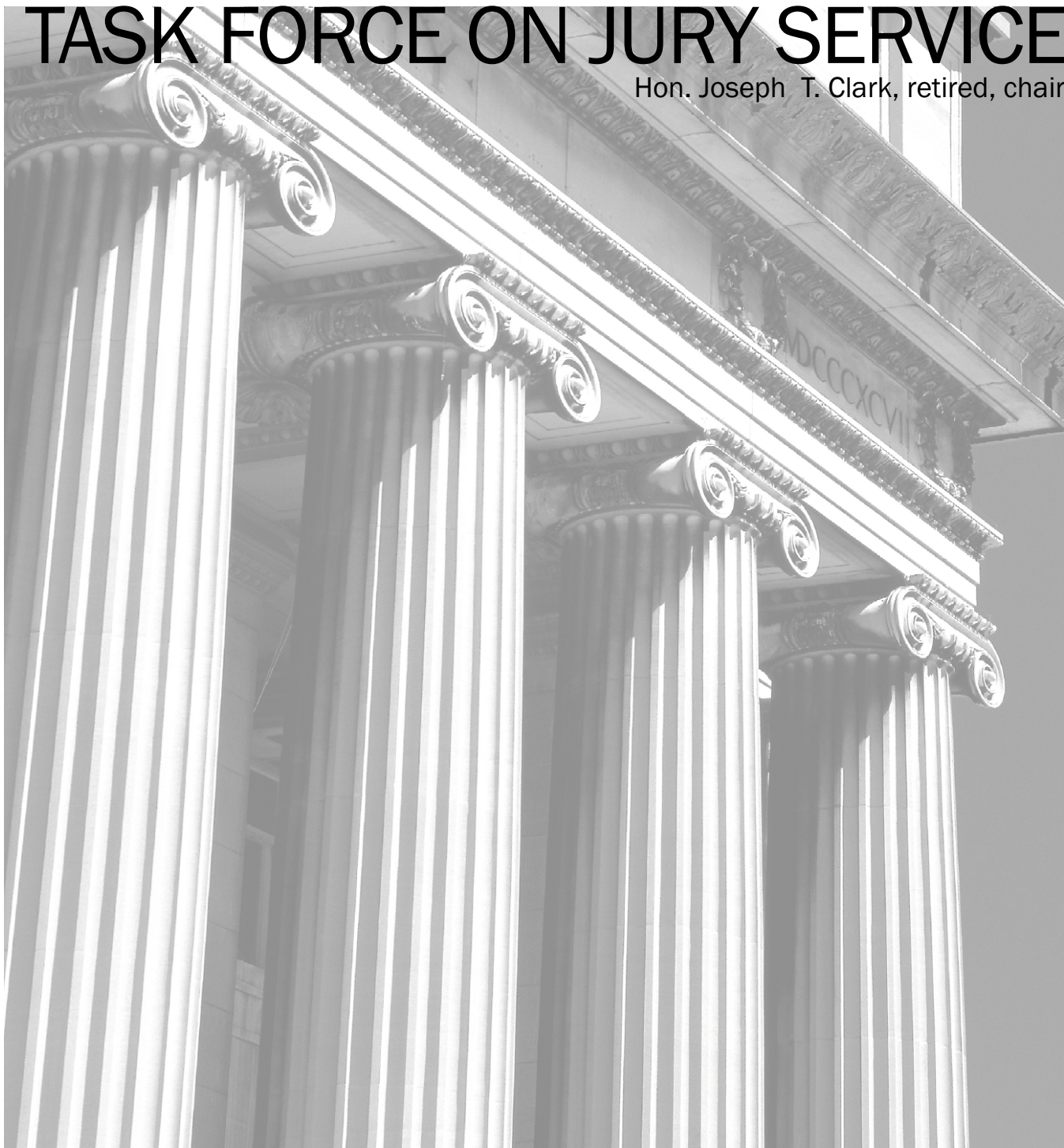




REPORT and RECOMMENDATIONS
of the Supreme Court of Ohio

TASK FORCE ON JURY SERVICE

Hon. Joseph T. Clark, retired, chair



February 2004

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THE SUPREME COURT TASK FORCE ON JURY SERVICE

Judge Joseph T. Clark (ret.), Chair
Fairfield County Common Pleas Judge
Lancaster

Jean Atkin
Court Administrator, Lucas County Common Pleas Court
Toledo

Herb Cook, Jr.
Editor, Columbus CEO Magazine
Columbus

David Doughten, *Esq.*
Doughten & Smith
Cleveland

Jeri Grier
Vice President, Huntington BancShares
Columbus

Judge James D. Jensen
Lucas County Common Pleas Court
Toledo

Gerald R. Kowalski, *Esq.*
Cooper & Walinski, LPA
Toledo

Thomas A. McCarthy
Union County Commissioner
Marysville

Charles M. Murray, *Esq.*
Murray & Murray LPA
Sandusky

Molly O'Brien, *Esq.*
Associate Professor of Law
University of Akron School of Law
Akron

Cindy Pike
Darke County Clerk of Courts
Greenville

Judge Steve Shuff
Seneca County Common Pleas Court
Tiffin

Elizabeth Stephenson
Court Administrator, Tuscarawas County
Common Pleas Court, General Trial Division
New Philadelphia

Judge Susan Anderson
Clark County Municipal Court
Springfield

Rosanne M. Buell
Clerk, Marietta Municipal Court
Marietta

Charles Coulson
Lake County Prosecuting Attorney
Painesville

Renee S. Filiatraut, *Esq.*
Thompson Hine LLP
Cincinnati

William A. Henry, Jr.
Former Juror
Pickerington

Joreece K. Kee
Former Juror
Columbus

Judge Charles F. Kurfess (ret.)
Common Pleas Judge
Perrysburg

Keith Mitchell, *Esq.*
Law Office of Keith Mitchell
Toledo

Dr. David Naylor
Professor of Education
University of Cincinnati
Cincinnati

Judge Jeff Payton
Mansfield Municipal Court
Mansfield

Tom Shields
Jury Commissioner, Franklin County
Municipal Court
Columbus

Patricia Snyder, *Esq.*
Cleveland

Staff Liaisons
Jo Ellen Cline, *Esq.*
Supreme Court of Ohio

Richard A. Dove, *Esq.*
Supreme Court of Ohio

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OVERVIEW OF RECOMMENDATIONS

TRIAL PRACTICE

The Task Force on Jury Service considered improvements to make the judicial process comprehensible to jurors thereby creating a more satisfactory jury experience. The Task Force had volunteer judges participate in pilot projects to test innovative practices in the courtroom and surveyed all courtroom participants, including judges, attorneys and jurors. The Task Force concludes that implementation of trial innovations will improve juror comprehension and satisfaction and will enhance the quality of justice. Therefore, The Task Force strongly recommends that the following jury procedures be implemented and that the other steps described below be taken.

- Jurors are entitled to a brief statement of the case by the court or counsel prior to the beginning of voir dire and also interim summaries by counsel as the case proceeds, especially in lengthy, complex litigation.
- Courts are encouraged to try alternative methods of jury selection and also encourage judicial education on various selection alternatives.
- Jurors are entitled to understand the proceedings in the courtroom and “plain English” should be used at trial and in jury instructions.
- Jurors are entitled to be provided a copy of written instructions, including any preliminary instructions and final instructions. Rule of Civil Procedure 51 should be amended to reflect that a court shall reduce its instructions to writing and provide the written instructions to the jury. The rule also should be amended to include “the legal claims and defenses of the parties” in the list of instructions the court may give at the commencement of trial.

- Jurors are entitled to receive preliminary instructions on some aspects of the law and procedure prior to the taking of evidence in a case.
- Jurors are entitled to take notes during trial with appropriate instructions from the court that note taking should not interfere with the trial process. The Supreme Court of Ohio should promulgate a rule allowing jurors to take their notes into the deliberation room.
- Jurors are entitled to ask questions of witnesses unless the court, in its discretion, finds in a specific case that the process will not contribute to the search for truth.
- Jurors are entitled to be provided notebooks for collating admitted evidence in lengthy, complex cases or where it will enhance a juror's comprehension of the evidence.
- Jurors should be instructed on the substantive law prior to the attorneys' closing arguments.
- Ohio Revised Code section 2945.29 should be repealed and Rule of Criminal Procedure 24(F) be amended to allow an alternate juror to substitute after the case has been submitted to the jury, if one of the deliberating jurors, for any reason, is unable to continue to perform the juror's duties.
- Jurors are entitled to be given suggestions regarding the procedures they can follow in conducting deliberations.
- Jurors are entitled to ask questions about the court's instructions.
- Jurors shall have the opportunity to meet with the judge and the trial attorneys after the jury is discharged, unless it is determined that such a meeting would not be in the interests of justice.
- Counseling services should be made available to jurors after especially stressful trials.
- Ohio Revised Code Sections 2939.06 and 2945.28 should be revised to simplify the oath for grand jurors and petit jurors.
- Ohio Revised Code Section 2939.07 should be amended to provide grand jurors, in writing, the elements of each crime the grand jury may be considering while hearing the evidence on each case and during deliberations.

- The Ohio Revised Code should be amended to remove inconsistent language and repeal those sections dealing with jury trial procedural matters that have been superceded by an applicable criminal or civil rule or Rule of Superintendence.
- Rule of Civil Procedure 47(B) and Rule of Criminal Procedure 24(D) should be amended to make clear that, if an attorney waives a peremptory challenge, subsequent peremptory challenges are preserved.

