed to return to the jury pool located in Stamford, a substantial amount of travel time would be required. This would cause inconvenience to the potential juror and the time necessary to travel would negate any efficiency that might be gained. Where such geographic obstacles exist, this practice should not be used.

The advantage is that having a more pre-screened fully "stocked" jury pool would expedite jury selection, making for shorter trials and give individuals an opportunity to serve on a jury, which would not otherwise be afforded them.

5. The best practice would be to institute a policy wherein a trial Judge shall, after excusing a potential juror during the initial screening process, instruct such juror to return to the jury assembly room when in the judgment of the Court, the availability of such juror for another prospective panel would result in a more efficient and expeditious jury selection process. The Court should take into account all appropriate considerations, including geographic locations, the time of day and the reasons for excusal. To implement this policy no legislation or Practice Book changes are necessary. Connecticut General Statutes §51-238a governs the Length of Term of Service as a Juror and limits it to one day subject to certain exceptions. Implementing the policy as aforesaid will not run afoul of the Statute.

Public Service and Trust Commission
Jury Committee
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Recommendation VI: Improving Juror Comfort while Waiting to be Questioned

1. This recommendation discusses whether changes can be implemented to improve the comfort of jurors while waiting to be questioned.

2. Juror comfort while waiting to be questioned would appear to vary in the different jurisdictions depending on the physical facilities and amenities available in different courthouses, ranging from jury panels being sequestered in small, crowded, sterile rooms with little or no amenities, to more comfortable quarters in the newer courthouse facilities.

The ABA Principles for Juries and Jury Trials (Principle 2.C, 2.D, and 2.E) recommend that the time required of persons called for jury service be the shortest period consistent with the needs of justice, that courts respect jurors by minimizing their waiting time, and that courts should provide an adequate and suitable environment for jurors.

3. Consistent with the ABA Principles, it would appear that juror comfort is dependent upon both the speed with which the jurors are "processed" and the ability of jurors to engage in meaningful activity while waiting.

4. It is recommended that the judicial branch make processing of jurors and reduction of waiting time a priority in all cases. It is recommended that in order to speed voir dire, each counsel receive copies of the "Confidential Juror Questionnaire" for each venire person. In many, if not all, jurisdictions only one copy of the "Confidential Juror Questionnaire" is available to be shared among counsel despite the language of CGS 51-232(c) that copies shall be provided to counsel. Consequently, there is a significant delay in commencing questioning while all counsel circulate the one copy of the Confidential Juror Questionnaire prior to initiation of questioning. Even in two party cases, this results in significant delay, which is obviously multiplied in multi- party cases. (See Recommendation IV)

Additionally, use of pre-screening questionnaires for assignment of venire persons to individual cases is recommended to improve the speed of processing. Every case should utilize a questionnaire that contains all information necessary to identify conflicts with counsel, parties, witnesses, etc, as well as those case specific issues which would necessarily be asked of every juror, i.e. "have your or anyone close to you suffered the (same injury as the plaintiff)", in a medical malpractice case, "have your or anyone close to you every been dissatisfied with the care of a healthcare provider." (See Recommendation II)

As to the venire persons' ability to engage in meaningful activity while waiting, it is recommended that jurors be allowed to bring books, cards, and personal electronic devices which can be used noiselessly, such as DVD players, i-pods and laptop computers equipped with earphones, and that they be notified when summoned that they are encouraged to do so.

It is recommended that other than those times when venire persons are required to be addressed in a group, such as the introductory orientation and introduction of specific cases, that venire persons be allowed to move about the court house facility, to the degree permitted by security and confidentiality considerations, and possibly leave the building.

It is recommended that the branch explore the feasibility of providing each juror with a buzzer which would allow the juror to be notified that his/her presence is required within 5- 10 minutes, freeing the jurors to move about the facility. Although there is great variation among the facilities as to the amenities available, were the jurors free to move throughout the facility, they could wait in coffee shops, larger group waiting areas, quiet areas, areas for internet access for laptop computers, reading rooms, etc.

Although the speed of voir dire questioning and the number of venire persons required for questioning can vary greatly, when it becomes apparent that the size of a particular panel is such that the entire panel cannot be questioned in the morning, portions of the panel should be excused and allowed to report back in the afternoon.

It is also recommended that an exit survey be conducted of all venire persons for suggestions for improving in the process.

Public Service and Trust Commission
Jury Committee
Voir Dire Subcommittee

Recommendation VII: Making Better Use of Alternate Jurors

1. This recommendation discusses potential issues related to better use of alternate jurors. We recommend that further consideration be given to the issues set forth below, after consideration by interested parties, the public, bar and judiciary. Some members of the subcommittee disagreed with the proposals set forth in paragraphs 3 and 5.

2. Currently alternate jurors are selected after the regular jury has been selected and the jurors are aware of their status as alternates. The alternate jurors are dismissed just prior to submission of the case to the jury and, in civil cases, serve no other function.

3. Rather than informing alternate jurors that they are alternates and therefore may not deliberate, consideration should be given to not informing the alternates of their alternate status until immediately prior to the submission of the case to the jury.[1] This proposal would require amendments to CGS 51- 243 regarding civil cases, CGS 54-82h regarding criminal cases, and CGS 1- 25 regarding the alternate's oath. Jurors could be given both the regular juror oath and the alternate juror oath at the start of the case.

4. It is anticipated that the jurors would be more diligent and invested in the process if they were unaware that they were the alternates in the case. Although we have seen no data to support it, under the current practice it is assumed that the alternates are less invested in the process because of their status as such. This proposal is at least consistent with the ABA Principles for Juries and Jury Trials, Principle 11.G.2, which recommends that the status of jurors as regular jurors or alternates should be determined through random selection at the time for jury deliberation.

5. It is also recommended that consideration be given to allowing the alternates to participate in deliberations in civil cases upon the unanimous agreement of all counsel.[2] It is suggested that alternates not be allowed to participate in deliberations unless they are allowed to vote, since non-voting alternates would not have the same investment in the proceedings as those voting. This proposal is in keeping with ABA Principle 11.G.3.

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[1]Some members of the subcommittee disagree with this proposal.

[2]Some members of the subcommittee disagree with this proposal.

In the event alternates are allowed to participate and vote, counsel would have to unanimously agree on whether the verdict requires a unanimous vote or otherwise. The ABA Principles for Juries and Jury Trials, Principle 4, recommends that in both civil and criminal cases jury decisions be unanimous wherever feasible. Although the ABA Principles approve of less than unanimous verdicts upon stipulation by the parties, the Principles recommend that to be valid, the stipulation must be clear as to the number of concurring jurors required for a verdict and, in criminal cases, requires the personal waiver by the defendant of the right to a unanimous decision after being advised by the Court of the right to a unanimous decision.

6. It is also recommended that the court allow alternates to replace regular jurors during deliberations in civil cases, as allowed in criminal cases. CGS 54- 82h(c) provides that in criminal cases if an alternate becomes a regular juror after commencement of deliberations, the jury "shall be instructed by the court that deliberations by the jury shall begin anew." An amendment to the civil statute governing alternates, CGS 51- 243, to add a similar provision would be required if alternates are allowed to replace regular jurors during deliberations in civil cases.

CHAIRS' NOTE: The Selected Jurors Subcommittee made comments but did not make a specific recommendation on this issue. That subcommittee agreed that whatever procedure is adopted for the use of alternate jurors, the same procedure should apply in both criminal and civil cases. See Selected Jurors Recommendation XIII.

PUBLIC SERVICE AND TRUST COMMISSION

JURY COMMITTEE

REPORT AND RECOMMENDATIONS

RECOMMENDATIONS OF THE SELECTED JURORS SUBCOMMITTEE

SUBCOMMITTEE ON SELECTED JURORS

RECOMMENDATION I: POST-SELECTION ORIENTATION

The Subcommittee discussed at some length the guidance that is given to jurors – after they have been selected to serve in a particular case – about important requirements of their service. The Subcommittee concludes that Connecticut courts could make some helpful improvements in the approaches for giving selected jurors this guidance.

Practice Recommended in PRINCIPLE 6:

PRINCIPLE 6 provides that "[c]ourts should educate jurors regarding the essential aspects of a jury trial." In pertinent part, PRINCIPLE 6.C. provides as follows:

> Throughout the course of the trial, the court should provide instructions to the jury in plain and understandable language.
>
> 1. The court should give preliminary instructions directly following empanelment of the jury that explain the jury's role, the trial procedures including note-taking . . . the nature of evidence and its evaluation. [Remaining text omitted.]
>
> 2. The court should advise jurors that once they have been selected to serve as jurors or alternates in a trial, they are under an obligation to refrain from talking about the case . . . until the trial is over and the jury has reached a verdict. [Remaining text omitted.]

PRINCIPLES, at 29.

Current Connecticut Practice:

The current Connecticut jury handbook, titled "Your Guide to Jury Duty," provides at least some of the guidance suggested by PRINCIPLE 6.C.1 and PRINCIPLE 6.C.2, albeit in the midst of a much broader orientation to jury service in general. Most Connecticut judges also give empanelled jurors oral instructions covering some of these topics; the comprehensiveness of this guidance, however, appears to vary considerably from court to court.

Perceived Advantages of Approach from PRINCIPLES:

- Jurors will likely pay more attention to instructions specifically concerning their responsibilities as selected jurors if they receive those instructions after they know that they have been selected to serve in a trial.

- Jurors may better comply with important instructions about their service as selected jurors if they have those instructions readily available to them, in a succinct written format, throughout their service in a trial.

Perceived Disadvantages of Approach from PRINCIPLES:

- Courts will incur some additional expense if required to produce new pamphlets or other written instructional materials specifically targeted toward selected jurors' service.

Subcommittee Recommendation:

The judiciary should prepare succinct educational materials for distribution to selected jurors immediately or soon after they have been selected to serve in a trial. While additional matters may warrant inclusion, the Subcommittee recommends that these educational materials should cover at least the following aspects of selected jurors' service. The Subcommittee also concludes that jurors should be given explicit guidance about the extent – if any – to which they will be permitted to use smartphones or other devices to access and process e-mail and voicemail messages during recesses.

Conduct Requirements:

- **Jurors should not discuss the evidence, the facts, the witnesses or the issues in the case until the judge instructs them that they can begin their deliberations.**
- **Jurors should not discuss the case with others until their jury service is finished.**
- **Jurors should not investigate the law or facts relating to their trial (in person, internet, etc.).**
- **Jurors should not review media accounts of the case on which they are serving.**
- **Jurors should understand that the attorneys in the trial are not permitted to talk with jurors informally on recesses, etc., and that attorneys are not being rude when they refrain from doing so.**
- **Jurors should inform the court by passing a written note (on a folded-up piece of paper) to court staff (i.e., the clerk, or a marshal, if a marshal is present) if they experience health issues or other emergencies or problems, and the court staff will deliver the note directly to the judge, unopened.**
- **Jurors should not use smartphones or other handhelds at any time during their service for research/investigation of the case (including information about the lawyers, parties or other witnesses) or for communicating with others about the case.**
- **Having been selected to serve, jurors are expected to conduct themselves as officers of the court and can expect to be treated as such by the judge and other participants in the proceedings.**

Additional Information:

- **Phone numbers for alerting court to attendance or other problems.**
- **Information about parking, meals, etc.**

- **Procedures for note taking and any special procedures that will be used in the case (e.g., use of "trial notebooks"/exhibit binders, if applicable).**

Subcommittee Comments on Implementation:

The Subcommittee on Selected Jurors Subcommittee on Selected Jurors concludes that it will be very helpful if specific orientation materials – independent of or easily separable from broader, more-generalized orientation materials – address recurring, critically-important particular aspects of selected jurors' service during trial. While this might be accomplished by a brief, stand-alone brochure, it may be possible to include this guidance in a broader jury handbook as a removable insert. The overall goal should be to have a succinct, clear, written statement of conduct requirements and other key information that selected jurors can have readily at hand and to which they can easily refer for guidance during trial.

