

The Arizona Jury Past, Present and Future Reform

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November 7, 2005

**Jurors are rarely brilliant and rarely stupid,
but they are treated as both at once.¹**

The jury system is an integral part of America's rule of law and judicial system. Jury service impacts hundreds of thousands of Arizona citizens every year.² Jury reform is all about identifying, facilitating and maximizing the positive benefits of jury service – for justice, for the community, and for the individual juror.

During late summer 2005 in Judge Rebecca Albrecht's courtroom, a civil trial jury is being selected.³ The case is not unusual among pending civil trials, involving a workplace injury where plaintiff sought money damages based on negligence. During the questioning of thirty-five potential jurors by the judge and attorneys⁴, several jurors seek to be excused for hardship. One potential juror, among several others, complains he cannot afford to be away from work, explaining he has a report to finish that is crucial and too important to put off.⁵

During a recess out of the presence of the jury panel, requests for dismissal for hardship are resolved on the record with the attorneys, challenges for cause are heard,

¹ W. Schwarzer, Reforming Jury Trials, 1990 U. Chi. Legal. F. 119, 137 (quoting Warren K. Urborn, Toward Better Treatment of Jurors By Judges, 61 Neb. L. Rev. 409,425 (1982), reprinted in 132 F.R.D. 575, 590 (1991).

² An estimated one million Americans serve as jurors every year, and more than five times that number report to local court houses for duty. American Bar Association, The American Jury Initiative, Online Media Kit (2005). Available at <http://www.abavideo.org/ABA301/index.htm> All web citations in this paper were last visited within two weeks of November 7, 2005.

³ Judge Rebecca Albrecht was appointed in 1985 to the Arizona Superior Court of Maricopa County.

⁴ Here the judge used the "struck" method of jury selection. The entire panel is questioned before any potential juror is excused for qualification, hardship, cause or by peremptory strike. Arizona Rules of Civil Procedure, Rule 47(a)(1), 1995 Comment.

⁵ As to workplace hardship, Arizona statutes specify a juror may be excused only if service would substantially, materially and adversely affect the public interest or welfare or service would cause undue or extreme physical or financial hardship to the person or the person's family. A.R.S. 21-202B. Available at <http://www.azleg.state.az.us/FormatDocument.asp?inDoc=/ars/21/00202.htm&Title=21&DocType=ARS>

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and the attorneys exercise their peremptory strikes.⁶ Insufficient hardship is found to excuse the reluctant juror and he is not struck by either side. The jury panel is called back into the courtroom. The clerk calls the names of the eight jurors selected to serve.⁷ As each name is called, each juror takes a seat in the jury box as directed by the court bailiff. The reluctant juror, when his name is called, is obviously very upset and angrily takes his seat in the jury box. After all eight are called and seated, those not selected return to the jury assembly room – perhaps to be discharged and return home or to be sent to another courtroom for another jury selection that day.⁸

The reluctant juror is obviously unhappy at being chosen. Even as the trial juror oath is administered by the clerk⁹ his attitude is clear. He -- perhaps a bit indignantly -- states he just cannot serve. The judge tells him he has to serve anyway. The Preliminary Jury Instructions are read to the jury by the judge. The reluctant juror does not read along on his written copy of the preliminary instructions and appears not to listen.¹⁰

The lunch break is taken. During the lunch break, the reluctant juror demands to see the judge. He is told by court staff to return at the end of the lunch break. He does not return. After conferring with counsel and obtaining their stipulation to proceed with seven jurors rather than declaring a mistrial, court reconvenes. The judge, in the presence

⁶ In Arizona civil matters, each side normally has four peremptory strikes. Arizona Rules of Civil Procedure, Rule 47(e).

⁷ Civil juries in Arizona consist of eight persons. A.R.S. 21-102(C).

⁸ Maricopa County has for many years used, and now all Arizona uses, a one-day/one trial jury summoning procedure.

⁹ After voir dire, Arizona trial jurors are required to swear or affirm that they will “. . . give careful attention to the proceedings, abide by the court’s instructions, and render a verdict in accordance with the law and evidence presented. . . .” Arizona Rules of Criminal Procedure, Rule 18.6(b).

¹⁰ Arizona Jury Instructions, both Preliminary and Final, must be in writing and each juror is given a copy. Arizona Rules of Civil Procedure, Rules 51(a) and 51(b)(3); Arizona Rules of Criminal Procedure, Rules 18.6(c) and 21.3(d).

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of the jury, finds the absent juror in direct criminal contempt of court, issues a bench warrant for his arrest, and directs the Sheriff to arrest the absent juror. The trial proceeds.

The next morning, the reluctant juror had been found, arrested and brought before the judge. The judge sentenced the reluctant juror to jail for the duration of the trial, until the final verdict was returned or the jury discharged. When the trial reconvened, with the approval of counsel, the jury was told of the arrest and contempt sentence.

Here is the rest of the story. A few weeks later, James N. Giordano, the Court Programs Jury Analyst for the Oregon Judicial Department, was returning to Oregon from the National Center for State Court's Institute For Court Management (ICM) Jury Management Course in Phoenix.¹¹ Mr. Giordano, overheard a fellow passenger mention service on a Maricopa County Jury. He explained he was returning from a jury seminar in Phoenix, asked "How was your experience as a juror?" The juror replied: "Oh, it was very interesting. I was a bit hesitant going into it but I'm glad I had the chance to serve." To which Mr. Giordano replied:

That is very common. Many people are nervous and don't know what to expect. While others find it a great inconvenience. But most who serve come out saying it was a very positive experience. You are particularly fortunate. Maricopa county is known for having one of the best run and innovative courts in the country.¹²

The juror then continued with a full recitation of her experience. She had been one of the selected jurors on Judge Albrecht's case! The juror reported that when the trial started on the second day:

¹¹ National Center for State Courts (NCSC), Institute for Court Management (ICM) , *Jury Management Course*, September 28-30, 2005, Phoenix, Arizona.

¹² National Center for State Courts (NCSC) *Jur-E Bulletin*, October 7, 2005. Available at <http://www.ncsconline.org/Juries/bulletin.htm>

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. . . , the judge looked quite happy. She reported to us that this [reluctant] juror had been arrested. The judge said that she told him he would remain in jail until the trial ended!¹³

Mr. Giordano asked "How did you feel about that?" and "Did you feel she was too harsh on him?" The juror replied "Oh, not at all, " explaining while she has three children, a business to run, and a husband who is on the road much of the time. She said:

It was an inconvenience to me and many others I'm sure. But I see the value of having a jury trial. If I had a problem, I would want the benefit of a jury hearing my case.¹⁴

As this story demonstrates, most persons called to jury duty are reluctant to serve, but having served, feel the better for it. Citizens who serve also expect the courts to apply the duty to serve fairly. The judicial branch, including administrators, judges and lawyers, have an affirmative obligation to fairly maintain and promote the jury system and jury service. A judge's obligation runs the gambit from promoting good jury systems, to making the jury experience as painless and effective as reasonably possible, to fairly enforcing a citizen's obligation to serve.

INTRODUCTION

This paper presents the genesis, implementation and future of Arizona jury reform from the author's viewpoint .¹⁵ In association with the University of Canberra School of Law this paper is a supporting reference document for a series of jury workshops and other lectures presented in Australia during November 2005. The author retired from full-

¹³ *Id.*

¹⁴ *Id.* Mr. Giordano asked for the name of the judge, receiving the reply: "It was Judge Rebecca Albret. Wait, it was Albrecht. I remember. Her name had a C-H in it. A-L-B-R-E-C-H-T." In Mr. Giordano's words: "Albrecht that juror will be more willing to serve the next time he is called."

¹⁵ While the constitutional provisions, statutes, and rules that apply to jury trials in Arizona will be summarized, this paper is not intended to be a primer on Arizona trial practice. Similarly, while many of the research projects and reports on the American jury are noted and discussed, this paper is not intended as an exhaustive collection or analysis of the existing American jury research.

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time trial court judging on the Arizona Superior Court of Maricopa County at the end of January, 2005, after serving some thirteen years from his appointment on October 1, 1991. Prior to appointment to the bench, the author spent twenty years in the private practice of law, primarily commercial litigation in the areas of real property, finance, and construction.¹⁶

What follows is divided into six sections. Section One presents a basic overview of Arizona jury structure. Section Two summarizes the Arizona jury reform movement. Section Three summarizes various jury studies based primarily on Arizona jury research. Section Four presents a discussion of Arizona jury practice, with reference to both the Arizona jury reform recommendations and the August 2005 American Bar Association Principles for Juries & Jury Trials.¹⁷ Section Five deals with future jury reform in Arizona, identifying areas of continuing opportunity and discussing various issues relating to the impact of technology. Section Six presents a brief conclusion.

ARIZONA JURY STRUCTURE

Every system of rule of law, judicial system, and jury system is particular to the history, culture and practices of the respective jurisdiction. In the United States, jury systems and practices vary significantly between the federal system and the systems in each of the fifty states.¹⁸ Jury systems also vary between various federal district courts, between the fifty states, among local jurisdictions within states, and even between judges

¹⁶ See generally <http://www.michaelyarnell.com>. A copy of this paper, with Internet hyperlinks, is available at the author's web page and at the University of Canberra School of Law's web page at <http://www.blis.canberra.edu.au/schools/law/>

¹⁷ American Bar Association, *Principles for Juries & Jury Trials*, August, 2005. Available at <http://www.abanet.org/juryprojectstandards/principles.pdf>. Hereinafter sometimes cited as the ABA Jury Principles.

¹⁸ A detailed summary of all state court systems, including jury systems, is found at David B. Rottman, Carol R. Flango, et al., *State Court Organization 1998* (June, 2000). Conference of State Court Administrators and the National Center for State Courts. Available at <http://www.ojp.usdoj.gov/bjs/pub/pdf/sco98.pdf>

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in a single court. While jury reform efforts of the past twenty years in the United States have benefited from this rich tapestry of varying practices, there is an underlying constitutional right to jury trial, in both criminal and civil matters, which ties these disparate systems to common goals and aspirations.¹⁹ This section presents an overview of the constitutional and statutory provisions controlling the use of juries in Arizona as they exist in November 2005.²⁰

The Arizona Constitution, Article 2, Section 23, titled “Trial by jury; number of jurors specified by law,” guarantees the right to jury trial in both civil and criminal cases in the Arizona courts, providing:

The right of trial by jury shall remain inviolate. Juries in criminal cases in which a sentence of death or imprisonment for thirty years or more is authorized by law shall consist of twelve persons. In all criminal cases the unanimous consent of the jurors shall be necessary to render a verdict. In all other cases, the number of jurors, not less than six, and the number required to render a verdict, shall be specified by law.²¹

The Seventh Amendment to the United States Constitution guarantees the right to jury trial in civil cases in federal court.²² While the federal guarantee of a jury in civil trials

¹⁹ A good resource guide to jury trial innovations in the United States is found at National Center for State Courts, *Jury Trial Innovations, Resource Guide* (2005). Available at <http://www.ncsconline.org/WC/Education/JurInnGuide.htm> See also the American Judicature Society, National Jury Center Homepage (2005). Available at <http://www.ajs.org/jc/index.asp> A bibliography of resources on jury reform is found at Maricopa County Law Library Web Pages, *Jury Reform* (2004). Available at <http://www.superiorcourt.maricopa.gov/lawlibrary/Documents/Html/Bibliographies/JuryReform.asp> A leading resource on jury systems throughout the world is Neil Vidmar, ed., *World Jury Systems*, Oxford University Press (2002) Available for purchase at <http://www.oup.com/us/catalog/general/subject/Law/CriminalLawandProcedure/?view=usa&ci=0198298560>

²⁰ A diagram of the Arizona State Court system is included in the Appendix. A good overview of jury practice in the United States Federal courts is found in the *Manual For Complex Litigation, Section 12.4, Jury Trials*, Federal Judicial Center (4th Ed., 2004). Available at <http://www.fjc.gov/public/home.nsf/pages/470>

²¹ Arizona Constitution, Article 2, Section 23. Available at <http://www.azleg.state.az.us/FormatDocument.asp?inDoc=/const/2/23.htm>

²² The Seventh Amendment reads: “In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.” Available at <http://caselaw.lp.findlaw.com/data/constitution/amendment07/>

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has not been extended to civil cases in state courts,²³ the law of most states guarantees a jury in civil cases above the level of small claims.²⁴

The Sixth Amendment to the United States Constitution guarantees the right to jury trial in criminal cases in federal court.²⁵ The Supreme Court extended the Sixth Amendment guarantee of jury trial in criminal cases to the states in *Duncan v. Louisiana*, stating:

[T]he deep commitment of the Nation to the right of jury trial in serious criminal cases as a defense against arbitrary law enforcement qualifies for protection under the Due Process Clause of the Fourteenth Amendment, and it therefore must be respected by the States.²⁶

The Arizona constitutional jury provisions are implemented by statute and court rule. Civil and criminal juries are called to sit in all Arizona trial courts – the Superior Court and the courts of limited jurisdiction such as the Justice of the Peace Courts and the city or municipal courts. The Superior Court of Arizona is the general jurisdiction statewide trial court,²⁷ is a court of record,²⁸ and is organized and separately sitting in each of Arizona's fourteen counties.²⁹ In those counties with more than 250,000 population (Maricopa County – the Phoenix metropolitan area ; and Pima County -- the Tucson metropolitan area) the Superior Court Judges are merit system appointed and stand for retention every

²³ See *Gasperini v. Ctr. for the Humanities, Inc.*, 518 U.S. 415, 432 (1996).

²⁴ American Judicature Society, *Juries in-depth: Right To A Jury Trial* (2004). Available at http://www.ajs.org/jc/juries/jc_right_overview.asp

²⁵ The Sixth Amendment reads, in part: "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," Available at <http://caselaw.lp.findlaw.com/data/constitution/amendment07/>

²⁶ *Duncan v. Louisiana*, 391 U.S. 145, 156-58 (1968). Available at <http://caselaw.lp.findlaw.com/scripts/getcase.pl?navby=case&court=us&vol=391&invol=145>

²⁷ Arizona Constitution, Chapter 2, Section 14. Available at <http://www.azleg.state.az.us/FormatDocument.asp?inDoc=/const/6/14.htm>

²⁸ Arizona Constitution, Chapter 2, Section 30. Available at <http://www.azleg.state.az.us/FormatDocument.asp?inDoc=/const/6/30.htm>

²⁹ Arizona Constitution, Chapter 2, Section 14. Available at <http://www.azleg.state.az.us/FormatDocument.asp?inDoc=/const/6/13.htm>

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four years in non-partisan elections.³⁰ Juries for Superior Court are “summoned from the body of the county” as provided by statute.³¹

The Justice Courts are organized within geographical precincts within counties. Justice Court civil jurisdiction is limited to controversies where the sum sought is ten thousand dollars or less, exclusive of interest and costs, and their criminal jurisdiction is limited to misdemeanors.³² City Court jurisdiction is limited to city or municipal ordinance violations and traffic offenses, but includes misdemeanor driving under the influence of alcohol traffic offenses. In Arizona, jury trials are provided for all misdemeanor offenses where six months or more jail time may be imposed³³ and for driving under the influence violations.³⁴

Statutory provisions related to juries are contained in various titles of the Arizona Revised Statutes.³⁵ The basic provisions for the trial jury size and unanimity in Arizona are contained in A.R.S. 21-102, which provides:

A. A jury for trial of a criminal case in which a sentence of death or imprisonment for thirty years or more is authorized by law shall consist of twelve persons, and the concurrence of all shall be necessary to render a verdict.

³⁰ See Arizona Constitution, Chapter 2, Sections 30 and 37. Available at <http://www.azleg.state.az.us/FormatDocument.asp?inDoc=/const/6/30.htm> and <http://www.azleg.state.az.us/FormatDocument.asp?inDoc=/const/6/37.htm> In Arizona’s other twelve counties, Superior Court judges are elected.

³¹ Arizona Constitution, Chapter 2, Section 17. Available at <http://www.azleg.state.az.us/FormatDocument.asp?inDoc=/const/6/17.htm>

³² Arizona Constitution, Chapter 2, Section 32. Available at <http://www.azleg.state.az.us/FormatDocument.asp?inDoc=/const/6/32.htm>

³³ *Derendal v. Griffith*, et al., 209 Ariz. 416, 104 P.3d 147 (2005), Available at <http://www.supreme.state.az.us/opin/pdf2005/CV040037PR.pdf>

³⁴ A.R.S. 28-1381(f). Available at <http://www.azleg.state.az.us/FormatDocument.asp?inDoc=/ars/28/01381.htm&Title=28&DocType=ARS>
See *State v. Smith*, 1 CA-SA 05-0082, Arizona Court of Appeals August 25, 2005

³⁵ See Title 12, Courts and Civil Proceedings; Title 21, Juries; Title 13, Criminal Code ; Title 22, Justice Courts; and various other miscellaneous titles The complete un-annotated text of the Arizona Revised Statutes is available at <http://www.azleg.state.az.us/ArizonaRevisedStatutes.asp> While Arizona uses the grand jury procedure to return indictments in criminal felony charges, discussion of grand jury procedures is beyond the scope of this paper.

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B. A jury for trial in any court of record of any other criminal case shall consist of eight persons, and the concurrence of all shall be necessary to render a verdict.

C. A jury for trial in any court of record of a civil case shall consist of eight persons, and the concurrence of all but two shall be necessary to render a verdict.

D. In a court not of record, a jury for trial of any case shall consist of six persons. The concurrence of all in a criminal case and all but one in a civil case shall be necessary to render a verdict.

E. The parties in a civil case, and the parties with the consent of the court in a criminal case, may waive trial by jury, or at any time before a verdict is returned consent to try the case with or receive a verdict concurred in by a lesser number of jurors than that specified above.³⁶

Thus in all criminal cases in Arizona the verdict must be unanimous, however, the size of the jury varies depending on the severity of the matter. If the possible punishment equals or exceeds thirty years in prison, the criminal jury must be twelve persons. In all other criminal cases in Superior Court the jury consists of eight persons. In criminal cases in the courts of limited jurisdiction the jury consists of six persons.

In civil cases in Arizona civil jury verdicts need not be unanimous. In civil cases in Superior Court the jury consists of eight persons, with at least six of eight returning a verdict. In civil cases in the courts of limited jurisdiction the jury consists of six persons, with at least five of six returning a verdict.

Potential jurors are summoned from a jury list maintained by the jury commissioner.³⁷ The jury list consists of all registered voters and all those with driver's

³⁶ A.R.S. 21-102. Available at <http://www.azleg.state.az.us/FormatDocument.asp?inDoc=/ars/21/00102.htm&Title=21&DocType=ARS>

³⁷ A.R.S. 21-131. The jury commissioner in smaller counties is the court clerk, while in counties over 250,000 the presiding judge appoints a jury commissioner. Available at <http://www.azleg.state.az.us/FormatDocument.asp?inDoc=/ars/21/00131.htm&Title=21&DocType=ARS>

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licenses.³⁸ To be qualified to sit as a juror in Arizona, a person must: 1) be a citizen of the United States; 2) be a resident of the jurisdiction where summoned to serve; 3) never have been convicted of a felony, unless his or her civil rights have been restored; and, 4) not be currently adjudicated mentally incompetent or insane.³⁹ The Arizona law provides:

It is the policy of this state that all qualified citizens have an obligation to serve on juries when summoned by the courts of this state, unless excused.⁴⁰

In 2003 Arizona passed a version of the “Jury Patriotism Act,” generally eliminating jury service loopholes, tightening up the rules for seeking excusal from service, and establishing a lengthy-trial fund for juror compensation in long trials.⁴¹ Otherwise qualified jurors may be temporarily excused by the jury commissioner or the judge in a particular case, only for specific statutory reasons.⁴² These reasons include:

1. A mental or physical condition causing the person to be incapable of performing jury service, supported by a doctor’s certification;
2. That service would substantially, materially and adversely affect the public interest or welfare;
3. That the person cannot currently understand the English language;
4. That service would cause undue or extreme physical or financial hardship to the person or the person’s family;

³⁸ A.R.S. 21-301(B). Available at <http://www.azleg.state.az.us/FormatDocument.asp?inDoc=/ars/21/00301.htm&Title=21&DocType=ARS>

³⁹ A.R.S. 21-201. Available at <http://www.azleg.state.az.us/FormatDocument.asp?inDoc=/ars/21/00201.htm&Title=21&DocType=ARS>

⁴⁰ A.R.S. 21-202(A). Available at <http://www.azleg.state.az.us/FormatDocument.asp?inDoc=/ars/21/00202.htm&Title=21&DocType=ARS>

⁴¹ V. Schwartz, M. Behrens and C Silverman, *The Jury Patriotism Act: Making Jury Service More Appealing and Rewarding to Citizens*, April, 2003. The Jury Patriotism Act reforms are discussed in more detail *infra*. Available at http://www.icjl.org/images/contentpdfs/030416_ALECJuryReport.pdf

⁴² A.R.S. 21-202(B). Available at <http://www.azleg.state.az.us/FormatDocument.asp?inDoc=/ars/21/00202.htm&Title=21&DocType=ARS>

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5. The person is currently certified and employed as a peace officer;
6. The judge or jury commissioner finds good cause for excusal based on a showing of undue or extreme hardship under the circumstances, including being temporarily absent from the jurisdiction or a lack of transportation; and
7. The person is over seventy-five years of age.

An otherwise qualified potential juror must be disqualified under certain circumstances. The Arizona statutes⁴³ provide:

The following persons shall be disqualified to serve as jurors in any particular action:

1. Witnesses in the action.
2. Persons interested directly or indirectly in the matter under investigation.
3. Persons related by consanguinity or affinity within the fourth degree to either of the parties to the action or proceedings.
4. Persons biased or prejudiced in favor of or against either of the parties.

The jury commissioner randomly creates a summons list⁴⁴ from the master juror list and supplies a juror questionnaire, generally with the initial summons, covering the basic qualifications to serve.⁴⁵ A copy of the current Maricopa County jury summons and questionnaire is reproduced in the Appendix. An original summons is mailed to the prospective juror.⁴⁶ A juror who actually serves on a trial is exempt from being called

⁴³ A.R.S. 21-211. Available at <http://www.azleg.state.az.us/FormatDocument.asp?inDoc=/ars/21/00211.htm&Title=21&DocType=ARS>

⁴⁴ A.R.S. 21-312. Available at <http://www.azleg.state.az.us/FormatDocument.asp?inDoc=/ars/21/00312.htm&Title=21&DocType=ARS>

⁴⁵ A.R.S. 21-314. Available at <http://www.azleg.state.az.us/FormatDocument.asp?inDoc=/ars/21/00314.htm&Title=21&DocType=ARS>

⁴⁶ A.R.S. 21-333. Available at <http://www.azleg.state.az.us/FormatDocument.asp?inDoc=/ars/21/00331.htm&Title=21&DocType=ARS>

The actual practices involved in sending jury summons, resending summons, yield rates, and enforcement in Maricopa County are discussed in more detail *infra*.

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again for a period of two years.⁴⁷ A potential juror may postpone service two times only, unless particular hardship findings are made.⁴⁸ The Arizona statutes mandate a statewide one-day/one-trial rule.⁴⁹ This requirement is fulfilled by:

1. Serving on one trial until being excused or discharged;
2. Appearing but not assigned for selection before the end of that day;
3. Assigned for jury selection and serves through the completion of jury selection or is excused;
4. Complies with a request to telephone a court or check a court's web site to determine whether to report on a particular day, for four days within a thirty-day period; or
5. Provides the court with a valid telephone number and stands ready to serve on the same day, for a period of two days.

The constitutional and statutory provisions related to juries are further defined and implemented in Arizona by the Arizona Code of Judicial Administration,⁵⁰ the Arizona Rules of Civil Procedure,⁵¹ and the Arizona Rules of Criminal Procedure.⁵² A summary of the provisions for jury service in Arizona, including links to various court web sites, is available on the Arizona Supreme Court web pages.⁵³

Much of Arizona jury reform has dealt with the juror experience after summons – such as voir dire procedures, trial procedures, jury instructions, juror satisfaction, and the like. Section Three discusses the Arizona jury reform movement and Arizona based jury

⁴⁷ A.R.S. 21-335. Available at <http://www.azleg.state.az.us/FormatDocument.asp?inDoc=/ars/21/00335.htm&Title=21&DocType=ARS>

⁴⁸ A.R.S. 21-336. Available at <http://www.azleg.state.az.us/FormatDocument.asp?inDoc=/ars/21/00336.htm&Title=21&DocType=ARS>

⁴⁹ A.R.S. 21-336.01. Available at <http://www.azleg.state.az.us/FormatDocument.asp?inDoc=/ars/21/00336-01.htm&Title=21&DocType=ARS>

⁵⁰ Arizona Code Of Judicial Administration. Available at <http://www.supreme.state.az.us/orders/admcode/>

⁵¹ Arizona Rules of Civil Procedure. Available at <http://azrules.westgroup.com/home/azrules/default.wl>

⁵² Arizona Rules of Criminal Procedure. Available at <http://azrules.westgroup.com/home/azrules/default.wl>

⁵³ Arizona Supreme Court, Jury Service (2005). Available at <http://www.supreme.state.az.us/nav2/jury.htm>

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research. Following sections discuss in more depth the particulars of current jury selection and service practice in Maricopa County.

Jury service in Maricopa County Arizona is typical of that in most states. On the day of jury service, those summoned jurors not excused via telephone or web check in, report for service to the jury assembly room. The potential jurors check in and receive an orientation. Panels for particular trials, either criminal or civil, are randomly drawn, the prospective jurors are assigned sequential numbers, and the panel is sent to a courtroom with the particular court's bailiff for voir dire. After voir dire is conducted, the trial jury is selected in juror number order of from those not excused by the judge for hardship, for cause, or peremptorily stricken by the parties.

The trial jury is sworn, preliminary jury instructions given, opening statements heard, the trial evidence presented, final jury instructions given, closing arguments heard, and the jury retires to deliberate. In criminal cases involving capital punishment, after a decision of guilt, the jury hears the aggravation/mitigation sentencing portion of the trial. In criminal cases involving aggravating sentencing factors not an element of the underlying charge, the jury hears evidence on aggravating factors. A final verdict is reached, or a mistrial is declared if the jury reaches impasse, and then the jury is discharged. Sometimes jury counseling services are suggested to jurors by the court after they are discharged.