JURY ADMINISTRATION

The Task Force also considered enhancements to the juror's experience outside the courtroom. These recommendations cover a broad range of topics, including juror comfort, convenience, compensation, selection and education. These recommendations are designed to improve prospective juror response to a jury summons and providing the best possible experience while they fulfill their civic duty. The Task Force strongly recommends the following:

- The out-of-pocket expenses incurred by jurors for their service should be eliminated.
- The Supreme Court of Ohio should be allocated funds under the state budget process for distribution to all counties for the purpose of defraying the costs of jury service.
 - Courts should provide free parking or pay for the cost of parking. In addition, courts should arrange for a bus pass or tokens for use by jurors during the time of their jury service. In the alternative, the court should arrange for a reduced fare during the time of jury service. Courts should include Park and Ride information with the jury summons and, if applicable, on the jury commission web site.
 - The court should provide refreshments for jurors.
 - Current Ohio law regarding the compensation of jurors should be retained but employers should be strongly encouraged to permit jurors to keep the fee paid to them by the court in addition to receiving their regular wage while serving as jurors. A state tax credit for employers who continue the regular compensation of employees is suggested.

- A critical review should be done by each court of their system and the identification of possible steps to reduce the amount of “down time” experienced by jurors.
- Courts should be strongly encouraged to adopt the shortest term of jury service possible. However, it is important that each jurisdiction have the flexibility to determine what time period is appropriate.
- Courts should make every effort to provide appropriate waiting facilities and amenities for jurors, paying particular attention to those individuals who are serving as seated trial jurors.
- Courts should be sensitive to the concerns jurors may have regarding the disclosure of personal information in open court.
- In order to monitor and improve the representativeness of the jury panel, courts should be required to maintain data to allow the statistical evaluation of the jury system. Funding should be provided by the General Assembly to the Supreme Court of Ohio to engage the services of a professional statistician to develop the data collection tools and to analyze the data once it is collected.
- Courts should be required to collect demographic information about jurors on a periodic basis. The General Assembly should provide funding to the Supreme Court of Ohio for a professional statistician to develop the data tools and analyze the data.
- Courts should utilize a combined list of registered voters and licensed drivers for the purposes of juror selection. Strict standards for both voter registration and the licensing of drivers should be established.
- Pursuant to a legislative change and a local rule adopted by the court, Jury Commissions should be permitted to develop a procedure by which persons may volunteer.
- Courts should take the steps necessary to eliminate all barriers to jury service.
- There should be an analysis of what government entities are involved in the restoration of rights and how those entities can promote knowledge of the process of restoring rights.
- Public education regarding jury service should be coordinated state-wide by one court or association, with cooperation from others.

- Generic public service announcements (PSAs) regarding jury service should be produced for statewide dissemination.
- Poster/Billboard campaigns should be organized around the same theme or slogan as the PSAs.
- A jury service video should be professionally produced and geared for the average citizen who knows little about jury service.
- A jury service week should be organized which would highlight jury service during one week per year.
- A jury service brochure should be developed or utilized to educate prospective jurors post-summons but before they report for jury duty.
- A jury information web site should be maintained with basic jury information for the public as well as schools, and links to local court websites.
- Develop a “Teachers’ Tool Kit” which teachers could use to introduce the topic of jury duty to students of all ages.

CONCLUSION

The Task Force on Jury Service believes that the implementation of these recommendations will encourage citizens to participate in jury service and thereby will enhance the quality of justice in the state of Ohio.

INTRODUCTION

In July 2002 Chief Justice Thomas Moyer appointed a 25-member task force to study and recommend innovative reforms to Ohio's jury system. The panel included judges, attorneys, court administrators, clerks of court and former jurors. In announcing the formation of the Task Force, the Chief Justice remarked that "...when people are inspired to accept jury service as a mark of good citizenship, they will serve. And they will serve enthusiastically." Task Force members were charged with considering issues including how to encourage more citizens to respond to jury summons, helping jurors understand complex cases and developing an efficient jury system that respects jurors' time and dignity.

The Task Force considered itself an independent body. The members of the group understood that, without rule-making or legislative authority, it could only make recommendations to the Supreme Court of Ohio. It would then be left to the discretion of the Court whether and how to implement any of the recommendations and whether to recommend to the General Assembly any of the reforms requiring legislative changes. The Task Force met bimonthly over an 18-month period to allow the subcommittees an opportunity to report on its findings and discuss possible recommendations. During this time, the Task Force also worked with members of the Ohio General Assembly on legislation introduced in 2003 regarding reform of the Ohio jury system.

As the Task Force began meeting it defined its mission as:

to study and evaluate the jury system and make recommendations to broaden citizen participation, improve the trial process, enhance the quality of justice, and promote greater public confidence in the Ohio jury system.

In furtherance of this mission the Task Force split into two subcommittees: Trial Practice and Jury Administration. The Trial Practice Subcommittee was charged with studying and recommending enhancements for jurors inside the courtroom. The subcommittee used initial surveys to determine what practices are currently in use in Ohio courts and subsequently engaged volunteer judges to participate in pilot projects testing innovative courtroom practices to enhance jurors' understanding of cases and their satisfaction with service.

The Jury Administration Subcommittee took responsibility for studying and recommending improvements for jurors outside the courtroom. Issues considered by this subcommittee included juror comfort, compensation, selection and education. The subcommittee studied initial results of a survey on jury administration conducted by the Task Force, other surveys conducted by the subcommittee and existing research on jury administration.

Each subcommittee made specific recommendations and developed definite proposals to implement those recommendations. The Task Force considered and approved the subcommittee reports and authorized the preparation of a final report. The Task Force is aware that not all of its recommendations will be welcomed by all parties interested in jury service. The Task Force believes, however, that the recommended actions are the most effective means of enhancing the jury system for both jurors and the judiciary while ensuring fair and just results for all litigants. The findings and recommendations of the Task Force on Jury Service are outlined below.

TRIAL PRACTICE

INNOVATIVE TRIAL PRACTICES TO ENHANCE JURY SERVICE

Pilot Projects

In April 2003 the Supreme Court Task Force on Jury Service began conducting pilot projects testing innovative practices to aid juror comprehension and satisfaction in serving on a jury in Ohio. The project was modeled, in some respects, on a similar study conducted in Massachusetts in conjunction with the National Center for Citizen Participation in the Administration of Justice and the Flaschner Judicial Institute. The Massachusetts project took place over a year-long period beginning in 1997. Twenty-four judges testing 16 specific reform practices participated in the Massachusetts project.

The Ohio pilot projects were conducted over a shorter period of time, with a larger group of participating judges. The study took place from early April until mid-November 2003. Judges from across the state volunteered to take part in the project, although some of those did not have a jury trial during the project time period. Courts participating in the pilot project included municipal, county and common pleas courts, in large, medium and small jurisdictions. A listing of participating judges and their courts is attached as Appendix A.

The judges tested up to 13 innovations, using those that were appropriate in the particular trial setting. After each trial, participating judges were asked to complete questionnaires and have jurors and attorneys complete separate questionnaires to gauge the usefulness of each innovation. A total of 1,855 questionnaires were completed and analyzed, including 146 judicial questionnaires, 289 attorney questionnaires and 1,420 juror questionnaires.

The Task Force engaged Dr. James Frank of the University of Cincinnati to collate and analyze the questionnaires. A copy of his analysis is attached to this report as Appendix

B. This analysis shows that, in general, each of the innovations tested was well received by jurors, judges and, to a slightly lesser extent, attorneys.

The thirteen innovations tested during the pilot projects included:

- Mini-opening statements and interim commentary
- Utilizing a “strike” method in voir dire
- Using “plain English” jury instructions
- Providing jurors with written copies of instructions
- Giving preliminary instructions to the jury
- Juror note taking
- Giving jury instructions prior to closing arguments
- Giving jurors suggestions as to how to proceed in deliberations
- Permitting jurors to ask questions about final instructions
- Debriefing jurors after stressful trials
- Juror questions to witnesses

Mini-Opening Statements and Interim Commentary

The Task Force recommends that jurors are entitled to a brief statement of the case by the court or counsel before voir dire begins and interim summaries by counsel as the case proceeds, especially in lengthy, complex litigation. Although originally not intended to take the place of opening statements, some judges in the pilot project allowed attorneys to make full opening statements prior to voir dire. This process was not disruptive and did not garner complaints from the attorneys involved; however, the Task Force makes no recommendation as to whether a court should use a mini-opening statement or allow full openings prior to voir dire.

This innovation can help the jury selection process run smoothly and, as such, increase the satisfaction of jurors. The mini-opening statements are meant to help prospective jurors understand why particular questions are being asked during voir dire, especially questions which could make potential jurors uncomfortable. Having some basic knowledge about the case and the parties involved help the jurors feel more comfortable,

allows jurors to recognize personal bias and promotes candid responses to questions during voir dire. More than 60 percent of judges and 40 percent of attorneys participating in the pilot project thought that the mini-opening statements had a beneficial effect during voir dire.

Alternative Methods of Examining Jurors

Traditionally, a group of prospective jurors are placed in the jury box, the judge and attorneys question them and then the prospective jurors are excused for cause or by peremptory challenge. After the juror is excused, another juror from the pool is put in his or her place and the process begins again until all challenges have been exhausted. This process is both time consuming and inefficient.