The Subcommittee also notes its view that the trial judge should be the source of authority of these and all other matters concerning jurors' conduct during trial. Accordingly, if instructions of this type are published in written form for selected jurors to remind them of their legal obligations during jury service, the trial judge should distribute these materials and explain their significance. The Subcommittee believes this precaution appropriate to ensure that jurors will understand these instructions to be part of their charge as given by the trial judge, rather than by some independent, unknown and unseen authority.

The subcommittee examined the prudence of providing orientation instructions on the so-called "CSI Effect" as part of its charge and concluded that it would not be appropriate for the trial judge to provide instructions to selected jurors in an attempt to debunk or minimize this perceived effect. The subcommittee suggested that identifying jurors with unrealistic expectations about forensic evidence might be more appropriately handled at voir dire by counsel.

SUBCOMMITTEE ON SELECTED JURORS

RECOMMENDATION II: JUROR NOTE TAKING

Practice Recommended in PRINCIPLE 13:

PRINCIPLE 13 provides that "the court and parties should vigorously promote juror understanding of the facts and the law." With respect to note taking, Principle 13.A provides in pertinent part:

> Jurors should be allowed to take notes during the trial.
>
> (1) Jurors should be instructed at the beginning of the trial that they are permitted, but not required, to take notes in aid of their memory of the evidence and should receive appropriate cautionary instructions on note taking and note use. Jurors should also be instructed that after they have reached their verdict, all juror notes will be collected and destroyed.
> (2) Jurors should ordinarily be permitted to use their notes throughout the trial and during deliberations.
> (3) The court should ensure that jurors have implements for taking notes.
> (4) The court should collect all juror notes at the end of each trial day until the jury retires to deliberate.
> (5) After the jurors have returned their verdict, all juror notes should be collected and destroyed.

PRINCIPLES, at 91.

Current Connecticut Practice:

Many Connecticut judges currently permit jurors to take notes, but not all do so. Moreover, among those judges who do permit jurors to take notes, the procedures followed for juror note taking vary, sometimes significantly. Case law specifically authorizes Connecticut trial judges, in their discretion, to allow note taking by jurors in both civil and criminal cases. *See, e.g.,* Esaw v. Freedman, 217 Conn. 553, 586 A.2d 1164(1991) (civil cases); State v. Mejia, 233 Conn. 215, 228-29 (1995) (criminal cases). Practice Book provisions confirm the permissibility of note taking in both civil and criminal cases. *See* Practice Book §16-7 (for civil jury trials) Practice Book § 42-9 (for criminal jury trials). The Judicial Branch website includes helpful form instructions for use by judges when note taking is permitted. *See* State of Connecticut Judicial Branch Website "Civil Jury Instructions," Part 1 ("Preliminary and Trial Instructions"), Section 1 ("Before the Start of Evidence"), § 1.1-4; and State of Connecticut Judicial Branch Website "Criminal Jury Instructions," Part 2 ("Before Evidence"), § 1.2-11. Data on note taking by jurors permitted in other jurisdictions is attached in Appendix F.

Perceived Advantages of Approach from PRINCIPLES:

- Jurors who take notes may be better able to remain engaged and attentive during trial.
- Jurors who take notes may be better able to keep track of and later recall information received at trial.
- Jurors who have taken notes may feel more confident and comfortable during deliberations if they can use their notes to refresh their recollections.
- Many jurors apparently want to take notes at trial, and they may feel frustrated if they are not permitted to do so; conversely, they may be more satisfied with their jury service if permitted to take the notes they believe would be helpful.

Perceived Disadvantages of Approach from PRINCIPLES:

- Jurors who are taking notes may be distracted from paying full attention to witness testimony or the judge's instructions.
- Jurors who did not take notes may feel inclined in deliberations to defer inappropriately to jurors who took better (or at least more comprehensive) notes during trial.

The Subcommittee concludes that the perceived advantages of permitting jurors to take notes significantly outweigh the perceived disadvantages, and that Connecticut courts should follow most of PRINCIPLE 13.A.'s recommendations on juror note taking. A minority of the Subcommittee members feel that the balancing of advantages and disadvantages favors allowing jurors to take notes at all phases of trial – including opening statements, closing arguments and instructions – and to retain and review their notes during recesses. A significant majority of Subcommittee members, however, feel that (1) jurors should not be permitted to take notes while the court is instructing them or during counsels' opening statements or closing arguments; and (2) jurors should not be permitted to retain and review their notes during recesses. Accordingly, the Subcommittee makes the following recommendation:

Subcommittee Recommendation:

Connecticut judges should allow jurors to take notes at trial, with appropriate instructions about the procedures to be used for note taking. Jurors should not be permitted, however, to take notes while the court is instructing them or during counsels' opening statements or closing arguments. (A minority of the Subcommittee members believe that note taking should be permitted during opening statements and closing arguments.) Jurors should not be permitted to retain and review their notes during recesses. In other respects, Connecticut courts should follow the procedures recommended in PRINCIPLE 13.A.

Subcommittee Comments on Implementation:

The Subcommittee suggests that alternates' notes should be kept separate when the jurors who will deliberate retire to do so, so that the deliberating jurors will not refer to the alternate jurors' notes.

SUBCOMMITTEE ON SELECTED JURORS

RECOMMENDATION III: Clear Jury Instructions ("Plain Language")

Practice Recommended in PRINCIPLE 14:

PRINCIPLE 14 provides that "[t]he court should instruct the jury in plain and understandable language regarding the applicable law and the conduct of deliberations." PRINCIPLE 14.A. further emphasizes that "[a]ll instructions to the jury should be in plain and understandable language." PRINCIPLES, at 107.

Current Connecticut Practice:

The jury instructions used in Connecticut vary considerably – many communicate effectively in plan and understandable language, but some do not. There are standing committees in place to make recommendations for civil and criminal jury instructions. Instructions drafted by these committees are made available to the public on the Judicial Branch's website. These instructions, however, are not endorsed as "approved" instructions.

Perceived Advantages of Approach from PRINCIPLES:

- Jurors may be better encouraged to consider the jury instructions carefully – and may apply them more effectively and accurately – if the jury instructions are written in language that is accessible to lay persons.

Perceived Disadvantages of Approach from PRINCIPLES:

- The process of preparing plain language instructions is difficult and can be very time consuming.
- Use of plain language in instructions often will require a "translation" of and a departure from the exact language used in court opinions or statutes, with some risk that the plain language reformulation will subsequently be found to be incorrect.

The Subcommittee concludes that the perceived advantages of using instructional language that will be accessible to jurors significantly outweigh the perceived disadvantages, and that Connecticut appellate and trial courts should make every effort to use plain and understandable language when issuing decisions and instructing jurors on the law. Accordingly, the Subcommittee makes the following recommendation:

Subcommittee Recommendation:

Connecticut judges should instruct the jury in plain and understandable language regarding the applicable law and the conduct of deliberations.

Subcommittee Comments on Implementation:

The task of preparing plain language jury instructions is a difficult and time consuming one. The Subcommittee notes that Connecticut's standing committees on civil and criminal jury

instructions have already made significant progress toward plain language instructions in recent years. The Subcommittee believes that the Connecticut judiciary should urge the standing committees to make plain language formulation a top priority as the standing committees continue to examine and refine existing pattern instructions and prepare future ones. In this regard, the standing committees might find it helpful to seek assistance from extra-judicial resources including legal academics, linguists, and attorneys with expertise in the subject areas that particular instructions will address.

SUBCOMMITTEE ON SELECTED JURORS

RECOMMENDATION IV: COPIES OF INSTRUCTIONS

Practice Recommended in PRINCIPLE 14:

With respect to copies of instructions, PRINCIPLE 14.B. provides:

> Jurors should be instructed with respect to the applicable law before or after the parties' final argument. ***Each juror should be provided with a written copy of instructions for use while the jury is being instructed and during deliberations***. (Emphasis added.)

PRINCIPLES, at 107.

Current Connecticut Practice:

Many -- perhaps most -- Connecticut judges currently give the jury a written copy of the jury instructions for their use during deliberations, but few give each juror a copy of the instructions.

Some judges currently use procedures that permit the jurors to read along as the judge delivers the jury charge. Of the judges who take this step, some give the jurors hard copies of the instructions at this stage; other judges instead use an overhead projector to display the instructions while the judges read the instructions aloud to the jurors. Judges who give the jurors hard copies of the instructions for their use during the jury charge retrieve those hard copies before the jurors' deliberations begin, if the judges have found errors in the instructions while reading them to the jury. (The jurors then receive corrected copies of the instructions for their use during deliberations.)

Perceived Advantages of Approach from PRINCIPLES:

- Jurors may be better able to follow the judge's instructions if they are able to read along as the judge delivers the instructions orally.
- Jurors who are able to read along while the judge delivers the jury charge observe (contemporaneously) the headings and subheadings that the judge used to organize the instructions, likely permitting the jurors subsequently to locate pertinent instructions more efficiently during their deliberations.
- Jurors may make more effective use of the instructions during deliberations if each juror has his or her own copy of the instructions to which to refer.
- Courts may get fewer requests for reinstruction when the complete instructions are provided in writing, and such requests may be better focused than they tend to be when the instructions have been provided orally, without written copies.
- Provision of multiple copies helps "democratize" the deliberation process, by preventing one or two especially strong-willed jurors from monopolizing the

conversation by seizing control of the only printed copy of the instructions sent in for the jurors' use.

Perceived Disadvantages of Approach from PRINCIPLES:

- The courts will incur some additional expense if required to make copies of instructions for each juror.
- The process of preparing multiple copies of the final jury charge will require additional time that may cause some delay in the proceedings.
- Jurors read at different rates, and some jurors may either read ahead of or fall behind the trial judge if they are reading their own copy of the instructions while the trial judge is charging them.
- Judges occasionally detect minor errors in the instructions as they read the charge to the jury; if the jurors have already been given their own individual copies of the instructions, the result will be to complicate the process of correcting the charge as initially written to ensure that the jurors use a corrected version of the instructions during deliberations.

The Subcommittee concludes that the perceived advantages of giving each juror his or her own copy of the instructions significantly outweigh the perceived disadvantages, and that Connecticut courts should follow PRINCIPLE 14.B.'s recommendation on copies of instructions for jurors. Accordingly, the Subcommittee makes the following recommendation:

Subcommittee Recommendation:

Connecticut judges should provide each juror with a copy of the instructions for use while the jury is being instructed and during deliberations. (A minority of the Subcommittee members believe that jurors should not be given their own copies of the instructions to read along with the judge during the jury charge, but should instead receive their copies at the time they commence deliberating.)