THE ARIZONA JURY REFORM MOVEMENT

Arizona jury reform finds its genesis in the efforts of several key Arizona judges, court administrators and lawyers.⁵⁴ Judge B. Michael Dann's 1993 paper "*Learning*

⁵⁴ See American Bar Association, Committee on Jury Standards. *Standards Relating to Juror Use and Management*. Chicago, IL: American Bar Association (1993), based in part on the work of the Jury Standards

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Lessons” and “Speaking Rights”: *Creating Educated and Democratic Juries*,⁵⁵ remains a leading presentation of the arguments for improved jury communication. Accurately identifying the central problem of jury performance as not one of juror competence, but rather juror communication, Judge Dann states:

Judges, lawyers, law teachers, social scientists, jurors themselves, and others have called for an end to the traditional passive role of the juror and urged utilization of several techniques intended to create more juror participation in trials.⁵⁶

Judge Dann astutely identified the primary problem in instituting suggested jury reforms to improve juror communication as:

. . . “threatening” the current balance of power that judges and lawyers have over the trial itself, a disquieting prospect to many judges and lawyers. This power and control is jealously guarded, in large part, due to the inherent distrust of juries harbored by many lawyers and judges. However, the jury, a key democratic institution, could in fact be strengthened by a reallocation of such power and control.⁵⁷

The legal model of the juror as a passive observer, an empty vessel to be filled, an object of one-way, linear communication, a complete and accurate recorder of information, is both inaccurate and illogical.⁵⁸ Empirical research⁵⁹ concerning Arizona juries in

Task Force of 1980-1983. The Hon. Roger Strand of the United States District Court For Arizona, previously a sitting judge in the Superior Court of Maricopa County, participated as a member of both the 1980-83 and 1991-92 ABA groups. Jury Standards were rearticulated by the American Bar Association in the ABA Standards for Criminal Justice: Discovery and Trial by Jury, Standard 15 (3rd ed., 1996). Available at http://www.abanet.org/crimjust/standards/jurytrial_toc.html

⁵⁵ B. Michael Dann, *“Learning Lessons” and “Speaking Rights”*: *Creating Educated and Democratic Juries*, 68 Ind. L. J. 1229 (Fall, 1993).

⁵⁶ *Id.*, at 1230.

⁵⁷ *Id.*

⁵⁸ Within a short time, many academics supported the jury reform concepts and rationales. See e.g. Akhil Reed Amar and Vikram David Amar, *Unlocking the Jury Box*, 77 Policy Review (May-June, 1996). Available at <http://www.policyreview.org/may96/amar.html>

⁵⁹ Jury research based on Arizona data sets is presented in Section Four of this paper.

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operation has not only measured and evaluated the effect of various Arizona jury reforms,⁶⁰ it has clearly validated Judge Dann's jury communication arguments.

On April 14, 1993, the Arizona Supreme Court established the Committee on More Effective Use of Juries.⁶¹ The Arizona Supreme Court noted that juries and jury trials:

[h]ave come under increasing scrutiny, study and criticism relating to issues of representativeness, preparation for jury service, jury selection, juror comprehension of complex facts and of the law, use of technology in jury trials and, in general, judge and lawyer responsiveness to the needs of juries⁶²

The members of the committee included trial and appellate judges, members of the bar, professors of law and the social sciences, court personnel, and former jurors. The committee, chaired by Judge B. Michael Dann, was directed to :

- Study and evaluate the utilization of juries and the conduct of jury trials in Arizona in light of available studies, reports and other published scholarship that bear on the issues referred to in this order.
- Recommend specific ways to improve jury trials, the effectiveness of juries and the quality of jury verdicts.
- Propose rule and other changes that would implement the recommended changes.
- Suggest educational and training programs for the bench, the bar, jurors and the public concerning the changes.

⁶⁰ Judge Dann argued for the following reforms: case-specific jury orientation; mini-opening statements before voir dire; tailored preliminary jury instructions; juror notebooks; note taking by jurors; document (exhibit) control; questions of witnesses by jurors; interim summaries; simple, clear and case specific final instructions; final instructions prior to lawyer closing argument; written copies of instructions for each juror; inviting questions from jurors about instructions; greater assistance to jurors regarding questions during deliberations; allowing jurors to discuss the evidence as the case proceeds; and aiding jurors at impasse. Most, but not all, of these suggested reforms have been implemented in Arizona.

⁶¹ Arizona Supreme Court, *Administrative Order No. 93-20*, April, 1993. Available at <http://www.supreme.state.az.us/orders/admorder/orders94/pdf93/9320.pdf>

⁶² *Id.* At ¶2.

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- Monitor implementation and utilization of the new rules and procedures to determine their effects and propose modifications when necessary.⁶³

The Committee on More Effective Use of Juries produced a formal report, fifty-four recommendations,⁶⁴ and a proposed Bill of Rights for Arizona Jurors.⁶⁵ A list of the fifty-four recommendations and the proposed Bill of Rights For Arizona Jurors are included in the Appendix.

Many of the recommendations of the “Jurors: The Power of 12” report were quickly adopted. On October 24, 1995, effective December 1, 1995, the Arizona Supreme Court adopted various rule changes including: allowing written, judge-reviewed juror questions in civil and criminal cases; the use of juror notebooks; allowing discussion of evidence by jurors during the trial in civil (but not criminal) cases; giving substantive preliminary jury instructions; allowing mini-opening statements; allowing final instructions before attorney closing argument in civil and criminal cases; requiring a copy of preliminary and final instructions be given to each juror; requiring confidentiality of juror addresses; allowing the use of the “struck” method of voir dire; allowing lawyer voir dire as a matter of right, but subject to control and time limits; and assisting jurors at impasse. The particular recommendations implemented by the 1995 rules amendments are discussed in more depth in Section Four below.

⁶³ B. Michael Dann, Chairman, *Jurors: The Power of 12* (1993). Available at <http://www.supreme.state.az.us/jury/Jury/jury.htm>

⁶⁴ Arizona Supreme Court, *Committee on More Effective Use of Juries, Summary of Recommendations* (July 2, 2004). Available at <http://www.supreme.state.az.us/jury/Jury/jury1g1.htm>

⁶⁵ Arizona Supreme Court, *Committee on More Effective Use of Juries, Jurors Bill of Rights* (July 2, 2004). Available at <http://www.supreme.state.az.us/jury/Jury/jury1n.htm>

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In late 1996 the Committee on More Effective Use of Juries was reconvened to consider a dozen additional issues.⁶⁶ Some of these issues were more controversial in nature. The twelve issues considered were: 1) improving compliance with jury summons; 2) jury facilities standards; 3) use of jury consultants; 4) change in the number of peremptory challenges; 5) use of anonymous juries; 6) keeping present jury sizes; 7) jury discussions of evidence during trials of criminal cases; 8) use of deposition summaries; 9) sequencing of expert testimony; 10) informing criminal juries of the potential range of punishment; 11) sequestration of jurors; and, 12) the requirement of unanimity in criminal cases.⁶⁷ The reconvened committee recommended affirmative action on seven of the twelve issues considered, with no change of practice in the other areas. Generally summarized, the recommended affirmative actions were:

1. Improve compliance with jury summons through a program of better treatment of jurors and a public relations campaign;
2. Improve jury facilities, including juror assembly rooms, jury box courtroom areas, parking lots, and disability accommodations;
3. Cut the number of peremptory challenges by one-half, while expanding the definition of “for cause” dismissal used in voir dire;
4. Allow structured jury discussions of the evidence during criminal trials (not just civil trials);
5. Encourage or, in some cases, require the use of deposition summaries in civil cases;

⁶⁶ Arizona Supreme Court, *Jurors: The Power of 12, Part 2* (1996). Available at <http://www.supreme.state.az.us/jury/Jury2/jury2.htm>

⁶⁷ *Id.* The full text of the report is available at <http://www.supreme.state.az.us/jury/Jury2/jury2.htm>, but must be manually paged through.

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6. Educate judges and lawyers as to the advantages of presenting both sides' trial expert witnesses back to back; and,
7. Inform criminal juries of the potential range of punishment.

The recommendation concerning the greater use of deposition summaries in civil trials was adopted by way of an amended comment to Arizona Rules of Civil Procedure, Rule 32, reading, in part:

The verbatim reading of deposition transcripts at trial can be a tedious exercise for the jury that greatly reduces juror comprehension and attention. . . . [The] Parties are encouraged to agree upon and use a concise deposition summary. . . . When considered necessary for jury comprehension or an efficient trial, the court may require the use of deposition summaries. . . . Similarly, the court may require the editing of videotaped depositions to fairly and succinctly include only the important portions of the proceedings. Additionally, the introduction of important portions of deposition transcripts, which allows direct introduction of key questions and answers, is permitted.⁶⁸

There were dissenting votes on the reconvened committee as to limiting the number of peremptory strikes, discussion of the evidence in criminal cases, and informing the jury in a criminal case of the possible punishment. None of these recommendations have been implemented. By practice, a number of the recommendations to improve compliance with jury summons and the improvement of jury facilities has occurred. Some judges have also experimented with the idea of “back to back” trial court expert testimony, the current procedural and evidentiary rules being broad enough to allow such procedure.

⁶⁸ Arizona Supreme Court, Order Adding A Comment To Rule 32, Rules of Civil Procedure, R-04-0011 (June 8, 2004). Available at http://www.supreme.state.az.us/rules/ramd_pdf/r-04-0011.pdf

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On July 11, 2001, the Arizona Supreme Court created the “Ad Hoc Committee to Study Jury Practices and Procedures.”⁶⁹ The charge of the Ad Hoc Committee was to examine and develop recommendations concerning:

- The quality of source lists used for summoning jurors statewide;
- The efficacy and cost savings realized by centralizing jury list preparation;
- The processes of how courts enforce their summonses and excuse or postpone prospective jurors from jury service;
- An increase in juror pay to keep in step with inflation;
- The feasibility of implementing “one-day/one trial” reforms statewide; and,
- Any other such issues considered by the committee to be related to improving jury service.

The Ad Hoc Committee focused on studying Arizona’s fifteen counties’ jury system processes and considered standardization among the counties. This committee:

. . . reviewed the status of jury system reforms related to its specific charges that were covered in *Jurors: The Power of 12*. The committee specifically focused on reasons why some recommended reforms had not been implemented. By reopening dialogue on previous jury recommendations, the committee hoped to offer updated solutions that would inspire further progress and improvement in Arizona’s jury system.⁷⁰

In its Final Report and Recommendations issued August 2002,⁷¹ the Ad Hoc Committee recommended various actions relating to jury management and administration. The committee reached a consensus on all its recommendations, which covered the following areas:

⁶⁹ Arizona Supreme Court, *Administrative Order No. 2001-69* (July 11, 2001). Available at <http://www.supreme.state.az.us/orders/admorder/orders01/2001-69.pdf>

⁷⁰ Arizona Supreme Court, *Final Report and Recommendations of the Arizona Supreme Court Ad Hoc Committee to Study Jury Practices and Procedures* (August, 2002), at 2. Available at <http://www.supreme.state.az.us/jury/juryrpt.pdf>

⁷¹ *Id.*

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1. Quality of juror source lists;
2. Centralizing jury list preparation;
3. Enforcement of jury summonses;
4. Standardizing excuse/postponement policy;
5. Juror pay and compensations;
6. Mandated statewide one-day/one-trial;
7. Provide an educational program of the benefits of one-day/one-trial;
8. Create a taskforce to implement statewide one-day/one-trial;
9. Statewide adoption of a modified Juror Bill of Rights;
10. Identify jurors by number, not name, when polling verdict result;
11. Prepare a statewide Juror Management Reference Manual;
12. Adopt revised Trial Jury Management Standards, Section 5-203 of the Arizona Code of Judicial Administration (attached as Exhibit C to the report);
13. Continue to develop and implement a statewide public relations campaign on jury service;
14. Establish a multi-disciplinary committee to examine and develop reforms of state and county grand jury systems, and
15. No recommendation on the issue of accommodating non-English speaking jurors.

The Ad Hoc Committee's executive summary of its recommendations, and the revised Juror Bill of Rights, are contained in the Appendix. The recommendation to adopt revised Jury Management Standards as Section 5-203 of the Arizona Code of Judicial

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Administration as been implemented, consistent with the terms of the Jury Patriotism Act.⁷² A copy of the Arizona Jury Management Standards is included in the Appendix.

The Ad Hoc Committee issued a supplemental report in March 2003 considering further the issue of juror anonymity and discussing at length the arguments for and against juror anonymity.⁷³ In striking a balance between not using juror names at polling and not using names of jurors at all, the committee stated:

It is at polling, when jurors are asked individually whether they agree with the verdict, that jurors have reported feeling most uncomfortable with the use of their names. The Committee's recommendation accommodates jurors' interest in privacy to some degree while maintaining the current practice that favors openness.⁷⁴

The recommendation to require the anonymous polling of jurors, in both criminal and civil cases, after the return of a verdict by jury number, not jury name, has been implemented by rule change in Arizona.⁷⁵

The Ad Hoc Committee's recommendations regarding standardization for excusal from jury service, juror pay, and one-day/one-trial have been implemented in somewhat modified form through Arizona's adoption of the "Jury Patriotism Act."⁷⁶ The Jury Patriotism Act as adopted in Arizona includes: establishing a lengthy trial fund for juror compensation; increasing a juror's protection from being fired or having to use vacation pay for jury service; increasing the penalty for ignoring a jury summons; standardizing and

⁷² Arizona Code of Judicial Administration, Section 5-203, Trial Jury Management (adopted 2003, amended 2003 and June 9, 2004). Available at <http://www.supreme.state.az.us/orders/admcode/pdfcurrentcode/5-203.pdf>

⁷³ Arizona Supreme Court, *Jury Practices and Procedures Committee Supplemental Report Concerning Juror Anonymity* (March, 2003). Available at <http://www.supreme.state.az.us/jury/SupRptJuryAnon.pdf>

⁷⁴ *Id.*, at 1.

⁷⁵ Arizona Rules of Civil Procedure, Rule 49(f), and Rule 23.4, Arizona Rules of Criminal Procedure, Rule 23.4.

⁷⁶ V. Schwartz, M Behrens, and C. Silverman, *The Jury Patriotism Act: Making Jury Service More Appealing and Rewarding to Citizens*, American Legislative Exchange Council (ALEC) (April, 2003). Available at http://www.icjl.org/images/contentpdfs/030416_ALECJuryReport.pdf See also T. Carter, *Jury Duty As a Patriot Act; Model Bill Would Tighten Rules and Pay Jurors in Lengthy Trials*, 89 ABA Journal 24 (June 2003).

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tightening the grounds for excusal from service; granting one automatic postponement of service; providing for one-day/one-trial service; and, providing that if a juror serves on a jury, he or she will not be called again by the same court for two years.⁷⁷

Arizona's adoption of the American Legislative Exchange Council's⁷⁸ proposed uniform law on jury service is an example of the national spread and acceptance of Arizona's pioneering jury reform efforts. The seeds of reform have spread nationwide and are now returning to Arizona. Over a decade has passed since the "Jurors: Power of 12" report and recommendations. The fifty-four recommendations of Judge Dann's committee continue to form the bedrock of jury reform in Arizona and, to some extent, the United States. The recommendations, and their supporting rationale, have been instrumental in jury reform efforts at every level across the United States.

The feel and ripple of the original fifty-four recommendations is clearly present in the August 2005, ABA Jury Principles.⁷⁹ In 2002, according to the National Center for State Courts, some thirty-one states either had, or were in the process of, examining their jury systems.⁸⁰ The National Center provides web page of links to over twenty five states pending jury trial innovation information.⁸¹ A current summary of the status of jury reform in all fifty states is found on the International Association of Defense Counsel web page.⁸²

⁷⁷ Arizona House Bill 2520, Forty-sixth Legislature, First Regular Session (Signed by Governor May 12, 2003). As codified, a number of statutory sections were amended. The bill as signed is available at http://www.azleg.state.az.us/DocumentsForBill.asp?Bill_Number=2520&image.x=19&image.y=8

⁷⁸ American Legislative Exchange Council (ALEC). Available at <http://www.alec.org/>

⁷⁹ *Supra*, Footnote 15.

⁸⁰ National Center for State Courts, *Implementing Jury Trial Innovations*, Court Manager Jury News (2003). Available at http://www.ncsconline.org/wc/publications/Res_Juries_JuryNewsJuryTrialInnovationsPub.pdf

⁸¹ National Center for State Courts, *Jury Trial Innovations, State Links* (2005). Available at <http://www.ncsconline.org/WC/Publications/Statelinks/JurInnStateLinks.htm>

⁸² International Association of Defense Counsel, *Jury Trial Innovations* (2005) Available at http://www.iadclaw.org/jti_state.cfm

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To this author's knowledge there has been no systematic study or review of the state, local and individual structures, events and personalities that allowed or encouraged Arizona to become a leader in jury reform. In this author's view, three key elements of jury reform in Arizona were, and continue to be: 1) The dedication, public service orientation, integrity and vision of key judges, administrators and lawyers; 2) a rapidly growing governmental system and structure, not locked into engrained practices; and 3) merit selection of judges, allowing attention to longer term system needs rather than the next popular election.⁸³

RESEARCH ON ARIZONA JURIES

It is perhaps not surprising, given the central importance of the jury to the American legal system and democracy, that significant academic papers and studies about how juries work, should work, or might work better, number in the many hundreds.⁸⁴ A summary of recent United States evaluative research on jury trial innovations is found in the Spring 2004 issue of the *Court Review*.⁸⁵ Included there is a discussion of the methods used to study jury innovations and citations to recent empirical evaluations of eight jury innovations: note taking, allowing jurors to ask questions at trial; preliminary jury instructions on the applicable law; juror notebooks; juror discussions of the evidence

⁸³ The insight, integrity, dedication and effort of all the members of the Committee on More Effective Use of Juries were simply extraordinary, including the judges: Judge B. Michael Dann, past Presiding Judge, Maricopa County Superior Court and chairman; Judge Michael J. Brown, past Presiding Judge, Pima County Superior Court; Judge Robert D. Myers, past Presiding Judge, Maricopa County Superior Court; Judge Barry C. Schneider, Maricopa County Superior Court; Judge Leslie Miller, Pima County Superior Court; Judge Allen G. Minker, Greenlee County Superior Court and all Justices on the Arizona Supreme Court. A full list of the original committee membership is available at <http://www.supreme.state.az.us/jury/jury1c.htm>

⁸⁴ The American Psychology-Law Society, Division 41 of the American Psychological Association, lists some 184 pages of citations to jury research. Available at <http://www.ap-ls.org/links/publishingJury.html> See also D. Devine, L. Clayton, B. Dunford, R. Seying, & J. Pryce, *Jury Decision Making: 45 Years of Empirical Research on Deliberating Groups*, Psychology, Public Policy, and Law (September, 2001). A list of jury scholars is found at American Judicature Society, Jury Center Web Page, Jury Scholars (2004). Available at http://www.ajs.org/jc/jc_scholars.asp

⁸⁵ B. Michael Dann and Valerie P. Hans, *Recent Evaluative Research on Jury Trial Innovations*, *Court Review* (Spring, 2004). Available at <http://aja.ncsc.dni.us/courtrv/cr-41-1/CR41-1Dann.pdf>

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during civil trials; final jury instructions before closing arguments; suggestions from the judge regarding deliberations; and, written copies of jury instructions for all jurors.

Further discussion in this section is limited to jury research based primarily on empirical data from Arizona juries.⁸⁶ Comments from this author's personal experience on the bench in Maricopa County will also be included from time to time.

1. **Civil Trial Juror Discussions Before Deliberation.**

Effective December, 1995, the Arizona Supreme Court approved the use of discussions in civil cases among jurors as the trial proceeds and prior to final deliberations.

Arizona Rule of Civil Procedure 39(f) provides:

If the jurors are permitted to separate during the trial, they shall be admonished by the court that it is their duty not to converse with or permit themselves to be addressed by any person on any subject connected with the trial; except that the jurors shall 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. Notwithstanding the foregoing, the jurors' discussion of the evidence among themselves during recesses may be limited or prohibited by the court for good cause.⁸⁷

Revised Arizona Jury Instructions (Civil), Third Edition (RAJI 3rd) (1997) provided, in part:

You jurors may discuss the evidence during the trial, but only among yourselves and only in the jury room when all of you are present. Despite what you have heard or experienced in other trials, where jurors cannot discuss the evidence among themselves during the trial, that rule has been changed in Arizona to permit jurors to talk with each other about the evidence during civil trials like this one. The reason for this change is that the courts believe that juror discussions during trial may assist jurors in understanding and recalling the witnesses, their testimony and exhibits. The kinds of things you may discuss include the witnesses, their testimony and exhibits. However, you must be very careful not to discuss or make up your

⁸⁶ Perhaps the same environment and attitudes which have fostered jury reform efforts in Arizona have also allowed the Arizona courts, with the active consent of the judges, administrators, lawyers and litigants, to become data centers for jury research.

⁸⁷ Arizona Rules of Civil Procedure, Rule 39(f) (1995).

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minds about the final outcome, or who should win the case, until you have heard everything – all the evidence, the final instructions on the law and the attorneys' arguments – and your deliberations have begun. Obviously, it would be unfair and unwise to decide the case until you have heard everything.⁸⁸

In practice many judges shorten this instruction somewhat. The instruction has been formally shortened in Revised Arizona Jury Instructions (Civil) Fourth Edition (RAJI Civil 4th) (2005), Preliminary Instruction Number 9, which provides, in part:

. . . There is one and only one limited exception to the foregoing rules. During recesses from the trial, you may discuss the evidence presented at the trial, but: 1) only among yourselves; and 2) only when you are all together; and 3) only in the jury room.

Even though you may discuss the case under the conditions I have described, do not form final opinions about any fact or about the outcome of the case until you have heard and considered all of the evidence, the closing arguments, and the rest of the instructions I will give you on the law. Both sides have the right to have the case fully presented and argued before you decide any of the issues in the case. Keep an open mind during the trial. Form your final opinions only after you have had an opportunity to discuss the case with each other in the jury room at the end of the trial.⁸⁹

When I first instructed civil juries in Maricopa County they could discuss the evidence as the case proceeded but only when all together and in the jury room, I feared the jury might tend to ignore later evidence in the trial and decide cases prematurely. That fear proved unfounded. In talking to several juries after verdict I asked how they felt about the new rule and whether they thought they tended to decide the case before hearing all the evidence. Uniformly all jurors said they did not. In fact, I recall one juror telling me that “exactly the opposite” had occurred. He recited that when a fellow juror said something to the effect that “this case is over” based on some damaging testimony, several of the other jurors urged the fellow juror to keep an open mind and not decide until the end of the case.

⁸⁸ Revised Arizona Jury Instructions (Civil), Preliminary Instruction 7 (3rd Ed., 1997).

⁸⁹ Revised Arizona Jury Instructions (Civil), Preliminary Instruction 9 (4th Ed., 2005).

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The first study of Rule 39(f) in Arizona began in 1997. At the request of the National Center for State Courts, the Arizona Supreme Court by order of January 1, 1997, temporally suspending civil Rule 39(f), to allow the selection of “certain trials of civil cases in which the jurors will be instructed to refrain” from pre-deliberation discussions, to select other trials where discussions would be allowed, and to videotape all such discussions and deliberations “with the informed consent of all parties and jurors,”⁹⁰ However, it appears that in this first study only questionnaires were utilized without videotaping.

Based on the 1997 administrative order, a field experiment that tested the impact of trial discussions was conducted, resulting in three published papers,⁹¹ collectively referred to here as the Hannaford Study. Some eighty-five civil jury trials were randomly assigned to be “trial discussion” cases and seventy-six were assigned to be “no discussion” cases. Judges in Maricopa (Phoenix), Pima (Tucson), Mohave, and Yavapai County Superior Court participated. Questionnaires were given to jurors, judges, attorneys and litigants. Judges and jurors participation rates exceeded 85%, while attorney rates of participation were in the 50% range and that of litigants in the 30% range.

The Hannaford Study found that 31% of the Discuss juries reported that they did not discuss the case before deliberation and that 14% of the No-Discuss juries discussed the case pre-deliberation, despite the admonition to refrain from discussion. The Hannaford Study concluded jurors were “quite enthusiastic” about the reform and “claim it

⁹⁰ Arizona Supreme Court, Administrative Order No. 97-1 (1997). Available at <http://www.supreme.state.az.us/orders/admorder/orders99/pdf97/9701.pdf>

⁹¹ Valerie P. Hans, Paula L. Hannaford and G. Thomas Munsterman, *The Arizona Jury Reform Permitting Civil Jury Trial Discussions: The Views of Trial Participants, Judges and Jurors*, University of Michigan Journal of Law Reform, Winter 1999, vol. 32, no. 2;. See also Hannaford, Paula L., Valerie P. Hans and G. Thomas Munsterman, *Permitting Jury Discussions During Trial: Impact of the Arizona Reform*, Law and Human Behavior 24 (2000): 359-382; Hannaford, Paula L., Valerie P. Hans, Nicole L. Mott, and G. Thomas Munsterman, *The Timing of Opinion Formation by Jurors in Civil Cases: An Empirical Examination*, U. Tenn. L. Rev., Spring 2000, Volume 67, No. 3

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has positive effects.”⁹² A 2002 summary by G. Thomas Munsterman of the Hannaford

Study states:

This is the first time actual jurors have been asked this type of question, and the first time this procedure of permitting jurors to discuss the evidence has been evaluated. The final answer is not in as to whether jurors should be allowed to discuss the evidence prior to deliberation, but we will say in this study we saw no indication that fears about the procedure are real. We did see that some of the advantages are real.⁹³

Shortly after the Hannaford Study the Arizona Supreme Court issued Administrative Order No. 98-10 specifically authorizing the videotaping of select civil trials in Pima County (Tucson) “in order to ascertain the impact of Rule 39(f).” The 1998 order, like the 1997 order, provided for the suspension of Rule 39(f) to establish a control group.⁹⁴ The final results of the videotaping study, as it relates to Rule 39(f), have been published,⁹⁵ hereinafter referred to as the Diamond Study. The sample consisted of fifty civil cases, all aspects of which were videotaped (including all juror discussions): 26 (52%) motor vehicle cases, 17 (34%) non-motor vehicle tort cases, four (8%) medical malpractice cases, and three (6%) contract cases. This breakdown is close to the breakdown of the total civil case load in Pima county.⁹⁶ In describing the videotaping study, the authors state:

The present research provided an unprecedented look into the jury room through the videotaping and analyses of the trials and the discussions and deliberations of 50 Arizona civil juries. The research design also allowed some cases to be randomly assigned to a control group that received No

⁹² *Id.*, at 375.

⁹³ G. Thomas Munsterman, Should Jurors Be Permitted To Discuss The Evidence Prior To Deliberations, Court Manager Jury News (Spring, 2002). Available at http://www.ncsconline.org/wc/publications/Res_Juries_JuryNewsDiscussEvidencePub.pdf

⁹⁴ Arizona Supreme Court, Administrative Order No. 98-10 (February 5, 1998). Available at <http://www.supreme.state.az.us/orders/admorder/orders99/pdf98/9810.pdf>

⁹⁵ Shari Seidman Diamond, Neil Vidmar, Mary Rose, Leslie Ellis & Beth Murphy, *Jury Discussions During Civil Trials: Studying An Arizona Innovation*, 45 Ariz. L. Rev. 1 (2003). Available at <http://www.law.arizona.edu/Journals/ALR/ALR2003/vol451/Diamond.pdf> A summary companion article is found at Shari Seidman Diamond, Neil Vidmar, Mary Rose, Leslie Ellis & Beth Murphy, *Inside The Jury Room: Evaluation Juror Discussions During Trial*, 87 Judicature 54-58, (2003).

⁹⁶ These percentages of type of case are similar to the author’s experience during eight years of civil docket assignment in Maricopa County.