During the pilot projects, judges were asked to use an alternative method of voir dire known as the “strike” method. In the “strike” method used by the pilot project judges, the court and attorneys pose questions to all of the jurors in the pool without indicating their order of call and then, out of the hearing of the jury - either at sidebar or in chambers – the attorneys exercise their challenges. This method is intended to expedite jury selection and decrease juror embarrassment about being excused from service because of an answer they provided during voir dire. Jurors report, anecdotally, that the “strike” method causes them to feel less embarrassed when they are excused. On the other hand, some jurors report that they feel as though the court and counsel are “talking about them behind their back” when they go to sidebar or into chambers.

Because of the divergent opinions on this issue, the Task Force makes no recommendation as to a specific form of jury selection but encourages courts to try alternative methods of selection and also encourages judicial education on various alternatives, including the

“strike” method. Courts may find that an alternative method of jury selection leads to a more satisfied jury and a more efficient process.

The Task Force also recommends that rules dealing with the selection of alternate jurors be adjusted to allow judges to use other methods in picking the alternate jurors and using peremptory challenges on alternate jurors so as to conceal from the jury the identity of the actual alternate juror until the time for deliberation. The manner of selecting the alternate jurors should be agreed to by the parties and the court.

Using “plain English”

The Task Force recommends that jurors are entitled to understand the proceedings in the courtroom and that “plain English” should be used at trial. The Task Force also recommends that jury instructions be understandable and rewritten into “plain English”. The Task Force recommends that the Ohio Jury Instructions and other appropriate instructions be continuously reviewed and revised to institute the use of “plain English”.

Although only a small percentage of jurors in the survey indicated difficulty with the language used at trial, a larger portion claimed to have difficulty understanding the “legal terms” and attorneys’ opening and closing arguments. In addition, the Task Force believes that juror satisfaction and effectiveness will increase if jurors better understand the proceedings in which they are participating. Jurors also tend to feel more confident in their verdict if they understand the language used in the trial. For these reasons, the Task Force recommends avoiding “legalese” in communications in the courtroom and replacing, or at least explaining, terms that are unfamiliar to those outside the judicial arena.

Jurors responding to the Task Force questionnaires indicated that they did not have difficulty understanding the court's instructions on the law; however, anecdotal evidence supports the idea that the use of "legalese" is often confusing to jurors. The jurors in the Task Force survey were also helped by more than 60 percent of judges who changed the instructions they gave into "plain English." The fear among many judges is that, if they change the common jury instructions into "plain English", the court of appeals will overturn their decisions. It is important, therefore, that the Ohio Jury Instructions regularly be updated to incorporate "plain English".

The Task Force believes that greater attention to the overall structure of jury instructions will help eliminate redundancies, inconsistencies and omissions. In addition, instructions that are easier to comprehend will facilitate more efficient and effective deliberations.

Written Instructions

The Task Force recommends that jurors are entitled to written instructions, including any preliminary instructions and final instructions. More than 93 percent of judges participating in the pilot projects provided written instructions to individual jurors. Most jurors indicated that they were able to understand the judge's instructions. The Task Force believes that providing written instructions to the jurors enhances this comprehension level.

Providing written instruction increases comprehension and reduces questions from the jury during the deliberative process. More than 50 percent of the jurors participating in the pilots indicated that they did not submit any questions to the court during deliberations, and 85 percent indicated that there was nothing more the court could have done to lessen juror conflict during deliberations. Written instructions can also help structure the deliberative process and increase juror confidence in their verdict. Jurors report that following the written instructions like a blueprint allowed them to conduct efficient deliberations.

The Task Force is sympathetic to the concerns of some courts that providing written instructions to each juror is either costly, time consuming or both. The Task Force recommends that each individual juror be given a copy of written instructions but, in the event of budgetary constraints, one copy of written instructions be provided to the jury to use during the deliberation process.

The Task Force recommends that Rule of Civil Procedure 51 be amended to require a court to reduce its instructions to writing and provide the written instructions to the jury. The Task Force also recommends that section (B) of the rule be amended to include “the legal claims and defenses of the parties” in the list of instructions the court may give at the commencement of trial. The Task Force believes these amendments will clarify the importance of providing written instructions to the jury.

Preliminary Jury Instructions

The Task Force recommends that jurors are entitled to receive preliminary instructions on some aspects of the law and procedure prior to the taking of evidence in a case. Consistent with the previous recommendation, these instructions should be provided to the jury in writing. Fundamentally these instructions should include an introduction of the parties and their claims, guidance on the governing legal principles and information on the role of the jury.

Preliminary instructions enhance the jurors’ ability to remember information that is presented at trial and evaluate that evidence more carefully. In addition, it helps put the jurors at ease as the case begins. Jury service is generally a stressful experience for citizens as it is an unfamiliar process to them; adding preliminary instructions to help the

jurors feel at ease will make them more relaxed and better able to perform their duties appropriately.

Juror Note taking

The Task Force recommends that jurors are entitled to take notes during trial with appropriate instructions from the court that note taking should not interfere with the trial process. It is the opinion of the Task Force that allowing jurors to take notes during trial promotes the fact-finding process and aids in juror comprehension. In addition, analysis from the pilot project questionnaires shows that jurors, judges and attorneys are uniformly supportive of this practice.

In a presentation by Bonnie Kantor, director of the Office of Geriatrics and Gerontology at the Ohio State University, the Task Force learned that employing multiple sensory experiences helps activate learning. Allowing jurors to take notes allows them not only to listen to the evidence presented, but to also write it down. This move away from passivity enhances a juror's comprehension of the evidence and his or her ability to remember key elements of the trial. Note taking also will encourage more active participation in jury deliberations. Jurors will be able to reconstruct the evidence presented more efficiently which will lead to a more thorough discussion of the issues in the case.

The common objection to allowing jurors to take notes in trial is that the juror might miss evidence, including the expressions and demeanor of a witness, being presented while taking notes. This concern is why the Task Force believes it is important for the court to properly instruct the jury that they are to listen to the evidence and take notes only if they believe it will be beneficial to them. Many judges participating in the pilot project instructed jurors to make notes only when there was a break in testimony. (e.g., while judge and attorneys are busy at sidebar).

In accordance with this recommendation, the Task Force recommends that the Supreme Court of Ohio promulgate a rule allowing jurors to take their notes into the deliberation room. This change is, in the view of the Task Force, necessary to ensure that jurors have these important papers with them as they determine their verdict.

Jurors Submitting Questions to Witnesses

“The hallmark of the American trial is the pursuit of truth. Such truth—and, in the end, justice—is attainable only if counsel successfully communicates evidence to the jury. History has nonetheless relegated the jury to a passive role that dictates a one-way communication system—a system that, in its traditional form, is not amenable to resolving juror confusion.” (State v. Fisher (2003), 99 Ohio St.3d 127, 2003-Ohio-2761 ¶19.)

The Task Force recommends that jurors shall be given the right to ask questions of witnesses, unless the court, in its discretion, finds in a specific case that the process will not contribute to the search for truth.

Some attorneys and judges have expressed hesitancy in using this innovation due to several concerns. Attorneys believe that allowing jurors to submit questions to a witness will be detrimental to their trial strategy. Attorneys who have expressly not asked a specific question may find that question posed by a juror. Both trial counsel and judges fear that allowing jurors to ask questions is inconsistent with the role of the juror as an impartial fact-finder and potentially places the juror in the role of an advocate. Finally, judges express concern that allowing jurors to submit questions to the witnesses will lengthen the time it takes to complete a trial. The Task Force acknowledges these concerns, but believes that

the essential nature of the process and the function of the jury are to seek the truth and that this function would be significantly enhanced if, under limited circumstances, jurors were allowed to submit written questions.

Allowing jurors to ask questions of the witnesses increases the likelihood that the jurors will understand witness testimony. Submitting questions keeps the jury engaged in the trial proceedings, enhancing juror satisfaction with the process. Juror questions can also point out to the judge or attorneys that the jurors have misunderstood the evidence or testimony, giving them the opportunity to correct that misunderstanding through further testimony or other means.

According to the pilot project survey analysis, juries submitted fewer than three questions per trial witness. Judges participating in the pilot project did not believe that the ability to submit questions negatively impacted the trial process. More than 81 percent of judges disagreed with the idea that questions influenced the role of the jury. In addition, a majority of attorneys who participated in the surveys said that juror questions did not interfere with the presentation of their case. Jurors were overwhelmingly supportive of the practice, indicating that being allowed to submit questions helped them remain attentive and aided in rendering a decision.

The Task Force believes that the process for allowing jurors to submit questions is extremely important in ensuring that the practice is fairly managed and procedurally sound. In State v. Fisher (2003), 99 Ohio St.3d 127, 2003-Ohio-2761, the Supreme Court of Ohio set forth a procedure to be followed in allowing jurors to submit questions to witnesses. The Task Force believes this procedure should be incorporated into rules of practice and followed in all instances where jurors submit questions to the witnesses.

Juror Notebooks

The Task Force recommends that jurors are entitled to be provided notebooks for collating admitted evidence in lengthy, complex cases or where it will enhance a juror's comprehension of the evidence.

Overwhelmingly, jurors participating in the pilot project said that notebooks and access to key exhibits were beneficial in the trial process. In addition, judges and attorneys were both supportive of the practice. The use of juror notebooks can help a juror organize and remember large amounts of information in complex and lengthy trials. Notebooks can also be used to hold copies of preliminary jury instructions and final instructions, in an effort to keep the juror organized. Jurors report that the organization factor leads to less stress about serving on the jury and a more satisfactory experience.