Subcommittee Comments on Implementation:

The Practice Book currently permits one copy of the jury instructions to be sent into the jury room. *See* Practice Book § 16-15 (civil cases) and § 42-23 (criminal cases). If the Subcommittee's recommendation on this practice is implemented, the Practice Book rule should be revised to authorize the court on its own motion to give each juror a copy of the instructions for the juror's use during deliberations.

The Subcommittee notes that one possible variation in implementation may be helpful in addressing some of the perceived disadvantages of giving the jurors copies of the instructions to read along with the judge. As noted above, some trial judges use an overhead projector while they charge the jury, rather than giving each juror a written copy of the instructions to read during the charge. Two benefits result: (1) jurors cannot read ahead of or fall behind him as the judge delivers the charge; and (2) the judge does not have to retrieve from the jurors their copies of the charge as initially written if the judge detects minor errors while reading the charge. (Instead, the judge can make corrections and then have copies of the corrected final instructions

made and given to the jurors for use during deliberations.) Where courtrooms have the technology to permit this approach, the approach should be used as a likely "best practice."

SUBCOMMITTEE ON SELECTED JURORS

RECOMMENDATION V: Exhibit Index for Use During Deliberations

Practice Recommended in PRINCIPLE 15:

PRINCIPLE 15.B. provides:

> Exhibits admitted into evidence should ordinarily be provided to the jury for use during deliberations. Jurors should be provided an exhibit index to facilitate their review and consideration of documentary evidence.

PRINCIPLES, at 113.

Current Connecticut Practice:

Some Connecticut judges currently give the jury an exhibit index for their use during deliberations, but many do not.

Perceived Advantages of Approach from PRINCIPLES:

- An exhibit index should assist jurors in recalling and locating exhibits to which they may wish to refer during their deliberations.

Perceived Disadvantages of Approach from PRINCIPLES:

- The process of preparing the exhibit index will require additional time that may cause some delay in the proceedings.

The Subcommittee concludes that the perceived advantages of giving the jury an exhibit index for their use during deliberations significantly outweigh the perceived disadvantages, and that Connecticut courts should follow PRINCIPLE 15.B.'s recommendation in this regard. The Subcommittee cautions, however, that the court should (with the active assistance of counsel) eliminate from the index to be provided to jurors all references to exhibits that have not been admitted as full exhibits (e.g., court exhibits and exhibits marked for identification but not admitted as full exhibits), and all descriptions of full exhibits that might in some way be prejudicial. Accordingly, the Subcommittee makes the following recommendation:

Subcommittee Recommendation:

Connecticut judges should provide the jury with an appropriately redacted index of full exhibits for the jurors' use during deliberations.

Subcommittee Comments on Implementation:

If the Subcommittee's recommendation on this practice is implemented, the Practice Book rule should be revised to authorize the court on its own motion to provide the jury with an appropriately redacted index of full exhibits for the jurors' use during deliberations. *See* Practice Book § 16-15 (civil cases) and § 42-23

(criminal cases), which do not currently include an exhibit list among the items that may be given to the jury for use during deliberations.

SUBCOMMITTEE ON SELECTED JURORS

RECOMMENDATION VI:

Responding to Juror Questions and Requests for "Readbacks" of Testimony During Deliberations

Practice Recommended in PRINCIPLE 15:

PRINCIPLE 15.D. provides:

> When jurors submit a question during deliberations, the court, in consultation with the parties, should supply a prompt, complete and responsive answer or should explain to the jurors why it cannot do so.

PRINCIPLES, at 113.

Current Connecticut Practice:

The Connecticut Practice Book provides for and Connecticut judges allow a readback of trial testimony when the jurors request one during deliberations. Connecticut judges vary in the approaches they use when deliberating jurors submit a question about interpretation of the court's instructions. Some judges simply reread to the jurors the initial instructions and advise the jurors that they will have to do the best they can to follow them; other judges, after consulting with counsel, give the jurors additional instructions in an attempt to respond to the issue about which they appear confused or uncertain.

Perceived Advantages of Approach from PRINCIPLES:

- Jurors will likely deliberate more effectively and more confidently – and they may reach objectively more accurate verdicts – if the court provides the information or guidance the jurors have requested when they are uncertain about their recall of testimony or have a question about the judge's instructions.
- Jurors who receive this type of assistance from the court will likely feel more satisfied with their service than will jurors who have requested this type of assistance and been rebuffed by the court.

Perceived Disadvantages of Approach from PRINCIPLES:

- The process of preparing helpful, appropriate responses to jurors' questions about instructions will require additional time, delaying completion of the proceedings.
- The process by which the court works with counsel to formulate additional instructions to address jurors' questions about the initial instructions is a challenging process, and the supplemental instructions that the court fashions may expose the trial court to greater risk of reversal on appeal.

The Subcommittee concludes that the perceived advantages of responding helpfully to jurors' questions during deliberations significantly outweigh the perceived disadvantages, and

that Connecticut courts should follow PRINCIPLE 15.D.'s recommendation in this regard. Accordingly, the Subcommittee makes the following recommendations:

Subcommittee Recommendation:

With respect to readbacks, the Subcommittee recommends that Connecticut courts should continue to follow current practice as prescribed by Practice Book § 16-27 and § 42-26. The Subcommittee further recommends:

- **Judges should be sensitive to concerns of fairness and completeness and should construe requests for readbacks broadly to ensure that the readbacks will include all testimony fairly responsive to the jurors' request.**

- **When the court is uncertain about which portions of the recorded testimony will be fairly responsive to the jurors' request – or when the jurors' request arguably will require the reading of very significant portions of testimony – the court should make inquiries to the jurors about their request, after consultation with counsel, to determine if the jurors' readback request can be refined and better focused.**

With respect to jurors' request for additional instructions or clarification of the instructions that have been given, the court should consult with counsel and then supply a prompt, complete and responsive answer or explain to the jurors why it cannot do so. In responding to reinstruction requests, judges should continue to follow the guidance in Practice Book § 16-28 (for civil cases) § 42-27 (for criminal cases).

With respect to requests for readbacks and requests for reinstruction, the Subcommittee further recommends:

- **After receiving a request from the jury for a readback or additional instruction, the court should instruct the jury to continue with its deliberations, as best it can, while the court works with counsel to fashion an appropriate response.**

SUBCOMMITTEE ON SELECTED JURORS

RECOMMENDATION VII: INNOVATIVE TRIAL PROCEDURES

Procedures that should be used only in particular trials in which they might be helpful, by agreement of counsel and the court

The Subcommittee examined a number of other procedures recommended in the PRINCIPLES or elsewhere and concluded that that they might be advantageous in a limited number of trials. The Subcommittee concluded that certain of these procedures, summarized briefly below, should be used only in particular trials in which they might be helpful, by agreement of counsel and the court. The Subcommittee also concludes that the judiciary should provide judges with appropriate guidance and training on the "best practices" for implementation of these procedures, for those trials in which the procedures will be used.

1. Juror Exhibit Binders/Notebooks

PRINCIPLE 13.B. states in pertinent part that "[j]urors should, in appropriate cases, be supplied with identical trial notebooks which may include such items as the court's preliminary instructions, selected exhibits which have been ruled admissible, stipulations of the parties and other relevant materials not subject to genuine dispute." While many trials will not be of sufficient length or complexity to warrant use of such trial notebooks, the Subcommittee agrees with PRINCIPLE 13.B.'s recommendation that they be used in appropriate cases in which the trial notebooks will assist jurors in organizing and keeping track of materials they have received, including notes they have taken.

2. Expanded Preliminary Instruction

PRINCIPLE 13.B. states in pertinent part that "[t]he court should give preliminary instructions directly following empanelment of the jury that explain . . . the nature of evidence and its evaluation, ***the issues to be addressed, and the basic relevant legal principles, including the elements of the charges and claims and definitions of unfamiliar legal terms***." (Emphasis supplied.)

The Subcommittee concludes that substantive instructions of this type might be helpful in giving jurors a better sense of the context in which they will have to evaluate the evidence that will be presented at trial. The Subcommittee does, however, have two significant concerns about the procedure:

- Jurors who are so instructed may prematurely adopt a frame of reference within which they will place undue emphasis on selected parts of the evidentiary presentation.
- The process of determining which substantive instructions can be given appropriately and safely at the beginning of trial may become unduly burdensome and time-consuming.

These potential disadvantages of expanded preliminary instructions lead the Subcommittee to the following recommendation:

Subcommittee Recommendation:

Expanded preliminary instructions should be given only to the extent that they are deemed helpful in particular cases, and only when agreed upon by counsel and the court.

SUBCOMMITTEE ON SELECTED JURORS

RECOMMENDATION VIII: INNOVATIVE TRIAL PROCEDURES
Procedures that should *not* generally be used by Connecticut courts

The Subcommittee examined several procedures that are being suggested or used elsewhere and concluded that they should not generally be used by Connecticut courts, as the perceived disadvantages of them appear to the Subcommittee to outweigh the perceived advantages.

1. Discussing Evidence During Trial

PRINCIPLE 13.F. states that "[j]urors in civil cases may be instructed that they will be permitted to discuss the evidence among themselves in the jury room during recesses from trial when all are present, as long as they reserve judgment about the outcome of the case until deliberations commence."

The Subcommittee acknowledges that jurors may feel some frustration that they are not permitted during recesses to discuss the evidence that has been presented up to that point in the trial. The Subcommittee also believes that there may be some benefits to allowing jurors during recesses to engage in discussion to clarify matters on which particular jurors may have misheard recent testimony or experienced other types of confusion. The Subcommittee concludes, however, that permitting jurors to engage in such discussions involves very significant risk that jurors will start to move prematurely toward judgment about the outcome of the case – before they have heard all the evidence that will be presented – even if the court admonishes them strongly not to do so. In addition, this procedure was held unconstitutional in State v. Washington, 182 Conn. 419 (1980). The Subcommittee concludes that this disadvantage of the procedure significantly outweighs its potential benefits, and thus makes the following recommendation:

Subcommittee Recommendation:

Connecticut courts should continue to follow their current practice of instructing jurors that they may not discuss the evidence in the case until the judge has delivered the final jury charge and instructed the jurors that they may begin deliberations.

2. Sequential Expert Witness Testimony

PRINCIPLE 13.G. states in pertinent part that "[p]arties and courts should be open to a variety of trial techniques to enhance juror comprehension of the issues including . . . alteration of the sequencing of expert witness testimony."

The Subcommittee acknowledges that jurors may better understand issues that will be addressed in expert testimony if the experts for both sides present their testimony at the same stage of trial, rather than separated by days or weeks of evidence on other issues and the intervening testimony of some or many other witnesses. The Subcommittee concludes, however, that the procedure involves significant disadvantages. Chief among these is the likelihood that the interjection of defense expert's testimony in the course of plaintiff's case in chief will unfairly prejudice plaintiff's ability to present that case in chief coherently and effectively. Defendants may also find the procedure disadvantageous, as they will be precluded from presenting defense expert testimony that is informed by and responsive to all of the evidence presented in plaintiff's case in chief. For these reasons, the Subcommittee makes the following recommendation:

Subcommittee Recommendation:

Connecticut courts should not generally use sequential presentation of expert witnesses. If – in extraordinary cases – a court feels that the procedure might be especially advantageous, the procedure should be used only if all counsel for all parties in the case consent.