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Discuss instructions. Additional data included post-trial questionnaires from the judges, jurors, and attorneys.⁹⁷

The Diamond Study concluded that neither the full projected benefits, nor the full projected detriments, to jury discussions before deliberations were observed. In particular:

The Discuss jurors spent very substantial amounts of time and energy engaged in discussions about the trial. Jurors who were instructed that they were *not* permitted to talk about the evidence (No Discuss jurors) occasionally made remarks about the case, but their remarks were almost always brief and perfunctory. The longer and more complex the trial, the more Discuss jurors talked about the case. Jurors often used discussion to fill in the gaps in their knowledge, to review testimony and to clarify misunderstandings. They also shared differences in recall and in interpretation of the evidence. In complex cases, when factual questions arose about the evidence, discussion tended to improve the accuracy of recall.⁹⁸

The study also found that Discuss jurors frequently discussed the case when not all of the other jurors were present. Some individual jurors took an early position as to outcome, sometimes being corrected by other jurors, but the study found “no clear indication that they [early verdict statements] were responsible for altering case outcomes.”⁹⁹ Overall, the Diamond Study concluded:

In sum, our close look at the discussion process revealed evidence for some of the positive features and a few of the negative characteristics reflected in predictions about the effects of the innovation. A number of the predicted differences, both positive and negative, did not materialize at all, although the small sample size meant that we could detect only large effects.¹⁰⁰

I, and other sitting judges in Maricopa County, have noticed that since civil jurors have been allowed to discuss the evidence as the trial proceeds, jury deliberations at the close of the evidence seem to be somewhat less lengthy. This makes some common

⁹⁷ Diamond, *supra*, at 74.

⁹⁸ *Id.*

⁹⁹ *Id.*, at 75.

¹⁰⁰ *Id.*, at 76

sense as the jurors have likely established their group dynamics and have been more informed on the evidence and issues as the trial progresses based on their discussions.

2. Effectiveness of Jury Admonitions and “Blindfold” Jury Instructions.

The data compilation from the Arizona videotaping of fifty civil jury trials, designed for study of trial jury discussions of the evidence, has provided an opportunity for empirical research of other jury communication issues. American juries are routinely instructed not to consider, or not to do, certain things. Examples include topics such as not talking about the case with others, not doing any independent research, and not forming a final opinion as to the outcome of a case until all the case is submitted after evidence, argument and closing instructions.

Shari Seidman Diamond and Neil Vidmar used the data set to study the effectiveness of rules of evidence, and jury instructions, that blindfold jurors to facts about the case that might influence their decisions in legally unacceptable ways.¹⁰¹ In discussing blindfolding and admonitions as methods of jury control, the authors cite various examples, such as: ordinarily excluding from the jury’s knowledge the prior criminal record of a defendant who does not testify; subsequent remedial measures taken after an injury accident; the taxability or non-taxability of an award; settlement efforts by the parties; and statutory tripling of antitrust suit damages. The study, however, focused on jury discussions about insurance and attorney’s fees in selected civil cases by analyzing actual videotaped jury discussions.

¹⁰¹ Shari Seidman Diamond and Neil Vidmar, Jury Room Ruminations on Forbidden Topics, 87 Va. L. Rev. 1857 (2001). Available at [http://eprints.law.duke.edu/archive/00000525/01/87_Va._L._Rev._1857_\(2001\).pdf](http://eprints.law.duke.edu/archive/00000525/01/87_Va._L._Rev._1857_(2001).pdf)

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The most common civil jury trials in Arizona involve persons injured in automobile accidents seeking money damages from those alleged at fault for the accident.¹⁰² All automobile accident situations involve the possibility of insurance – both liability insurance covering the cost of defense and any adverse verdict for the defendant, and health insurance covering some or all of the cost of medical treatment for the plaintiff. The nature, existence, amount and payment of insurance is not relevant and not admissible on the issue of fault or the amount of compensation. However, by common sense and experience we know that civil jurors are aware of the likelihood of insurance and may spontaneously raise the subject.

The study found that insurance was sometimes mentioned by a witness, sometimes brought up by the jury in a question to a witness or the court, and was sometimes spontaneously mentioned by jurors in their discussions. The study finds that “talk about insurance was a strikingly common occurrence in the jury room” and occurred “in 85%” of the cases.¹⁰³

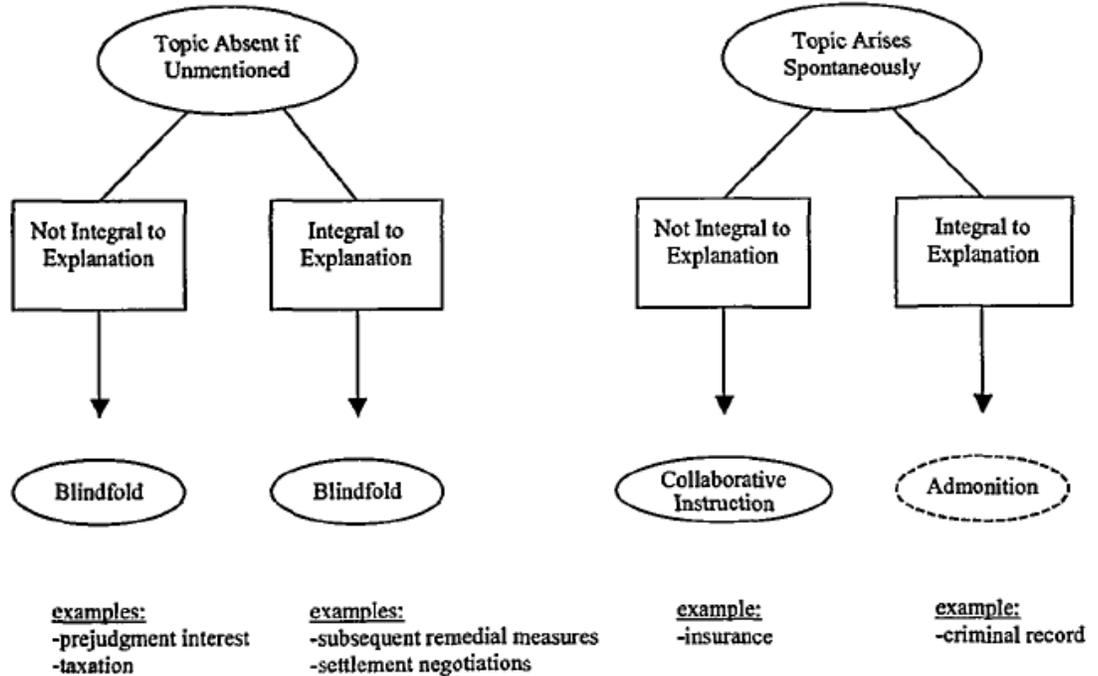
The authors posit a behaviorally informed approach to blindfolding by categorizing topics on two axes: those likely to arise spontaneously or not; and, those that are integral, or not integral, to an explanation of the facts. The concept is presented in this diagram:¹⁰⁴

¹⁰² Fault is negligence (failure to exercise reasonable care in the situation) plus causation (contributing to the injury).

¹⁰³ Diamond and Vidmar, at 1876. Particular verbatim examples of actual jury discussions are presented.

¹⁰⁴ Id., at 1905.

Figure 1. Handling Forbidden Topics



The authors conclude that blindfolding and simple admonitions are most effective if the topic will likely remain absent if not mentioned. The authors find this result whether a topic is not integral to an explanation (like prejudgment interest), or whether a topic is integral to an explanation and likely to cognitively restructure juror perceptions of other evidence (like remedial or settlement efforts).

The authors conclude that when a topic is likely to arise spontaneously, traditional blindfolding and admonitions are not effective. The authors state “. . . a simple admonition cannot be depended upon to terminate juror conversations about insurance even though an admonition may be more successful than simply ignoring a juror question on the topic.”¹⁰⁵

¹⁰⁵ Id., at 1907-1908.

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The authors suggest, as to the insurance topic and other topics that are likely to arise spontaneously and are not integral to an explanation of the events, the court use a “collaborative” instruction. A collaborative instruction is one that explains the reason for the instruction. For instance, the authors’ suggested insurance instruction is:

In reaching your verdict, you should not consider whether any party in this case [names] was or was not covered by insurance. As you may know, some plaintiffs are covered and some are not, and some have various forms of partial coverage. The same is true for defendants. The law does not allow the parties to present any evidence about insurance or lack of insurance or amount of insurance, and there is no way that you can accurately determine whether any party in this case has insurance coverage or, if they have it, how much insurance they have.

More importantly, insurance or lack of insurance has no bearing on whether the defendant [name] was or was not negligent or on how much damage, if any the plaintiff [name] has suffered.¹⁰⁶

As to topics like prior criminal conviction and attorney’s fees, the authors do not suggest a jury instruction, appearing to suggest that a stern admonition may be the most effective.

Shortly first presiding over civil automobile accident cases in Maricopa County, it occurred to this author that the then rule and practice of never mentioning the word “insurance” in an automobile accident case – and if the “secret” word was mentioned by anyone, declaring a mistrial and starting over – was nonsense. The author started, in about 1992, often over objection by both plaintiff and defendant, instructing every automobile case jury in the preliminary and final instructions:

You may believe one or more of the parties in this case has, or does not have, liability or health insurance. You are not to consider the existence or absence of insurance in reaching your decisions in this case.

¹⁰⁶ Id., at 1910.

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Although invited to do so, no party ever appealed that instruction to the court of appeals. Most attorneys intuitively recognized what the foregoing study has confirmed – jurors, all of whom drive automobiles and know about liability and health insurance, are going to at least think about insurance and are likely talk about it. I’m sure my giving this instruction was better than ignoring the situation. Having read the foregoing study, this author believes a better instruction would include the reasons and be more “collaborative.”

In the last decade, the practicing bar has come to recognize the need for an insurance instruction. Arizona Revised Jury Instructions (Civil), 4th, Standard Instruction 9, titled “Insurance,” reads:¹⁰⁷

In reaching your verdict, you should not consider [or discuss] whether a party was or was not covered by insurance. Insurance or the lack of insurance has no bearing on whether or not a party was at fault, or the damages, if any, a party has suffered.

The jury instruction committee’s comment says this is a modified version of the study’s suggested instruction. Perhaps the committee did not fully buy into the suggested collaborative approach – although the omitted first paragraph language could be viewed, in Arizona, as an impermissible comment on the evidence.

3. Jurors’ Unanswered Questions.

The Arizona civil and criminal rules require that jurors be instructed they may ask questions of witnesses and the court. Arizona Civil Rules of Procedure, Rule 39(b)(10)¹⁰⁸ provides:

Jurors shall be permitted to submit to the court written questions directed to witnesses or to the court. Opportunity shall be given to counsel to object to such questions out of the presence of the jury. Notwithstanding the

¹⁰⁷ RAJI 4th, Standard Instruction 9

¹⁰⁸ Arizona Rules of Civil Procedure, Rule 39(b)(10). Available at <http://azrules.westgroup.com/Find/Default.wl?DocName=AZSTRCP39%28B%29&FindType=W&DB=AZ-TOC-WEB%3BSTAAZTOC&RS=WLW2%2E07&VR=2%2E0>

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foregoing, for good cause the court may prohibit or limit the submission of questions to witnesses.

Arizona Rules of Criminal Procedure, Rule 18.6(e)¹⁰⁹ provides, in substantially the same language:

Jurors shall be instructed that they are permitted to submit to the court written questions directed to witnesses or to the court; and that opportunity will be given to counsel to object to such questions out of the presence of the jury. Notwithstanding the foregoing, for good cause the court may prohibit or limit the submission of questions to witnesses.

Recommended Arizona Jury Instructions (Civil) 4th, Preliminary Instruction No.11, titled "Questions By Jurors" provides:

If at any time during the trial you have difficulty hearing or seeing something that you should be hearing or seeing, or if you get into personal distress for any reason, raise your hand and let me know.

If you have any questions about parking, restaurants, or other matters relating to jury service, feel free to ask one of the court staff. But remember that the Admonition applies to court staff, as it does to everyone else, so do not try to discuss the case with court staff.

If you have a question about the case for a witness or for me, write it down, but do not sign it. Hand the question to the bailiff. If your question is for a witness who is about to leave the witness stand, please signal the bailiff or me before the witness leaves the stand.

The lawyers and I will discuss the question. The rules of evidence or other rules of law may prevent some questions from being asked. If the rules permit the question and the answer is available, an answer will be given at the earliest opportunity. When we do not ask a question, it is no reflection on the person submitting it. You should attach no significance to the failure to ask a question. I will apply the same legal standards to your questions as I do to the questions asked by the lawyers.

If a particular question is not asked, please do not guess why or what the answer might have been.

¹⁰⁹ Arizona Rules of Criminal Procedure, Rule 18.6(e). Available at <http://azrules.westgroup.com/Find/Default.wl?DocName=AZSTRCRPR18%2E6&FindType=W&DB=AZ-TOC-WEB%3BSTAAZTOC&RS=WLW2%2E07&VR=2%2E0>

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The same preliminary instruction is generally used in criminal cases.¹¹⁰ When jurors are allowed to ask questions of witnesses and the court, sometimes those questions can not be answered for evidentiary or relevance reasons. The instruction forewarns the jurors that some questions cannot be answered.

But what does the jury discuss or do when a question is not answered? The data from the Arizona videotaping of fifty civil trials in Pima county, together with copies of the questions submitted by the jurors during the trial and deliberations, were used by Shari Diamond, Mary Rose, and Beth Murphy to analyze this issue.¹¹¹ A distinctive feature of the video record was not only the identification of the jury questions which the judge declined to answer, but also the observation of juror reactions during trial and deliberations as jurors learned their questions would not be allowed.

In the fifty civil trials, jurors submitted questions in forty-eight. In half the trials there were ten or fewer questions, with an average of 17.5 per trial. On average .76 questions were submitted per trial hour. Judges allowed 76% of the jurors' 820 questions to be asked. No instances of jurors submitting frivolous questions were found. The author's state:

The questions that the judges allowed were consistent with the observations from previous reports that jurors generally submit appropriate and relevant questions. For example, the jurors directed nearly half of their questions to expert witnesses, typically attempting to clarify their testimony or to understand the bases for their opinions. The juror questions that judges allowed ranged from simple questions about definitions, such as "What is a tear of the meniscus?" (for a physician) and "What does the 'reasonable psychological probability' mean?" (for a psychologist who testified using the phrase), to more complex attempts by jurors to understand the inferences made by the witness, such as "Is his post-traumatic stress a result of the confrontation, or a result from his childhood? Specifically, could his

¹¹⁰ Arizona Supreme Court, *Civil/Criminal Bench Book* (2005), p. 6-11.

¹¹¹ Shari Seidman Diamond, Mary R. Rose, and Beth Murphy, Jurors' Unanswered Questions, 41 *Court Review* 20-29 (Spring, 2004). Available at <http://aja.ncsc.dni.us/courtrv/cr-41-1/CR41-1Diamond.pdf>

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breakdown be from another accident?” and “Not knowing how he was sitting, or his weight, how can you be sure he hit his knee?” (for an engineer testifying about an accident reconstruction).¹¹²

Both allowed and disallowed questions were more frequent in longer trials, with at least one disallowed question in thirty-nine of the fifty trials. Many of the disallowed questions sought information excluded by the rules of evidence, such as: “Who was cited in this accident?”; “Is the defendant required to have his vision and hearing tested in order to renew his driver’s license, and has he done so?”; and, “Has [the plaintiff] been in any other lawsuits, considering the number accidents he has been in?”¹¹³

The judges formally acknowledged less than a third of the 197 disallowed questions. When the disallowed question was acknowledged sometimes a general comment such as “Some questions cannot be answered” was made. Sometimes a legal reason such as “The jury cannot consider insurance in its decision” was made.¹¹⁴ The authors state:

After an issue is raised by a juror and the juror’s question is not answered, the issue may simply be dropped and not discussed among the jurors at all, or it may receive further attention from the jurors. That further attention can take one of three forms. First, a juror may mention having posed a question, note that there was no answer, and accept the lack of an answer without complaint or even with understanding (e.g., by asserting that the issue must, in fact, be irrelevant). Second, consistent with the worries of those apprehensive about juror questions, the jury may chafe at the non-response, casting the judge’s decision in a negative light. Finally, jurors not given an answer to their question may consider what the answer actually is.¹¹⁵

The authors coded all 197 unanswered questions and the jurors responses, presenting the following table:¹¹⁶

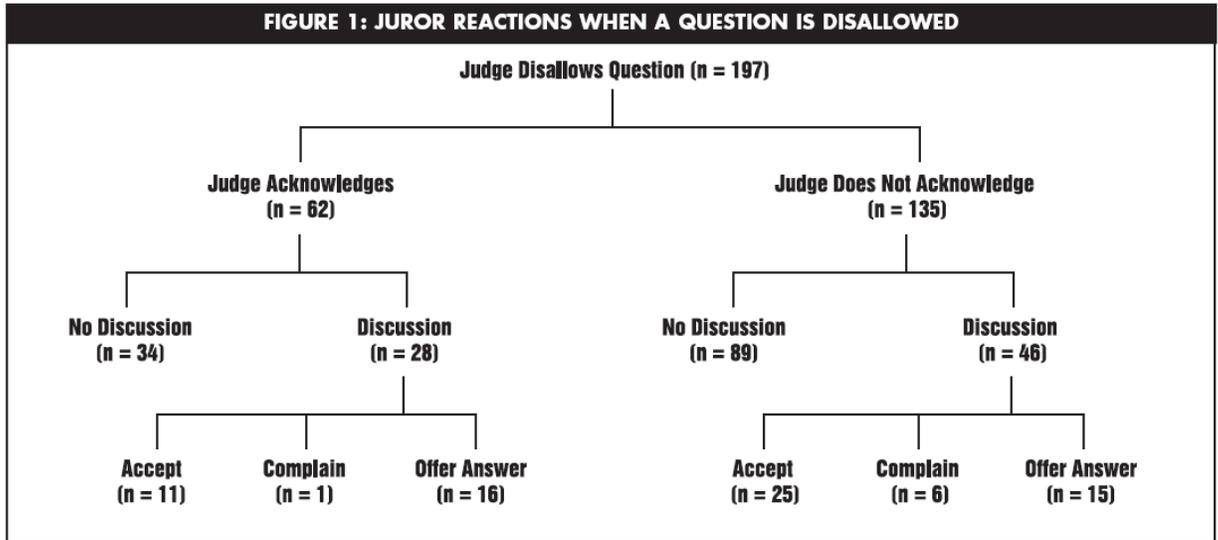
¹¹² *Id.*, at 22.

¹¹³ *Id.*, at 23.

¹¹⁴ *Id.*

¹¹⁵ *Id.*, at 25.

¹¹⁶ *Id.*



As this figure shows, the most common reaction of jurors was not to mention the unanswered question, either in pre-deliberation discussions or deliberations. When jurors did mention the unanswered question, almost half of the time the jury explicitly or tacitly accepted the lack of response and quickly turned to other topics. Overt annoyance or displeasure with the lack of an answer was rare.

When jurors attempted to fill in the blank by providing an answer, their attempts to do so varied by type of question – less so for unanswered questions about legal standards (15%) and more so for unanswered questions about insurance (79%). The authors conclude:

. . . , more than three-quarters (76%) of the questions that the jurors submit are legally appropriate. Jurors not only appreciate the opportunity to submit questions, but also formulate relevant questions to assist them in evaluating the evidence. Our analysis of the questions jurors submit that judges do not allow under current evidentiary rules reveals that those questions are likely to concern topics like legal standards and insurance, topics that reflect commonsense ways of reasoning and common knowledge but that evidentiary rules preclude jurors from obtaining information about in reaching their verdicts.

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Although jurors appreciate the opportunity to submit questions, they rarely express disappointment or even surprise when the judge does not supply them with an answer.¹¹⁷

Although a minority of the juries did attempt to answer their own questions, and thus technically violated the admonition not to attempt to answer unanswered questions, the authors opine that “many of the same questions and answers . . . may have emerged even in the absence of a juror question formally submitted by a juror. . . .”¹¹⁸

In discussing procedures and jury instructions about juror questions, the authors believe that specifically cautionary instructions such as telling the jury that “questions should be reserved for important points only” are not necessary, since the data show that jurors censored their own potential questions – jurors discussed almost two potential questions per case they chose not to submit to the judge.¹¹⁹ The authors also conclude, and seem to recommend consideration, the Judge consider giving at least perfunctory acknowledgement beyond the basic initial instruction that a jury question has been received but could not be answered. Such a response makes the jury feel better and is likely to reduce speculation as to the answer.¹²⁰

After pointing out that there are ancillary benefits to unanswered questions, such as keeping the jury more on track of relevant issues, the authors conclude:

The need to leave some juror questions unanswered offers no justification for missing the opportunity to assist jurors in reaching well-grounded decisions.¹²¹

This author’s experience over the years with juror questions is wholly consistent with the foregoing research findings. Jurors’ questions are not only almost always factual

¹¹⁷ *Id.*, at 27.

¹¹⁸ *Id.*

¹¹⁹ *Id.*

¹²⁰ *Id.*, at 28.

¹²¹ *Id.*, at 29.

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in nature and on point, they frequently cut to the heart of some materially disputed issue. It is not unusual to find a jury asking some factual question that has been tacitly ignored by both sides of the case, but is otherwise relevant.¹²² It is also not unusual for jurors to draw attention to counsel's lapses through their questions. One notable juror question that made headline news in the judges' lunchroom was: "Do we have to listen to the lawyers continued repetition during closing arguments?"

A common issue confronting sitting judges in Arizona as to juror questions is the particular procedure to be followed during trial. Some judges ask the jury at the conclusion of each witness' testimony "Are there any questions from the jury?" Some, including this author, do not. Some judges take a formal recess, excusing the jury from the courtroom, and discuss each question on the record with counsel. Some, including this author, have a brief bench or side-bar conference. Some judges ask the question of the witness. Some, as this author, give the lawyers the opportunity to ask the question. These procedures are largely a matter of individual judge preference and likely do not have a major impact on jury discussions, deliberations or result.

4. Hung Criminal Juries.

The National Institute of Justice and the National Center for State Courts funded a study on deadlocked felony criminal juries, also known as hung juries. This study consisted of two phases. The first phase was to collect nationwide statistics about hung jury rates in state and federal courts. The second phase was a questionnaire based in-

¹²² Jury questions are often very insightful. The author presided over a case involving alleged medical negligence in the administration of an insulin dose to a newly admitted patient who died the night of admission. The plaintiff family alleged the patient had been given insulin, but didn't need it; her roommate did. But records showed the roommate's insulin levels were consistent with having received the correct dose at the correct time. A juror asked who was in the bed before the patient and whether that person was insulin dependent. Apparently the lawyers had not thought of this possibility and did not know the answer.

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depth jurisdiction study of four state trial courts, one of which was the Arizona Superior Court in Maricopa County (Phoenix).¹²³ The authors of the study have published an executive summary¹²⁴ and a detailed report (which includes the executive report).¹²⁵

The available archival data on hung criminal juries for felony trial disposition in some thirty courts, with additional partial data from sixteen courts, and after adjustment for various definitions of hung jury (hung on just some or all of the charges), showed an average hung jury rate of 6.2%. However, there was a “great deal of variation, ranging from 0.1% in Pierce County, Washington, to 14.8% in Los Angeles County, California.”¹²⁶

The in-depth jurisdiction study resulted in a data set of survey responses from judges, lawyers and jurors in a total of 383 felony trials between June 2000 and August 2001. 90% of the judges returned survey forms, at least one attorney returned forms in 88% of the cases, and 80% of the jurors (an average of 10 jurors per case) returned survey forms. Thirteen percent of the 382 cases hung on one or more charges. The study states:

Using multiple approaches to explore the data, we learned what differentiates a hung jury from one that reaches a verdict. Consistent themes of weak evidence, problematic deliberations, and jurors’ perception of unfairness arose in the hung jury cases. These themes structure and inform the proposals we suggest for addressing hung juries. Interested courts and trial participants have voiced concerns about the incidence of hung juries and have subsequently put forward proposals to reduce their occurrence. However, many of the proposals target the symptoms of a hung jury, not the

¹²³ The other three courts were Superior Court of Los Angeles County, the Supreme Court of Bronx County, and the District of Columbia Superior Court.

¹²⁴ Paula L. Hannaford-Agor, Valerie P. Hans, Nicole L. Mott, and G. Thomas Munsterman, *Are Hung Juries A Problem, Executive Summary* (September 30, 2002). National Institute of Justice, National Center for State Courts. Available at http://www.ncsconline.org/WC/Publications/Res_Juries_HungJuriesExecSumPub.pdf

¹²⁵ Paula L. Hannaford-Agor, Valerie P. Hans, Nicole L. Mott, and G. Thomas Munsterman, *Are Hung Juries a Problem*, (September 30, 2002). National Institute of Justice, National Center for State Courts. Available at http://www.ncsconline.org/WC/Publications/Res_Juries_HungJuriesPub.pdf The report is most complete and extensive. Only some of the data and conclusions are presented here.

¹²⁶ *Executive Summary*, at 2.

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underlying cause. For example, eliminating the requirement of all jurors to decide unanimously on a verdict reduces hung jury rates, yet ignores addressing why one or two individuals refused to acquiesce to the majority.¹²⁷

The authors concluded that jury deliberation dynamics is a critically important factor in the ultimate outcome of the trial, and thus recommend increased guidance on how to conduct effective discussions within small groups. The authors also conclude that evidentiary factors, such as incomplete or ambiguous evidence, play the major role in hung juries. Through their data set analysis, the authors were able to identify some cause of jury deadlock in 43 of the 46 cases in which the jury hung on one or more charges:¹²⁸

Table 6.1
Reasons Why Juries Hang

Reason (N=46)	Factor		
	% (N) Primary	% (N) Secondary	% (N) Primary or Secondary
Weak Evidence	62.8 (27)	6.5 (3)	69.3 (30)
Police Credibility	16.3 (7)	10.9 (5)	27.2 (12)
Juror Concerns about Fairness	16.3 (7)	10.9 (5)	27.2 (12)
Case Complexity	4.7 (2)	26.1 (12)	30.8 (14)
Dysfunctional Deliberation Process	--	30.2 (13)	30.2 (13)
Unknown	6.5 (3)	--	--

The authors summarize:

A substantial majority of cases featured two or more reasons for the deadlock. Juror concerns about the fairness of the law were present in slightly more than one-quarter of the cases, yet they occurred as the sole reason for the hung jury in only three cases, less than 7% of the total.

¹²⁷ *Id.*, at 3.

¹²⁸ Paula L. Hannaford-Agor, Valerie P. Hans, Nicole L. Mott, and G. Thomas Munsterman, *Are Hung Juries A Problem*, (September 30, 2002). Table 6.1 at 76. National Institute of Justice, National Center for State Courts.