The Task Force believes that notebooks should not contain any exhibits or evidence prior to their introduction and acceptance by the court. The Task Force understands that notebooks can be an added responsibility, both in terms of time and finances, but believes that not every case a court hears would be appropriate for the use of a notebook. Finally the Task Force again recommends that the court give appropriate instructions as to how the notebooks should be utilized by jurors and jurors should listen to the evidence carefully as it is presented in court.

Jury Instructions Prior to Closing Arguments

The Task Force recommends that jurors should be instructed on the substantive law prior to the attorneys' closing arguments. Allowing the attorneys to make closing arguments after the final substantive instructions have been given makes the argument more meaningful and may improve jurors' recollection of the evidence. In addition, attorneys

can tailor their closing arguments to the jury instructions to help better guide the jury in applying the instructions to the facts of the case.

Of all the innovations tested during the pilot projects, having judges instruct the jurors prior to closing arguments was the most well received, especially by attorneys. More than 60 percent of attorneys believe that giving final instructions prior to closing arguments is beneficial to jurors. Jurors in the pilot project reported that they were able to easily understand both the court's instructions and the attorney's closing arguments. Any difficulties jurors encountered were usually caused by the use of "legal terms" in the instructions and arguments.

The Task Force also recommends that the court have the last word to the jury and, therefore, should give procedural instructions after the attorney's have made their closing arguments. These instructions would include suggestions on deliberation procedures and how to submit questions to the court during deliberations.

The Task Force recommends that Ohio Revised Code section 2945.29 be repealed and Rule of Criminal Procedure 24(F) be amended to allow an alternate juror to substitute after the case has been submitted to the jury, if one of the deliberating jurors, for any reason, is unable to continue to perform the juror's duties. Under current law, alternate jurors are discharged when the jury retires to consider its verdict. By repealing the statute and amending the rule to allow alternate jurors to remain available, a court would not need to declare a mistrial and begin the process again. The alternate juror simply could be substituted in for the duration of deliberations with the instruction that once the alternate joins the deliberations, consideration of the case by the jury should begin anew.

Suggestions on Deliberation Procedure

The Task Force recommends that jurors are entitled to be given suggestions regarding the procedures they can follow in conducting deliberations. These suggestions would include, but not be limited to, how to choose a foreperson, recommending that the jurors consider one charge at a time in a multiple count indictment and allowing all jurors to present their opinions prior to taking a vote. Suggestions on deliberations would aid jurors in organizing the process and lead to a more efficient deliberative process.

The more information jurors have, the more satisfactory the experience is for them. More than 80 percent of jurors in the pilot project believed that suggestions on the deliberation procedure were helpful. Suggestions made by the pilot project judges included how to select a foreperson, how to handle disagreements or deadlock and the process to vote on the verdict. When judges failed to give suggestions, a majority of juror respondents indicated that such suggestions would have been useful. Providing jurors with these simple suggestions makes them more comfortable with the process and increases their positive feelings about serving.

Responding to Juror Questions Regarding Instructions

The Task Force recommends that jurors are entitled to ask questions about the court's instructions. Jurors are more satisfied with their service if they are free to communicate with the judge for supplemental instructions to aid in their deliberations if they find the original instructions confusing or inadequate. Of the jurors that participated in the pilot project, more than 80 percent of them felt well informed about the procedure to ask a question of the court during deliberations.

It is imperative that the court carefully screen and review any juror questions with counsel. This will eliminate the possibility of appellate issues arising out of the court's

response to a juror question. In addition, by reviewing the questions and answers with the attorneys, the court can ensure that any supplemental instructions are clear, accurate and nonprejudicial.

Post-Verdict Meetings with Jurors, Judges and Attorneys

The Task Force recommends that jurors shall be given the opportunity to meet with the judge and the trial attorneys after the jury is discharged, unless it is determined that such a meeting would not be in the interests of justice. Cases where such meetings would be inappropriate might include a case where the judge knows that a motion for new trial is going to be filed. These informal meetings provide a sense of closure to the jury experience and allow the jury to ask questions about the trial process. It is paramount for judges and attorneys to ensure that, during any discussions with the jury post-verdict, there is no comment on the jury's decision or violation of the ethical boundaries of their positions.

These meetings also would provide an opportunity for the judge to thank jurors for their service and acknowledge the importance of the work they have done. Jurors in the pilot project indicated that they were offered the opportunity to meet with the judge, a majority took advantage of the opportunity to do so, and more than 90 percent thought it was helpful to them. Judges also thought that the post-verdict meetings were beneficial. This innovation provides jurors with an opportunity to learn more about the judicial system and provides the court with vital feedback.

Debriefing Jurors after Stressful Trials

The Task Force recommends counseling services be made available to jurors after especially stressful trials. This innovation would be particularly useful to help jurors

handle post-service stress in cases where the evidence was especially gruesome, the trial garners a significant amount of media attention or the jurors' service requires extraordinary measures, such as sequestration.

The Task Force is well aware that there are fiscal implications to providing these counseling services to jurors. In some courts, counselors and psychologists have volunteered their services for these "debriefing" sessions. Courts should investigate the availability of professionals in their community willing to donate services on an as-needed basis. The Task Force does not foresee there being a constant need for these services; however, it has been suggested that information consistently be made available to jurors about counseling services in the community to help deal with stress, even in trials where the court does not provide those services.

STATUTES AND RULES

Grand Jurors

When the Task Force on Jury Service began its research and discussion of issues related to jury service, the decision was made to focus on the petit juries as opposed to grand juries. The Task Force did, however, review some of the statutes and rules that pertain to grand jurors and saw a need for changes to improve their service.

First, Ohio Revised Code sections 2939.06 and 2945.28 should be revised to simplify the oath for grand and petit jurors. The Task Force is aware that some revision of the grand juror oath has been pursued by the General Assembly; however, it was the opinion of the Task Force that the oath is still archaic and needs further revision.

In addition, the Task Force recommends that Ohio Revised Code section 2939.07 be amended to provide grand jurors, in writing, the elements of each crime the grand jury

may be considering while hearing the evidence on each case and during deliberations. This would assist the grand jurors in understanding the applicable law in each case. Although the Task Force did not specifically focus on grand jurors, the recommendations contained in this report, to the extent possible, should also extend to their service.

Miscellaneous Statutes and Rules

The Task Force recommends that the General Assembly be requested to amend the Ohio Revised Code to remove inconsistent language and repeal those sections dealing with jury trial procedural matters that have been superceded by an applicable criminal or civil rule or a Rule of Superintendence. These sections of the Ohio Revised Code are superfluous and should be repealed in deference to the authority of the judicial branch, which has the constitutional authority to promulgate rules that encompass procedural matters in the courts. A listing of these sections is attached to this report as Appendix C.

The Task Force also recommends an amendment to Rule of Civil Procedure 47(B) and Rule of Criminal Procedure 24(D) to make clear that, if an attorney waives a peremptory challenge, subsequent peremptory challenges are preserved. Although this change does not directly benefit jurors, as the Task Force surveyed the rules related to the jury, it was determined that often courts and attorneys will assume that once a peremptory challenge is waived all remaining peremptory challenges are waived. The Task Force believes this is an inaccurate reading of the rules and recommends that the Supreme Court of Ohio take this opportunity to clarify these rules.

CONCLUSION

Instituting these recommendations in courts will provide jurors with a more satisfactory jury experience. Judges and attorneys who participated in the pilot projects found the innovations to be beneficial in presenting cases to the jury. Although some were skeptical

when the projects first began, the majority found that the innovative practices were not disruptive and were well received by jurors. Jurors were overwhelmingly supportive of all the innovations and felt that many of the practices helped them to reach a verdict in an efficient and competent manner. The Task Force recommends that courts and the bar carefully consider any objections to the use of these innovations, as each innovation will, in its own way, help the jury pursue the truth in each case and, by doing so, attain justice.

JURY ADMINISTRATION

IMPROVEMENTS TO SERVICE

The Task Force concentrated on exploring issues that affect the willingness and ability of citizens to serve as jurors and identifying steps that may be taken in response to these issues. The general areas of review included issues relating to the length of service; employment issues; case management-related matters, such as lengthy trials; low utilization of jurors who report for service and the use of juror's time. The Task Force also looked at concerns relating to juror comforts in the courthouse and compensation.

The information reviewed included the jury administration survey conducted by the Task Force, a survey of courts using exit questionnaires, the Ohio Trial Court Jury Use and Management Standards, the Ohio Courts Futures Commission Report, the Action Plan of the Racial Fairness Implementation Task Force, relevant sections of the Ohio Revised Code and reports issued by other state jury task forces.

The recommendations fall into three general categories: compensation, convenience, and comfort.

COMPENSATION

The term "compensation" encompasses not only the attendance fee received by the juror but also items resulting in out-of-pocket expenses incurred by the juror during jury service. Many jurisdictions face fiscal restrictions that affect juror compensation.

As jury service is an obligation, all barriers to service – including the possible financial impact of out-of-pocket expenses – should be removed. The Task Force recommends that the out-of-pocket expenses incurred by jurors for their service be eliminated. To help address the costs associated with jury service and to provide an equitable level of

compensation statewide, it is recommended that the Supreme Court of Ohio be allocated funds under the state budget for distribution to all counties for the purpose of defraying the costs of jury service. Each county could determine how to spend the available funds, with a report to the Supreme Court of Ohio being required to document such expenditures.