3. Guidance on Selecting Foreperson and Jury Deliberation Guide

Principle 14.C. states that "[i]nstructions for reporting the results of deliberations should be given following final argument in all cases. ***At that time, the court should also provide the jury with appropriate suggestions regarding the process of selecting a presiding juror and the conduct of its deliberations***." (Emphasis added.)

The Subcommittee acknowledges that many jurors have expressed the view, after completing their service, that they would have benefited from more guidance about how they should deliberate. The Subcommittee concludes, however, that the process by which juries decide how to deliberate is itself a critical step by which jurors develop rapport with each other and general strategies for group conversation. The Subcommittee believes that jurors will likely feel constrained to follow the suggestions in a "jury deliberation guide," if given one by the court.,

Subcommittee Recommendation:

Connecticut judges should continue to provide general guidance in their instructions regarding jury deliberations and should instruct jurors about the role and responsibilities of the foreperson, but should not otherwise offer suggestions to jurors about how they should go about deciding who will serve as foreperson..

SUBCOMMITTEE ON SELECTED JURORS

RECOMMENDATION IX: Juror Questions for Witnesses

PRINCIPLE 13.C. states:

> In civil cases, jurors should, ordinarily, be permitted to submit written questions for witnesses. In deciding whether to permit jurors to submit written questions in criminal cases, the court should take into consideration the historic reasons why courts in a number of jurisdictions have discouraged juror questions and the experience in those jurisdictions that have allowed it.
>
> 1. Jurors should be instructed at the beginning of the trial concerning their ability to submit written questions for witnesses.
> 2. Upon receipt of a written question, the court should make it part of the court record and disclose it to the parties outside the hearing of the jury. The parties should be given the opportunity, outside the hearing of the jury, to interpose objections and suggest modifications to the question.
> 3. After ruling that a question is appropriate, the court may pose the question to the witness, or permit a party to do so, at that time or later; in so deciding, the court should consider whether the parties prefer to ask, or to have the court ask, the question. The court should modify the question to eliminate any objectionable material.
> 4. After the question is answered, the parties should be given an opportunity to ask follow-up questions.

PRINCIPLES at 91-92.

Current Connecticut Practice:

The Practice Book permits jurors to submit questions to be asked of witnesses in the discretion of the presiding judge in both civil, Practice Book § 16-7, and criminal cases, Practice Book § 42-9. Some Connecticut judges currently permit jurors to submit questions for witnesses in civil cases, with the parties' consent. The Subcommittee is not aware of any Connecticut judge who has permitted jurors to ask questions of witnesses in criminal cases. Data about the practice of permitting jurors to ask questions in other jurisdictions is attached in Appendix F.

Perceived Advantages of Approach from PRINCIPLES:

The Subcommittee concludes that – at least in civil trials – some significant benefits may be realized from use of this procedure.[1] Possible or likely benefits include:

- Jurors who are allowed to submit questions may avoid potentially unnecessary confusion about portions of witnesses' testimony.
- Jurors apparently want to be permitted to submit occasional questions for witnesses, and they may feel more confident and comfortable if they have been allowed to submit questions to get information they believe necessary for well-informed deliberation and decision-making.
- Jurors who are allowed to submit questions may remain more attentive and engaged than they will be if restricted to a passive role during trial.
- Jurors' questions, if permitted, may alert the court and counsel to issues about which jurors need additional information or guidance to deliberate effectively.

Perceived Disadvantages of Approach from PRINCIPLES:

The Subcommittee concludes that the potential disadvantages of the procedure are also significant. Potential disadvantages include:

- Jurors who are allowed to submit questions may draw unfair and inappropriate inferences if questions they submit are not posed to witnesses. (Inevitably, some juror questions will not be posed to witnesses because the questions are legally inappropriate.)
- Jurors who are allowed to submit questions for witnesses may be inclined to fall into the role of partisans or advocates, rather than the role of neutral fact-finders.
- Parties and their counsel may lose – or at least perceive a loss of – their control of the orderly presentation of evidence and issues at trial, if jurors are permitted to submit questions that the parties and/or their counsel would prefer not be asked.

The Subcommittee concludes that the perceived disadvantages of this procedure are sufficiently important that the procedure should not be used in Connecticut courts, absent consent of the parties and their counsel. Accordingly, the Subcommittee makes the following recommendation:

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[1] The Subcommittee concludes – as a number of jurisdictions have – that the procedure should not be used in criminal trials. In reaching this conclusion, the Subcommittee was significantly influenced by two concerns: (1) use of juror questions in criminal trials seems to inappropriately undercut the constitutional assignment to the government of the burden of presenting evidence that establishes guilt beyond a reasonable doubt; and (2) jurors in criminal trials may be especially likely to submit legally inappropriate questions (e.g., pertaining to prior convictions or accusations of criminal conduct by the accused) and to draw improper inferences when the questions are not posed by the court.

Subcommittee Recommendation:

Jurors should be permitted to submit questions for witnesses only when use of the procedure has been agreed upon by counsel and the court. The subcommittee does not believe this procedure should be used in criminal trials, although it is permitted by the rules. When jurors in civil trials are permitted to submit questions for witnesses, the court should use the procedures suggested in PRINCIPLE 13.C.

SUBCOMMITTEE ON SELECTED JURORS

RECOMMENDATION X: Counseling for Jurors in Stressful Cases

Subcommittee members discussed at some length the significant challenges faced by jurors who have served in especially stressful cases. These challenges may include anxiety, depression, and other potential symptoms of post-traumatic stress disorder. Accordingly, the Subcommittee makes the following recommendation:

Subcommittee Recommendation:

The judiciary should take steps to ensure that appropriate counseling and other mental health resources are available – free of charge – to jurors who report mental health challenges on account of their jury service.

Subcommittee Comments on Implementation

The Subcommittee suggests that – consistent with the general treatment of jurors as officers of the court during the period of their service – the judiciary's Employee Assistance Program ("EAP") might be an appropriate vehicle for provision of these resources, although the program currently is not used for this purpose. Use of the EAP, if feasible, might allow the judiciary to respond helpfully to the range of mental/emotional symptoms for which jurors might conceivably seek help.

If the EAP program will not be a feasible avenue for the provision of counseling and other mental health resources to distressed jurors, the judiciary may wish to explore the possibility of contracting with private mental health professionals for provision of these types of services to distressed jurors, with appropriate referral protocols and restrictions.

SUBCOMMITTEE ON SELECTED JURORS

RECOMMENDATION XI:

Jurors' Certificates of Appreciation (Doc. No. JDP-JA-28, New 10/7)

The Subcommittee believes that the Juror Certificates of Appreciation currently used by the courts are not an ideal method for acknowledging jurors and thanking them for their service. Accordingly, the Subcommittee makes the following recommendation:

Subcommittee Recommendation:

The judiciary should prepare a standard letter of appreciation that will routinely be sent to jurors at their homes, after they have completed their service. The Subcommittee recommends that these letters be personalized; they should be addressed individually to the jurors by name.

Subcommittee Comments on Implementation:

While the letters of appreciation might perhaps be signed by the trial judge from the case in which the jurors served, problems could arise if the trial judge is subsequently required to act on a motion for a new trial based upon claims of juror misconduct. (In such an instance, the receipt by the jurors of an intervening letter of thanks from the trial judge may present at least the appearance of a conflict or impropriety complicating the judge's consideration of the new trial motion.) For that reason, the better course may be to have the letter of thanks signed by the Administrative Judge or the Chief Justice, so that the trial judge will not be involved in private, post-trial communications with the jurors.

The Subcommittee also notes that a different approach than the one suggested here might be necessary if copies of the thank-you letters to jurors will be deemed to be public documents and thus filed in the public clerk's file. If that will be the case, the use of jurors' names and addresses in the thank-you letters would disserve the important goal of projecting jurors' privacy, and the new approach suggested here would likely not be a "best practice" because of those privacy concerns.

SUBCOMMITTEE ON SELECTED JURORS

RECOMMENDATION XII:

Using Jurors' Time Efficiently and Communicating Clearly With Jurors About Scheduling

PRINCIPLE 12 provides that "[c]ourts should limit the length of trials insofar as justice allows and jurors should be fully informed of the trial schedule established." PRINCIPLES 12.A-C. further provide as follows:

> A. The court, after conferring with the parties, should impose and enforce reasonable time limits on the trial or portions thereof.
> B. Trial judges should use modern trial management techniques that eliminate unnecessary trial delay and disruption. Once begun, jury trial proceedings with jurors present should take precedence over all other court proceedings except those given priority by a specific law and those of an emergency nature.
> C. Jurors should be informed of the trial schedule and of any necessary changes to the trial schedule at the earliest practicable time.

The Subcommittee is not persuaded that it will be generally feasible or fair for judges to impose time limits for trials or even portions thereof, even if judges confer with counsel before doing so. The Subcommittee agrees strongly, however, with PRINCIPLE 12's suggestion that judges should try to the greatest extent possible to manage trials (including sidebars and periods when jurors will be excused) to avoid wasting jurors' time. The Subcommittee also concurs with PRINCIPLE 12's suggestion that judges should do the best that they can to keep jurors apprised of the trial schedule, any necessary changes to the schedule and – when appropriate – the reasons for necessary delays. The Subcommittee notes that jurors may be more understanding of and patient with recesses and other delays if the court provides them with appropriate explanations of the reasons the delays are necessary.

The Subcommittee also recommends that courts explore the possibility of modifying the courthouse daily schedule to allow for the most efficient use of jurors' time. Some Connecticut judges, for example, have experimented successfully with shortening the daily trial schedule to start in mid-morning or conclude in mid-afternoon; this schedule allows jurors to come late or be excused early, and it permits the court to use periods when the jurors are absent from the courthouse to address with counsel some issues that might have required excusing the jury for periods of inactivity in the jury waiting room.

For these reasons, the Subcommittee makes the following recommendation:

Subcommittee Recommendation:

Judges should try to the greatest extent possible to manage trials (including sidebars and periods when jurors will be excused) to avoid wasting jurors' time. Judges should also do the best that they can to keep jurors apprised of the trial schedule, any necessary

changes to the schedule, and – when appropriate – the reasons for necessary delays. Connecticut courts should also explore the possibility of modifying the courthouse daily schedule to allow for most efficient use of jurors' time.

SUBCOMMITTEE ON SELECTED JURORS

RECOMMENDATION XIII: Treatment of Alternate Jurors at Trial

The Subcommittee understands that the Subcommittee on Voir Dire Practices is examining the procedures for selection of alternate jurors and their treatment at trial, including those procedures recommended in PRINCIPLE 8. The Subcommittee on Selected Jurors also discussed these issues and concludes that changes in current practices may be desirable. Because recommendations will be forthcoming from the Subcommittee on Voir Dire Practices, the Subcommittee on Selected Jurors limits its comments here to the following two observations.