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Similarly, dysfunctional deliberations were not the sole reason in any single case, although they contributed to juror deadlock in nearly one-third of the cases. This is particularly notable when we recall that evidentiary factors were more likely to affect jurors who ultimately held out against the majority than for jurors who joined in a unanimous verdict despite individual preferences for a different outcome to the trial. Although non-evidentiary factors do play a role in hung juries, they usually do so only in combination with fairly strong evidentiary factors.¹²⁹

As to approaches to decrease or minimize hung juries, while admitting that non-majority verdict systems would necessarily decrease the hung jury rate, the authors question that approach as “. . . not necessarily addressing the actual causes – namely, weak evidence, poor interpersonal dynamics during deliberations, and jurors’ concerns about the appropriateness of legal enforcement in particular cases.”¹³⁰ The authors accurately point out that addressing juror deadlock as a result of weak evidence are within the control and power of the prosecution. Similarly, juror perceptions of fairness of the charges falls within the purview of prosecutorial discretion.¹³¹

In this author’s personal experience of some 60+ felony jury trials, juries which hung on all charges were very rare – perhaps one or two trials. Juries that hung on some charges occurred more frequently. The rates from this author’s personal experience are generally consistent with the findings of the in-depth study. The in-depth study found the following case outcomes over all cases, hung and not hung¹³² (not including outcome post

¹²⁹ *Id.*, at 86.

¹³⁰ *Id.*

¹³¹ *Id.*, at 87.

¹³² *Id.*, at 37.

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hung jury on one or more charges):

Table 3.4
Case Outcomes

		Sites				Total %
		LA	Maricopa	Bronx	DC	
<i>Single Count</i>						
Conviction	<i>n=64</i>	57.7%	70.3%	50.0%	50.0%	58.7%
Acquittal	<i>n=32</i>	26.9%	27.0%	44.4%	25.0%	29.4%
Hung	<i>n=13</i>	15.4%	2.7%	5.6%	25.0%	11.9%
<i>Multiple Counts</i>						
Conviction (all)	<i>n=70</i>	37.3%	46.3%	17.7%	18.2%	28.0%
Acquittal (all)	<i>n=69</i>	9.8%	14.8%	38.0%	39.4%	27.6%
Hung (all)	<i>n=14</i>	9.8%	3.7%	2.5%	7.6%	5.6%
Combination	<i>n=97</i>	43.1%	35.2%	42.8%	34.8%	38.8%
Total (n)		<i>79</i>	<i>91</i>	<i>97</i>	<i>94</i>	

Recasting the same data as to hung juries only results in this table.¹³³

Table 4.1
Percentage of Hung Juries

	Sites				Totals
	LA	Maricopa	Bronx	DC	
Hung on all counts <i>n=27</i>	11.7%	3.3%	3.1%	12.8%	7.5%
Hung on Count 1 <i>n=36</i>	16.2%	5.1%	3.1%	16.0%	9.6%
Hung on any count <i>n=46</i>	19.5%	7.7%	3.1%	22.3%	12.8%

Note: This analysis includes both single and multiple defendant cases.

¹³³ *Id.*, at 41.

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From a system and judge's point of view, what happens to the defendant and the charges after the jury hangs is important. From a subset of the data set, the study concludes that fully 53% of hung jury cases did not result in a retrial (21.6 % being dismissed and 31.8% pleading guilty). Of the 32% that were retried, the conviction, acquittal and hung jury rates mirrored the initial trial distribution.¹³⁴ As a policy matter, one must ask if the system cost of retrial of one in three hung jury cases is reasonable in light of the primary reasons for a jury to hang -- weak evidence and overcharging. In this author's view, the proper approach to the hung jury problem is stronger cases and less overcharging, not the elimination of the unanimity requirement.¹³⁵ As stated by the authors of this study:

Yet the arguments favoring jury unanimity are compelling. Unanimity requires jurors to listen and consider the views of all other jurors. Additionally, minority jurors deliberating under unanimity requirements have more opportunity to present their arguments and report greater satisfaction with their participation in jury duty. In contrast, juries that are not required to return a unanimous verdict deliberate for shorter periods of time and, as expected, often stop deliberating once the majority has garnered the necessary number of votes. The quality of the deliberation also differs: verdict-driven deliberation is more common in majority decision rule groups, while evidence-driven deliberation is more characteristic of unanimity decision rule groups. As Abramson characterized the process, juries operating under unanimity requirements strive to understand the evidence and apply the judge's instructions; juries that are not required to return unanimous verdicts, strive for a sufficient number of votes.

Neilson and Winter address proposals for non-unanimous verdicts as a means to reduce or eliminate hung juries. They examined the effect on the statistical probabilities of a non-unanimous verdict, as there are error rates in any legal decision. A judge or jury may convict an innocent defendant, or acquit a guilty defendant. Both of these situations result in an error that is socially costly. They argue that eliminating hung juries from the list of

¹³⁴ *Id.*, at 27.

¹³⁵ In many jurisdictions, including Maricopa County, where a very high percentage of criminal felony cases are resolved by guilty plea, it is common for the prosecution to include one or two "extra" or "higher penalty" charges to facilitate plea bargaining. At times, the jury will see this overcharging and hang on some counts, while convicting on others.

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possible options would force the jury to either acquit or convict, increasing the probability that the decision would be incorrect. Thus, while retrials are often costly, the social cost of a wrongful acquittal or wrongful conviction should be weighed against it. Allowing a hung jury decreases the likelihood of an inaccurate verdict. [Footnotes omitted]¹³⁶

Discussion of non-unanimous criminal verdicts is occurring in many states, including California.¹³⁷ Preservation of the unanimity requirement in criminal cases is the position of the ABA Jury Principles.¹³⁸ The comment to ABA Jury Principles, Principle 4, relying in part on the instant study, states:

There is a fear that a unanimity rule will result in more hung juries. This fear is overstated. Juries rarely hang because of one or two obstinate jurors. . . . Generally, when deadlocks occur, they reflect genuine disagreement over the weight of the evidence and arise within juries that had substantial differences in verdict preference at the outset of deliberations. . . . Moreover, the cost of hung juries should not be overstated. Only one-third of the cases resulting in hung juries are retried. Half are disposed of by plea agreements or dismissals.

A unanimous verdict should be required in all criminal cases. This requirement reflects the established practice in federal criminal trials. . . . In criminal trials, there is a heightened need for accuracy and for a representative panel because a person's liberty is at risk and society faces the threat of mistaken acquittal or conviction, both of which undermine faith in the justice system. The need for unanimity has been recognized as compelling by the Supreme Court, where only six jurors are impaneled. [Citations omitted].¹³⁹

There is a body of scholarly comment supporting non-unanimous supermajority conviction verdicts in criminal cases, combined with majority votes of not guilty.¹⁴⁰ In a recent article Neilson and Winter present well reasoned arguments against relaxing the

¹³⁶ *Id.*, at 14.

¹³⁷ Margo Hunter, *Improving the Jury System: Nonunanimous Verdicts*, Public Law Research Institute (Spring, 1996). Available at <http://w3.uchastings.edu/plri/spr96tex/juryuna.html>

¹³⁸ ABA Jury Principles. Principle 4: Jury Decisions Should Be Unanimous.

¹³⁹ *Id.*, at 23.

¹⁴⁰ Ethkan J. Leib, *Supermajoritarianism and the American Criminal Jury*, ____ Hastings Const. Law Q. (forthcoming 2006). Available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=822927 See Michael H. Glasser, Letting The Supermajority Rule: Nonunanimous Jury Verdicts in Criminal Cases, 24 Florida State University Law Review 659 (1997). Available at <http://www.law.fsu.edu/journals/lawreview/downloads/243/glasser.pdf>

unanimity requirement for verdicts in criminal trials, developing the argument that a hung criminal jury does not end the case and that accuracy is increased by retrials.¹⁴¹

In the context of civil cases there is less support for unanimous verdicts. While the ABA Jury Principles support unanimous verdicts in all civil and criminal cases, the long-time practice in Arizona has been nonunanimous verdicts in civil cases.¹⁴²

5. Jury Nullification.

Based on the same data set that resulted in the Hung Jury study above, Paula L. Hannaford-Agor and Valerie P. Hans looked at jury nullification in their paper *Nullification at Work? A Glimpse From The National Center for State Courts Study of Hung Juries*.¹⁴³ The authors note that “jury nullification is, in essence, a counter-majoritarian measure.”¹⁴⁴ The popular press, focusing on selected widely reported hung jury cases, speculates the incidence jury nullification, allegedly race or ethnic background based, is growing.¹⁴⁵

Defining jury nullification is not a simple proposition, but in a general sense it is when jurors vote to acquit although believing the defendant guilty under the law. It is said that one word – *ambivalence* – describes the historical and current American view of jury nullification.¹⁴⁶ The authors discuss *Bushell’s Case*, the 1670 case that first established the common-law principle that jurors cannot be punished for their verdicts, stating:

¹⁴¹ William S. Neilson and Harold Winter, *The Elimination of Hung Juries: Retrials and Nonunanimous Verdicts*, 25 International Review of Law and Economics 1 (March, 2005). Available at <http://www.sciencedirect.com/science/article/B6V7M-4G94HMJ-2/2/9f0de527afbe2da3883f8070173f85d1>

¹⁴² See discussion in following sections.

¹⁴³ Paula L. Hannaford-Agor and Valerie P. Hans, *Nullification At Work? A Glimpse From The National Center for State Courts Study Of Hung Juries*, 78 Chicago-Kent Law Review 1249 (2003). Available at http://lawreview.kentlaw.edu/articles/78-3/hannaford_hans.pdf

¹⁴⁴ *Id.*, at 1250. Noting that in the state of South Dakota, in November 2002, a state constitutional amendment to allow and instruct criminal juries on nullification was defeated by a 78% margin.

¹⁴⁵ Joan Biskupic, In Jury Rooms, Form of Civil Protest Grows, Washington Post, February 8, 1999, page A1. Available at <http://www.washingtonpost.com/wp-srv/national/jury080299.htm>

¹⁴⁶ Hannaford-Agor, *supra*.

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The principle established by *Bushell's Case* was incorporated into the common law of the American colonies and the concept of jury nullification enjoyed widespread political support by the country's founding fathers. For example, Thomas Jefferson wrote that juries "never exercise this power [to nullify] but when they suspect partiality in the judges, and by the exercise of this power they have been the firmest bulwarks of English liberty." Jury nullification was credited with the August 1735 acquittal of John Peter Zenger, who was tried for seditious libel for publishing articles in the *New York Weekly Journal* that criticized William Cosby, then Royal Governor of New York. Likewise, jury nullification has been the preferred explanation for acquittals by Northern juries of abolitionists tried for violating the Fugitive Slave Act before and during the American Civil War, of rumrunners and moonshiners during Prohibition, and of antiwar protestors during the Vietnam War. Indeed, throughout most of American history, such instances of jury nullification have been heralded as courageous examples of political protest and moral integrity.¹⁴⁷

The authors examined juror reported perceptions of fairness in hung juries, finding that juries that acquitted on the majority of charges and juries that hung rated legal fairness of the law as significantly lower than juries that convicted on all or most charges, as summarized in this table:¹⁴⁸

¹⁴⁷ *Id.*, at 1256.

¹⁴⁸ *Id.* at 1267.

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Table 1:
Juror Views About the Fairness of the Law

	Jury Trial Outcome			F-value
	Majority Conviction	Any Hung	Majority Acquittal	
How fair was the law in this case?	6.0	5.2	5.3	36.914 ***
Worried about consequences of conviction for defendant?	3.6	3.3	3.2	7.402 **
How fair was the legally correct outcome?	5.7	4.6	5.1	40.624 ***
Consequences for defendant too lenient or harsh?	4.3	4.2	4.1	3.017 *
* $p < .05$				
** $p < .01$				
*** $p < .001$				

The study saw the same overall pattern across cases of different types of crime (homicide, sexual assault, child abuse, violent crime, property crime, drug offenses). After various multivariate analysis of many possible predictive factors, the authors concluded:

Indeed, it is striking that only those variables related to evidentiary characteristics of the case, and the juries' assessments of the courts, are predictive of their perceptions of outcome fairness. Race, the factor to which jury nullification is often attributed, loses its statistical significance when multiple factors are considered simultaneously.¹⁴⁹

In other words, when a case has weak or ambiguous evidence, or in a setting where the jurors have a low opinion of the court system, jury nullification might occur. However, the study notes that hung juries almost always occur when a number of predictors are present. This study concludes:

The jury's collective sense of the fairness of the law it is asked to apply to the facts in the case, then, is often related to the jury's verdict. However, finding an association between jury verdicts and the perceived fairness of

¹⁴⁹ *Id.*, 1270.

the law is not discovering the smoking gun of jury nullification. It could be incidental to other factors in the case.

We would have more evidence of possible nullification if we discovered that the evidence in a case was evaluated by the jury or the judge as compelling for the prosecution, the jury hung or acquitted, and rated legal fairness was low.

In this author's experience, jury nullification is simply not a common problem in felony trials. If the jury perceives the law as unfair, or the state as overreaching, they (or at least some members) will be more skeptical of the strength of the evidence and the credibility of the prosecution witnesses. The remote possibility of jury nullification – basically the refusal of one or more jurors to follow their oath to follow the law after they have heard the evidence – is not a threat to the legitimacy of the system and in rare and infrequent cases is an important protection against overreaching by the state.

6. Judge-Jury Agreement in Criminal Cases.

In their paper *Judge-Jury Agreement in Criminal Cases: A Partial Replication of Kalven and Zeisel's The American Jury*, Theodore Eisenberg, et al. make further use of the hung jury questionnaire data set.¹⁵⁰ Eisenberg, et al. confirmed “. . . that judges and juries do sometimes disagree, and that the general direction of the disagreement suggests less judicial sympathy for defendants.”¹⁵¹ The study found that judges “are willing to convict in cases much less favorable the prosecution, as ranked by the juries' view of the evidence, than are juries.”¹⁵² Figure 2 graphically demonstrates this conclusion:¹⁵³

¹⁵⁰ Theodore Eisenberg, Paula L. Hannaford-Agor, Valerie P. Hans, Nicole L. Mott, G. Thomas Munsterman, Stewart J. Schwab, and Martin T. Wells, *Judge-Jury Agreement in Criminal Cases: A Partial Replication of Kalven and Zeisel's The American Jury*, 2 *Journal of Empirical Legal Studies* 171-206 (March, 2005). Abstract available at <http://www.blackwell-synergy.com/doi/abs/10.1111/j.1740-1461.2005.00035.x>

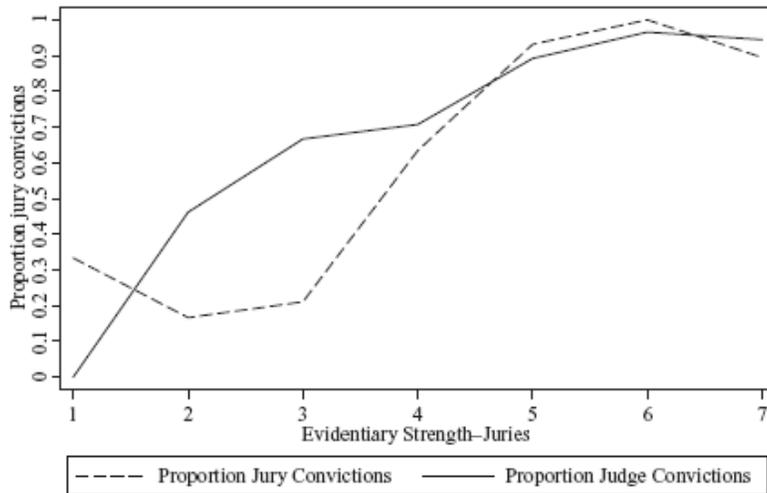
¹⁵¹ *Id.*, at 185.

¹⁵² *Id.* at 189.

¹⁵³ *Id.*

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Figure 2: Convictions and evidentiary strength: juries' view of the evidence.



SOURCE: NCSC data covering trials at four sites in 2000–2001.

While Eisenberg, et al., found that jury ratings of case complexity varied from those of the judge, they also found that “the rates of disagreement are not strongly associated with complexity, regardless of which adjudicator’s assessment of complexity is used.”¹⁵⁴

After various multivariate analyses (not set out here), Eisenberg, et al. state:

By controlling for multiple observers’ views of evidentiary strength, we can confirm with additional rigor, albeit in a smaller sample, Kalven and Zeisel’s finding that judges tend to convict more than juries—at least in the class of cases selected for trial by jury. We find little evidence that this effect is a function of evidentiary complexity or legal complexity. Judges simply appear to have a higher conviction threshold than juries. But we do not find evidence that this effect persists in every locale. A replication with more locales is needed to fully explore the persistence of the different conviction threshold.

Juror effects include a greater willingness of male jurors to convict, and more highly educated juries being less willing to convict than judges. Minority juror effects are mixed. They provide little explanatory power of convictions and somewhat greater power in explaining when judges and juries disagree. However, the effects do not persist at significant levels in models that control for locale. A richer set of locales is necessary to sort out minority-group effects, again suggesting the need for a larger study.¹⁵⁵

¹⁵⁴ *Id.*, at 191.

¹⁵⁵ *Id.*, at 204.

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This author's experience is consistent with the study conclusions. The general feeling that judges are more prone to convict means that in criminal cases a defendant seldom waives trial by jury. It is common lunch talk among defense counsel that a jury is more likely to acquit than a judge. However, in some cases defense counsel will advise her client to waive a jury. Based only on the author's experience, it seems such cases are either evidentially very strong or very weak. The State, which also has a right to a jury, seems to never object to a defendant's waiver of a jury. It is thought the defendant waives a jury when the evidence for conviction is particularly strong either in hopes of sentencing leniency or sometimes as part of a semi-plea bargain for the dropping of some sentencing enhancements, additional charges, or perhaps a recommendation of leniency from the prosecutor. The defendant also is prone to waive a jury in those cases where the evidence is very weak and the defendant presents a poor appearance to the jury (tattoos, or such). Defense counsel seem to understand the judge will often acquit if at least a prima facie case is not present.

7. Some Passing Observations About Jury Reform and Empirical Jury Research.

As empirical research into the effectiveness of jury reforms continues, some common themes are emerging. Juries are group decision makers. The dynamics of group decision making is thus central to jury function. One needed element for effective group decision is accurate information delivered in an understandable format. Most jury reforms deal with the transfer of information element by treating the jurors as active participants in the learning process – in essence treating jurors for what they are – adult

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learners. As stated by Hon. Robert D. Myers, Hon. Ronald S. Reinstein, and Gordon Griller in *Complex Scientific Evidence and the Jury*:¹⁵⁶

Two central participants in the courtroom are the ultimate beneficiaries of reform-oriented jury approaches when heavy doses of scientific evidence are the subject of an unfolding courtroom drama: jurors, and more importantly, litigants. Contemporary behavioral research, and Arizona's jury reform experience, substantiate that comprehension and understanding are significantly enhanced when information is actively processed.

It is becoming clear from the empirical research that in addition to good information, good group decision making requires effective small group dynamics and problem solving skills. B. Michael Dann, Valerie P. Hans, and David H. Kaye recently completed the final technical report on *Testing the Effects of Selected Jury Trial Innovations on Juror Comprehension of Contested mtDNA Evidence*.¹⁵⁷ That study, based on videotape presented mock trials in a controlled experiment, tested jury comprehension of the same mtDNA evidence using various jury innovation conditions. While increased juror comprehension occurred, it was somewhat modest, as shown in the following chart:¹⁵⁸

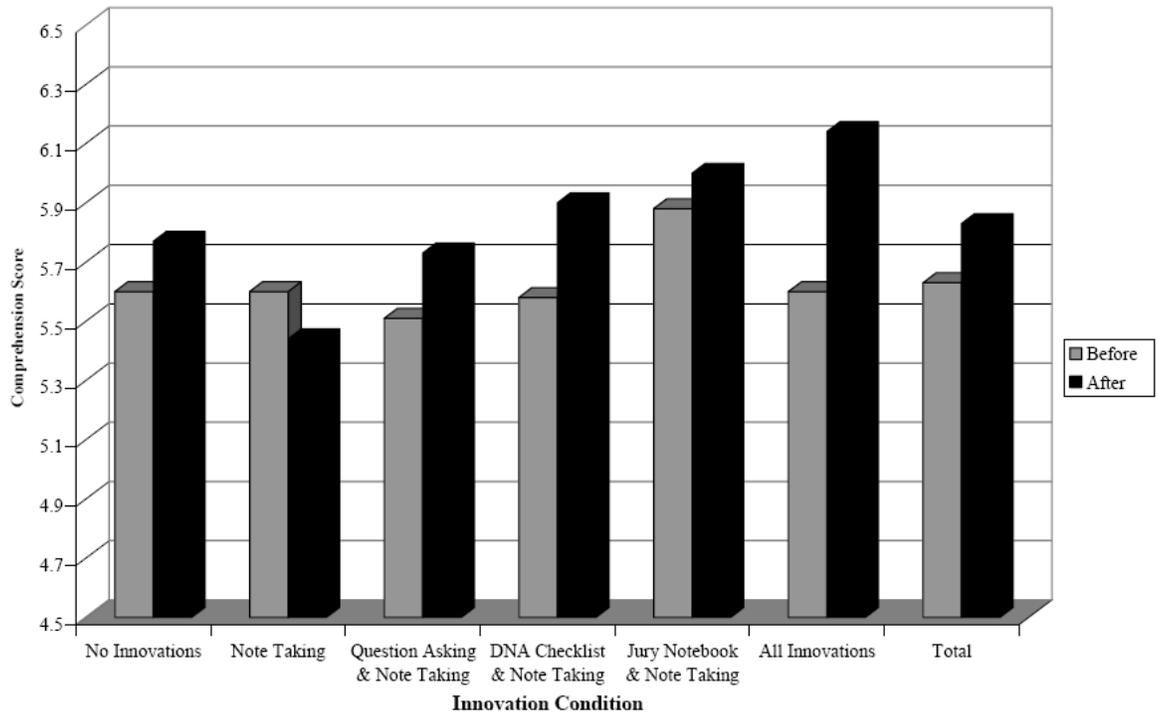
¹⁵⁶ Robert D. Myers, Ronald S. Reinstein, and Gordon M. Griller, *Complex Scientific Evidence and the Jury*, 83 *Judicature* 1-11, at 9 (November-December, 1999). Available at http://www.ornl.gov/sci/techresources/Human_Genome/publicat/judicature/article10.html

¹⁵⁷ B. Michael Dann, Valerie P. Hans, and David H. Kaye, *Testing The Effects Of Selected Jury Trial Innovations on Juror Comprehension of Contested mtDNA Evidence, Final Technical Report* (August, 2005). Available at <http://www.ncjrs.gov/pdffiles1/nij/grants/211000.pdf>

¹⁵⁸ *Id.*, at 68.

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Figure 6.9 Juror Comprehension of mtDNA with Different Innovations Before and After Deliberation



The report states: ¹⁵⁹

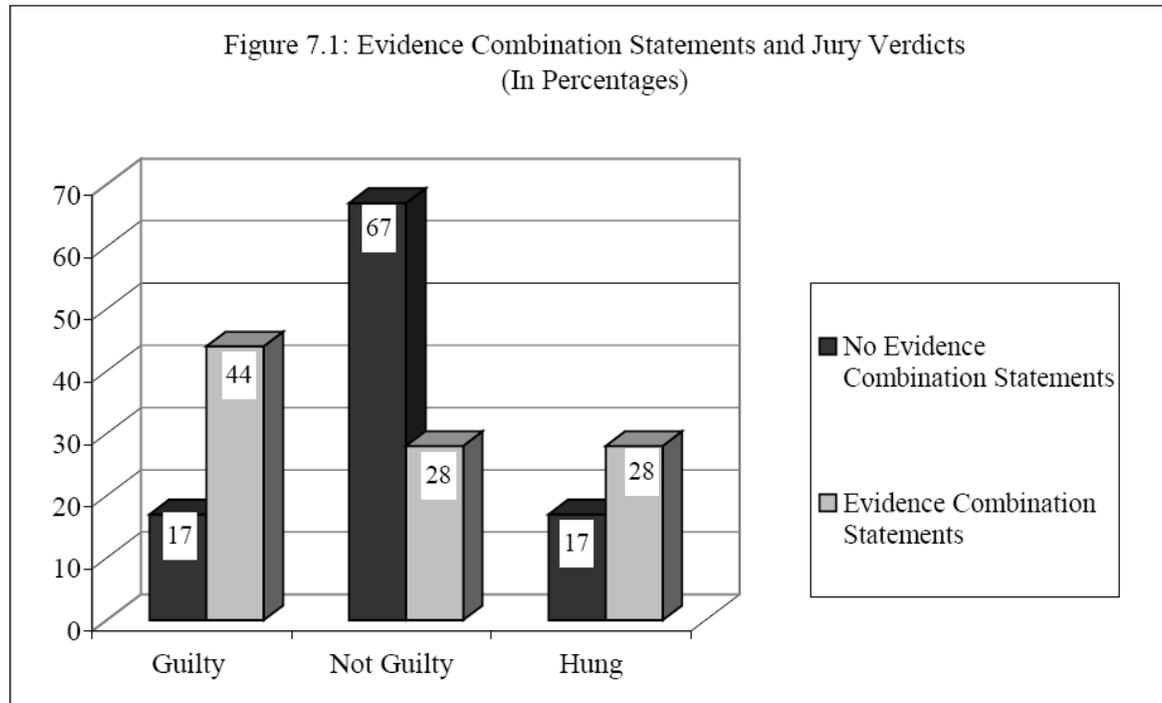
It is quite intriguing that whatever effects occur emerge only after jury deliberation. That discussion period appears to be crucial in assisting jurors with how to understand and employ scientific evidence. We are currently in the process of transcribing the mock jury deliberations, with an eye to analyzing how the scientific evidence is discussed in different groups. That may provide us with more insight about the role of deliberation in jury comprehension of complex testimony about mtDNA.

The mock jurors recognized the beneficial role of deliberation with 77% seeing deliberation helpful in increasing their understanding of the expert evidence. The report found that juries that were more able to combine and integrate scientific and nonscientific

¹⁵⁹ *Id.*, at 74.

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evidence had higher comprehension rates, were more likely to convict, and were less likely hang. That effect is shown graphically in Figure 7.1:¹⁶⁰



A surprising Arizona source found by the author during research for this paper suggests the idea that good group dynamics are one of the primary ingredients jury learning. The University of Arizona developed a Group Support System (GSS) computer system that promotes a more active, cooperative, problem-solving learning environment. The system allows equal participation of group members through simultaneous mediated written communication on computer screens. A system was installed at the Cholla High School in Tucson, Arizona. The system largely removes social status, strong and particularly weak personality types, and sidetrack or irrelevant issues. In combination with

¹⁶⁰ Id., at 80. The mock trial evidence was purposefully balanced, resulting in a high rate of not guilty verdicts.

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the GSS system, Cholla High School¹⁶¹ uses mock trials and jury deliberations among high school students to promote critical thinking and enhance communication skills. In a mock jury deliberation experiment, one student jury deliberated using the GSS system, another in the traditional fashion. Melissa Sue Glynn, et al., in a paper titled *GSS for Jury Deliberations: Applying Technology in the High School Courtroom*,¹⁶² concluded:

Legal proceedings require juries to promptly deliver verdicts. The use of the GSS failed to produce an agreed upon decision in a timely manner. Yet, it did support equal participation by all of the students. In this educational setting, GSS promoted the students' active involvement in the learning process. Participation in the deliberations required the students to develop critical discussion and thinking skills.