Parking

Parking facilities available to prospective and seated jurors vary from jurisdiction to jurisdiction. With some courts, parking is not an issue because there is ample free parking located within easy walking distance of the courthouse. In many locations, however, the issue of parking is one of great concern, aggravation, and cost to jurors. Particularly in the larger metropolitan areas, parking can be both expensive and inconvenient for the jurors. Citizens are often not familiar with the downtown area, nervous about coming into a congested area, and not prepared for the cost of the parking. The cost of parking can be significant, especially if the total fee paid for jury service is proportionately low. It is recommended that courts provide free parking or pay for the cost of parking. A court should consider:

- Providing a parking lot with spaces designated for jurors.
- Providing free parking at a commercial lot within easy walking distance of the courthouse by issuing a parking permit or coupons to jurors.

If court parking facilities are not feasible and/or there are fiscal limitations, the court should consider:

- Providing for a reduced parking fee at a commercial lot within easy walking distance of the courthouse.
- Reducing the juror fee by the cost of paid parking. As detailed later in this report, jurors must often give the juror fee they are paid to their employer in order to receive their regular compensation while on jury duty. The cost

of parking, therefore, becomes a direct, out-of-pocket expense for the juror. By paying parking and reducing the jury fee, the juror receives a direct monetary benefit.

Public Transportation

For those jurors without a car or for those who prefer not to drive to the court, the use of public transportation may be a necessary alternative. This issue is viewed as related to compensation as it will be an out-of-pocket cost to the juror. It is recommended that the court arrange for a bus pass or tokens for use by jurors during the time of their jury service. In the alternative, it is suggested that the court:

- Arrange for a reduced fare during the time of jury service.
- Include “park and ride” information with the jury summons and, if applicable, on the jury commission web site. It should be recognized that even citizens who routinely use public transportation may not be familiar with the system options for transportation to the courthouse.

Snacks and Beverages

While this item could also appropriately be discussed as a juror comfort, there is a cost implication. When jurors are called to service and must spend some time waiting for court to begin, there is often a desire for a beverage and sometimes a light snack. Often, the juror must pay personally for the items, an additional out-of-pocket expense which may not be incurred but for jury service. It is recommended that the court provide refreshments for jurors. The court may consider providing:

- Coupons to jurors to use toward the purchase of identified beverages and snacks at the cafeteria or snack stand. The coupons could be used for the full cost of some identified purchases (e.g. a cup of coffee) or to reduce the cost of more expensive items.

- A vending machine within the confines of the jury waiting area with reduced costs for items. The use of this vending machine would be restricted to jurors only.

Juror Fees

It is often suggested that jurors need to be paid a higher jury fee and that greater compensation would increase a citizen's willingness and ability to serve. The Task Force recommends that the statutory cap on the jury fee be raised to \$75 per day. When considering higher juror fees, many issues arise.

- The increased cap is comparable to the amount paid to poll workers on Election Day. The Task Force believes that because both of these duties are civic in nature, and vital to our system of democracy the level of pay should be, at a minimum, equivalent.
- Current Ohio law permits a jurisdiction to pay up to \$40.00 per day to a juror for each day of service. The Task Force acknowledges that there are practical limitations to the ability of the court to afford increased juror fees. The jury fee is set by each jurisdiction taking into consideration the available budget for jury fees and the costs typically incurred by the citizen to serve as a juror (e.g. cost of parking).
- To address the financial impact of lengthy jury service, there is a statutory provision for an increase in the jury fee after 10 days of service. If service as a juror would be a genuine financial hardship for an individual, current law does allow the court to excuse that person from service. It is incumbent upon the court to require documentation of the hardship and to make an assessment of the negative financial impact the person will experience as the result of jury service.
- In many cases, whatever the jury fee, the juror is unable to retain that fee but must turn it over to his/her employer in order to receive their usual pay while they are away from work serving as a juror.

Currently under Ohio law, an employer cannot discipline or threaten to discipline an employee for responding to a jury summons. The law does not require the employer to compensate an employee while he or she is away from work for jury service (R.C. 2313.18).

Jurors may request an excuse from jury service on the basis of financial hardship when the employer does not pay them while on jury duty. R.C. 2313.16(B) permits a juror to be excused when “the interests of the public or of the juror will be materially injured by the juror’s attendance.” The court has discretion regarding the granting of this excuse.

The standard for financial hardship varies from court to court. Some courts will automatically grant the excuse if the employer provides a letter stating that it is not their policy to pay employees absent for jury duty. Other courts take it a step further and require that the juror also provide a statement detailing the severity of the financial impact of not being paid by their employer. The Task Force believes that the current structure, which promotes judicial discretion and a case by case analysis of hardship, to be the best alternative and promotes the smooth administration of justice.

Ohio law requires that the jury fee structure be set by county commissioners. Whatever fee is approved by the commissioners must also be paid by any municipal or county court within that jurisdiction. Current Ohio law states that the jury fee may be up to forty dollars per day. After ten days of service, the jury fee must be fifteen dollars per day or one and one-half the regular per diem compensation, whichever is greater, not to exceed twice the regular fee.

To address the issue of juror compensation and the impact of employer policies requiring jurors to surrender jury fee payment in order to receive their regular pay, there was some suggestion that the law should be changed to require employers to pay employees their regular wage while serving on jury duty. The obvious objective of this idea is to reduce the possibility of jurors suffering economic loss. The issue becomes one of shifting the financial burden of jury service from the individual to employers. It is a balancing act to ensure that those rendering service as jurors receive adequate compensation, with the

interests of the juror, the employer, and the court being involved. There are a number of laws on the books of other states addressing this issue. For example:

- In Alabama, an employer is required to pay all full-time employees their regular wage, less any fee paid for jury service. (AL ST Sec. 12-16-8).
- In Colorado, an employer must pay all “regularly employed” individuals, which includes part-time, temporary and casual employees if their hours can be determined by a schedule, custom, or practice during three month period preceding juror’s term of service, their regular wages, not to exceed \$50.00 per day, unless otherwise agreed, for the first three days of service. Beginning the fourth day, the state must pay the jurors \$50.00 per day (C.R.S.A. Sec. 13-71-126).
- Connecticut employers are required to pay full-time employees for the first five days of jury service as long as the time is a normal work day for the juror. Part-time or unemployed jurors shall be reimbursed by the state for out-of-pocket expenses, including mileage, in an amount between twenty and fifty dollars. After five days of service, the state must pay the juror fifty dollars per day starting the sixth day. (C.G.S.A. Sec. 51-247).
- In New York, employers with ten or more employees must pay the first \$40.00 of the daily wage of a juror for up to three days. (NY JUD Sec. 519).

The Task Force recommends that employers be strongly encouraged to permit jurors to keep the fee paid to them by the court in addition to receiving their regular wage while serving as jurors. To support this initiative, a state tax credit for employers who continue the regular compensation of employees is suggested. The recommendation for continued employer compensation is coupled with the additional recommendation that the term of jury service be as short as possible, an issue addressed in the next section of this report.

CONVENIENCE

Use of Jurors' Time

The experience of citizens during their service as jurors may be the only point of reference they have to form an opinion on the efficiency of the entire justice system. One concern heard repeatedly from jurors across the state involves the issue of the use of their time. It is a general perception that jury duty will entail a great deal of waiting on the part of the juror and that more effort could be made by the court to improve the efficiency of the court system to reduce the waiting. A critical review by each court of its system and the identification of possible steps to reduce the amount of "downtime" experienced by jurors is recommended. Courts should collect and evaluate data regarding jury use, including the number of citizens reporting for service, the number sworn in for voir dire, reporting and dismissal time and the duration of trials. While some courts do not seem to get a negative reaction to the system of having all jurors report every day for the two or three week term of service, the financial burden to jurors, employers, and to the court justifies a review of scheduling practices. The following actions should be taken by each court:

- Consider the use of technology to reduce or eliminate time spent waiting in the courthouse for a jury demand to develop. For example, with the use of pagers or cell phones, prospective jurors could be released to leave the confines of the courthouse with the understanding that they must be willing and able to report for service within a defined period of time (e.g. one-half hour). Jurors could return home or to work, run errands or spend time doing something more enjoyable than sitting in a room in the courthouse. Obviously, the ability of a juror to take advantage of this opportunity would be based upon his or her personal situation. The implementation of this could be accomplished with pagers or cell phones owned by the jurors and by collecting the needed contact numbers before permitting the juror to leave or by the court acquiring equipment which could be used to make contacts en masse with the pool of jurors. Grants from a local civic foundation or bar association could be used for purchasing such equipment.
- Examine the redesign of the case management system to give priority to the use of the juror's time. It is suggested that the necessary individuals

- judges, counsel, court administrator - evaluate local procedures that have an impact upon the prediction rate of trial starts. The more accurate and timely the information is regarding the need to have jurors report for service, the less waste of juror time (and court resources). Some courts have instituted a policy limiting the opportunity for the defendant to enter a plea on the day of trial by requiring all plea negotiations to be completed at least one court day prior to trial. In the same vein, for civil cases, the court may have an expectation that the settlements be determined prior to the day of trial. While there will always be unexpected issues that require the last minute plea, settlement, or continuance of a case, the court should establish procedures which respect the importance of juror's time.