First, the Subcommittee believes that Connecticut should consider discontinuing the practice currently followed in criminal trials for use of alternate jurors when deliberating jurors must be excused. Specifically – pursuant to Conn. Gen. Stat. § 54-82h – an alternate juror in these circumstances can be brought back to join in jury deliberations, but the jury is required to start deliberations over and to disregard all discussion that took place before the alternate returned. (This practice is not used in civil trials.) The Subcommittee believes that this procedure may not constitute a "best practice," as the kind of deliberation that results from it will likely be materially different than the kind of deliberation that occurs when a jury has not been required to "start again" with a new member who did not participate in the group's initial deliberations. The Subcommittee concludes that the practice warrants further study, with a view to a possible change.

Second, Connecticut's practices regarding treatment of alternate jurors for purposes of deliberations should be revised so that the same approach is used in criminal and civil trials. The Subcommittee believes that consistency in this practice would be beneficial, and there do not appear to be compelling reasons (if any) for using a different approach in criminal trials than is used in civil trials. The Subcommittee notes that legislative action will be necessary for effectuation of the Subcommittee's recommendation here for a change in the practice used with alternates in criminal trials, as the current practice has been codified. *See* Conn. Gen. St. §§ 54-82h (criminal cases) and 51-243 (civil cases).

CHAIRS' NOTE: This topic is covered in greater detail in Voir Dire Recommendation VII.

SUBCOMMITTEE ON SELECTED JURORS

RECOMMENDATION XIV:

Protecting Juror Privacy -- Parting Instructions for Jurors

Practice Recommended in PRINCIPLE 18:

PRINCIPLE 18 provides that "[c]ourts should give jurors legally permissible post-verdict advice and information." PRINCIPLES 18.C.-E. provide additional suggestions in this regard, as follows:

> C. At the conclusion of the trial, the court should instruct the jurors that they have the right either to discuss or to refuse to discuss the case with anyone, including counsel or members of the press.
> D. Unless prohibited by law, the court should ordinarily permit the parties to contact jurors after their terms of jury service have expired, subject, in the court's discretion, to reasonable restrictions.
> E. Courts should inform jurors that they may ask for the assistance of the court in the event that individuals persist in questioning jurors, over their objection, about their jury service.

PRINCIPLES, at 127.

Current Connecticut Practice

Judges use various methods to advise jurors that the law does not require them to speak to anyone about their service, and that the jurors may choose whether or not to do so. Representatives of parties and the media can directly contact jurors to discuss their jury service.

Perceived Advantages of Approach From Principles

- Jurors will likely feel more comfortable and relaxed knowing that they have a choice as to whether to speak about their service post-verdict.
- The court's involvement with juror access may reassure jurors, especially in light of concerns they may have about their own safety after serving in criminal cases and some types of civil cases.

Perceived Disadvantages From Principles

- The fact that post-verdict access to jurors will – at least to some extent – be under the control of the court may make accessibility more limited than it would be with an unfiltered approach.

Subcommittee Recommendation

The Subcommittee believes that the approach suggested by the PRINCIPLES constitutes the "best practice" in this area and that Connecticut courts should follow the procedures suggested in PRINCIPLE 18.

Consistent with this general recommendation, the Subcommittee specifically recommends:

Judges should provide jurors with at least the following instructions and information after they have completed their service:

Instructions:

- **Jurors have the right either to discuss or to refuse to discuss the case with anyone, including counsel, the parties and members of the press.**
- **Jurors may ask for the assistance of the court in the event that individuals persist in questioning them, over their objection, about their jury service.**

Additional Information:

- **Contact information for jurors to use if they require assistance from the court in addressing persistent unwelcome questioning about their jury service.**

Subcommittee Comments on Implementation

The Judicial Branch might consider establishing a secure statewide juror "hotline" or juror service line that jurors could call to report problems related to unwelcome post-service contacts from others. Such a hotline would allow jurors to call to report problems without having to resort to the clerk's office in the courthouse in which the jurors served, and availability of the hotline might facilitate speedy, private follow-up on post-discharge juror complaints.

SUBCOMMITTEE ON SELECTED JURORS

RECOMMENDATION XV:

Protecting Juror Privacy -- Prospective Juror Questionnaire and Personal Information

Practice Recommended in PRINCIPLE 7:

PRINCIPLE 7.A .8 states:

> Following jury selection and trial, the court should keep all jurors' home and business addresses and telephone numbers confidential and under seal unless good cause is shown to the court which would require disclosure. Original records, documents and transcripts relating to juror summoning and jury selection may be destroyed when the time for appeal has passed, or the appeal is complete, whichever is longer, provided that, in criminal proceedings, the court maintains for use by the parties and the public exact replicas (using any reliable process that ensures their integrity and preservation) of those items and devices for viewing them.

Current Connecticut Practice

Prospective jurors receive a questionnaire prior to their report date. The completed questionnaire is present with the prospective juror on the report date. The questionnaire is presented to the attorneys (parties) during the jury selection process. At the conclusion of voir dire, the questionnaire is collected by the clerk and copies are shredded. The confidentiality of the questionnaire is protected by law. Connecticut General Statutes § 51-232. The jury clerk produces a listing of jurors and their towns of residence. This list is generally collected by the clerk upon completion of the voir dire process.

Jurors regularly express concerns about their personal information being disclosed to the public, lawyers, criminal defendants and the media. Under current practices, the listing of jurors' names and towns of residence can be made available to the public. This practice has caused jurors consternation and concern, particularly in criminal cases.

Generally – consistent with requirements under the state and federal constitutions – Connecticut courtrooms are open to the public and names of jurors and personal information about them are presented in court during the voir dire process. While the questionnaire contains personal information, current law already protects against broad public disclosure of the questionnaire.

Perceived Advantages of Approach From PRINCIPLES

- Jurors will very much appreciate the improved protection of privacy and confidentiality that the PRINCIPLES approach affords.

Perceived Disadvantages of Approach From PRINCIPLES

- Access to contact by media, parties and other individuals will be restricted.
- Destruction of voir dire transcripts may not be permissible under applicable constitutional principles.

Subcommittee Recommendation

The ABA's recommended practices appear to be generally consistent with Connecticut's practice, except that voir dire is open (pursuant to constitutional requirements) and the names and towns of residence of jurors can be disclosed under current Connecticut law.

The Subcommittee recommends that this issue be studied further, to ascertain if Connecticut courts might better protect jurors' privacy by using, in all respects consistent with constitutional requirements, the practices recommended in Principle 7.A.8. The Subcommittee also suggests that the courts may want to consider particularized specification of the type of "good cause" that must be shown before disclosure will be permitted – something more than a simple balancing test pitting the public's right to know against the jurors' rights to confidentiality.

SUBCOMMITTEE ON SELECTED JURORS

RECOMMENDATION XVI: Juror Use of Smartphones (E-mail, Voice-mail)

The Subcommittee believes that the issue of jurors' use of smartphones or other similar devices during their service warrants further examination by the courts. All members of the Subcommittee agree that jurors should be prohibited from using such devices at *any* time during their service (including during the jury selection process) to conduct research about issues in or media accounts of their case; to gather information about the parties, counsel or witnesses; or to communicate with others about the proceedings. Members of the Subcommittee differed vigorously, however, in their views of the desirability of allowing jurors to use smartphones or other devices during recesses or lunch breaks to catch up with their personal and work voicemail and/or e-mail. The Subcommittee's conversations suggested both advantages and disadvantages of prohibiting jurors from using smartphones during recesses to catch up on personal and business matters.

Perceived Advantages of Prohibiting Jurors from Using Smartphones During Recesses

- Jurors who are prohibited entirely from using smartphones during their service, including during recesses, may be better able to resist the temptation to use their smartphones to conduct research about issues in or media accounts of their case; to gather information about the parties, counsel or witnesses; or to communicate with others about the proceedings. (This advantage will be secured with greater certainty if jurors are required to leave their smartphones with the clerk during recesses.)

- If permitted to use their smartphones during recesses, jurors may become distracted by the personal or business matters discussed in the voicemails or e-mails they retrieve, with the result that they may become less capable of committing their full attention to the court proceedings when the proceedings resume after the period of recess.

- The conversations in which jurors engage during periods of recess are an important component of the process by which jurors build relationships and establish rapport, and these conversations will take place differently (and perhaps not at all) if some or many jurors are preoccupied during recesses by using their smartphones to check on outside personal or work matters.

Perceived Disadvantages of Prohibiting Jurors from Using Smartphones During Recesses

- Jurors will likely be angered and frustrated if they are prevented from using recesses to work through at least some of their voicemail and e-mail messages that will accumulate during the trial day and with which the jurors will otherwise have to contend in the evening hours, after they are excused for the day.

- If jurors are not required to leave their smartphones with the clerk during recesses, some -- perhaps many -- of them will likely use their smartphones to check on personal or business matters during recesses, even if they have been explicitly instructed not to do so. Two unfortunate consequences appear likely:

    - Some erosion of the authority of the trial judge may result as jurors observe fellow jurors violating the judge's instructions without apparent penalty. (It seems unlikely that jurors would report fellow jurors to the court for the offense of checking their personal e-mails or voicemails on their smartphones during recesses.)

    - Jurors who conclude that the prohibition against their smartphone use during recesses is not justified by compelling reasons of policy – and who then use their smartphones in violation of the instructions – may resent that they were required to violate the judge's instructions in order to engage in conduct that they believe should have been permissible.

Subcommittee Recommendation

Jurors should be prohibited from using smartphones or other such devices at *any* time during their service (including during the jury selection process) to conduct research about issues in or media accounts of their case; to gather information about the parties, counsel or witnesses; or to communicate with others about the proceedings. The judiciary should conduct additional investigation to evaluate the desirability of allowing jurors to use smartphones or other devices during recesses or lunch breaks to catch up with their personal and work voicemail and/or e-mail. Finally, as noted in Recommendation I, the Subcommittee concludes that – whatever the approach will be that the courts will follow in the future in this regard – jurors should be given explicit guidance about when and how they may use their handheld devices and the reasons for the restrictions that the court imposes on that use.

Subcommittee Comments on Implementation

In weighing future approaches in this regard, the judiciary may find a helpful resource in the Center for Jury Studies at the National Center for State Courts. Paula Hannaford, Director of the Center for Jury Studies, has been collecting instructions prepared by jurisdictions around the country relating to the use that jurors may make of smartphones and similar devices during their jury service.

PUBLIC SERVICE AND TRUST COMMISSION

JURY COMMITTEE

REPORT AND RECOMMENDATIONS

RECOMMENDATIONS OF THE CHAIRS

CHAIRS' RECOMMENDATIONS

1. The chairs have attached recommendations for post-report projects, areas of study or survey, and areas for training based on the recommendations of the subcommittee in part IV of this report.

2. The chairs recommend the creation of a small standing committee, consisting of the Jury Administrator, three judges and a chief clerk, for following purposes: to assist in implementing adopted recommendations, to supervise any future studies, surveys or focus groups, to assist in establishing educational programs, to review general instructions drafted by the standing civil and criminal jury instruction committees, to review revisions of juror publications, orientation remarks, web site information and juror video, to coordinate with other committees regarding media issues, and to recommend the creation of task forces where appropriate to address on-going jury service issues. The chairs propose that this standing committee be constituted as an internal Judicial Branch committee without public membership, but that any task force that may be created may include members of the public.