It appears to this author the ability of a particular jury to engage in constructive group dynamics is an underrated yet key factor in the result of the group decision making progress – that is, the verdict. From years of observing juries at work, those juries that bond, have a “good attitude,” cooperate and generate mutual respect seem to reach decision more easily and are more satisfied with their effort. Those juries that are unhappy, uncooperative, dominated by friction, and do not develop mutual respect. Such a jury seems to have great difficulty reaching any decision, let alone a reasoned decision. Such a jury also has unhappy and unsatisfied members. An interesting area for further jury reform, and further jury empirical study, is what can be done by the judicial system (or for that matter society) to increase citizen jurors group decision making abilities.

¹⁶¹ See <http://edweb.tusd.k12.az.us/Cholla/> A picture of the GSS is available at <http://edweb.tusd.k12.az.us/Cholla/>

¹⁶² Melissa Sue Glynn, Jeannette Quintana, Debra Cunningham, and Sam Cooper, *GSS for Jury Deliberations: Applying Technology in the High School Courtroom*, IEEE Computer Society, Proceedings of the Thirty-First Annual Hawaii International Conference on System Sciences-Volume 1 - Volume 1 (1998). Available at <http://csdl2.computer.org/comp/proceedings/hicss/1998/8233/01/82330309.pdf>

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The next section discusses, in the context of the August 2005 ABA Jury Principles, those jury reforms that are in place and operating in Arizona, and those that are not.

ARIZONA JURY REFORMS IN PRACTICE

In August 2005 the American Bar Association General Assembly formally adopted the *Principles for Juries & Jury Trials*.¹⁶³ The American Jury Project¹⁶⁴ members were and are the leaders of American jury reform.¹⁶⁵ The nineteen ABA Jury Principles, and their subparts, embody the tradition of the American Jury, endorse virtually all the recent American jury innovations and reforms, and offer guidelines in some (but not all) controversial areas. The ABA Principles, including subparts and comments, are a detailed 142 pages in length. This section discusses some, but not all, of the nineteen principles and subparts in relation to the current state of jury practice and reform in Arizona. The ABA Principles are statements of goals, requiring at times formal procedures for implementation and at other times only the sound exercise of discretion by the judge, court administrators, and lawyers.

1. ABA Jury Principle 1 – The Right To Jury Trial Shall Be Preserved.

Subpart A of ABA Jury Principle 1 provides that “Parties in civil matters have the right to a fair, accurate and timely jury trial in accordance with law.” Almost without exception all states guarantee the right to civil jury trial in cases above the level of small

¹⁶³ American Bar Association, *Principles for Juries & Jury Trials*, August, 1005. Available at <http://www.abanet.org/juryprojectstandards/principles.pdf>

¹⁶⁴ See <http://www.abanet.org/juryprojectstandards/home.html>

¹⁶⁵ Arizona judges and lawyers were well represented, including the chair of the project, Phoenix lawyer Patricia Lee Refo (ABA Litigation Section Chair, 2002-2003); co-chair of the project, Tempe Municipal Court Judge Louraine Arkfeld (ABA Judicial Division Chair, 2004-2005); and member B. Michael Dann (Retired Maricopa County Superior Court Judge).

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claims court. In this regard, American jurisprudence differs greatly from most other countries. Neil Vidmar¹⁶⁶ comments:

Legal practitioners and scholars whom I encounter in my travels outside the borders of the United States frequently challenge me to explain the “crazy,” “outrageous” system by which we allow groups of untutored lay persons to decide civil disputes.

Many Americans who have not served on juries, and some who have, share this sentiment. Many, as in Neil Vidmar’s example, bring up the popularly reported McDonald’s case, where a civil jury in New Mexico awarded \$160,000 in compensatory damages and \$2.7 million in punitive damages to a woman who spilled hot coffee on herself. People are surprised to learn the underlying facts. McDonalds had kept its coffee many degrees hotter than home-brewed coffee or the coffee of its competitors, knowing for over five years of serious burns resulting from the coffee through over 700 complaints. McDonalds had never consulted a burn specialist, reduced the temperature of its coffee, or warned consumers. The seventy-nine-year-old woman suffered second and third degree burns to her private parts. The jury also learned the plaintiff had tried to settle the suit for a much more modest amount before trial, initially around \$20,000 to cover her medical expenses. The jury’s punitive damage award was equal to two days’ worth of the McDonald’s corporation’s profits from selling coffee.¹⁶⁷ Many are ignorant that the trial judge reduced the punitive damage award to \$480,000, for a total award of \$640,000 – and that the case was later settled for an undisclosed amount, presumably less than the award.

¹⁶⁶ Vidmar, Neil J., "The American Civil Jury for Auslander (Foreigners)." *Duke Journal of Comparative & International Law*, Vol. 13, No. 3, p. 95, Summer 2003. Available at [http://eprints.law.duke.edu/archive/00001039/01/13_Duke_J._Comp._&_Int%27L_.95_\(2003\).pdf](http://eprints.law.duke.edu/archive/00001039/01/13_Duke_J._Comp._&_Int%27L_.95_(2003).pdf)

¹⁶⁷ The underlying facts are included in Vidmar’s paper, and are now well documented and publicized. See, e.g., http://www.centerjd.org/free/mythbusters-free/MB_mcdonalds.htm

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Vidmar makes the same point that I often make with civil jurors during voir dire – only the unusual jury story makes the news. Reporting extraordinary jury results is, in Vidmar’s accurate words: “. . . endemic with media coverage of jury awards.”¹⁶⁸ The overwhelming number of civil verdicts are unremarkable, fair, rather routine and rational.¹⁶⁹

Vidmar concludes, after reviewing various research (including research based on Arizona data mentioned in this paper), that:

A substantial body of systematic empirical studies indicates that the American civil jury system is not as erratic or unreasonable as portrayed in the media. Whether it involves issues of liability, responses to experts, attention to the judge’s instructions or damage awards, the civil jury performs much better than many people believe. . . . American society could not afford the caprice and craziness ascribed to juries. Examined from this pragmatic perspective, it should not be surprising that the empirical research into the performance of the civil jury yields a generally positive picture, especially when considered in the context of the formal and informal controls on errant verdicts.¹⁷⁰

2. ABA Jury Principle 2 – Citizens Have The Right To Participate In Jury Service And Their Service Should Be Facilitated.

The six subparts of ABA Jury Principle 2 deal with jury qualifications and eligibility, the time required for service, the number of persons called, providing a suitable environment for jurors, and jurors receiving a reasonable fee for service.¹⁷¹ Arizona does well in implementing ABA Jury Principle 2 in most areas. With passage of the Juror Patriotism Act, Arizona has reduced qualifications, standardized grounds for excusal,

¹⁶⁸ Vidamar, at 97.

¹⁶⁹ During 2001 a jury decided almost 75% of the 12,000 tort, contract and real property trials in the United States’ 75 largest counties. The median award in jury trials decreased from \$65,000 in 1992 to \$37,000 in 2001. Cohen, Thomas H., and Smith, Steven K., *Civil Trial Cases and Verdicts in Large Counties, 2001*, Bureau of Justice Statistics Bulletin (April, 2004). Available at <http://www.ojp.usdoj.gov/bjs/pub/pdf/ctcvlc01.pdf>

¹⁷⁰ Vidmar, at 131.

¹⁷¹ For jury system management issues see G. Thomas Munsterman, *Jury System Management*, National Center for State Courts (1996) and G. T. Munsterman and Paula L. Hannaford-Agor, *The Promise and Challenges of Jury System Technology*, National Center for State Courts (March 31, 2003).

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provided for state wide one-day/one-trial service, and provided for increased juror compensation for trials that last ten days or more.¹⁷²

The number of jurors summoned and used In Maricopa County Superior Court each year is large. For the year from July 1, 2003, through June 30, 2004, there were 1,596 trials which requested jurors (1,257 criminal trials, plus 326 civil trials).¹⁷³ For these trials 56,556 jurors were requested for the courtrooms with an average panel size of 35.1. 127 of the 1,596 trials did not proceed for various reasons (mostly those cases settled at the last minute). 12,724 jurors were actually selected and sworn in after voir dire with an average of 8.7 jurors per trial.¹⁷⁴ The average length of all trials was 3.3 days (3.1 days for criminal trials, 4.2 days for civil trials). Of the potential jurors present in the jury assembly room, 84.8% were sent to a court room.

The number of summons sent is much larger than the number of jurors who attend voir dire. The jury commissioner has had good success in increasing the response rate to summons by routinely sending a second summons. Several well publicized juror round up days have also increased the response rate.¹⁷⁵ A copy of the summons in use in Maricopa County is included in the Appendix. The second summons is the same as the first, except for the title. There is a separate summons for each court, but the substantive content is the same. In the jury assembly room the jurors fill out a biographical information

¹⁷² See *Supra*, Section One. For trials lasting ten days or more, the amount jurors can receive is based on their loss up to \$100/day for court days four through ten and up to \$300/day from day eleven through the end of their obligation.

¹⁷³ All the figures of jury summons and usage statistics in Maricopa County come from Maricopa County Superior Court Jury Commissioner Bob James to the author. These statistics are maintained by the court in the ordinary course.

¹⁷⁴ In Arizona Superior Court, criminal trials with a possibility of 30 years or more prison have twelve jurors (plus alternates), all other criminal and all civil juries have eight jurors (plus alternates).

¹⁷⁵ The presiding judge now routinely issues an order to show cause pursuant to A.R.S. 21-331(b) to about 100 non-appearing jurors each month to show up in court and explain their non-response to jury summons. Some are fined, some are sent to jury duty, and some excused.

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sheet which the lawyers see just before voir dire, but must return to the court at the end of voir dire.¹⁷⁶

In somewhat convoluted language Subpart A.4 provides “all persons should be eligible for jury service except those who: . . . are not able to communicate in the English language and the court is unable to provide a satisfactory interpreter.” In Arizona, lack of fluency in English is ground for excusal from a jury, but not a disqualification. Sign language interpreters are routinely provided for hearing impaired jurors in Maricopa County, in part due to the provisions of the American with Disabilities Act (ADA). Foreign language interpreters are provided for criminal defendants and criminal witnesses, but not for jurors – primarily due to funding constraints. Multi-lingual jurors are often seated, but those who are not reasonably fluent in English are rarely selected or accommodated.

The issue of multi-lingual juries is a topic in jury reform discussions in Arizona and the United States.¹⁷⁷ It is reported that a few trial judges in Arizona have ordered language assistance for otherwise qualified jurors or potential jurors.¹⁷⁸ In 1996 the reconvened Committee on More Effective Use of Juries looked at, but took no position on, the multi-lingual jury issue. In June 2005 the Maricopa Superior Court organized a Jury Advisory Committee that is looking into the issue of non-English speaking jurors.¹⁷⁹ The issue of multi-lingual juries is apt to become more common in our increasingly multi-lingual, multicultural world.

¹⁷⁶ A copy of the biographical information sheet is attached in the Appendix.

¹⁷⁷ Tom Munsterman, Multi-Lingual Juries (2000). Available at http://www.ncsconline.org/WC/Publications/KIS_JurMan_Trends99-00_Pub.pdf

¹⁷⁸ Jeffrey S. Sirtola, *Language Assistance and Arizona Jurors*, (August, 2003). Available at <http://legalminds.lp.findlaw.com/list/courtinterp-l/msg08367.html>

¹⁷⁹ The Spanish speaking population in Maricopa County exceeds 20% of the population and is rapidly growing. New Mexico is the only state that routinely, pursuant to the New Mexico State Constitution, provides foreign language interpreters for jurors. New Mexico Constitution, Article VII, Sec. 3. *State v. Singleton*, 130 N.M. 583 (2001).

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For instance, the Commonwealth of Puerto Rico has two official languages: English and Spanish. The language in the United State District Court for the District of Puerto Rico is English, not Spanish. The federal district court local rules provide that all pleadings and proceedings are to be conducted in the English language, that testimony presented in a language other than English shall be translated into English, and that exhibits offered as evidence shall be transcribed in English.¹⁸⁰ Local rules require the judge to “personally conduct the initial examination of prospective jurors requesting that each juror address the court orally as their name, address, occupation, previous service, and proficiency in the English language.”¹⁸¹

The language in the Puerto Rico state courts, on the other hand, is Spanish, not English. All state court pleadings and proceedings are carried on in Spanish.¹⁸² Exhibits that are in English are admitted into evidence. Testimony is in Spanish, but if a party or witness is not fluent, an interpreter is provided. Many local judges in Puerto Rico are fluent in both English and Spanish. Jurors in Puerto Rico must be United States citizens and be able to read and write in Spanish. Judge Lugo is not aware of any situation where a juror without a reasonable understanding of the Spanish language has been seated in a criminal jury trial in Puerto Rico.

One of the ways to facilitate service on juries is for the court system to formally adopt a Juror Bill of Rights. Despite several recommendations from various committees, Arizona has yet to formally adopt a Juror Bill of Rights.

¹⁸⁰ United States District Court for the District of Puerto Rico, Local Rule 43, Taking of Testimony. Available at http://www.prd.uscourts.gov/usdcpr/docs/rule_43.pdf

¹⁸¹ United States District Court for The District of Puerto Rico, Local Rule 47, Jurors. Available at http://www.prd.uscourts.gov/usdcpr/docs/rule_47.pdf

¹⁸² The information concerning local courts in Puerto Rico comes from the Hon. Judge Herman Lugo Carolina Judicial Centre, Puerto Rico. October 24, 2005 E-mail to the American Bar Association State Court Judges e-mail list NJD_ST@MAIL.ABANET.ORG. Used with permission.

3. ABA Jury Principle 3 – Juries Should Have 12 Members.

This principle goes significantly beyond Arizona jury practice where juries of twelve are used only in criminal cases where the possible punishment exceeds thirty years in prison. All other Arizona Superior Court juries are eight persons in both criminal and civil matters.¹⁸³

The comment to Principle 3 points out that historically the United States Constitutional guarantee of trial by jury required a jury of twelve persons¹⁸⁴ until the 1970 Supreme Court case of *Williams v. Florida*,¹⁸⁵ which held that juries with as few as six, but no fewer than six, were constitutional in state criminal cases. The comment marshals an argument based on empirical and other social research that twelve person juries, as opposed to six person juries:

- Deliberate longer
- Have better recall of the trial testimony
- Are more likely to produce accurate results
- Reduce the number of outlier verdicts not reflecting community values
- Are more likely to return verdicts in accord with community values
- Are more representative of the community
- Are not significantly less efficient or more expensive than six person juries¹⁸⁶

The comment on jury size concludes:

It should be emphasized that the preference expressed in these Principles for the twelve person jury is premised on colonial and federal constitutional considerations, long historical experience and the best empirical evidence currently available. In expressing that preference these Principles do not seek to deny that legitimate alternative views regarding jury size exist nor to

¹⁸³ See the general discussion at: Margo Hunter, *Reducing Jury Size*, Public Law Research Institute (Spring 1996). Available at <http://w3.uchastings.edu/plri/spr96tex/jurysiz.html>

¹⁸⁴ *Thompson v. Utah*, 170 U.S. 343,345 (1898).

¹⁸⁵ *Williams v. Florida*, 399 U.S. 78, 102 (1970).

¹⁸⁶ *ABA Jury Principles*, at 16-18. The fourteen studies on jury size cited in the comment are not repeated here.

suggest the illegitimacy of alternative constitutional commitments existing in a number of states.¹⁸⁷

In this author's view, it is not likely that Arizona will adopt twelve person civil juries – primarily because the civil bar and its clients appear satisfied with eight person civil juries. Consideration might be seriously given to adopting twelve person juries in criminal juries, however the prosecution bar and lobby is very influential and would strongly oppose any such move. The criminal bar, both prosecution and defense, seem to be the most conservative about any jury changes. It is likely that the ABA Principles will be influential in maintaining current Arizona jury sizes against any suggestion of size reduction.

4. ABA Jury Principle 4 – Jury Decisions Should Be Unanimous.

While recommending unanimous jury verdicts in all civil cases, this principle also states:

A less-than-unanimous decision should be accepted only after jurors have deliberated for a reasonable period of time and if concurred in by at least five-sixths of the jurors. In no civil case should a decision concurred in by fewer than six jurors be accepted, except . . . [by stipulation].¹⁸⁸

Five-sixths is 83.3%. Arizona civil juries decide with six of eight votes, or 75%. It is unlikely either the unanimity recommendation or the five-sixths recommendation in civil trials will be adopted in Arizona, again because there is no significant dissatisfaction among the civil bar or their clients with the current system. Maricopa County has had success in using civil “short trials” by stipulation in small tort cases where a jury of four jurors, with a concurrence of three for a verdict, is used in one-day trials.¹⁸⁹ It has been the preference of many trial judges in Arizona to allow all jurors who have been seated to

¹⁸⁷ *Id.*, at 18-19.

¹⁸⁸ *ABA Jury Principles*, at 21.

¹⁸⁹ G. Thomas Munsterman, *A Cost Free Jury Trial?*, 18 *The Court Manager* 35(2004). Available at http://www.ncsconline.org/WC/Publications/Res_Juries_JuryNewsCostFreeTrialPub.pdf A brief description of the Maricopa County civil short trial is found on the court's web pages at <http://www.superiorcourt.maricopa.gov/adr/programs/programs.asp#B>

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deliberate. It is not atypical for civil lawyers and parties, at the urging of the trial judge, to stipulate to accept a verdict of seven of nine sitting jurors – a percentage of 77.7%, and at times a verdict of five of seven – a percentage of 71.5%.¹⁹⁰

A primary concern for the use of non-unanimous juries in civil matters is the measured marginalization of the dissenting jurors.¹⁹¹ The issue of unanimity is tied, to some extent, to the issue of jury size. A discussion of state court jury sizes has been presented by the National Center for State Courts.¹⁹² A recent review of the literature in relation to jury size presents the pros and cons of large and small juries. That review concludes:

Based on a review of the literature, it is evident that reducing the size of juries will save money, yet likely be less representative of the community. Much of the literature questions the accuracy and predictability of smaller-sized juries. Predictability is the cornerstone for parties in a dispute. Effective plea bargaining and settlement attempts rely upon more predictable outcomes. In sum, evaluating the best size for a jury incorporates many considerations. To name a few, courts should weigh the cost, representation of the community, predictability of awards, accuracy (such as in recalling evidence), and the importance of how easily the group can reach consensus.¹⁹³

Further published studies are expected on this issue of non-unanimous juries in civil cases based on the Arizona Jury Project videotaped data set.¹⁹⁴

¹⁹⁰ Federal Rules of Civil Procedure, Rule 48, provides for a civil jury of six to twelve, in the judge's discretion, however all deliberate and the verdict, absent stipulation, must be unanimous. Available at <http://judiciary.house.gov/media/pdfs/printers/108th/civil2004.pdf>

¹⁹¹ Leonard Post, Study: Dissenting Jurors Get Short Shrift, National Law Journal (August 8, 2005). Available at <http://www.law.com/jsp/article.jsp?id=1123684510991> commenting on a to-be-published study on dissenting jurors based on the 50 videotaped Arizona trial database.

¹⁹² National Center for State Courts, Juries Research Services, *Jury Size* (2003). Available at http://www.ncsconline.org/WC/Publications/Res_Juries_JurySizePub.pdf

¹⁹³ Nicole L. Walters, *Does Jury Size Matter?: A Review of the Literature*, National Center for State Courts, Judicial Council of California (August, 2004). Available at http://www.courtinfo.ca.gov/reference/documents/jury_size_report.pdf

¹⁹⁴ Shari Seidman Diamond and Mary Rose, *The Unanimity Rule in Jury Trials*, Abstract for Presentation at Loyola Law School (March 29, 2005). Available at http://www.luc.edu/law/faculty/facworkshops/unanimity_rule.pdf

5. ABA Jury Principle 6 – Courts Should Educate Jurors Regarding The Essential Aspects Of A Jury Trial.

ABA Principle 6 involves jury orientation and information from the time of the initial summons until discharge. Many courts, including Maricopa County Superior Court, have websites with jury information,¹⁹⁵ include jury information with the summons, and have audio-video presentations for the jurors when they arrive at the courthouse.

The 1995 Arizona Jury Reforms included amended civil and criminal rules of procedure requiring written preliminary jury instructions before opening statement by counsel, with a written copy given to each juror, and including elementary substantive rules of law that apply to the case.¹⁹⁶

There are standard recommended civil and criminal jury instructions to refrain from talking about the case and conducting any independent investigation.¹⁹⁷ It is common for trial judges to add an admonition to refrain from the use of dictionaries and the Internet during trial. In light of the popularity of blogging, an admonition not to blog the jury experience until the juror is discharged might also be advisable!

6. ABA Jury Principle 7 – Courts Should Protect Juror Privacy Insofar As Consistent With The Requirements Of Justice And The Public Interest.

It is not uncommon in Maricopa County to use written juror questionnaires to cover particularly sensitive voir dire topics, such as prior sexual abuse. In every case, jurors being examined during voir dire are advised they may discuss any matter out of the presence of the public and other jurors, with just the judge and the attorney's present.

¹⁹⁵ See Maricopa County Superior Court, Jury Service (2005). Available at <http://www.superiorcourt.maricopa.gov/jury/index.asp> and Arizona Supreme Court, Jury Service (2005). Available at <http://www.superiorcourt.maricopa.gov/jury/index.asp>

¹⁹⁶ Arizona Rules of Civil Procedure, Rules 51(a) and 51(b)(3); Arizona Rules of Criminal Procedure, Rules 18.6(c) and 21.3(d).

¹⁹⁷ Recommended Arizona Jury Instruction (Civil), Preliminary Instruction 9 (4th ed., 2005); Arizona Supreme Court, *Civil/Criminal Bench Book* (2005), pp. 6-15 & 6-16.

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These practices are consistent with ABA Jury Principle 7 and with the jurors' interest in privacy. They are also likely to produce more accurate information than always requiring public discussion. Jurors' biographic information beyond that necessary to track jury service is not kept by the court. The lawyers and parties are not allowed to keep the juror's brief biographical sketch, or obtain that information in advance of immediate voir dire in the courtroom.

The 1996 reconvened Committee on More Effective Use of Juries considered the mandatory use of juror numbers, not names, at all stages of voir dire. While the judge, in an appropriate case, can require such a procedure, the practice is not to use last names in initial voir dire, but, as now required by rule in both criminal and civil case, jury numbers only when polling the jury after a verdict.¹⁹⁸ Based on the recommendation of the Jury Practices and Procedures Committee Supplemental Report Concerning Juror Anonymity (March, 2003),¹⁹⁹ jurors names remain public record in all trials in Arizona.

The author has found that in practice an important part of the implementation and maintenance of juror privacy is the active control of the trial judge of the lawyer voir dire process. The trial judge should review with the lawyers at least the subject matter of expected lawyer voir dire, if not the particular questions being considered. Determining the existence of juror bias in favor of one side or the other generally does not require delving deeply into the particularly personal lives of the potential juror. A juror distraught by the long past death of a child will demonstrate an inability to place personal issues aside without having to recite or relive all the tragic details.

¹⁹⁸ Arizona Rules of Civil Procedure, Rule 49(f); Arizona Rules of Criminal Procedure, Rule 23.4.

¹⁹⁹ Sherry Newman, *Jury Practices and Procedures Committee Supplemental Report Concerning Juror Anonymity* (March, 2003). Arizona Supreme Court. Available at <http://www.supreme.state.az.us/jury/SupRptJuryAnon.pdf>

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Similarly, exercise by the judge of sound discretion is needed to decide when individual or private juror voir dire is needed to avoid exposing the jury panel to prejudicial pretrial press or other events.

7. ABA Jury Principle 11 – Courts Should Ensure That The Process Used To empanel Jurors Effectively Serves The Goal Of Assembling A Fair And Impartial Jury.

ABA Jury Principle 11 covers jury questionnaires, the voir dire process and procedure, challenges for cause, peremptory challenges, alternate jurors, and anonymous juries. ABA Jury Principle 11 encourages the use of pre-voir dire questionnaires and broad voir dire in every case. This position is based on research about detecting juror bias. The types of voir dire are outlined by Valerie Hans and Alayna Jehle²⁰⁰ in this chart:

Table 1:
Range of Variations in Voir Dire Procedures

Traditional Limited Voir Dire	Expansive Voir Dire
No pretrial juror questionnaire	Pretrial juror questionnaire
Limited number of questions	Larger number of questions
Questions very specific to trial	Broader range of questions
Close-ended questions that permit only yes or no responses	Combination of close-ended and open-ended questions
Group questioning of prospective jurors	Individual, sequestered voir dire
Judge alone conducts voir dire	Judge and attorneys both participate in voir dire

ABA Principle 11 contemplates a balanced approach to voir dire, including questioning by both the judge and the attorneys. While actual voir dire practice in Arizona

²⁰⁰ Valerie P. Hans and Alayna Jehle, Avoid Bald Men And People With Green Socks? Other Ways to Improve the Voir Dire Process in Jury Selection, 78 Chicago-Kent Law Review 1179 (2003), at 1183. Available at http://lawreview.kentlaw.edu/articles/78-3/hans_jehle.pdf

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varies from judge to judge and case to case, under the 1995 jury reforms voir dire by the attorneys must be allowed, but may be reasonably limited in scope and time, and terminated for abuse.²⁰¹

The use of pre-voir dire written questionnaires varies greatly. When sensitive issues touch on juror privacy such as in sex-related cases or in capital cases, the use of a questionnaire is quite common. In the typical criminal or civil case, questionnaires are seldom used. Most Arizona judges, including the author, allow open-ended lawyer questions, both of the panel and of individual potential jurors. Individual sequestered voir dire is unusual, except in some capital cases or those involving a great deal of pretrial publicity.

ABA Principle 11, Subdivision E, contemplates the use of the “struck” method of voir dire, where the entire panel is examined before any potential juror is excused for cause, rather than the more traditional “strike and replace” method, where a subset of the jury panel is examined with each juror in the box replaced from the panel as stricken for cause. The “struck” method is encouraged, but not mandated, by Arizona’s 1995 jury reforms.²⁰² A majority of judges in Maricopa County use the “struck” method. However, regardless of which method is used, no peremptory strikes are exercised until a final panel of qualified jurors equal to the number to sit, plus alternates, plus peremptory strikes, is chosen. Those jurors not stricken for cause with the lowest original randomly assigned numbers constitute the panel on which the lawyers then exercise their peremptory strikes.

ABA Principle Number 11 supports retention of peremptory strikes in both civil and criminal cases. In its second report in 1998, The Committee on More Effective Use of

²⁰¹ Arizona Rules of Civil Procedure, Rule 47(b)(2); Arizona Rules of Criminal Procedure, Rule 18.5(d).

²⁰² Arizona Rules of Civil Procedure, Rule 47(a)(1), 1995 Comment; Arizona Rules of Criminal Procedure, Rule 18.5(b), 1995 Comment.

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Juries recommended decreasing the number of peremptory strikes in Arizona from 10 per side to 5 in capital cases, from 6 per side to 3 in other felony cases, and from 4 per side to 2 in civil cases (misdemeanor criminal cases remaining at 2 per side)²⁰³ This recommendation did not meet with a favorable reception from the bar in Arizona and has not been implemented.²⁰⁴

ABA Jury Principle 11. subsection G.3, supports the practice all allowing alternate jurors to deliberate in civil cases when there are less than twelve jurors. As mentioned above, it is a common practice in Maricopa County to seek the stipulation of counsel in civil trials that all jurors, including alternates, be allowed to deliberate. Some judges, including the author, express to counsel a reluctance to seat alternate jurors unless such a stipulation is obtained. However, in criminal cases the selection and then random dismissal of alternates remains the universal practice in Arizona – based on constitutional and statutory concern about the unanimous verdict standard and beyond a reasonable doubt burden of proof.