- Schedule the reporting time for jurors after taking into consideration other court business to be conducted prior to calling for the jury panel. Jurors report in exit questionnaires that it is upsetting to be waiting while the court takes care of other business. It is taken as a sign of efficiency and respect for the juror's time to start the jury selection process as soon as possible after the reporting time. Prolonged waiting causes irritation and frustration. Is it possible for the larger jurisdictions with multiple jury panel demands on any given day to develop a system for staggered reporting times? Is it possible to have a stand-by system to permit jurors to check with the court first before traveling to the courthouse for an afternoon panel?
- Set the amount of time a seated jury may be asked to work on any given day. Understanding that there are often family obligations that must be met even while a person is on jury duty, the court should be willing to set a reasonable amount of time to be served during any given day. To the extent possible, the court should inquire about the jurors' situations and offer options to respond to the collective needs of the jury panel. Courts need to be conscious of extremes: working too long versus setting a schedule which does not take advantage of a reasonable work day, causing the trial to be extended.

Term of Jury Service

It is the recommendation of the Task Force that courts be strongly encouraged to adopt the shortest term of jury service possible. The Task Force also believes that it is important that each jurisdiction have the flexibility to determine what time period is appropriate.

Under the Trial Court Jury Use and Management Standards adopted by the Ohio Supreme Court in 1993, the following is the standard regarding the term of service:

- The time that persons are called upon to perform jury service and to be available should be the shortest period consistent with the needs of justice.
- A term of service of one day or the completion of one trial, whichever is longer, is recommended. However, a term of one week or the completion of one trial, whichever is longer, is acceptable.
- Persons should not be required to maintain a status of availability for jury service for longer than two weeks except in jurisdictions where it may be appropriate for persons to be available for service over a longer period of time.

The amount of time a citizen is asked to set aside his or her personal business and be available to respond to the needs of the court is one of the biggest concerns expressed by jurors. Although a court may employ a lenient rescheduling policy to allow jurors to select a more convenient time for service, a shorter term of service will have a positive impact upon the jury system by reducing the potential financial hardship for jurors or their employers, increasing the opportunity for service for individuals who might be excused on the grounds of personal hardship, and increasing the number of citizens subject to the jury system process. In addition, shorter terms of service spread the obligation of service among a greater number of citizens, thereby better reflecting the profile of the community and generally spreading the burden of service.

Courts often cite the extra effort it takes to manage a jury system of constantly changing jurors as a deterrent to providing a reduced term of service. The Task Force believes these administrative burdens should not take precedence over the use of a scheduling system that benefits potential jurors and enhances the public perception of jury service.

Current law allows a term of up to three weeks of service although courts implement this provision in several different ways. The court needs, within some limits, to be able to design a jury system which is the best match for its operation. Accordingly, the Task Force does not endorse the imposition of a mandatory, specific term of service. Judges, court administrators, clerks and jury managers with experience managing a short term of jury service should be asked to assist courts that want to explore a reduced term of service. Ohio courts which currently have a short term of service include the Lucas County Common Pleas Court and the Cleveland Municipal Court, which both have a two-day/one trial system. The Fostoria Municipal Court utilizes a one-day/one trial system.

Courts deciding to maintain a longer term of service should be asked to consider splitting the term of service so that consecutive weeks of service are not required. For example, if a two week term of service is necessary, would it be possible to schedule prospective jurors for one week and schedule the second week two months later? Being creative, giving priority to juror convenience, and being willing and able to support a higher level of jury management should be encouraged.

COMFORT

Jury Waiting Facility and Amenities

Courts should make every effort to provide appropriate waiting facilities and amenities for jurors, paying particular attention to those individuals who are serving as seated trial jurors. A number of courts responded to a survey inquiry “What improvements or changes have you made, if any, as the result of feedback received from exit questionnaires?” The majority of responses cite that jury waiting facilities had been improved. Some of the improvements included: more comfortable chairs, telephones for free local calls, refrigerator, microwave, games, magazines, computers or Internet access for juror’s laptop computers, and providing soft drinks. These additions enhance the comfort of the

jurors waiting to serve, whether in a pool of prospective jurors or after they have been seated in a case.

While it is recognized that available space within the courthouse to dedicate to juror waiting may be limited or even nonexistent, it is incumbent upon the court to make the best effort possible to address juror comfort issues. Often the space used for juror waiting is multi-purpose and is available for other uses when not required for jurors. Jurors are citizens the court has summoned from their regular lives to perform a civic obligation that can produce a high level of inconvenience and anxiety. Seeing to the jurors' comfort is another way of expressing the respect the court has for the jurors.

The Trial Court Jury Use and Management Standards address the physical comforts of jurors.

- Courts should provide an adequate and suitable environment for jurors.
- The entrance and registration area should be clearly identified and appropriately designed to accommodate the daily flow of prospective jurors to the courthouse.
- Jurors should be accommodated in pleasant waiting facilities furnished with suitable amenities.
- Jury deliberation rooms should include space, furnishings, and facilities conducive to reaching a fair verdict. The safety and security of the deliberation rooms should be ensured.
- To the extent feasible, juror facilities should be arranged to minimize contact between jurors, parties, counsel, and the public.

The Supreme Court of Ohio also adopted Court Facility Standards, which, in part, address juror comforts by stating, "Each trial courtroom shall have a soundproof jury deliberation room located in a quiet area as near the courtroom as possible. Access from the jury

deliberation room to the courtroom should be private. Private personal convenience facilities should be available for the jurors. An adequate waiting room must be provided for jurors. Reading material of general interest, television and telephones should be provided.”

The Task Force suggests the following features for juror waiting facilities:

- The area should be separate from waiting space used by the general public and/or the parties.
- The space should be large enough to provide appropriate space for orientation, waiting and other possible activities, such as television viewing and reading.
- The chairs in the waiting area should be comfortable. Chairs with padding and sized to accommodate a larger person would be preferable.
- The arrangement of the waiting facility should allow for as much “personal space” as possible. People are not comfortable in crowded situations.
- The space needs to accommodate jurors in wheelchairs. If the room consists of fixed seating, arrangements should be made to have an open area for a juror in a wheel chair which allows for full inclusion.
- Separate or designated rest rooms not shared with the general public are recommended. Jurors should not be exposed to the parties or their family members while waiting. An overheard comment could easily contaminate one or more jurors. It is also very disconcerting to a juror to be in the presence of a party during a break in the trial, therefore, separate rest room facilities should be provided for seated trial jurors.
- Waiting room decor which is appropriate and “calming”.
- Access to the internet for use by jurors while waiting. While this may raise some concerns about monitoring of the websites accessed by jurors, there is often an interest by jurors in being able to work while waiting.

Another aspect of juror comfort is the issue of juror privacy and security. Courts should be sensitive to the concerns jurors may have regarding the disclosure of personal information

in open court. As an example, jurors may be uncomfortable revealing information about their families and employment in the presence of the defendant. While there are few examples of jurors being intimidated by people with an interest in the case, there is the perception that such a threat could exist. This perception may be a barrier to a citizen's willingness to report for jury service. The court should also provide for a process for a prospective juror to indicate that the response to a question involves intensely personal information and to have that response given in chambers, in the presence of the parties and their counsel. While maintaining the rights of all parties, the court should handle the situation with sensitivity toward the juror.

CONCLUSION

The underlying theme to all of these recommendations is respect for the citizens called upon to serve as jurors. It can be a source of frustration for a court that the individuals contacted to serve as jurors are reluctant to serve or, in some cases, fail to appear for service. Although there can be many reasons for this hesitation or unwillingness, many people believe the stereotypes, often portrayed on television, that many more people than needed are called, there is a great deal of nonproductive waiting, and prospective jurors must cope with uncomfortable surroundings. Courts must rise to this challenge by not only performing a critical review of the local practices and realities associated with jury duty but committing to changing those items identified as being an impediment to citizens performing their civic responsibility as jurors.

JUROR SELECTION

The Task Force explored issues relating to the representativeness of the jury system and developed recommendations to address any identified concerns. A primary focus was to develop a process by which courts could evaluate their jury systems, using local demographic information in comparison with juror demographic information. To ensure a broad perspective on this issue, the information reviewed included the relevant sections of the Ohio Revised Code, the Ohio Trial Court Jury Use and Management Standards, the Ohio Courts Futures Commission Report, the Action Plan of the Racial Fairness Implementation Task Force, responses to an inquiry sent out through the National Center for State Courts concerning experiences with combined lists for the selection of jurors and reports issued by other state jury task forces.

BACKGROUND INFORMATION

Ohio Revised Code

Current Ohio law (R.C. 2313.06, R.C. 2313.08) requires that jurors be selected from either the list of registered voters *or* a combined list of registered voters and licensed drivers. The majority of counties in Ohio use only the list of registered voters. Those that use a combined list are generally less populated counties. Legislation has been proposed in the past mandating the use of the combined list. That legislation did not move forward because of numerous concerns about the issues associated with a combination of the two lists. Additional information on the experiences of other states in using more than one list for the purpose of jury selection will be provided later in this report.

Ohio Trial Court Jury Use and Management Standards

The Supreme Court of Ohio adopted the Ohio Trial Court Jury Use and Management Standards in August 1993. The standards are guidelines, not mandates, for the trial courts in Ohio. Each Court is required to have a jury management plan which addresses

the standards. The following standards have an impact upon jury selection:

Opportunity for Service

- The opportunity for jury service should not be denied or limited on the basis of race, national origin, gender, age, religious belief, income, occupation, disability, or any other factor that discriminates against a cognizable group in the jurisdiction.
- Jury service is an obligation of all qualified citizens.

Jury Source List

- The names of potential jurors should be drawn from a jury source list compiled from one or more regularly maintained lists of persons residing in the court jurisdiction.
- The jury source list should be representative and should be as inclusive of the adult population in the jurisdiction as is feasible.
- The court should periodically review the jury source list for its representativeness and inclusiveness of the adult population in the jurisdiction as is feasible.
- Should the court determine that improvement is needed in the representativeness or the inclusiveness of the jury source list, appropriate corrective action should be taken.