3. The chairs recommend a review of the job description and compensation for those individuals who serve as jury clerks so that the description and compensation are commensurate with the size of the location in which the clerk serves and the caseload.

PUBLIC SERVICE AND TRUST COMMISSION

JURY COMMITTEE

REPORT AND RECOMMENDATIONS

IV. POST-REPORT PROJECTS, RECOMMENDATIONS FOR FURTHER STUDY AND SURVEYS/FOCUS GROUPS AND RECOMMENDATIONS FOR TRAINING

POST-REPORT PROJECTS

- Creating, maintaining and updating forms, publications, website, video and orientation materials and conforming them for consistency
- Creating a uniform process to address jurors specific concerns about their ability to serve
- Training programs for judges and staff on adopted recommendations
- Creating a new jury orientation video
- Adopting recommended appropriate practices for pre-screening jurors in civil and criminal cases
- Exploring methods by which post-verdict counseling can be provided for jurors who served in stressful cases without cost to them
- Establishing a secure statewide juror service line for post-discharge complaints/issues

RECOMMENDATIONS FOR: FURTHER STUDY AND FOCUS GROUPS OR SURVEYS

- Study ways to improve quality of source list data received
- Study whether technology can overcome disadvantages of permanent master file
- Study juror utilization practices in different locations statewide
- Study efficiency of the size of venire panels
- Study whether a need exists to translate sections of the website and juror publications into languages other than Spanish
- Conduct focus groups with former jurors on what information would be helpful both in advance of service and during service
- Study legality of changing summons calculation formula (this would be a major study and requires a legal opinion first before the demographic data is examined)
- Study constitutional ways in which to protect juror privacy following jury selection and trial
- Exit survey of jurors regarding improvements to the voir dire experience
- Study restrictions as to jurors' use of personal electronic devices during jury service

RECOMMENDATIONS FOR TRAINING

- Train jury staff and clerks'officeson how to interpret utilization statistics for more accurate assessment of number of jurors needed
- Train jury staff to assess jurors' specific concerns about serving
- Train judges to assess jurors' specific concerns about serving
- Train judges and staff regarding appropriate pre-screening practices
- Train judges, attorneys on how to conduct panel jury selection
- Train judges, attorneys, staff on preservation of juror privacy and confidentiality

PUBLIC SERVICE AND TRUST COMMISSION

JURY COMMITTEE

REPORT AND RECOMMENDATIONS

V. APPENDICES

Appendix A

Summoning and Utilization Statistics

	2007 Court Year	2008 Court Year
Total Jurors Summoned:	609,121	610,120
Disqualified (C.G.S. § 52-217 (a)):	284,288	286,004
Excused by Court:	6,720	5,712
Canceled by Court:	160,282	177,461
Jurors who served:	109,904	98,831
No Shows:*	35,329	35,272

Juror utilization is the percentage of jurors scheduled to appear who actually serve at least one day. The National Center for State Courts recommends a minimum juror utilization rate of 40 percent.

	CY 2007	CY 2008
Statewide Juror Utilization Rate:	35%	31%
Statewide Juror Cancellation Rate:	51%	56%

* Not all no-show jurors attain delinquent status. Some are disqualified or canceled prior to the expiration of 13 months from the original summons date.

Appendix B

Jury Trials by Case Type – J.D. Locations 9/1/2007 to 8/31/2008

Jury Trials - G.A. Locations 9/12007 to 8/31/2008

Jury Trials by Case Type
J. D. Locations
9/1/2007 to 8/31/08

	Criminal	Civil
Ansonia-Milford	3	28
Danbury	2	22
Fairfield	28	84
Hartford	20	53
Litchfield	1	8
Middlesex	0	13
Meriden	0	8
New Britain	10	25
New London-Norwich	8	22
New Haven	18	44
Stamford	8	50
Tolland	1	6
Waterbury	23	35
Windham	0	4
State	122	402

Jury Trials
G. A. Locations
9/1/2007 to 8/31/08

	Criminal Jury Trials
Derby	2
Milford	0
Danbury	5
Bridgeport	9
Manchester	11
Enfield	0
Hartford	9
New Britain	4
Bristol	2
New London	6
Norwich	2
Bantam	1
Middletown	0
Meriden	2
New Haven	11
Stamford	8
Norwalk	6
Rockville	1
Waterbury	6
Danielson	1
State	86

Appendix C

Mock Up of Revised Summons For Petit Juror

Mock Up of Revised Juror Reminder Notice

STATE OF CONNECTICUT
SUMMONS FOR PETIT JUROR

Juror ID: XYZ-2009-002-200909999999

YOU MUST APPEAR FOR JURY DUTY IN CONNECTICUT SUPERIOR COURT. FAILURE TO REPORT FOR JURY DUTY IS A VIOLATION OF STATE LAW. PLEASE REPORT TO:

COURT

Hartford Superior Court
101 Lafayette Street
Hartford, CT 06106

APPEARANCE DATE:

September 5, 2008

APPEARANCE TIME:

8:30 a.m.

You will be required to serve for at least one day. If you are selected for a trial, you must serve until the end of the trial.

You may postpone your service to a date within ten months of the appearance date listed above. To postpone your service, call the Jury Administrator at 1-800-842-8175 or log on to www.jud.ct.gov/jury.

Fill out and return the Confirmation Form to Jury Administration as soon as possible or answer your summons by e-mail. If you claim one of the disqualifications on the Confirmation Form, please check the appropriate box and provide documentation, if applicable.

Approximately one week prior to your appearance date, you will receive a handbook and a reminder notice in the mail with directions to the court. The handbook will contain general information about juror service. You can obtain appearance and cancellation information on-line.

The Judicial Branch complies with the Americans With Disabilities Act (ADA). If you need a reasonable accommodation in accordance with the ADA, Contact Jury Administration.

For more information, you may contact Jury Administration toll-free at 1-800-842-8175, Monday through Friday from 8:00 a.m. to 8:00 p.m. TDD/TTY users may transmit inquirers by calling (860) 263-2771 or 1-800-708-6794.

Save Time!
Answer your summons by e-mail.
Get information about jury duty on-line.
Just log on to www.jud.ct.gov/jury
It's fast and easy!

DETACH HERE AND RETURN THIS SECTION IMMEDIATELY

ENTER CHANGE OF ADDRESS HERE

XYZ-2009-002-200909999999
Shari DeLuca
80 Washington Street
Hartford, CT 06106

CONFIRMATION FORM
Complete and return to Jury Administration immediately.

A ☐ I WILL APPEAR ON MY APPEARANCE DATE OF: **September 5, 2008**

B ☐ I WISH TO POSTPONE TO A DATE WITHIN 10 MONTHS:

1st CHOICE ___/___/___ 2nd CHOICE ___/___/___

THE FOLLOWING ARE DISQUALIFICATIONS ALLOWED BY STATUTE. CHECK ANY BOX WHICH APPLIES AND SUPPLY THE REQUIRED INFORMATION OR DOCUMENTATION.

C ☐ I claim previous service within the past three years, or I am currently scheduled to serve. (Please enclose a copy of your Juror Certificate if available.)

D ☐ I am 70 years of age or older and choose not to serve:
Date of Birth: ___/___/___ (MM / DD / YYYY)

E ☐ I am not a resident of the State of Connecticut. (Enter new address above.)

F ☐ I am incapable of serving due to a physical or mental disability. (To claim this disqualification you must submit a letter from a licensed physician stating the physician's opinion that such disability prevents you from rendering juror service for a period of one year or permanently, whichever is applicable)

G ☐ I am not a U.S. citizen. I am a citizen of: _____ (country of citizenship)

H ☐ I do not speak or understand English. My language is: _____

I ☐ I was convicted of a felony within the past 7 years, or I am a defendant in a pending felony case, or I am in the custody of the Commissioner of Corrections.

J ☐ A judge of the Superior Court has found that I exhibit a quality which will impair my ability to serve. (To claim this disqualification, include a copy of the impairment document issued by a judge.)

K ☐ I am under 18 years of age. Date of Birth: ___/___/___ (MM / DD / YYYY)

L ☐ I am a member of the General Assembly and the General Assembly is in session.

M ☐ I am the Governor, Lt. Governor, Secretary of State, Treasurer, Comptroller, Attorney General, Judge of Superior, Appellate, Supreme, Probate or Federal Court, or Family Support Magistrate.

SIGNED (Signed under penalty of false statement) **DATE SIGNED**

IF SIGNED BY OTHER THAN ADDRESSEE, PRINT YOUR NAME AND RELATIONSHIP

OFFICE USE ONLY 1 2 3 4 5 6 7 8 9 10 11 12 18 19

REMINDER NOTICE

For more information regarding the Judicial Branch, visit our Web site at www.jud.ct.gov

State of Connecticut Judicial Branch
Jury Administration
P.O. Box 260448
Hartford, CT 06126-0448

Appear On:

09/05/2008

Juror ID: XYZ-2009-064-20099999999

Dear Shari DeLuca

You must report for jury service on 09/05/08. Please arrive before 8:30 A.M. at Hartford Superior Court, 101 Lafayette Street, Hartford and proceed to the 4th floor Jury Room.

You must call 1-800-842-8175 if you are unable to appear as scheduled.

On Thursday, 09/04/08 after 5:30 P.M., you must call the court at (860) 566-5298. At that time, you will learn whether you have been excused from jury duty. If you are not excused, report as scheduled.
You may obtain appearance/cancellation information at any time at our Web site, www.jud2.ct.gov/jury.
You have not contacted us. Please call 1-800-842-8175 to confirm your appearance date.

COURT
Hartford Superior Court
101 Lafayette Street
Hartford, CT 06106

Inclement Weather Radio Station
WTIC-AM 1080

(860) 548-2784 - Prerecorded Message - Jury Clerk's Office During Business Hours

PARKING IS AVAILABLE ON SITE. COURTHOUSE DOORS OPEN AT 8:30 A.M.
Please dress appropriately.
Visit our Web site at: www.jud.ct.gov

PLEASE DETACH

JD-JA-7-96 CGS 51-232

CONFIDENTIAL JUROR QUESTIONNAIRE

PLEASE PRINT

Please complete and bring with you to court

Juror ID: XYZ-2009-064-2009999999

The information which you provide will be used by the judge, lawyers, and litigants during the selection of a jury and will be kept confidential unless the judge orders that it be disclosed.

Shari DeLuca	AGE	ARE YOU A U.S. CITIZEN? YES☐ NO☐
EDUCATION (Circle Highest Level Completed) 1 2 3 4 5 6 GRADE 7 8 9 10 11 12 HIGH 13 14 15 16 17 + COLLEGE		ARE YOU A RESIDENT OF CONNECTICUT? YES☐ NO☐
("X" Appropriate Box) ☐SINGLE ☐MARRIED ☐DIVORCED OR SEPARATED ☐PARTY TO A CIVIL UNION ☐WIDOW OR WIDOWER		WHAT IS YOUR PRESENT OCCUPATION?
PRESENT EMPLOYER:	FORMER EMPLOYER:	FORMER OCCUPATION IF RETIRED:

IF MARRIED, OR A PARTY TO A CIVIL UNION, STATE THE FULL NAME, OCCUPATION AND EMPLOYER OF SPOUSE.