8. ABA Jury Principle 12 – Courts Should Limit The Length Of Jury Trials Insofar As Justice Allows And Jurors Should Be Fully Informed Of The Trial Schedule Established.

The ABA Jury Principles comment that jurors often complain about the “repetition and redundancy of trial testimony.”²⁰⁵ Such has been this author’s experience and that of

²⁰³ Arizona Supreme Court, *Jurors: The Power of 12, Part 2* (1996). Available at <http://www.supreme.state.az.us/jury/Jury2/jury2.htm> The full text of the report is available but must be manually paged.

²⁰⁴ See Paula L. Hannaford-Agor and Nicole L. Waters, Examining Voir Dire In California, National Center for State Courts (August, 2004). Available at http://www.courtinfo.ca.gov/reference/documents/voir_dire_report.pdf This study recommends reducing the number of peremptory challenges, based at least in part on the observation that not all peremptory challenges are used by the lawyers in California. In Arizona, most peremptory challenges are used by the lawyers.

²⁰⁵ *ABA Jury Principles*, at 87.

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many other trial judges. It is very difficult for the lawyers, without some guidance from the court, to set and maintain firm time limits on their presentations. On the other hand, cases with an established and specified time frame are always more persuasively presented.

Arizona and Maricopa County have been in the forefront of managing trial time more effectively. It is not uncommon in civil trials, after consultation with the lawyers, to place overall time limits on case presentation. A typical pretrial order provides a specific number of hours for each party's use, including all voir dire, opening statements, direct and cross-examination, legal arguments and closing arguments. This is called the "chess clock" method. This technique has been used very successfully by the author and has been well accepted by counsel. It is the general experience that each side does not use all of its allocated time. The practice has begun to spread to criminal trials, but is not widely used, primarily out of tradition and respect for the defendant's rights (although defense evidence presentations are generally very short in most trials).

It is normal for the Maricopa County Superior Court judge to inform the jury of the schedule, on the record with the lawyers present. This creates an expectation by all that the case will be concluded within the stated schedule. In experience, making any point or presenting any fact to a jury more than "three times" is simply redundant and unnecessary, plus it greatly aggravates jurors.

Arizona also strongly encourages judges to use their discretion under the rules of evidence to require summaries of evidence where appropriate. The use of deposition summaries in place of tedious reading of questions and answers is strongly encouraged.²⁰⁶ It has been the author's experience, gained from unsolicited comments

²⁰⁶ Arizona Rules of Civil Procedure, Rule 32, 2004 Comment. There is no specific Rule of Criminal Procedure, but see Arizona Rules of Evidence, Rule 611.

from jurors after trial, that jurors understand and appreciate court efforts to move the case along in a reasonable fashion.

9. ABA Jury Principle 13 – The Court And Parties Should Vigorously Promote Juror Understanding Of The Facts And Law.

The ten subparts of ABA Jury Principle 13 contain the heart of Arizona's implemented jury reforms, including: taking notes; trial notebooks; submission of written questions to witnesses; discussion of evidence before deliberations; mini or interim openings and closings; grouping expert witnesses by topic; and use of summaries, charts and computer simulations.

a. Taking Notes.

In Arizona, jurors in both criminal and civil cases must be instructed they may take notes,²⁰⁷ may refer to them during recesses and during deliberations,²⁰⁸ but should not be overly influenced by the notes of others. The standard instruction provides:

You have been provided with note pads and pencils. I encourage you to take notes during the trial if you wish to do so. Do not let note taking distract you so that you miss hearing or seeing other evidence. You may take your notes [and notebooks]¹ with you when you leave the courtroom for recesses, and may use them during [any discussions with other jurors in the jury room during the trial and during]² your deliberations at the end of the trial. Until then, keep your notes to yourself. If you do not want to take your notes [and notebook] with you during the trial, you should leave them on your seat. Whether you take notes or not, you should rely upon your own memory of what was said and not be overly influenced by the notes of other jurors. After you have rendered your verdict(s), the bailiff will collect your notes and destroy them.²⁰⁹

In the author's experience about one-half the jurors appear to be active note takers. One juror, after discharge, commented to this author, "I cannot believe that some courts do not

²⁰⁷ Arizona Rules of Civil Procedure, Rule 39(p); Arizona Rules of Criminal Procedure, Rule 18(d).

²⁰⁸ Arizona Rules of Civil Procedure, Rule 39(d)(3); Arizona Rules of Criminal Procedure, Rule 18.6(d).

²⁰⁹ Recommended Arizona Jury Instruction (Civil), Preliminary Instruction 8 (4th Ed., 2005); Arizona Supreme Court, *Civil/Criminal Bench Book* (2005), p. 6-15.

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allow jurors to take notes.” Allowing jurors to take notes is an increasingly common practice among state court systems, but is not universal.²¹⁰b. Trial Notebooks.

The use of jury trial notebooks is strongly encouraged in both criminal and civil trials in Arizona, although not required.²¹¹ The 1995 comment to both the civil and criminal rules states:

In trials of unusual duration or involving complex issues, juror notebooks are a significant aid to juror comprehension and recall of evidence. At a minimum notebooks should contain: (1) a copy of the preliminary jury instructions, (2) jurors’ notes, (3) witnesses’ names, photographs and/or biographies, (4) copies of key documents and an index to all exhibits, (5) a glossary of technical terms, and (6) a copy of the court’s final instructions. The preliminary jury instructions should be removed, discarded and replaced by the final jury instructions before the latter are read to the jury by the court.²¹²

In practice in Maricopa County juror three-ring binder notebooks with pen, paper and jury instructions are given to the jurors in every criminal and civil case. The jurors have a written copy of the preliminary and final jury instructions as they are read to the jury by the judge.²¹³ It is not uncommon, even in shorter trials, to add copies of key exhibits to the juror notebooks as the trial progresses. Some trial judges also include additional information about parking, where to eat lunch, and similar information. Judge control over the size and content of juror notebooks is required in many cases, as the lawyers may tend to over do the number and volume of exhibits. For some reason unknown to this author, many attorneys appear reluctant to include a picture of each witness with a generic description or biography of that witness. The attorneys tend to do so only if directed by the court to include that information.

²¹⁰ See *Taking and Use Of Trial Notes By Jury*, 36 A.L.R. 5th 255 (2005)

²¹¹ Arizona Rules of Civil Procedure, Rule 47(g); Arizona Rules of Criminal Procedure, Rule 18.6(d).

²¹² *Id.*, 1995 Comment.

²¹³ In some technology equipped courts, the judge pages through the instructions on the juror’s display screens as the instructions are read. Those judges who do this report most jurors prefer following along on the screen to reading along on a paper copy of the instructions.

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c. Juror Questions

The Arizona Criminal and Civil Rules require the judge instruct the jury they may ask written questions of witnesses and the court, unless the court “for good cause, prohibit[s] or limit[s] the submission of questions to a witness.”²¹⁴ The standard jury instruction reads:

If you have a question about the case for a witness or for me, write it down, but do not sign it. Hand the question to the bailiff. If your question is for a witness who is about to leave the witness stand, please signal the bailiff or me before the witness leaves the stand.

The lawyers and I will discuss the question. The rules of evidence or other rules of law may prevent some questions from being asked. If the rules permit the question and the answer is available, an answer will be given at the earliest opportunity. When we do not ask a question, it is no reflection on the person submitting it. You should attach no significance to the failure to ask a question. I will apply the same legal standards to your questions as I do to the questions asked by the lawyers.

If a particular question is not asked, please do not guess why or what the answer might have been.²¹⁵

While the court is given wide discretion by the rule to not allow jury questions to witnesses, such action is rarely taken. The typical procedure is to conduct a very short side bar conference to determine any disagreement among counsel and the court as to whether the question should be asked (and if there is disagreement, sometimes to take a short break), and then have the judge ask the question of the witness. The lawyers are then given an opportunity to follow up with the witness. In the author’s experience, juror questions are almost always relevant, factually based, and helpful to the development of the case. The impact of allowing jury questions on the trial proceedings, and on the time necessary for trial, has not been significant.

²¹⁴ Arizona Rules of Civil Procedure, Rule 39(b); Arizona Rules of Criminal Procedure, Rule 18.6(e).

²¹⁵ Recommended Arizona Jury Instruction (Civil), Preliminary Instruction 11 (4th Ed., 2005); Arizona Supreme Court, *Civil/Criminal Bench Book* (2005), p. 6-16 & 16-17

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The procedure for handling unanswered questions, as discussed in prior sections of this paper, varies from judge to judge. The effectiveness and reasons given, particularly to questions from the jury about jury instructions during deliberation, also varies. Some additional continuing education of judges as to appropriate responses would be helpful to the jury.

d. Discussion of evidence before deliberations.

In Arizona the civil jury may, in the judge's discretion, be instructed as to discussing the facts and evidence during recesses as the case proceeds prior to final deliberations.²¹⁶

The 1995 comment to rule provides:

In exercising its discretion to limit or prohibit jurors' permission to discuss the evidence among themselves during recess, the trial court should consider the length of the trial, the nature and complexity of the issues, the makeup of the jury, and other factors that may be relevant on a case by case basis.²¹⁷

In practice, it is very rare for a Maricopa County judge in a civil jury trial not to instruct the jury they may discuss the evidence as the case proceeds. The standard instruction is part of the "boiler plate" of Preliminary Instruction No 9. The entire Admonition provides:

I am now going to say a few words about your conduct as jurors. I am going to give you some do's and don'ts, mostly don'ts, which I will call "The Admonition." This admonition is designed to prevent jury tampering and any appearance of jury tampering, something that cannot be tolerated in our system of justice.

Do wear your juror badge at all times in and around the courthouse so everyone will know you are on a jury.

Do not do any research or make any investigation about the case on your own. Do not view or visit the locations where the events of the case took place. "Research" includes doing things such as looking up words in a dictionary or encyclopedia, or using treatises or similar sources with respect

²¹⁶ Arizona Rules of Civil Procedure, Rule 39(f).

²¹⁷ *Id.*, 1995 Comment.

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to any of the issues involved in the case. Research also includes searching on the internet or using other electronic devices to obtain information. The reason for this is that you have to base any decision on the evidence that is produced here in the courtroom.

Do not talk to anyone about the case, or about anyone who has anything to do with it, and do not let anyone talk to you about those matters, until the trial has ended and you have been discharged as jurors. Until then, you may tell people you are on a jury, and you may tell them the estimated schedule for the trial, but do not tell them anything else except to say that you can't talk about it until it is over.

It is your duty not to speak with or permit yourselves to be addressed by any person on any subject connected with the trial. If someone should try to talk to you about the case, stop him or her or walk away. If you should overhear others talking about the case, stop them or walk away. If anything like this does happen, report it to me or any member of my staff [insert phone number] as soon as you can. To avoid even the appearance of improper conduct, do not talk to any of the parties, the lawyers, or witnesses about anything until the case is over, even if your conversation with them has nothing to do with the case. For example, you might pass an attorney in the hall, and ask what good restaurants there are downtown, and somebody from a distance may think you are talking about the case. So, again, please avoid even the *appearance* of improper conduct.

The lawyers and parties haven't been given the same instruction about not speaking with you jurors, so do not think they are being unfriendly to you. When you go home tonight and family and friends ask what the case is about, remember you cannot speak with them about the case. All you can tell them is that you are on a jury, the estimated schedule for the trial, and that you cannot talk about the case until it is over.

There is one and only one limited exception to the foregoing rules. During recesses from the trial, you may discuss the evidence presented at the trial, but: 1) only among yourselves; and 2) only when you are all together; and 3) only in the jury room.

Even though you may discuss the case under the conditions I have described, do not form final opinions about any fact or about the outcome of the case until you have heard and considered all of the evidence, the closing arguments, and the rest of the instructions I will give you on the law. Both sides have the right to have the case fully presented and argued before you decide any of the issues in the case. Keep an open mind during the trial. Form your final opinions only after you have had an opportunity to discuss the case with each other in the jury room at the end of the trial.

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If at anytime during the trial you have difficulty hearing or seeing something you should be hearing or seeing, or if you have personal distress for any reason, raise your hand and let me know.

If you have any questions about parking, restaurants, or other personal matters relating to your jury service, feel free to ask one of the court staff. But, remember that the admonition applies to court staff, as it does to everybody else, so do not try to discuss the case with court staff.

Before each recess, I will not repeat the entire Admonition I have just given you. I probably will refer to it by saying, "Please remember the Admonition," or something like that. However, even if I forget to make reference to it, remember that the Admonition still applies at all times during the trial.²¹⁸

The experience with Maricopa County civil trials has been most positive. Attorneys, many of whom argued against the practice, have become supporters. Civil trial jurors are more attentive. They are more involved. In combination with the ability to ask questions, the attorneys are more informed as to whether or not the jury is following and understanding the evidentiary points being presented. In the author's estimation, there is simply no downside to allowing the practice. Several jurors have commented to the author, after discharge as a juror, that the ability to discuss the evidence as the trial proceeds helped them, and other jurors, keep an open mind.

In its second report in 1998, The Committee on More Effective Use of Juries recommended allowing structured jury discussion of evidence in criminal trials prior to deliberations, identifying the advantages as:

- Enhanced jury comprehension of evidence and preliminary instructions on the law as a result of interactive communication;
- Memories and impressions of testimony are better shared and questions are answered on a timely basis;
- Jurors get to know each other better and some "bonding" occurs;
- Group questions can be better framed and submitted to the Court;
- Juror stress is reduced;
- "Fugitive" conversations are reduced; and

²¹⁸ Recommended Arizona Jury Instruction (Civil), Preliminary Instruction 11 (4th Ed., 2005).

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- Deliberations are more focused and efficient since the jurors have already dealt with much of the "evidentiary foreground."²¹⁹

Despite subsequent empirical research validating many of these perceived advantages, this recommended change to allow pre-deliberation jury discussion of the evidence in criminal cases has not gained sufficient support to become a reality. The fear of juror premature judgment of defendant's guilt, and dilution of the beyond a reasonable doubt burden of proof, is too great. The ABA Jury Principles do not comment on the issue of pre-deliberation discussion of the evidence in criminal trials.

e. Mini or interim openings and closings.

The 1995 Arizona Jury Reform amendments both the criminal and civil rule provides:

The parties may, with the court's consent, present brief opening statements to the entire jury panel, prior to voir dire. On its own motion the court may require counsel to do so.²²⁰

The Arizona Civil/Criminal Bench Book (2005) provides that the judge in both criminal and civil trials should consider mini-opening statements prior to the main part of juror voir dire and includes that item on suggested pretrial checklists. Many Maricopa County judges require mini-opening statements in most cases, often imposing a five minute time limit. Other judges use mini-opening statements only if requested by counsel. The rules as to what may be said by counsel during mini-openings are the same as regular opening statements.²²¹

²¹⁹ Arizona Supreme Court, *Jurors: The Power of 12, Part 2* (1996). Available at <http://www.supreme.state.az.us/jury/Jury2/jury2.htm> The full text of the report is available at <http://www.supreme.state.az.us/jury/Jury2/jury2.htm>, but must be manually paged through.

²²⁰ Arizona Rules of Civil Procedure, Rule 47(b)(2); Arizona Rules of Criminal Procedure, Rule 18.5(c).

²²¹ See *State v. Sanders*, 205 Ariz. 208, 68 P.3rd 343 (Ariz. App. 2003); *Henry ex. rel. Estate of Wilson v. Health Partners of Southern Arizona*, 203 Ariz. 393, 55 P.3rd 382 (Ariz. App. 2002).

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In several more lengthy trials in Maricopa County, judges have both required and allowed lawyers to give interim summations during trial at key points. While rarely used, in trials in excess of a week or two the technique has much merit in promoting orderly understanding and retention of the evidence.

f. Grouping expert witnesses by topic.

ABA Jury Principle 13, subpart G, urges parties and the courts to be open to alteration of the sequencing of expert witness testimony. Grouping of expert witnesses by topic was recommended in the section report of the Committee on More Effective Use of Juries, however the topic is not addressed in the Arizona Civil/Criminal Trial Bench Book. The civil and criminal rules of procedure do not directly address the issue. However, Arizona Rule of Evidence 611(a) provides the court “shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence . . .”²²² The 1995 comment addresses effective document control during trial, but does not address grouping experts.

In at least one complex civil case involving numerous alleged construction defects in new homes a Maricopa County trial court judge has ordered that the experts be grouped by topic – for instance plaintiff’s expert on soils conditions, followed “out of order” by defendant’s expert on soils conditions. The jury, judge, and the lawyers were happy with that procedure. The author is not aware of other instances where experts have been grouped and testify by that group, but the suggestion makes a lot of sense in terms of juror comprehension and retention of evidence.

²²² Arizona Rules of Evidence, Rule 611(a).

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g. Use of summaries, charts and computer simulations.

The topic of use of summaries, charts and computer simulations to aid jury comprehension was not directly addressed by The Committee on More Effective Use of Juries. To the extent addressed at all in the Arizona Civil/Criminal Trial Bench Book, it is addressed as a trial exhibit issue. The civil and criminal rules of procedure do not directly address the issue. However, Arizona Rule of Evidence 1006 provides that the “contents of voluminous writings, recordings or photographs which cannot conveniently be examined in court may be presented in the form of a chart, summary or calculation.”²²³ The comment to Arizona Rule of Evidence 611 provides that:

. . . (5) At the close of the evidence in a trial involving numerous exhibits, the trial judge shall ensure that a simple and clear retrieval system, e.g. an index, is provided to the jurors to assist them in finding exhibits during deliberations.²²⁴

Maricopa County Superior Court, as are many courts, is committed to making jury presentation technology routinely available in its courtrooms.²²⁵ The use of PowerPoint presentations in opening and closing statements is becoming commonplace in both criminal and civil trials.²²⁶ The taking of civil depositions via video is now sanctioned by rule.²²⁷ As a result, impeachment of witnesses by prior videotaped deposition is becoming more common. Particularly in more complex civil cases the use of all digitalized trial exhibits are becoming common, as is trial management software that organizes all trial materials and facilitates display of exhibits to the jury.

²²³ Arizona Rules of Evidence, Rule 1006.

²²⁴ Arizona Rules of Evidence, Rule 611, Comment (1995).

²²⁵ Maricopa County Superior Court, E-Courtroom (2005). Available at <http://www.superiorcourt.maricopa.gov/ecourtroom/index.asp>

²²⁶ The City of Phoenix prosecutor routinely uses PowerPoint slides in Driving Under The Influence criminal trials, and discloses those PowerPoint slides on its web page. See <http://phoenix.gov/AGENCY/PHXPROS/powerpoint.html> Included are various short streaming videos.

²²⁷ Arizona Rules of Civil Procedure, Rule 30(b)(4).

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h. Other subparts of ABA Jury Principle 13.

ABA Jury Principle 13, subpart D.3 states the court may question a witness in a jury trial, with discretion and restraint. This is essentially never done in a jury trial in Arizona due to the particular Arizona Constitutional provision that a judge may not comment on the evidence.²²⁸

ABA Jury Principle 13(J) sanctions the use of dual juries in multi-defendant criminal cases. Such juries have been used for some time in Arizona.

10. ABA Jury Principle 14 – The Court Should Instruct The Jury In Plain And Understandable Language Regarding The Applicable Law And The Conduct Of Deliberations.

A major thrust of ABA Jury Principle 14 is that all jury instructions should be “in plain and understandable language.” Pattern or uniform jury instructions, such as those used in Arizona, save time and reduce the likelihood of reversal on appeal. Despite continued efforts by those who draft standard instructions, various studies reveal that jury instructions “remain syntactically convoluted, overly formal and abstract, and full of legalese.”²²⁹ Published literature widely supports the concept of plain English jury instructions.²³⁰

The development of plain English jury instructions in Arizona is a particular challenge given the requirements of the Arizona law that instructions must not comment on the evidence, generally must take a “restatement” of the law approach, and generally must not be “verdict directing” in nature. The Arizona approach to the issue has been the

²²⁸ Arizona Constitution, Article 6, Section 27. Judges shall not charge juries with respect to matters of fact, nor comment thereon, but shall declare the law.

²²⁹ Peter M. Tiersma, *Jury Instruction in the New Millennium*, 36 Ct Rev. 28 (1999), cited at ABA Jury Principles, p. 108.

²³⁰ Ellen Chilton and Patricia Henley, *Jury Instructions: Helping Jurors Understand the Evidence and the Law*, Public Law Research Institute (Spring, 1996). Available at <http://w3.uchastings.edu/plri/spr96tex/juryinst.html>

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use of broad based standing committees of State Bar of Arizona to draft and revise recommended civil²³¹ and criminal jury instructions.²³² The membership of these committees varies, but always includes experienced trial judges and lawyers. Despite some suggestions otherwise, social scientists experienced in communication have not been included on these committees.

Over the years, and in fits and starts, the pattern Arizona jury instructions have slowly improved. On the positive side, Arizona does require that each jury receive a written copy of the preliminary and final jury instructions and does allow jurors to ask written questions for clarification. As another improvement, the approach of Arizona Revised Jury Instructions (Civil), 4th edition, is to always use the names of the parties instead of the terms plaintiff and defendant. Other states are further along in the plain English jury instruction efforts than Arizona. For instance, California has recently completed a plain English revision to its pattern criminal jury instructions.²³³

ABA Jury Principle 14, subpart A, provides for final instruction to the jury either before or after lawyer closing argument. In Arizona's 1995 jury reforms comments to the civil and criminal rules were added encouraging judges to give the bulk of final instructions prior to lawyer closing argument, stating:

The Court has discretion to give final instructions to the jury before closing arguments of counsel instead of after, in order to enhance jurors' ability to

²³¹ State Bar of Arizona, Civil Jury Instruction Committee, Recommended Jury Instructions (Civil) (4th Ed., 2005), available at <http://www.myazbar.org/SecComm/Committees/CJJI/ciji.cfm>

²³² State Bar of Arizona, Criminal Jury Instruction Committee, Interim Recommended Jury Instructions (Criminal) (2005). Available at <http://www.myazbar.org/SecComm/Committees/CRJI/crji.cfm>

²³³ California Courts, Criminal Jury Instructions Resource Center (2005). Available at <http://www.courtinfo.ca.gov/jury/criminaljuryinstructions/index.htm> An informative comparison of California's older pattern criminal instructions (CALJIC) and California's revised "plain English" instructions adopted August 26, 2005 (CALCRIM), is found at Peter M. Tiersma, *Language and Law Web Pages* (2005). Available at <http://www.languageandlaw.org/JURYINST/COMPARE.HTM> Loyola Law School Professor Tiersma's unpublished manual on "Communicating with Juries" is found at <http://www.languageandlaw.org/JURYINST/jurymanual.doc>

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apply the applicable law to the facts. In that event, the court may wish to withhold giving the necessary procedural and housekeeping instructions until after closing arguments, in order to offset the impact of the last counsel's argument.²³⁴

Since 1996 in Arizona judges in both criminal and civil trials increasingly give all substantive closing jury instructions prior to the lawyer's closing arguments. While statistics as such are not available, in the author's estimation the practice has become almost universal. While there was some resistance to the practice from the lawyers, after delivering closing argument after the court's final jury instructions, most lawyers like and approve the practice.

Judges in Arizona routinely give procedural instructions after closing argument particularly covering verdict forms.²³⁵ However, it is still relatively rare for judges to offer any particular advice on deliberation procedures. Such instruction could include suggestions regarding the process of selecting a presiding juror and the conduct of deliberations. The comments to ABA Jury Principle 14, subparts C and D, state:

. . . courts should advise that the presiding juror generally chairs the deliberations and ensures a complete discussion before any vote. The court should note that each juror should have an opportunity to be heard on every issue and should be encouraged to participate. Jurors should be told that they should not surrender an individual opinion or decision merely to return a verdict. The court should further inform the jurors that they may be asked, when the verdict is returned, if the verdict is in fact their individual verdict. By providing those suggestions, courts are explaining the functions of the presiding juror and deliberations. Those explanations serve to equip the jurors for the task at hand.²³⁶

Perhaps simply because such an instruction is not included in the Arizona Recommended Jury Civil or Criminal Instructions, or the Civil/Criminal Bench Book, it is

²³⁴ Arizona Rules of Civil Procedure, Rule 39(o), 1995 Comment; Arizona Rules of Criminal Procedure, Rule 19.1(a), 1995 Comment.

²³⁵ In more complex cases, crafting verdict forms can serve as a template or decision tree directing the jury as to necessary steps in the decision process.

²³⁶ ABA Jury Principles, Principle 14, Comment at 111.

rarely given. Even so, some judges have on occasion, with approval of counsel, passed out to the jury, before deliberations and after final jury instructions have been given, the American Judicature Society's pamphlet *Behind Closed Doors: A Guide For Jury Deliberations*.²³⁷ With the permission of the American Judicature Society, the contents of the pamphlet, and the parent Resource Manual to Improve Jury Deliberations, have been adopted for use by various courts, including New Mexico²³⁸ and Wisconsin.²³⁹

10. ABA Jury Principle 16 – Deliberating Jurors Should Be Offered Assistance When An Apparent Impasse Is Reported.

ABA Jury Principle 16 is drawn directly from the 1995 Arizona jury reforms which allow the court to offer additional instructions or further proceedings in the event the jury announces an impasse in its deliberations. The Arizona criminal and civil rules provide:

If the jury advises the court that it has reached an impasse in its deliberations, the court may, in the presence of counsel, inquire of the jurors to determine whether and how court and counsel can assist them in their deliberative process. After receiving the jurors' response, if any, the judge may direct that further proceedings occur as appropriate.²⁴⁰

The comment to the criminal and civil rule provides the following suggested jury instruction:

This instruction is offered to help your deliberations, not to force you to reach a verdict.

You may wish to identify areas of agreement and areas of disagreement. You may then wish to discuss the law and the evidence as they relate to areas of disagreement.

If you still have disagreement, you may wish to identify for the court and counsel which issues or questions of law or fact you would like counsel or

²³⁷ American Judicature Society, *Behind Closed Doors: A Guide For Jury Deliberations* (1999). Free copies may be ordered from the society at <http://www.ajs.org/cart/storefront.asp>

²³⁸ Judicial Education Center Of New Mexico (JEC), *Jury Deliberations Guide* (2005). Available at http://jec.unm.edu/resources/juror_questions.htm

²³⁹ Wisconsin Court System, *Behind Closed Doors: A Guide To For Jury Deliberations* (2005). Available at <http://www.wicourts.gov/services/juror/docs/deliberate.pdf>

²⁴⁰ Arizona Rules of Civil Procedure, Rule 39(h); Arizona Rules of Criminal Procedure, Rule 22.4.

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court to assist you with. If you elect this option, please list in writing the issues where further assistance might help bring about a verdict.