Random Selection Procedures

- Random selection procedures should be used throughout the juror selection process. Any method may be used, manual or automated, that provides each eligible and available person with an equal probability of selection. These methods should be documented.
- Random selection procedures should be employed in:
 - Selecting persons to be summoned for jury service;
 - Assigning prospective jurors to panels; and
 - Calling prospective jurors for voir dire.
- Departures from the principles of random selection are appropriate:
 - To exclude persons ineligible for service in accordance with Standard 4;

To excuse or defer prospective jurors in accordance with Standard 6;
To remove prospective jurors for cause or if challenged peremptorily in accordance with Standards 8 and 9; and
To provide all prospective jurors with an opportunity to be called for jury service and to be assigned to a panel in accordance with Standard 13.

Eligibility for Jury Service

All persons should be eligible for jury service except those who:

- Are less than eighteen years of age;
- Are not citizens of the United States;
- Are not residents of the jurisdiction in which they have been summoned to serve;
- Are not able to communicate in the English language; or
- Have been convicted of a felony and have not had their civil rights restored.

The obvious objective of the above standards is to insure that there are not inappropriate barriers to jury service for those individuals who are a part of the community.

Racial Fairness Implementation Task Force

The action plan issued by the Racial Fairness Implementation Task Force in September 2002 contained a number of recommendations relating to jury service. The report issued by the Commission on Racial Fairness stated that “it is imperative that criteria and procedures of jury selection and treatment of juries within the administration of justice be democratic and free from unfair treatment and bias.” The action plan noted that “there is the perception, if not the reality, that this standard is not being met in the state of Ohio. Different racial fairness issues can emerge depending upon widely diverse demographics of the state...an appropriate standard of information and education in racial diversity is not

only essential but also demanded.” The following recommendations from the Commission followed by a Task Force Action Plan were presented:

- COMMISSION RECOMMENDATION: The sources for jury selection should be further expanded. While currently the source for jurors is the voter registration list, we recommend that driver’s license records, state identification records, and other appropriate sources also be used as lists of potential jurors.

TASK FORCE ACTION PLAN: The Task Force recommends including driver’s license records as sources for voter registration lists, and excluding state identification records.

- COMMISSION RECOMMENDATION: Research should be conducted to determine accurately the pattern of minority under-representation in juries in Ohio state courts.

TASK FORCE ACTION PLAN: The Task Force recommends the Supreme Court facilitate research to determine whether and to what extent there is minority under-representation in Ohio state courts.

The Ohio Courts Futures Commission Report

The Ohio Courts Futures Commission Report, issued in May 2000, also addressed some aspects of jury management which could have an impact upon the diversity of the jury system.

The vision statement for 2025 contained in the report declared “persons called for jury duty will respond as responsible citizens performing a valued community service. Jury pools will reflect the full diversity of the communities they serve.” To reach this vision, the Futures Commission recommended that “courts use expanded source lists to develop jury pools that are demographically representative of the jurisdiction. In addition to voter registration lists, pools should be drawn from driver license and non-driver license ID card files, vehicle registration lists, public directories, and other sources.”

REPRESENTATIVE JURIES

The common theme of all of the above-referenced material is the desire for the jury system to be fair and free from bias. For many people, this means that the jury sitting in the courtroom should reflect the composition of the community in which the case is being heard. While this interpretation is common, it is, in fact, not reflective of either constitutional language or case law.

The Fourteenth Amendment to the United States Constitution states “No state ... shall deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.” The Sixth Amendment provides that “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.” Case law has stated that the Sixth Amendment guarantee of a right to a jury trial requires that jurors come from a source that fairly represents a cross section of the community (Taylor v. Louisiana (1975), 419 U.S. 522, 528).

Although there can be no systematic exclusion of distinctive groups in the community, there is also no requirement that a jury seated to hear a case mirror the community and reflect distinctive groups. The use of the voter registration list as a source list for a jury has been repeatedly upheld (State v. Johnson (1972), 31 Ohio St.2d 106).

Use of Combined Lists:

The Lucas County Common Pleas Court engaged in a study in 1997 funded by a technical assistance grant from the Supreme Court of Ohio to develop a methodology to measure the representativeness of the jury system. A subsequent grant from the State Justice Institute allowed the court to enlist the services of the University of Toledo Urban Affairs Center to apply the methodology. The study concluded that the racial and ethnic

composition of registered voters and licensed drivers did not totally reflect the diversity of the population of Lucas County.

The study also revealed that the list of licensed drivers was less representative of minority populations than the list of registered voters. The study determined that the poor quality of the driver's license list and the lack of information to identify duplicates were also deterrents to the use of a combined list to enhance the representativeness of the jury system in Lucas County.

Recommendations included efforts to improve the quality of both the voters and driver's license lists and the more rigorous enforcement of the appearance rate for jury service. This study highlights that the representativeness of the jury system must be measured at many points in the process to gain insight into possible barriers to jury service that may affect the diversity of the jury pool.

Several other states have had experience with the use of a combined list. A number of court professionals shared their perspective on the practice. It was reported that the combined lists of registered voters and licensed drivers have been used in North Carolina since the early 1980s. Challenges arising from using the combined list included the removal of duplicates, since there is no common identifier such as a Social Security number, and the lack of current information due to sporadic purging of the voters list and a five year renewal period for a driver's license. It was noted that the use of the voters and drivers list produced a more representative source list than when North Carolina used the property tax list.

A clerk of court from Wisconsin reported that all courts must use the list of registered voters and that, while the use of secondary lists is permitted, there are so many restrictions on the use, no county uses a combined list.

In the state of Oregon, combined voter and driver's license lists are used and undetected duplicates resulting from citizens not being consistent in how they register their names for the separate systems has proven to be problematic and has reduced juror yield. The issues with the lack of consistent, accurate information from the lists used were repeatedly cited as having a negative impact upon the jury system. It was strongly recommended that, if a combined list is used, stringent standards be established to update and purge data to provide the best information possible for use as a jury source list.

Jury System Statistics

The Task Force recommends that, in order to monitor and improve the representativeness of the jury pool, courts be required to maintain data to allow the statistical evaluation of the jury system. This recommendation is consistent with Ohio Trial Court Jury Use and Management Standard 12, although the language of the standard is permissive, and the Task Force recommends that the collection of data be mandatory.

To ensure compliance and process consistency, it is suggested that funding be provided by the General Assembly to the Supreme Court of Ohio to engage the services of a professional statistician to develop the data collection tools and to analyze the data once it is collected. The results of the analysis should be given to the local court to determine what action, if any, is needed in response.

In order for each court to evaluate the representativeness and inclusiveness of the jury system, information needs to be obtained to outline what happens to the individuals

selected for possible service as a juror. A basic data-collection packet has been prepared and is attached to this report as Appendix D. It is important to track the total numbers of individuals who report for service and, to the extent possible, the reasons for the unavailability of the other jurors to serve. Policies or practices affecting the postponement, excuse, disqualification, service, and appearance rates will have an ultimate affect on the composition of citizens who report to court for service as a juror.

In statistics language, the number of citizens who serve is referred to as the “yield”. The collection of data to calculate yield involves categorizing the reason individuals do not serve. If a court employs a two-step system where jurors are sent an initial qualification questionnaire, which is returned to the court for the development of the list from which jurors will be contacted for service at a later date, the yield will need to be calculated for both stages of the summoning process. By analyzing the yield, a court will be able to determine whether or not corrective action needs to be taken to increase the participation rate for jury service.

The Center for Jury Studies, which is affiliated with the National Center for State Courts, has determined various standards against which a court can measure their yield to help ascertain if changes need to be considered or made. A copy of the standards for the various yield categories has been included with this report, along with the possible actions to be taken if there is a need to improve in a particular area, are included with this report as Appendix E.

Demographics

The Task Force recommends that courts be required to collect demographic information on a periodic basis. Again, this data collection expectation is consistent with the current Jury Use and Management Standards. The suggestion of the Task Force is that courts

collect demographic information for at least a one month period every two years. As with the previous recommendation, the Task Force suggests that, in order to ensure compliance and process consistency, the General Assembly provide funding for a professional statistician to develop the data tools and analyze the data.

As previously mentioned, there is some concern that the jury pool does not appropriately represent the demographic profile of the community. This perception can lead to repeated statutory challenges to the jury system. To address this concern, a court should periodically measure the demographics of the jury system. Although it may be difficult to measure the demographics of any group other than those jurors who actually report to the courthouse, it is important to be as comprehensive as possible. Courts may consider using the resources of a local university in a manner similar to the Lucas County project. The university may be able to provide the ability to assess the demographics of the source list, the jurors who serve, and perhaps most important, the demographics of those citizens who are called for jury service but do not serve.

At a minimum, the Task Force recommends that courts should periodically measure the demographics of the individuals who do report for service and compare that data to the most recent census data for the jurisdiction. A sample form has been provided for the collection of demographic information. (Appendix F).

Use of a Combined List

The Task Force recommends that courts utilize a combined list of registered voters and licensed drivers for the purposes of juror selection. Ohio Jury Use and Management Standard 2 states, “The names of potential jurors should be drawn from a jury source list compiled from one or more regularly maintained lists of persons residing in the court jurisdiction.” Ohio law permits the combination of the list of registered voters and licensed

drivers for use as the jury source list.