STATE LAST OCCUPATION AND EMPLOYER IF SPOUSE RETIRED OR DECEASED.

IF YOU HAVE EVER BEEN CONVICTED OF A CRIME OR HAVE A PENDING CHARGE, STATE THE OFFENSE, DATE AND RESULTS BELOW, INCLUDING MOTOR VEHICLE CHARGES OTHER THAN PARKING TICKETS.

HAVE YOU EVER BEEN PARTY TO A CIVIL ACTION OF ANY KIND? YES☐ NO☐
IF YOU ANSWER YES, STATE DETAILS BRIEFLY.

Pursuant to Sec. 51-232(c) of the Connecticut General Statutes information concerning race and

REMINDER NOTICE

For more information regarding the Judicial Branch, visit our Web site at www.jud.ct.gov

State of Connecticut Judicial Branch
Jury Administration
P.O. Box 260448
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Juror ID: XYZ-2009-064-20099999999

Dear Shari DeLuca

Appear On:

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You may obtain appearance/cancellation information at any time at our Web site, www.jud2.ct.gov/jury.
You have not contacted us. Please call 1-800-842-8175 to confirm your appearance date.

COURT
Hartford Superior Court
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Please dress appropriately.
Visit our Web site at: www.jud.ct.gov

PLEASE DETACH

JD-JA-7-96 CGS 51-232

CONFIDENTIAL JUROR QUESTIONNAIRE

PLEASE PRINT

Please complete and bring with you to court

Juror ID: XYZ-2009-064-2009999999

The information which you provide will be used by the judge, lawyers, and litigants during the selection of a jury and will be kept confidential unless the judge orders that it be disclosed.

Shari DeLuca

AGE

ARE YOU A U.S. CITIZEN? YES ☐ NO ☐

EDUCATION (Circle Highest Level Completed) 1 2 3 4 5 6 GRADE 7 8 9 10 11 12 HIGH 13 14 15 16 17 + COLLEGE

ARE YOU A RESIDENT OF CONNECTICUT? YES ☐ NO ☐

("X" Appropriate Box) ☐ SINGLE ☐ MARRIED ☐ DIVORCED OR SEPARATED ☐ PARTY TO A CIVIL UNION ☐ WIDOW OR WIDOWER

WHAT IS YOUR PRESENT OCCUPATION?

PRESENT EMPLOYER:

FORMER EMPLOYER:

FORMER OCCUPATION IF RETIRED:

IF MARRIED, OR A PARTY TO A CIVIL UNION, STATE THE FULL NAME, OCCUPATION AND EMPLOYER OF SPOUSE.

STATE LAST OCCUPATION AND EMPLOYER IF SPOUSE RETIRED OR DECEASED.

IF YOU HAVE EVER BEEN CONVICTED OF A CRIME OR HAVE A PENDING CHARGE, STATE THE OFFENSE, DATE AND RESULTS BELOW, INCLUDING MOTOR VEHICLE CHARGES OTHER THAN PARKING TICKETS.

HAVE YOU EVER BEEN PARTY TO A CIVIL ACTION OF ANY KIND? YES ☐ NO ☐
IF YOU ANSWER YES, STATE DETAILS BRIEFLY.

INDICATE (X) IF ANY OF THE FOLLOWING APPLY TO YOU OR ANY MEMBER OF YOUR FAMILY OR HOUSEHOLD:

(A) RELATED TO AN ATTORNEY AT LAW ☐ (B) EVER HELD PUBLIC OFFICE ☐

(C) EVER BEEN CONNECTED WITH ANY POLICE DEPT., COURT OR OTHER LAW ENFORCEMENT AGENCY ☐

(D) EVER BEEN CONNECTED WITH THE BUSINESS OF INVESTIGATING CLAIMS ☐
IF YOU CHECKED ANY OF THE ABOVE, STATE DETAILS:

HAVE YOU EVER SERVED ON A JURY OR GRAND JURY, STATE OR FEDERAL? YES ☐ NO ☐
IF YES, STATE PLACE: _____ APPROX. DATE _____

INDICATE WHETHER THE JURY YOU SERVED ON HEARD: CIVIL ☐ CRIMINAL ☐ OR BOTH ☐

Pursuant to Sec. 51-232(c) of the Connecticut General Statutes information concerning race and ethnicity is required solely to enforce nondiscrimination in jury selection. The furnishing of this information is not a prerequisite to being qualified for jury service. This information need not be furnished if you find it objectionable to do so.

RACE _____

ETHNICITY _____

NOTICE: ANY FALSE WRITTEN STATEMENT MADE BY YOU WHICH YOU DO NOT BELIEVE TO BE TRUE AND WHICH IS INTENDED TO MISLEAD A PUBLIC SERVANT IN THE PERFORMANCE OF AN OFFICAL FUNCTION IS PUNISHABLE BY A FINE AND/OR IMPRISONMENT.

DATE **SIGNATURE (Under penalty of false statement)**

Appendix D

National Center for State Courts State Rankings of Judge & Attorney Survey Results (2007)

1. Length of Voir Dire for Civil Trials

2. Length of Voir Dire for Felony Trials

3. Who Questioned Jurors During Voir Dire

State Rankings of Judge & Attorney Survey Results

Length of Voir Dire for Civil Trials

Median length of voir dire in hours for civil trials.

State	Sample Size	Median Length (Hr)
South Carolina	42	0.5
Delaware	24	0.8
Virginia	91	0.8
Arkansas	21	1.0
Maine	43	1.0
Maryland	113	1.0
Massachusetts	87	1.0
New Hampshire	17	1.0
Vermont	13	1.0
West Virginia	56	1.0
Rhode Island	17	1.3
DC	37	1.5
Kentucky	107	1.5
Oregon	210	1.5
Tennessee	91	1.5
Michigan	402	1.7
Alabama	29	2.0
Arizona	58	2.0
Colorado	60	2.0
Georgia	202	2.0
Indiana	130	2.0
Iowa	60	2.0
Kansas	41	2.0
Minnesota	180	2.0
Mississippi	47	2.0
Missouri	222	2.0
Montana	32	2.0
Nebraska	63	2.0
Nevada	86	2.0
New Jersey	115	2.0
New Mexico	33	2.0
Ohio	174	2.0
Oklahoma	63	2.0
Pennsylvania	544	2.0
South Dakota	96	2.0
Texas	313	2.0
Utah	160	2.0
Wisconsin	93	2.0
Wyoming	19	2.0
North Dakota	62	2.3
Florida	88	2.5
Idaho	30	2.5
Hawaii	40	3.0
Illinois	519	3.0
Louisiana	54	3.0
New York	216	3.0
North Carolina	67	3.0
Washington	77	3.0
Alaska	102	3.8
California	184	4.0
Connecticut	137	16.0

n/a = Not Applicable

National Center for State Courts, 2007

State Rankings of Judge & Attorney Survey Results

Length of Voir Dire for Felony Trials

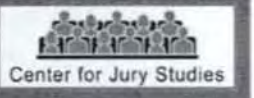
Median length of voir dire in hours for felony trials.

State	Sample Size	Median Length (Hr)
South Carolina	32	0.5
Alabama	27	1.0
Delaware	12	1.0
Maine	15	1.0
New Hampshire	23	1.0
Virginia	118	1.0
West Virginia	28	1.3
Arkansas	22	1.5
Kentucky	74	1.5
Maryland	178	1.5
Massachusetts	70	1.5
Michigan	166	1.5
Mississippi	50	1.5
New Mexico	51	1.5
Pennsylvania	149	1.5
Wisconsin	7	1.5
Florida	186	2.0
Georgia	105	2.0
Indiana	112	2.0
Iowa	58	2.0
Kansas	56	2.0
Montana	21	2.0
Nebraska	43	2.0
North Carolina	133	2.0
North Dakota	49	2.0
Ohio	71	2.0
Oregon	117	2.0
Rhode Island	21	2.0
South Dakota	75	2.0
Tennessee	73	2.0
Texas	148	2.0
Utah	166	2.0
Vermont	29	2.0
Washington	71	2.0
Wyoming	25	2.0
Colorado	57	2.5
Idaho	14	2.5
Oklahoma	70	2.5
Arizona	90	3.0
Hawaii	24	3.0
Illinois	145	3.0
Minnesota	110	3.0
Missouri	97	3.0
Nevada	43	3.0
DC	60	3.5
Alaska	67	4.0
California	167	4.0
Louisiana	93	4.0
New Jersey	48	4.5
New York	148	5.0
Connecticut	28	10.0

n/a = Not Applicable

National Center for State Courts, 2007

State Rankings of Judge & Attorney Survey Results



Who Questioned the Jurors During Voir Dire

Mean score from most judge-dominated voir dire (scoring a 1) to most attorney-dominated voir dire (scoring a 5) for all jury trials.

State	Sample Size	Average Score
South Carolina	83	1.05
Maine	65	1.19
Delaware	41	1.20
Massachusetts	197	1.28
New Jersey	168	1.35
Maryland	347	1.75
Utah	406	1.92
New Hampshire	45	2.00
DC	107	2.08
Arizona	161	2.27
California	446	2.57
Nevada	140	2.79
Illinois	781	2.84
West Virginia	90	2.96
Michigan	799	3.06
Virginia	226	3.08
Pennsylvania	748	3.09
Colorado	176	3.11
Oklahoma	173	3.12
Wisconsin	179	3.24
Idaho	68	3.28
Mississippi	126	3.37
Hawaii	69	3.40
Minnesota	345	3.50
Ohio	255	3.51
New Mexico	97	3.55
New York	450	3.55
Kentucky	211	3.56
Louisiana	159	3.61
Florida	405	3.62
Nebraska	150	3.64
Rhode Island	62	3.66
Arkansas	45	3.68
Washington	165	3.71
Alabama	57	3.73
Indiana	274	3.73
Tennessee	181	3.85
Kansas	111	3.91
Oregon	393	3.93
North Dakota	154	3.94
Georgia	382	3.96
Montana	66	3.98
North Carolina	245	3.98
Wyoming	47	3.98
Alaska	225	4.03
Texas	574	4.09
South Dakota	213	4.13
Iowa	168	4.16
Missouri	348	4.19
Vermont	57	4.30
Connecticut	170	4.54

n/a = Not Applicable

National Center for State Courts, 2007

Appendix E

Survey Data on Retention/Destruction of Confidential Juror Questionnaires

- In Connecticut

- In Other Jurisdictions

CONFIDENTIAL JUROR QUESTIONNAIRE (CJQ): RESPONSES FROM JURY CLERKS

Additional abbreviations used in this table: LSB = Locked Shredding Bin
SAA = Same As Above
TAC = Temporary Assistant Clerk