I do not wish or intend to force a verdict. We are merely trying to be responsive to your apparent need for help. If it is reasonably probable that you could reach a verdict as a result of this procedure, it would be wise to give it a try.²⁴¹

In Arizona the impasse instruction may not be given unless and until there is an impasse.²⁴² Depending on the response from the jury, the court may allow additional closing argument or reopen the evidence. In Arizona such issues, including the length of time for further deliberations, is left to the trial judge's sound discretion.²⁴³ In this author's personal experience, the general practice of Maricopa County judges in civil and criminal cases is to give the impasse instruction whenever the jury announces an impasse on all or some of the claims or charges. In most cases, but not all, the jury remains at an impasse after the instruction is given. Some juries at impasse, but not many, ask for additional argument or evidence.

CONTINUING JURY REFORM IN ARIZONA

Jury reform is of ongoing concern to the bench and bar in Arizona. A number of the original fifty-four recommendations in the "Jurors: The Power of 12" report, and subsequent jury study committee recommendations, have not been implemented in Arizona. A number of the ABA Jury Principles are not actively practiced or implemented in Arizona. This section presents the author's view of "round three" of the Arizona Jury Reform movement, suggesting particular jury reform efforts which should be continue to be pursued in Arizona over the next decade.

²⁴¹ *Id.*, 1995 Comment.

²⁴² *State v. Huerstel*, 206 Ariz. 93, 75 P.3rd 698 (2003).

²⁴³ See *State v. Patterson*, 203 Ariz. 513, 56 P.3rd 1097 (App. 2002), approving the reopening of evidence in a criminal case.

1. Continue efforts to achieve application of prior Arizona recommendations.

While there are many unimplemented recommendations detailed in this paper, three strike this author as most important. They are: 1) aiding jurors in the mechanics of deliberation; 2) allowing pre-deliberation discussion of evidence in criminal cases; and, 3) allowing the jury to know the range of punishment in criminal cases.

Of these three suggestions, the least controversial and easiest to implement is ABA Jury Principle 14, subpart C – providing the jury with appropriate suggestions regarding the process of selecting a presiding juror and the conduct of its deliberations. The Arizona standing committees on Recommended Jury Instructions should promulgate a standard instruction patterned after the American Judicature Society's *Behind Closed Doors: A Guide for Jury Deliberations*.²⁴⁴ The pamphlet should be passed out to every juror. An instruction similar to that of New Mexico²⁴⁵ and Wisconsin²⁴⁶ should be given in all cases.

Allowing pre-deliberation discussion of evidence in criminal cases is not included in the ABA Jury Principles, presumably because of its controversial nature. Yet over a decade ago that change was recommended in Arizona by the reconvened Committee on More Effective Use of Juries.²⁴⁷ There is no persuasive reason not to implement this change for criminal juries. Research as to the use of the reform in civil juries substantiates that pre-deliberation discussion of the evidence is helpful to juries and does not lead to any

²⁴⁴ American Judicature Society, *Behind Closed Doors: A Guide for Jury Deliberations* (1999). Free copies may be ordered from the society at <http://www.ajs.org/cart/storefront.asp>

²⁴⁵ Judicial Education Center of New Mexico (JEC), *Jury Deliberations Guide* (2005). Available at http://jec.unm.edu/resources/juror_questions.htm

²⁴⁶ Wisconsin Court System, *Behind Closed Doors: A Guide for Jury Deliberations* (2005). Available at <http://www.wicourts.gov/services/juror/docs/deliberate.pdf>

²⁴⁷ Arizona Supreme Court, *Jurors: The Power of 12, Part 2* (1996). Available at <http://www.supreme.state.az.us/jury/Jury2/jury2.htm>

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premature judgment in favor of the party with the burden of proof. Yet it appears that Indiana is the only state to date to allow pre-deliberation of evidence in criminal cases.²⁴⁸

With continued education of the bar as to current and ongoing jury research, the political objections of the criminal defense bar to this reform may be overcome. In fact, if a pilot program could be instituted (or perhaps an empirical jury study as to conviction rates with and without the practice), it is likely the defense bar would discover the practice would increase the juror's ability to keep an open mind until the end of the case and not increase conviction rates.

Informing the jury of the potential range of punishment in criminal cases is the most controversial unimplemented Arizona reform. This reform was recommended in Arizona by the reconvened Committee on More Effective Use of Juries²⁴⁹ over a dissenting minority report. This reform is not included in the ABA Jury Principles.

American juries are increasingly called upon to make factual and sentencing determinations in criminal cases.²⁵⁰ Perhaps the biggest indicator of the political nature of this issue is to compare what happens in capital cases with what happens in other felony cases. In all capital eligible criminal cases the jury is told of the possible capital punishment and called upon to decide whether a capital sentence should be imposed, often without being informed of the scope and nature of available alternative sentences.²⁵¹ In the non-capital case it is the rule that juries may not be informed of the possible

²⁴⁸ Indiana Rules of Court, Jury Rules, Rule 20 (2003). Available at <http://www.in.gov/judiciary/rules/jury/#r22>

²⁴⁹ Arizona Supreme Court, *Jurors: The Power of 12, Part 2* (1996). Available at <http://www.supreme.state.az.us/jury/Jury2/jury2.htm>

²⁵⁰ Gregory E. Mize and Christopher J. Connelly, *Jury Trial Innovations: Charting a Rising Tide*, Court Review (Spring 2004). Available at <http://aja.ncsc.dni.us/courtrv/cr-41-1/CR41-1Mize.pdf>

²⁵¹ Richard C. Dieter, *Blind Justice: Juries Deciding Life And Death With Only Half The Truth* (October, 2005). Available at <http://www.deathpenaltyinfo.org/BlindJusticeReport.pdf> Based on post case capital jury interview, this study notes that some jurors voted for death because they did not know the Defendant otherwise would have been sentenced to natural life without parole.

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punishment. Yet in felony cases in states where statutory aggravating circumstances may enhance punishment, American juries are now constitutionally required to consider, and return a special verdict, as to whether the aggravating circumstance has been proven beyond a reasonable doubt, again without the benefit of knowing the various sentencing outcomes.²⁵² Recent experience in the United States with jury sentencing in capital cases has shown that knowing the punishment has not diminished conviction or sentencing rates.²⁵³ As stated by the reconvened Committee on More Effective Use of Juries:

Juries don't always render their verdicts in ignorance of the potential for punishment. In death penalty cases jurors are told that death is a possible punishment upon convictions. Some of these juries also learn that the only other option, for conviction of murder at least, is life imprisonment. In murder-one cases where the death penalty is not sought, the jurors are so informed. In any case where one defendant accepts a plea bargain in exchange for testimony against another defendant, the jury almost always learns of the range of sentence faced by the defendant on trial when the former co-defendant is cross-examined and during final argument by counsel.²⁵⁴

Keeping the jury in ignorance, or attempting to keep the jury in ignorance, of a fact or situation they are likely to discuss is simply not effective – nor is it just to the parties or the community. The jury will discuss the issue and will speculate, often supplying the missing fact. Justice is not served when the jury speculates and arrives at an erroneous conclusion about the fact. Simply admonishing the jury with a “blindfold” instruction to ignore the fact does not work. Empirical research in the insurance instruction demonstrates what juries actually do. The issue of potential criminal punishment, and for

²⁵² *Blakely v. Washington*, ___ US ___ (2004). Available at <http://a257.g.akamaitech.net/7/257/2422/24june20041200/www.supremecourtus.gov/opinions/03pdf/02-1632.pdf> See also Anne Skove, *Blakely v. Washington: Implications for State Courts*, National Center for State Courts (July, 2004). Available at http://www.ncsconline.org/WC/Publications/KIS_SentenBlakely.pdf

²⁵³ Discussion of Capital Punishment is beyond the scope of this paper. Wikipedia, *Capital Punishment In The United States* (2005). Available at http://en.wikipedia.org/wiki/Capital_punishment_in_the_United_States

²⁵⁴ *Id.* at section J.

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that matter the likely term of imprisonment, is just like the existence of insurance – something that is not legally relevant, but about which the jury will speculate.

All the arguments which have eventually prevailed for giving a collaborative instruction about the existence of insurance in civil cases apply to telling the jury about the punishment range in all criminal cases. The recommendation of the reconvened Committee on More Effective Use of Juries was sound a decade ago and it is sound today – but it is now supported by empirical research.

The jury needs to know the consequences of its actions. Jurors want to know punishment ranges – and will supply an often erroneous answer if not told. Not telling a jury about the general punishment range, in a collaborative instruction that tells the jury not to consider the punishment and give the reasons for the rule, disrespects the jury and its abilities. Jury nullification arguments are more theoretical than real – juries, when properly informed, are overwhelmingly good citizens and worthy of trust.

2. Develop and implement jury communication recommendations that incorporate court technology.

The ABA Jury Principles deal only briefly and in passing with the growing use of court technology to aid jury communication. ABA Jury Principle 13, subpart G, urges the parties and courts to “be open to a variety of techniques to enhance juror comprehension” such as “the use of computer simulations, deposition summaries and other aids.” Today’s jurors receive information most effectively as they do in everyday life: in multi-media fashion via sound bites. They are not used to lengthy question-answer format and “speaking head” presentations. In many ways judges and lawyers “have a PBS mind, in

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an MTV world.”²⁵⁵ Trial judges are familiar with the glazed look and inattention of jurors when long, complex, or uninteresting traditional testimony is presented. Judges all too often see the lawyer and witness engaged in a complex dialogue over key paragraphs in a document, when no one in the jury has a copy of the document.

The use of technology tools to aid jurors in their role as active learners makes sense.

The current model of juror is a passive one: the juror is directed to sit through the trial and simply absorb information like a sponge. Instead, jurors should have a role in organizing and analyzing the information presented at trial and should begin this process when they enter the courtroom.²⁵⁶

In addition to pre-courtroom technologies such as maps and directions, juror handbooks, juror orientation videos, and online juror resources and notifications, Marder suggests the appropriate use of courtroom technology such as digital evidence presenters, expert testimony via video conference and the “low-tech” reforms of note taking, written instructions, and juror notebooks.²⁵⁷ Marder also suggests expanded use of technology, such as Internet detailed voir dire questionnaires, Internet or CD-Rom juror orientation presentations, use of laptop computers by jurors, and available post-verdict Internet updates as to case results.²⁵⁸

The use of integrated implementation of readily available, affordable, and easy to use court technology to improve juror communication should be an affirmative requirement in trial courts. Training in the use of such techniques should be required of judges and lawyers. The use of digitalized exhibits, with a big screen or individual screens for the

²⁵⁵ Jimmy Buffett, I Don't Know, I Don't Care, Song Lyrics. “Why does the sun set in the west and why does my heart keep beating in my chest, whatever happened to the Duke of Earl. I gotta PBS mind in an MTV world.” Available at <http://www.lyricsfreak.com/j/jimmy-buffett/71847.html>

²⁵⁶ Nancy S. Marder, *Juries And Technology: Equipping Jurors for the Twenty-First Century*, 66 Brooklyn Law Review 1257 (2001) at 1261.

²⁵⁷ *Id.*, at 1269-1280.

²⁵⁸ *Id.*, at 1281 – 1287.

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jurors, witness, lawyers and judge is increasingly common, but far from universal. The presentation of summaries and checklists by PowerPoint is increasingly common and very effective when well done. When digitalized exhibits are used, the jury should have access to those exhibits in the jury room during deliberations, either via the court network or on a stand-alone computer.²⁵⁹ Jurors should be given, if they wish, laptop computers for note taking.²⁶⁰

The increasing use of digitalized audio or audio-video recordings for the court record, and the use of real-time stenographic court reporting in some courts, removes the issue of cost and preparation time in relation to the court record. It makes no common (or social science) sense to make that portion of the court record consisting of written trial exhibits available to the jury, but not make available the readily searchable digital audio, audio-video, or real-time transcript.

3. Develop and implement public education and outreach about jury function and duty.

The first recommendation of “Jurors: The Power of 12” in 1994 was to undertake programs of public education about juries and jury service.²⁶¹ In 2002 the National Center for State Courts undertook a national program to increase citizen participation in juries. The program promotes public awareness and understanding of jury service and supports

²⁵⁹ Official Comment 5 to Arizona Rules of Evidence, Rule 611, provides: “At the close of the evidence in a trial involving numerous exhibits, the trial judge shall ensure that a simple and clear retrieval system, e.g. an index, is provided to the jurors to assist them in finding exhibits during deliberations.” Doesn’t this include digitalized exhibits and their index?

²⁶⁰ As technology advances, perhaps jurors should have a wireless key board for annotation, tied to their own multi-purpose presentation display screen.

²⁶¹ Arizona Supreme Court, *Committee on More Effective Use of Juries, List of Recommendations* (July 2, 2004). Available at <http://www.supreme.state.az.us/jury/Jury/jury1e.htm>

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state and local court improvements to the jury system through the promotion of citizen outreach and improving the conditions of jury service.²⁶²

The American Bar Association's Jury Initiative has two parts. The first concluded with the issuance of the ABA Principles in 2005 by the American Jury Project, a committee chaired by Phoenix lawyer Patricia Refo.²⁶³ The second effort is just underway. A 21-member group, the Commission on the American Jury, has been formed with honorary chair United States Supreme Court Justice Sandra Day O'Connor and co-chairs New York Chief Judge Judith Kaye, Chicago lawyer Manuel Sanchez, and Oscar Criner, foreman of the Arthur Andersen 2002 trial jury.

The ABA Commission on the American Jury is charged with outreach to the public, the legal profession, and the courts. A wealth of information is available at the ABA Jury Initiative web pages, although it does not appear that a public outreach program has been published for the 2006-2007 time frame. Public outreach and education about the jury system is critical to the survival of the American jury. William L. Dwyer, a veteran litigator and United States District Court Judge, tells us:

The founders of the American republic would be surprised to learn that the jury's survival is in doubt. When they wrote the Constitution, trial by jury was widely seen as "the very palladium of free government," to use a phrase from *The Federalist Papers*, and would no more have been abandoned than would the ballot box.²⁶⁴

²⁶² Ann L. Kieth and Paula L. Hungorford-Agor, *A National Program to Increase Citizen Participation in Jury Service*, Jury Management, Trends in 2002 (2002). Available at http://www.ncsconline.org/WC/Publications/KIS_JurMan_Trends02_Pub.pdf

²⁶³ American Bar Association, The American Jury Initiative Home Page (2005). Available at <http://www.abanet.org/jury/home.html>

²⁶⁴ William L. Dwyer, *In the Hands of the People: The Trial Jury's Origins, Triumphs, Troubles, and Future in American Democracy*, St. Martins Press (2002) at 1.

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As of this writing, the Arizona Supreme Court has not organized a formal committee or commission for public education about jury service.²⁶⁵ Nor has the Maricopa County Superior Court organized a group charged with public outreach about juries. Perhaps this is because of the diffuse nature of public education efforts and a lack of resources. A public outreach effort of patterned public education about the function and role of the jury in the public schools, community groups and media outlets would directly aid juror communication in many ways. Citizens would have a better idea about the function of jurors and the jury. Response rates to jury summons should increase. A greater portion of the public would become educated about methods of rational discourse, mutual respect, and effective decision making. The overall legitimacy of, and respect for, the judicial system would be maintained and enhanced.

CONCLUSION

Arizona has come a long way since the beginning of jury reform efforts over a decade ago. Arizona has occupied a national leadership position in jury reform efforts. Arizona citizens, through jury duty, have the opportunity to participate meaningfully in the third branch of government. Much has been accomplished.

Many of the first generation leaders and change agents of Arizona jury reform have retired or are nearing retirement. The second wave of empirical study has compiled several remarkable data sets that will be of continued use to jury researchers for many years. The third stage of Arizona jury reform has arrived.

²⁶⁵ Arizona Supreme Court Standing Committees and Commissions are listed at <http://www.supreme.state.az.us/nav2/commit.htm>

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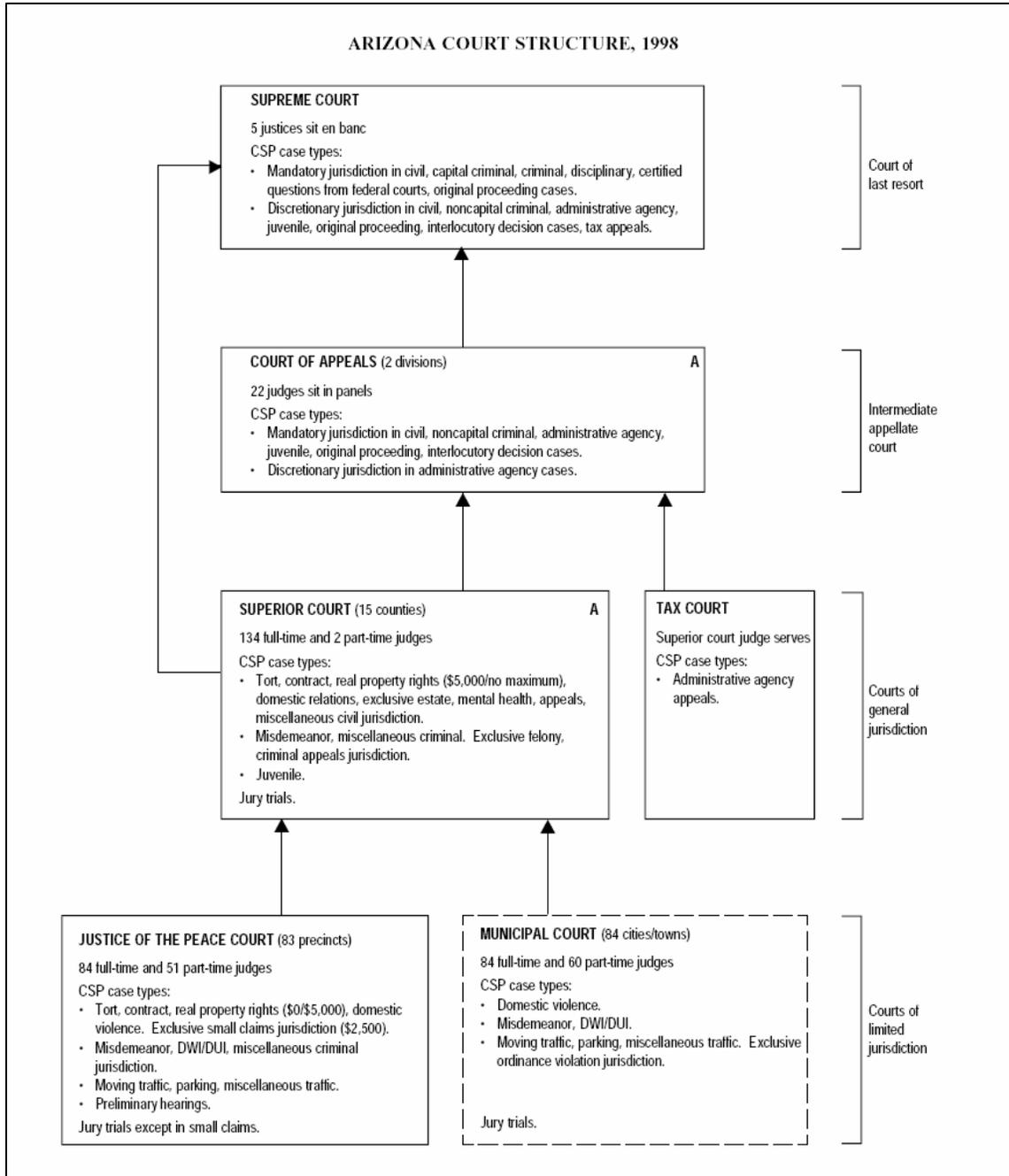
In this author's view continued efforts should concentrate not only perusing continued empirical research of those reforms in place and under consideration, but should specifically address:

1. Continue efforts to achieve application of prior Arizona recommendations:
 - a. Aiding jurors in the mechanics of deliberation;
 - b. Allowing pre-deliberation discussion of evidence in criminal cases;
and,
 - c. Allowing the criminal jury to know the range of punishment.
2. Develop and implement jury communication recommendations that incorporate court technology.
3. Develop and implement public education and outreach about jury function and duty.

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APPENDIX

1. Chart of Arizona Court Structure, from D. Rottman, C. Flango, et al., *State Court Organization 1998* (June, 2000), at p. 320. Conference of State Court Administrators and the National Center for State Courts. Available at <http://www.ojp.usdoj.gov/bjs/pub/pdf/sco98.pdf>



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2. Arizona Supreme Court, *Committee On More Effective Use of Juries, List of Recommendations* (July 2, 2004). Available at

<http://www.supreme.state.az.us/jury/Jury/jury1e.htm>

A. <u>PUBLIC AWARENESS</u>	Summary	Report
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1. Undertake Programs of Public Education About Juries and Jury Service

B. <u>SUMMONING JURORS:</u>	Summary	Report
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2. Improve Current Juror Source Lists
3. Use Additional Juror Source Lists
4. Improve Jury Diversity through "Random Stratified Selection"
5. Study Summoning Jurors on Regional Basis
6. Striking of Grossly Unrepresentative Jury Panels
7. Obtain More Demographic Information from Jurors
8. Supply More Information to Persons Summoned
9. Limit Potential Juror Report Dates
10. Deal with Failures to Respond to Jury Summons
11. Handling and Monitoring Requests for Deferral of Service and for Excusal
12. Update and Expand Initial Courthouse Orientation
13. Improve Rate of Utilization of Potential Jurors
14. Show Appreciation to Potential Jurors Not Needed for Juries
15. The Needs of Jurors who are Disabled Should be Met
16. Reform and Improve Juror Pay and Mileage

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17. Juror-Supplied Locating Information Should Remain Confidential During Jury Selection and Thereafter

C. <u>JURY SELECTION:</u>	Summary	Report
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18. Encourage Mini-Opening Statements Before Voir Dire

19. Allow Judges to Choose Between the "Struck" and the "Strike and Replace" Methods of Jury Selection

20. Assure Lawyers the Right to Voir Dire in Criminal Cases

21. Judges Should Receive Training in Voir Dire

22. Protect Juror Privacy During Voir Dire

23. Continue Peremptory Strikes in Present Form and Number

24. Vigorously Enforce Batson Safeguards

D. <u>TRIAL:</u>	Summary	Report
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25. Set and Enforce Time Limits for Trials

26. Guidelines for Severance in Complex Cases are Needed

27. Jury Trial Time Should be Maximized

28. Trial Interruptions Should be Minimized

29. Juror Notebooks Should be Provided in Some Cases

30. Expand Use of Preliminary Jury Instructions

31. Ensure Note taking by Jurors in Civil Cases

32. Improve Management of Trial Exhibits

33. Deposition Summaries Should be Used

34. Allow Jurors to Ask Questions

35. Educate Attorneys and Judges Concerning Interim Summaries During Trial

36. Use Modern Information Technology More Often in Trials

37. Allow Jurors to Discuss the Evidence Among Themselves During the Trial

38. Use Only Plain English in Trials, Especially in Legal Instructions

39. Do not Keep Jurors Waiting While Instructions are Settled

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40. Make Jury Instructions Understandable and Case-Specific and Give Guidance Regarding Deliberations

41. Do Not Instruct Juries on Jury Nullification; However, the Rules of Evidence Ought to be Expanded in Recognition of the Jury's Power to Nullify

42. Give Jurors Copies of the Jury Instructions

43. Read the Final Instructions Before Closing Arguments of Counsel, Not After

44. Alternate Jurors Should Not Be Released From Service in Criminal Cases Until a Verdict is Announced or the Jury is Discharged

45. Allow all Jurors Remaining at the End of a Civil Trial to Deliberate and Vote

E. <u>JURY DELIBERATIONS:</u>	Summary	Report
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46. The Trial Judge Should Decide on a Schedule for Jury Deliberations and Inform Jurors in Advance

47. Encourage Juror Questions About the Final Instructions

48. Fully Answer Deliberating Jurors' Questions and Meet Their Requests

49. Offer the Assistance of the Judge and Counsel to Deliberating Jurors that Report an Impasse

50. When Juries Reported to be at Impasse are Returned for Further Deliberations They Should Not be Instructed Any Further

F. <u>POST-VERDICT STAGE:</u>	Summary	Report
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51. Become Proactive in Detecting and Treating Juror Stress

52. Assist Jurors in Coping with Fears of Contact or Retaliation

53. Solicit Jurors' Reactions to Their Courthouse Experience

54. Advise Jurors Concerning Post-Verdict Conversations with the Judge, Attorneys and the Media

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3. Arizona Supreme Court, *Committee on More Effective Use of Juries, A Proposed Bill of Rights for Arizona Jurors* (July 2, 2004). Available at <http://www.supreme.state.az.us/jury/Jury/jury1n.htm>

A PROPOSED BILL OF RIGHTS FOR ARIZONA JURORS

JUDGES, ATTORNEYS AND COURT STAFF SHALL MAKE EVERY EFFORT TO ASSURE THAT ARIZONA JURORS ARE:

1. Treated with courtesy and respect and with regard for their privacy.
2. Randomly selected for jury service, free from discrimination on the basis of race, ethnicity, gender, age, religion, economic status or physical disability.
3. Provided with comfortable and convenient facilities, with special attention to the needs of jurors with physical disabilities.
4. Informed of trial schedules that are then kept.
5. Informed of the trial process and of the applicable law in plain and clear language.
6. Able to take notes during trial and to ask questions of witnesses or the judge and to have them answered as permitted by law.
7. Told of the circumstances under which they may discuss the evidence during the trial among themselves in the jury room, while all are present, as long as they keep an open mind on guilt or innocence or who should win.
8. Entitled to have questions and requests that arise or are made during deliberations as fully answered and met as allowed by law.
9. Offered appropriate assistance from the court when they experience serious anxieties or stress, or any trauma, as a result of jury service.
10. Able to express concerns, complaints and recommendations to courthouse authorities.

11. Fairly compensated for jury service.

4. Arizona Supreme Court, *Final Report and Recommendations of the Arizona Supreme Court Ad Hoc Committee to Study Jury Practices and Procedures, VI Summary of Recommendations* (August, 2002), at 15 - 17. Available at <http://www.supreme.state.az.us/jury/juryrpt.pdf>

VI. Summary List of Recommendations

Preamble

The report that follows consists of 15 specific recommendations applying to jury management and administration. The committee believes the judicial branch has a responsibility to improve every aspect of its jury system. Accordingly, each recommendation was formulated with the aspiration of improving jury service for all of Arizona's citizens. In the committee's deliberations, consensus on all issues was reached. Due to the fundamental importance of the jury system to public respect for the judicial branch, the committee recommends that the Arizona Judicial Council and trial courts statewide support and adopt its recommendations.

Quality of source lists

1. Based on the results of Maricopa County's test with the Department of Revenue, the committee recommends that the state income tax filers' list not be considered as an additional source list. The committee further recommends that appropriate language be included in the Arizona Code of Judicial Administration specifically mandating that counties periodically test their master source list for inclusiveness.

Centralizing jury list preparation

2. Centralizing jury list preparation in the Administrative Office of the Courts or a particular county would be difficult at this time due to economic and logistical constraints. The committee recommends that discussion of this topic continue based on the findings of the pilot project conducted by LaPaz and Pima counties.

Enforcement of summons

3. The committee recommends that the enforcement procedure provided by A.R.S. §21-331(B) be strictly complied with and facilitated through the use of automation and enforced through education of jury management staff.