	Description of procedures in use	Written policy in place?
AAN	Jury Clerk: (1) Obtains all copies and originals; (2) Disposes CJQ in LSB; (3) Informs all jurors that CJQ are strictly confidential	Not known
A05D	Shred CJQ after voir dire	Not known
BHB	1) Crim: Pre-trial: For dismissed jurors, CJQs placed in LSB; for returning jurors, CJQ placed in vault; During trial, kept by courtroom clerk and locked in crim. clerk's vault; after trial, kept in vault with exhibits. Destroyed after appeal period. (2) Civil: Pre-trial, kept in locked cabinet in Jury Room; during trial, placed in exhibit envelope and given to courtroom clerk and @ end of day, locked in vault; after trial, kept in civil clerk's vault with exhibits. Destroyed after appeal period.	Not known
B17B	LSB	Not known
DBD	LSB	Not known
FBT	Daily, placed in recycle bin and shredded by maintenance workers.	Not known
HHD	Crim.: Pre-trial: Originals given to clerk; Three copies are made – one given to each of two attys and on to judge. When voir dire completed, copies sometimes returned to clerk and shredded; sometimes judge and attorney(s) will retain copy. For selected jurors, originals given to Jury Clerk and CJQ are placed in office until end of trial; then they are stored and destroyed pursuant to retention schedule. Non-selected persons: Jury Clerk will return	Yes

	original to summoned person or, if person does not return to Jury Room, will destroy CJQ by tearing it up. Civil.: TAC accepts CJQ from jury office when TAC collects voir dire panel; TAC responsible for CJQ – will allow attys possession during voir dire. at conclusion of voir dire, atty returns CJQ to TAC; TAC returns CJQ to jury office. Complex Lit.: SAA except in one unit, TAC makes copy of CJQ for attorneys; at conclusion of voir dire, TAC collects copies and deposits them shredding bin.	
H12M	Not selected: CJQ shredded @ end of day; Selected: CJQ placed into envelope marked "Sealed to the Public" and placed in the file until end of trial when jurors are dismissed. Then, CJQ shredded by courtroom clerks.	Yes
H13W	Clerk collects CJQ; makes sufficient number of copies for proper distribution. Selected: Original CJQ are retained by the clerk separate from the court file; original is retained until conclusion of the case (including any appeal period). Copies of CJQ that had been distributed at beginning of voir dire process are collected by the clerk at end of daily voir dire and shredded. made; original CJQ retailed by clerk	Yes
KNL	Daily, LSB	Yes
LLI	conclusion of voir dire, shredded	No

MMX	) Copy of CJQ provided to attys for use during voir dire;) When CJQ are returned to jury office, they are shredded;) Original CJQ is held for a while then also shredded.	No
NNH	stroyed by shredding	Not known
NNI	) Copy supplied to counsel then returned to clerk of court upon completion of voir dire.) Non-Selected: At end of day, shredded; Selected: CJQ held for time needed to cover the case.	Yes
SST	ily, Jury Clerk destroys CJQ and end of day.	No
S20N	ter voir dire, all CJQ shredded via LSB	No
TTD	n-Selected: CJQ shredded; Selected: At conclusion of trial, CJQ and notes are shredded	Not known

UWY	) Civil: Selected: Original CJQ of selected jurors placed in sealed envelope until case is disposed;) Not selected: shred CJQ at end of each day.) Complex Lit.: Selected: SAA) Not selected: tear-up CJQ at tend of each day.) Crim.: Keep all original CJQ in confidential area until appeal period and all other criminal proceedings (e.g. *habeas*) have expired. red all copies	Not known
WWM	) Selected: Originals are maintained in file locked in jury pool office. Copies of CJQ shredded.	No

	Non-Selected: Originals and copies are shredded	

Responses to Juror Questionnaire

	Questionnaire prior to voir dire?	Is questionnaire confidential?	How long retained?
Polk County, Oregon	Yes		3 years
Lane County, Oregon	Yes	No, can be viewed by public on request	3 years after conclusion of jury service
Hamilton County, IN	Varies county-to-county	Unknown	2 years
MA	Yes	Yes	No, shredded at end of day
Orange County, CA	Yes	Yes	3 years
U.S. District Court in Hartford, CT	Yes	Yes	Approx. 6 years
Carroll County, MD	No	Yes	4 years
AZ	Yes	Appears yes	At present, indefinitely
Cumberland County, PA	Yes	Yes	After trial completed
Idaho Falls, ID	Yes	Yes	4
New York	Yes	Unknown	Returned to jurors or shredded

Appendix F

National Center for State Courts State Rankings of Judge & Attorney Survey Results (2007)

1. Jurors Permitted to Take Notes

2. Jurors Provided with Note Taking Materials

3. Juror Questions to Witnesses

State Rankings of Judge & Attorney Survey Results

Jurors Permitted to Take Notes

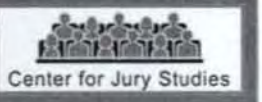
Percent of respondents who reported that jurors were permitted to take notes.

State	Sample Size	% of Respondents
Wyoming	47	95.7
Arkansas	45	95.6
Arizona	161	95.0
Indiana	274	94.9
Colorado	176	92.6
Oregon	393	92.1
Minnesota	345	91.9
California	446	91.5
Alabama	57	91.2
Idaho	68	91.2
Maryland	347	90.5
Utah	406	90.4
Hawaii	69	88.4
Iowa	168	88.1
New Mexico	97	87.6
Illinois	781	87.3
Washington	165	87.3
Alaska	225	87.1
DC	107	86.9
Montana	66	86.4
Wisconsin	179	86.0
Nevada	140	83.6
Georgia	382	81.9
South Dakota	213	80.8
Tennessee	181	77.3
North Dakota	154	76.6
Kentucky	211	76.3
Massachusetts	197	67.0
North Carolina	245	64.9
Virginia	226	59.7
Vermont	57	59.6
Mississippi	126	57.1
Florida	405	55.1
Ohio	255	53.7
Texas	574	53.0
Michigan	799	52.1
Oklahoma	173	50.3
Connecticut	170	47.6
Delaware	41	46.3
Pennsylvania	748	46.1
West Virginia	90	44.4
Missouri	348	40.2
New Jersey	168	39.9
South Carolina	83	38.6
Kansas	111	36.0
Louisiana	159	34.6
New York	450	32.7
Nebraska	150	24.7
Maine	65	23.1
New Hampshire	45	20.0
Rhode Island	62	19.4

n/a = Not Applicable

National Center for State Courts, 2007

State Rankings of Judge & Attorney Survey Results



Jurors Provided with Notetaking Materials

Percent of respondents who reported that jurors were provided with writing utensils and notepaper for taking notes.

State	Sample Size	% of Respondents
Wyoming	47	95.7
Indiana	274	95.3
Arizona	161	94.4
Minnesota	345	93.9
Oregon	393	93.9
California	446	93.7
Maryland	347	93.7
Arkansas	45	93.3
Nevada	140	92.1
Colorado	176	91.5
Washington	165	90.3
Hawaii	69	89.9
Iowa	168	89.3
Alaska	225	88.9
DC	107	88.8
Illinois	781	88.6
Idaho	68	88.2
Montana	66	84.8
Utah	406	82.3
New Mexico	97	81.4
Georgia	382	80.4
South Dakota	213	77.9
North Dakota	154	72.7
Tennessee	181	72.4
Massachusetts	197	66.5
Kentucky	211	64.9
Vermont	57	56.1
Ohio	255	53.7
Florida	405	52.6
Pennsylvania	748	45.9
Alabama	57	45.6
Connecticut	170	45.3
Michigan	799	43.3
West Virginia	90	42.2
Delaware	41	41.5
North Carolina	245	40.0
Oklahoma	173	39.9
Virginia	226	39.8
Mississippi	126	37.3
New Jersey	168	36.9
Missouri	348	36.5
Kansas	111	36.0
Louisiana	159	34.0
Texas	574	32.8
New York	450	26.4
Wisconsin	179	25.7
Nebraska	150	24.7
South Carolina	83	22.9
Maine	65	21.5
Rhode Island	62	21.0
New Hampshire	45	17.8

n/a = Not Applicable

National Center for State Courts, 2007

State Rankings of Judge & Attorney Survey Results

Juror Questions to Witnesses

Percent of respondents who reported that jurors were permitted to submit questions in writing to witnesses.

State	Sample Size	% of Respondents
Arizona	161	91.3
Indiana	274	86.1
Colorado	176	62.5
New Mexico	97	58.8
New Jersey	168	35.1
Wyoming	47	34.0
Washington	165	33.9
Oregon	393	28.0
Wisconsin	179	27.4
Vermont	57	26.3
Kentucky	211	24.6
Utah	406	24.4
Idaho	68	23.5
Hawaii	69	23.2
California	446	22.9
DC	107	22.4
Tennessee	181	21.5
Nevada	140	18.6
Massachusetts	197	18.3
Florida	405	14.6
Alaska	225	14.2
Ohio	255	14.1
Arkansas	45	13.3
South Dakota	213	12.2
Michigan	799	12.1
Virginia	226	11.5
Maryland	347	9.2
New Hampshire	45	8.9
Nebraska	150	6.7
Montana	66	6.1
New York	450	4.9
Rhode Island	62	4.8
Connecticut	170	4.7
Alabama	57	3.5
North Dakota	154	3.2
Oklahoma	173	2.9
Kansas	111	2.7
Minnesota	345	2.6
West Virginia	90	2.2
Georgia	382	2.1
Texas	574	1.7
Maine	65	1.5
Iowa	168	1.2
Missouri	348	1.1
Illinois	781	1.0
Pennsylvania	748	0.8
Louisiana	159	0.6
Delaware	41	0.0
Mississippi	126	0.0
North Carolina	245	0.0
South Carolina	83	0.0

n/a = Not Applicable

National Center for State Courts, 2007

Appendix G

Proposed Change to Practice Book § 42-12
(Referenced in Voir Dire Recommendation II)

PROPOSED CHANGES TO PRACTICE BOOK § 42-12

Sec. 42-12. —Voir Dire Examination

Each party shall have the right to examine, personally or by counsel, each juror outside the presence of other prospective jurors as to qualifications to sit as a juror in the action, or as to interest, if any, in the subject matter of the action, or as to relations with the parties thereto. If the judicial authority before whom such examination is held is of the opinion from such examination that any juror would be unable to render a fair and impartial verdict, such juror shall be excused by the judicial authority from any further service upon the panel, or in such action, as the judicial authority determines. The judicial authority shall not abridge the right of such examination [shall not be abridged] by requiring counsel or the defendant to put questions [to be put] to any juror in writing and [submitted] submit them in advance of the commencement of the trial.

COMMENTARY: The reason for the above change arises from the fact that recently defense counsel have taken the position that the provision bars the court from submitting a written questionnaire to the jurors as part of its prescreening function. The court's prescreening authority, however, is well settled. See, e.g., *State v. Faust*, 237 Conn. 454, 462-63 (1996); General Statutes sec. 51-217a (b); Practice Book Sec. 42-11. Use of a written questionnaire by the court saves time for the court, counsel, and jurors, preserves peremptory challenges for counsel, provides additional information about jurors and, in general, makes jury selection much easier. The new language effectuates more clearly the intent of the provision, which was to prevent the court from requiring counsel to use written questionnaires, rather than prevent the court from using its own questionnaire.