Excuse/postponement policy

4. The committee recommends that standardized excuse/postponement guidelines be developed by the Jury Management Reference Manual Workgroup established by the committee chair. These guidelines should be included in the jury management reference manual, being developed by the workgroup, as a model for the local courts.

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The committee further recommends that the presiding judge of each county should subsequently issue a specific administrative order implementing the local excuse/postponement policy. This policy should be consistent and in furtherance of the recommended guidelines.

Juror pay and compensation

5. The committee recommends that the judicial branch form a joint task force -- composed of representatives from the legislative and judicial branches, the counties and municipalities, and the public -- to explore creative ways to increase juror compensation.

One-day/one-trial

6. The committee recommends that the Supreme Court adopt the proposed Arizona Code of Judicial Administration Section 5-203: Trial Jury Management which includes the mandate that all courts implement a one-day/one-trial term of service in their jurisdiction unless an exception is granted pursuant to Arizona Code of Judicial Administration Section 5-203.

7. The committee recommends that the Administrative Office of the Courts with the assistance of Jury Commissioners develop a curriculum that extols the benefits of implementing a one-day/one-trial system and that provides participants with the improved juror management techniques that will allow them to implement a Oneday/one-trial term of service in their jurisdiction. This educational program should be provided to all key stakeholders at all trial courts.

8. The committee recommends the creation of an Implementation task force which shall be responsible for overseeing implementation of the committee's recommendation in regards to one-day/one-trial. Like membership of the committee, the task force's membership should be broadly representative of the diverse perspectives about the jury system. The task force should be formed within six months of the approval of the committee's final report and the adoption of the Arizona Code of Judicial Administration Section 5-203.

Other Issues Considered by the Committee:

Juror Bill of Rights

9. The committee recommends that trial courts statewide adopt the proposed Bill of Rights for Arizona Jurors included in this report. The committee further recommends that the Chief Justice issue an administrative order to such effect.

Juror anonymity

10. The committee recommends that when polling the jury under 49(f) of the Arizona Rules of Civil Procedure or Rule 23.4 of the Arizona Rules of Criminal Procedure, the court and clerk shall not identify the individual jurors by name but shall use such other method or form of identification as may be appropriate to ensure an accurate record of the poll.

Jury management reference manual

11. The committee recommends that a statewide jury management reference manual be prepared. The reference manual should be disseminated and utilized as part of the curriculum at training sessions developed to educate jury commissioners and their staffs. To achieve this goal, the committee further recommends supporting the continued efforts of the Jury Management Reference Manual Workgroup established by the committee chair.

Jury Management Standards

12. The committee recommends adoption of the proposed Arizona Code of Judicial Administration Section 5-203: Trial Jury Management.

Public awareness/outreach programs

13. The committee recommends that the Administrative Office of the Courts, Public Information Officer continue efforts to develop positive messages on jury service and to make contacts for a larger, statewide public relations campaign on jury service.

Issues for future consideration:

Grand jury process

14. The committee recommends establishing a multi disciplinary committee to examine and develop recommendations on reforms for the state and county grand jury systems especially, but not limited to, the burden of juror service on citizens.

Non-English-speaking jurors

15. The committee has discussed extensively the issues associated with utilizing non-English-speaking citizens as prospective jurors. The committee makes no recommendation in regard to changing current lawful practices or court policies at this time.

5. Arizona Supreme Court, *Final Report and Recommendations of the Arizona Supreme Court Ad Hoc Committee to Study Jury Practices and Procedures, Appendix B, A Proposed Bill of Rights for Arizona Jurors* (August, 2002), at 21. Available at <http://www.supreme.state.az.us/jury/juryrpt.pdf>

A PROPOSED BILL OF RIGHTS FOR ARIZONA JURORS

JUDGES, ATTORNEYS AND COURT STAFF SHALL MAKE EVERY EFFORT TO ASSURE THAT ARIZONA JURORS ARE:

1. Treated with courtesy and respect.
2. Afforded privacy and security safeguards.
3. Randomly selected for jury service without regard for race, ethnicity, gender, age, religion, physical disability, sexual orientation or economic status.
4. Provided with comfortable and convenient facilities, with accommodations to address the special needs of jurors with physical disabilities.
5. Informed of trial schedules as often as possible.
6. Informed of the trial process and of the applicable law in plain and clear language.
7. Permitted to take notes during trial and to ask questions of witnesses or the judge, as permitted by law, and to have them answered where appropriate.
8. When the law permits, told of the circumstances under which they may discuss the evidence during the trial among themselves in the jury room, while all are present, as long as they keep an open mind until a verdict is rendered.
9. Given answers, as permitted by law, to questions and requests that arise during deliberations regarding the law as it relates to their specific case.
10. Offered assistance if they experience serious anxiety, stress, or trauma as a result of jury service.
11. Permitted to express concerns, complaints and recommendations to courthouse authorities.
12. Compensated in a timely manner for jury service.

6. Arizona Code of Judicial Administration, Section 5-203, Trial Jury Management

(adopted 2003, amended 2003 and June 9, 2004). Available at

<http://www.supreme.state.az.us/orders/admcode/pdfcurrentcode/5-203.pdf>

ARIZONA CODE OF JUDICIAL ADMINISTRATION
Part 5: Court Operations
Chapter 2: Programs and Standards
Section 5-203: Trial Jury Management

A. Use of These Standards. These standards are intended in part as mandates and in part as guidelines. The language of the standards distinguishes required standards from those described in advisory terms, for which either absolute adherence is not possible in every court, such as the standards relating to jury facilities, or because the subject matter of the standard does not lend itself to mandatory requirements, such as when to grant requests to postpone jury service.

B. Selection of Prospective Jurors.

1. Opportunity for jury service. The opportunity for jury service shall not be denied or limited on the basis of race, national origin, gender, age, religious belief, income, occupation, or sexual orientation.

2. Master jury list.

a. The master jury list shall be as representative and as inclusive of the eligible adult population in the jurisdiction as possible. The court should review and update the master jury list periodically. A master jury list is representative of the population to the extent the percentages of cognizable group membership in the list equal the corresponding percentages in the population. A master jury list is inclusive of the population to the extent it includes all eligible members of the entire population in the jurisdiction.

b. The names of potential jurors shall be drawn from a master jury list in accordance with statute (A.R.S. "21-311, -312 and -313).

3. Random selection procedures.

a. Random selection procedures shall be used throughout the juror selection process. Any automated or manual method that provides each eligible and available person with an equal probability of selection may be used, except when a court orders an adjustment for underrepresented populations.

b. Random selection procedures shall be employed in:

(1) Selecting persons to be summoned for jury service;

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(2) Assigning prospective jurors to panels; and

(3) Calling prospective jurors for voir dire.

c. Departures from the principle of random selection are appropriate:

(1) To exclude persons ineligible for service in accordance with subsection (B)(4);

(2) To excuse or postpone prospective jurors in accordance with subsection (B)(7);

(3) To remove prospective jurors for cause or if challenged peremptorily in accordance with subsections (C)(2) and (3).

4. Eligibility for jury service. A.R.S. '21-201 establishes an individual's eligibility for jury service as follows:

Every juror, grand and trial, shall be at least eighteen years of age and meet the following qualifications:

1. Be a citizen of the United States.

2. Be a resident of the jurisdiction in which he is summoned to serve.

3. Never have been convicted of a felony, unless the juror's civil rights have been restored.

4. Is not currently adjudicated mentally incompetent or insane.

5. Term of trial jury service.

a. Effective January 1, 2005, A.R.S. §21-336.01 establishes a term of service for trial jurors as follows:

A. A person's jury service obligation is fulfilled when the person does any of the following:

1. Serves on one trial until being excused or discharged.

2. Appears at court but is not assigned to a trial division for selection of a jury before the end of that day.

3. Is assigned on one day to one or more trial divisions for jury selection and serves through the completion of jury selection or is excused.

4. Complies with a request to telephone a court or check a court's website to determine whether to report on a particular day, for four days within a thirty day

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period.

5. Provides the court with a valid telephone number and stands to serve on the same day, for a period of two days.

b. If necessary, the presiding judge in coordination with the jury commissioner shall, pursuant to A.R.S. §21-336.01(B), apply to the supreme court for exemption from the one-day one-trial system for a specified period of time not to exceed one year. To qualify for exemption, the court must demonstrate that:

(1) The cost of implementing the system is so high that the trial court would be unable to provide essential services to the public if required to implement such a system; or

(2) The requirements of the statute cannot be met because of the size of the population in the jurisdiction compared to the number of jury trials.

6. Term of grand jury service.

a. County grand jurors. The term of service for county grand jurors shall be determined pursuant to A.R.S. '21-403, which provides:

. . . a term designated by the presiding judge of the superior court which shall not exceed one hundred twenty days, unless at the end of such period the grand jury is serving in connection with unfinished inquiries or investigations, in which event the term may be extended by the presiding judge, upon petition by the county attorney stating the reasons therefor, until the conclusion of the investigation.

b. State grand jurors. The term of service for state grand jurors shall be determined pursuant to A.R.S. '21-421(c), which provides:

The regular term of the state grand jury shall be six months. The term may be shortened by the assignment judge at the request of the attorney general. The term may be extended by the assignment judge for a specified time period upon a verified, written petition by the attorney general stating that an extension is needed to conclude a grand jury inquiry begun prior to the expiration of its term.

c. Frequency of service. In no event shall either a county or state grand juror be asked to serve more than two days per week.

7. Exemption, excuse, and postponement. No automatic excuses or exemptions from jury service shall be permitted unless specified by statute. The following procedures shall apply to exempting, excusing and postponing jury service:

a. The following are grounds for exemption or excuse from jury service:

(1) Qualified peace officers who make a timely application pursuant to A.R.S. §21-202.

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(2) The individual suffers from a mental or physical condition causing that person to be incapable of performing jury service. A supporting statement from a physician who is licensed pursuant to Title 32 must be provided.

(3) Jury service by this individual would substantially and materially affect the public interest or welfare in an adverse manner.

(4) Jury service would cause undue or extreme physical or financial hardship to the prospective juror or a person under the prospective juror's care or supervision. This excuse must be supported by documentation such as income tax returns, payroll records, medical statements, proof of dependency or guardianship and is limited to the following circumstances:

(a) Jury service would require abandoning a person under the potential juror's care or supervision due to the impossibility of obtaining an appropriate substitute caregiver.

(b) The potential juror would incur costs that would have a substantial adverse impact on the payment of the person's necessary daily living expenses or on those for whom the potential juror provides regular employment or the principal means of support.

(c) The potential juror would suffer physical hardship that would result in illness or disease.

(d) The potential juror is not currently capable of understanding the English language.

(5) An individual who was selected to serve on a jury in Arizona is not required to serve again in any court in this state for two years following the juror's service. A.R.S. §21-335.

b. Undue or extreme physical or financial hardship does not exist solely based on the fact that a prospective juror will be required to be absent from the prospective juror's place of employment.

c. The following are grounds for postponement from jury service:

(1) Postponement shall be granted to an individual who works for an employer with five or fewer full-time employees, or their equivalent, if during the same period another employee of that employer is serving as a juror. A.R.S. §21-236(D).

(2) A jury commissioner shall postpone service not more than two times for those requesting postponement. A subsequent request for postponement may be granted based on a finding that an extreme emergency exists that could not have been anticipated at the time of the previous postponements. A.R.S. §21-336.

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d. The presiding judge shall adopt specific uniform guidelines for determining requests to postpone service and to be excused from service. Prospective jurors seeking to postpone their jury service shall be permitted to submit a request by phone, mail, in person, or electronically if the court offers this option. Prospective jurors seeking to be excused from jury service shall submit a written request that complies with the court's specific guidelines. Court officials shall promptly respond to requests to postpone service or to be excused from service. Any time a juror is granted a postponement or is excused from service, the court shall make an appropriate record of its decision.

C. Selection of a Particular Jury.

1. Voir dire. The following procedures shall apply to voir dire:

a. Voir dire examination shall be limited to matters relevant to determining whether to remove a juror for cause and to exercising peremptory challenges.

b. To reduce the time required for voir dire, basic background information regarding panel members, as required by Rules 47(a)(4) of the Arizona Rules of Civil Procedure and 18.3 of the Arizona Rules of Criminal Procedure, shall be made available to counsel for each party on the day on which jury selection is to begin. The jury commissioner shall obtain and maintain such information as to each potential juror in a manner and form to be approved by the supreme court.

c. The judge shall control the voir dire examination. The judge may permit counsel to question panel members for a reasonable period of time.

d. Where appropriate to further the purposes of voir dire, the judge may permit questionnaires to be submitted to the prospective jurors, in addition to oral examination. Before submitting them to the jurors, the judge shall review and approve the questions.

e. The judge shall ensure that the privacy of prospective jurors is reasonably protected, that the questioning by counsel is consistent with the purpose of the voir dire process, that voir dire proceeds expeditiously, and that jurors receive courteous treatment.

f. In courts of record, the voir dire process shall be held on the record in criminal cases. In civil cases, the voir dire process shall be held on the record unless waived on the record by the parties.

2. Removal from the jury panel for cause. If the judge determines during voir dire that any individual is unable or unwilling to hear the particular case at issue fairly and impartially, the judge shall remove that individual from the panel. Such a determination may be made on motion of counsel or on the judge's own initiative.

3. Peremptory challenges. The number of and procedure for exercising peremptory challenges shall comply with Arizona law.

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D. Efficient Jury Management.

1. Administration of the jury system. The judicial department shall be solely responsible for administering the jury system in compliance with statute and this section.

2. Notification and summoning. The following procedures shall apply to notifying and summoning jurors:

a. The notice summoning a person to jury service and the questionnaire eliciting essential information regarding that person shall be phrased so as to be readily understood by an individual unfamiliar with the legal and jury systems.

b. A summons shall clearly explain how and when the recipient must respond and the consequences of a failure to respond. The summons shall also contain clear directions on where to report for service.

c. A summons shall clearly state the process for a prospective juror to seek excuse or postponement of their jury service.

d. The questionnaire shall be phrased and organized to facilitate quick and accurate screening, and should request only information essential for:

(1) Determining whether a person meets the criteria for eligibility;

(2) Providing basic background information ordinarily sought during voir dire examination; and

(3) Efficiently managing the jury system.

e. Written policies and procedures shall be established for monitoring failures to respond to summons and for taking appropriate action when failures occur.

3. Monitoring the jury system. Courts should collect and analyze information regarding the performance of the jury system on a regular basis in order to ensure:

a. The representativeness of the master jury list;

b. The inclusiveness of the master jury list;

c. The effectiveness of qualification and summoning procedures;

d. The responsiveness of individual citizens to jury service summonses;

e. The efficient utilization of jurors;

f. The cost effectiveness of the jury system; and

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g. The court's ability to meet jurors' needs.

4. Juror utilization. Courts should implement the following practices relating to the number of jurors summoned to the courthouse:

a. Courts should employ practices that achieve optimum juror utilization with a minimum of inconvenience to jurors.

b. Courts should determine the minimally sufficient number of jurors needed to accommodate trial activity. This information and appropriate management techniques should be used to adjust both the number of individuals summoned for jury service and the number assigned to jury panels.

c. Courts should coordinate jury management and calendar management for effective juror utilization.

5. Jury facilities. Courts shall provide an adequate and suitable environment for jurors where possible. This should include:

a. Safe, convenient and free parking;

b. Entrance and registration areas that are clearly identified and appropriately designed to accommodate the daily flow of prospective jurors to the courthouse;

c. A pleasant and safe waiting facility furnished with suitable amenities;

d. Safe and secure jury deliberation rooms with space, furnishings and facilities conducive to reaching a fair verdict; and

e. Juror facilities arranged to minimize contact between jurors, parties, counsel, and the public.

6. Juror compensation. Persons called for jury service shall be promptly compensated for fees and mileage pursuant to statute and local court policy. Every effort shall be made to compensate jurors within two weeks of termination of service.

E. Juror Performance and Deliberations.

1. Juror orientation and instruction. The following practices should be observed in orienting and instructing jurors:

a. Courts should provide some form of orientation or instructions to persons called for jury service at all the following points:

(1) Upon initial contact prior to service.

(2) Upon first appearance at the courthouse.

(3) Upon reporting to a courtroom for voir dire.

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- (4) Directly following empanelment.
- (5) During the trial.
- (6) Prior to deliberations.
- (7) After the verdict has been rendered or when a proceeding terminates without a verdict.

b. Orientation programs should be designed to increase prospective jurors' understanding of the judicial system and prepare them to serve competently as jurors and should be presented in a uniform and efficient manner using a combination of written, oral, electronic and audiovisual materials. Any orientation materials provided to jurors shall be consistent with this section and all applicable rules and statutes. Any handbook used to orient jurors shall be approved by the supreme court.

c. In instructing a jury, the judge should:

- (1) Give preliminary instructions directly following empanelment of the jury that explain the Jury's role, the trial procedures including note-taking and questioning by jurors, the nature of evidence and its evaluation, the issues to be addressed, and the basic relevant legal principles in the case at issue;
- (2) Prior to the commencement of deliberations, instruct the jury on the law, on the appropriate procedures to be followed during deliberations, and on the appropriate method for reporting the results of its deliberations. Such instructions should be recorded or reduced to writing and made available to the jurors during deliberations; and
- (3) Prepare and deliver instructions which are readily understood by individuals unfamiliar with the legal system.

d. Before dismissing a jury at the conclusion of the case, the judge should:

- (1) Release the jurors from their duty of confidentiality;
- (2) Explain their rights regarding inquiries from counsel, the media or any person;
- (3) Either advise them that they are discharged from service or specify where they must report; and
- (4) Express appreciation to the jurors for their service.

e. All communications between the judge and members of the jury panel from the time of reporting to the courtroom for voir dire until dismissal shall be in writing or on the record in open court. Counsel for each party shall be informed of such communication and given the opportunity to be heard.

2. Jury size and unanimity of verdict. In determining jury size and number of jurors required to return a verdict in criminal and civil cases, courts shall comply with Arizona law.

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3. Jury anonymity. When polling a jury at verdict, the judge and clerk shall not identify the individual jurors by name, but shall use such other methods or form of identification as may be appropriate to ensure an accurate record of the poll and to accommodate the jurors' privacy.

4. Jury deliberations. The following conditions and procedures should be observed to ensure impartiality and to enhance rational decision-making during jury deliberations.

a. The judge should instruct the jury concerning appropriate procedures to be followed during deliberations in accordance with subsection (E)(1)(c).

b. The deliberation room should conform to the recommendations set forth in subsection (D)(5)(d).

c. The jury should not be sequestered except under the circumstances and procedures set forth in subsection (E)(5).

d. A jury should not be required to deliberate after normal working hours unless the judge after consultation with counsel and the jury determines that evening or weekend deliberations would not impose an undue hardship upon the jurors and are required in the interests of justice.

e. Personnel who escort and assist jurors during deliberation should receive appropriate training.

5. Sequestration of jurors. The following practices should be observed in sequestering a jury:

a. A jury should be sequestered only for the purpose of insulating its members from improper information or influences.

b. The judge has the discretion to sequester a jury on the motion of counsel or on the judge's initiative. The judge also has the responsibility to oversee the conditions of sequestration.

c. Training should be provided to personnel who escort and assist jurors during sequestration. Use of personnel actively engaged in law enforcement for escorting and assisting jurors during sequestration is discouraged.

Adopted by Administrative Order number 2003-34, effective March 20, 2003. Amended by Administrative Order number 2003-96, effective October 22, 2003. Amended by Administrative Order number 2004-34, effective June 9, 2004.

7. Maricopa County Jury Summons and Questionnaire (2005). The same content is used for the second summons and for summons to the separate courts: Superior Courts, Municipal courts, and Justice courts.

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Phoenix Municipal Court Jury Summons

In the next 10 days: Complete, detach and return the Juror Affidavit Questionnaire.



Juror ID: 987654321



ALBERT EINSTEIN
123 ANY STREET
PHOENIX AZ 85000-1234

You have been summoned for jury service to the PHOENIX MUNICIPAL COURT CENTER



When You Must Appear: Sunday, DECEMBER 19, 2004

For reporting times and other instructions call (602) 534-9931 after 4:30 p.m. on the business day BEFORE your scheduled date.

Your Group Number is: 1000

Where You Must Appear: PHOENIX MUNICIPAL COURT CENTER
300 WEST WASHINGTON ST, PHOENIX, AZ 85003

Expect to stay until 5:00 p.m. Bring this Summons with you. If selected to serve on a jury, you will be required to serve until the trial is complete. Average trial length is 2 days. Free Parking is Available At: 305 West Washington (See Map). Jury Center staff will validate parking stubs or provide bus passes

*** IMPORTANT ***

Prospective jurors are required by law to complete both sides of the Juror Affidavit Questionnaire below. Detach, complete both sides, sign and return the questionnaire immediately upon receipt in the envelope provided.

Juror Affidavit Questionnaire

Fill in circle that applies: CORRECT MARK

ALBERT EINSTEIN
123 ANY STREET
PHOENIX AZ 85000-1234

200 DECEMBER 19, 2004
987654321

Qualifications (Fill in the circle below or visit the web site at www.superiorcourt.maricopa.gov/jury)

- I am qualified and will report on date scheduled.
Disabilities: Access to jury service is available to all individuals with a disability as required by the Americans with Disabilities Act.
I am not qualified because I am [select no more than one reason for disqualification.]
not a U.S. citizen
not a resident of the area served by the court
under 18 years of age
a convicted felon whose civil rights have not been restored

Postponement
A one time postponement will be granted for up to 90 days from your appearance date listed above.
To select a specific date for your jury service, go to www.superiorcourt.maricopa.gov/jury or call 602-372-5879, OR
I request a postponement for 60 days OR 90 days from the current appearance date listed above.

Excuse
This form explains the excuses from jury service now allowed under Arizona law (A.R.S. 21-202), and what information you need to provide the Office of the Jury Commissioner to be excused.
If jury service for one day is NOT a hardship, but serving on a long trial would be a hardship, you will be able to explain your situation to a judge when you appear on your day of service.
I request to be excused from jury service because:

Age
I am seventy-five years of age or older and request to be:
Excused from this summons only. Permanently excused from this and any future Jury Service in an Arizona court.

Financial Hardship
If I have to attend jury service for even one day it will have a substantial adverse impact on my ability to pay my necessary daily living expenses.
If I have to attend jury service at least one day it will have a substantial adverse impact on the ability of my employees to pay their necessary daily living expenses.

Medical/Physical Hardship
I am unfit for jury service due to a mental and/or physical condition.
I would suffer physical hardship that would cause an illness or disease.

Internal use only
A B C D

987654321

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Trial Juror Information

Arizona is a "one day, one trial" state regarding jury service. This means that you are only required to participate at a courthouse for one day if you are not part of a trial selection process, or for the length of one trial. Most jurors who come to a courthouse are done with their service at the end of their first day. It is for this reason that excuses are only considered when the juror is unable to serve one day. If you can serve for one day, but have concerns about serving for multiple days, you will have a chance to explain your situation to a judge the day you appear for service.

If your reason for excuse does not match any options listed, or you fail to provide the necessary documentation, Arizona law prevents the Office of the Jury Commissioner from excusing you from jury service. You will receive written notification by mail regarding your request. If you do not receive written notification before your scheduled date for jury service, you must appear in person for service. Failure to appear for jury service can result in a fine of up to \$500 under Arizona law.

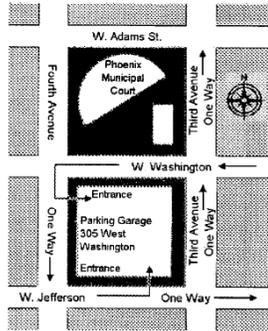
Parking: Free validated parking is available only in the parking garage located at 305 West Washington Street, directly south of the Court building. When you enter the parking garage, you will receive a parking stub. Bring the parking stub to the Jury Center for validation. In order to receive free parking, give the validated stub to the parking attendant upon exiting the garage. The Jury Coordinator cannot validate parking for any other parking garage or lot.

Security: Phoenix Municipal Court values the safety of its customers and staff. Weapons of any kind are strictly prohibited, and no article that could be used in a harmful manner can be carried into the Court. You will be subjected to security screening, a process which is very similar to airline passenger screening. Prohibited items include: tools, scissors, straight razors, knives, mace, pepper spray, etc.

High Profile Vehicles: If your vehicle is more than 7 feet in height, please call 602-495-6777 after 6:30 a.m. on the day of your jury service for special parking instructions.

Absence from Employment: By law, an employer shall not refuse to permit an employee to take a leave of absence from employment for the purpose of serving as a juror, or dismiss an employee because of jury service. However, an employer is not required by law to pay an employee their regular salary or wage when absent due to jury service.

Information: Call 602-534-9931 for recorded information, or visit www.phoenix.gov/JURY for more information. (web address is case sensitive)



ALBERT EINSTEIN
123 ANY STREET
PHOENIX, AZ 85000-1234

Page 2

200 987654321
DECEMBER 19, 2004



Caregiver for an Adult or Child

It is impossible for me to get appropriate substitute care FOR ONE DAY for someone who is under my care. (You MUST attach a written statement explaining why you are responsible for the care of this person. If the care is required by court order, you must attach a copy of that order to this request. You must also explain why you cannot get someone else to care for that person.)

Language

I am not currently capable of understanding English. To confirm this, my daytime contact phone number is: _____ (Jury Office staff will contact you at that number to verify your inability to understand English. If staff cannot reach you by phone, your request will be denied.)

Peace Officer

I am employed as a peace officer by the state of Arizona or a political subdivision, and am certified by the Arizona Peace Officer Standards and Training board. (You MUST attach a written statement on the letterhead of your employer verifying your eligibility for this excuse under A.R.S. 21-202(B)(4), and have it signed by a management representative of your employer.)

Public Interest and/or Public Welfare

My service would substantially and materially affect the public interest or welfare in an adverse manner. (You MUST attach a written statement from your employer, or yourself if you are self-employed, explaining how the public interest or welfare is adversely affected by your jury service.)

Active Military

I am a member of the National Guard and currently on active duty. (You MUST attach a written statement from your commanding officer verifying that you are a member of the National Guard and currently on active duty status.)

I am a member of the U.S. Armed Forces on active duty and currently deployed outside of Arizona. (You MUST attach a written statement from your commanding officer verifying that you are a member of the U.S. Armed Forces on active duty and currently deployed outside of Arizona.)

Previous Jury Service

I have served as a sworn juror on a case in a court in Arizona within the last two years. (You MUST attach a copy of the verification form you received from the court where you served.)

To assist in ensuring that all people are represented on juries, please fill in completely one or more circles which describe you. Nothing disclosed will affect your selection for jury service.

Race/Ethnicity/Gender

Black/African American Asian American Indian/Alaska Native

White Native Hawaiian/Pacific Islander

Other (specify) _____

Are you Hispanic or Latino? Yes No

Male Female

CHANGE OF INFORMATION ON SUMMONS

Name Change:

Address Change:

PERSONAL DATA

Home Phone: () _____ Date of Birth: _____

Work Phone: () _____ Occupation: _____

I certify under penalty of perjury the forgoing is true and correct:

Signature: _____ Date: _____