There is a definite benefit to the use of a combined list of registered voters and licensed drivers in that the responsibility for jury service is spread over a larger segment of the population, increasing the probability that the jury pool will be representative of the community. Current limitations on the use of the combined list by larger jurisdictions are the lack of cross-identifiers (for example, Social Security numbers) and the lack of consistent standards to update and purge data. The quality of the list of voters and the list of licensed drivers needs to be improved. The practical realities of combining a list must be addressed to make such a process viable.

It is recommended that strict standards for both voter registration and the licensing of drivers be established to insure that complete, accurate, and comparable information is obtained for both lists and automated in a manner to permit combining the lists and eliminating both duplicates and those from the driver's list who would not be eligible for jury service (for example, those people who are not a U.S. citizen or are younger than 18). Mandated and enforced standards to update and purge the information for both the voters and driver's list will also increase the quality of the combined list. Given the recommended standards, with a basic level of computerization, the combination of the lists should not be problematic.

Use of Volunteers

Citizens often express an interest in serving as jurors, but under current law there is no provision to include volunteers in the jury selection process. The Task Force recommends that, pursuant to a legislative change and a local rule adopted by the court, jury commissions be permitted to collect the names of persons who are otherwise qualified to serve as jurors and add the names into the process to develop the annual jury list for the court.

This process will add the names of volunteers into the system but will still require the random selection of the volunteer for that person to actually be called upon to serve. Such an approach would prevent an issue of a prospective juror seeking to volunteer for a specific case. Individuals who are included in the jury process as a result of volunteering should be treated the same as an individual selected from the voter and/or driver's license list.

The Task Force also recommends that a period of time, to be determined by the court, have passed since the volunteer's last service before they are eligible to be chosen again. A form, which could be used to verify that a volunteer for jury service meets the statutory qualifications for service, is attached to this report as Appendix G.

Eliminate Barriers to Service

The Task Force recommends that courts take the steps necessary to eliminate all barriers to jury service. This recommendation is also consistent with the Ohio Jury Use and Management Standards.

A number of the items addressed in improvements to service and outreach apply to jury selection. Citizens may avoid jury service due to a past bad personal experience, a negative experience by someone they know or the mere perception that jury service will be a tremendous burden. When citizens are able to postpone jury service to a more convenient time, are adequately paid for their jury service, experience minimal waiting time, can expect the term of service to be the shortest amount of time possible, and have better information about what they will experience as a juror prior to reporting, there will be fewer barriers to service and increased participation by a more diverse group of citizens.

The Task Force specifically recommends that if a court has jurors reporting for two sessions, morning and afternoon, the court should have some, if not all, jurors report for only one of the two sessions and only if there is a good chance they will be needed.

Another barrier to service identified by the Task Force is the lack of information to citizens on the restoration of their rights after a felony conviction. The Task Force recommends that there be an analysis of what government entities are involved in the restoration of rights and how those entities can promote knowledge of the process of restoring rights. For example, the local Board of Elections should be notified of a loss of rights and the restoration of those rights. The Adult Parole Authority may also have a role in this process.

CONCLUSION

Having a representative jury is important in developing public trust and confidence in the jury system. Courts should not be afraid to look at their systems, collect data, conduct critical self-evaluations, and take corrective action, if needed, to insure that the jury box reflects the citizens of that jurisdiction.

With a more transient population, the demographics of an area can easily change over a period of time. It is incumbent upon the court to make sure that the jury system reflects the community being served.

OUTREACH

AREAS OF OUTREACH

The Task Force identified two areas of outreach: public education and in-school education. The premise of these recommendations is that a potential juror who has had some orientation about jury service and why serving is an important civic duty will be more likely to report for service and have a positive attitude about reporting and serving. The avenues for outreach should thank citizens for their service, while reminding them that jury service is necessary civic work.

The Task Force recommends that outreach efforts should be coordinated statewide by one court or association, with cooperation from others. The most logical recommendation for overall coordination is the Supreme Court of Ohio, but other entities that should be considered for coordination or assistance are the Ohio State Bar Association, Ohio State Bar Foundation, Ohio Center for Law-Related Education, Ohio Judicial College, Ohio Judicial Conference, Ohio Jury Management Association, Ohio Association for Court Administration, Ohio Clerk of Courts Association, law schools and local bar associations. Funding could come from these entities and grant funds may be available.

General law-related outreach is already underway by many organizations. The Ohio State Bar Association has a public area as part of their website, and one page is directly about serving on a jury (<http://www.ohiobar.org/conres/jury/>). In addition, the Ohio Judicial Conference has a Public Confidence and Community Outreach Committee which could provide valuable resources.

Public Education

Public Service Announcements (PSAs) for radio, newspapers, and television should be developed around one common theme or slogan that conveys the importance of serving

on juries and opportunities for doing so (that is, the restoration of rights and opportunities to volunteer). Testimonial messages from former jurors could be used. It may be necessary to purchase air time for the pieces, as the free air time for such announcements is limited.

The Task Force recommends generic PSAs for statewide dissemination; however, specific counties may want to develop PSAs that highlight jury service in those particular jurisdictions. The Task Force believes that law firms or a local bar associations may be able to underwrite the costs of producing these PSAs as a community service project.

Poster/Billboard campaigns should be organized around the same theme or slogan as the PSAs to get the same message out in print form. Posters could be sent to schools, community centers, government offices, etc.

A jury service video should be professionally produced and geared for the average citizen who knows little about jury service. This film is not meant to be an orientation video, but instead should be educational, designed for schools and civic groups. It should be approximately 10 to 15 minutes and include such things as the historical origin, types of cases, trial stages, the jury's role and how jurors are selected, and close with a meaningful message pointing out how important jury service is to the American judicial system. The film footage should include people of a variety of ages, ethnicities and genders in the roles in courtrooms.

The video project is an ideal collaborative project for a university which has political science, communications, and drama departments as well as a law school. An example of an excellent jury video was done by the Columbus Bar Association and is used by both the Franklin County Municipal Court and Franklin County Court of Common Pleas. The Hamilton County Common Pleas Court also has a newer video that may be a model. The

video could be made available to the public through the state and local bar associations, local public libraries, as well as schools as detailed below.

An annual jury service week should be organized to highlight jury service. The timing could coincide with Law Day, which is May 1st each year, or could be scheduled at a separate time to insure specific focus on the jury system. A week during the regular school year is recommended to allow for participation by teachers and students in special events and activities.

State and local governments could pass resolutions declaring a jury service week. A packet should be developed for community groups and schools so that recognition of Jury Service Week would not have to include much preparation. Mock trials suitable for different ages could be presented to community groups by local bar associations, judges, clerks of court, court administrators and others in the legal arena. A poster and essay contest could be implemented in the schools as part of the special week. The Ohio Center for Law Related Education provides a good source for materials that could be used in schools. Media releases should be prepared to encourage coverage by all media outlets in the area.

A jury service brochure should be developed or used to educate prospective jurors post-summons but before they report for jury duty. Courts could use a generic brochure for a low budget option or they can customize it for their court. The brochure should be a bi-fold, three-panel piece with interesting graphics and some white space, and incorporate the common theme or slogan used in the PSAs and billboard campaign.

An excellent example of a jury brochure is the one published by Stark County Common Pleas Court. An example of how a brochure can be customized for a court is the

Juror Handbook published by Tuscarawas County Common Pleas Court, General Trial Division.

A jury information Web site should be maintained with basic jury information for the public as well as schools, and links to local court websites. The Ohio Jury Management Association should be contacted concerning the development of such a website. In addition, the Supreme Court of Ohio should add a link on its Web site to jury information sites in different Ohio jurisdictions.

In-School Education

The Task Force envisions and recommends development of a “Teachers’ Tool Kit” that educators could use to introduce the topic of jury duty to students of all ages. It should include the video, brochure, mock trial scripts, and information on how to find a local speaker on jury service. It would also give them the idea to tour their local courthouse.

The development of this “tool kit” should be coordinated, to the extent possible, with academic standards for each grade level in Ohio schools. Classroom activities and projects should provide information, but should also be responsive to curriculum requirements.

In addition, the Task Force recommends that information regarding voter registration be included for those students in high school who are 18 years of age.

School Resources

The American Bar Association (<http://www.abanet.org>) is an excellent source for Mock Trial Scripts and information.

The Ohio Center for Law-Related Education (<http://www.ocle.org>) is also an excellent source of materials.

The Ohio Bar Foundation (<http://www.osbf.net>) has a publication entitled “Did Not Did Too” which was published for a third grade audience to teach students about the courthouse and our society’s system for resolving disputes.

The Cincinnati Bar Association Auxiliary published a book entitled “Justice Walks” in 1981, which is an extensive guide for teachers who are teaching students about the courts and planning to visit a courthouse.

Two additional resources written by Dr. David Naylor, a Task Force member, as projects for the Ohio Center for Law-Related Education are “Supreme Court: Live- Ohio Courts in Action” and “Ohio Law and Government in Action”. Both are manuals for teachers with content applications. These materials could be revised and keyed to the state standards. The fourth grade proficiency test has a section on civics which would be a good fit for information about the jury system.

Examples

Attached to this report as Appendix H are various examples of court brochures, Web pages relating to jury service and other materials relating to outreach efforts described in this section. These examples can serve as a reference point for community and school programs highlighting jury service.

CONCLUSION

It is vital that courts in Ohio continuously strive to make jury service not only an obligation, but a privilege and an honor, of citizenship in Ohio. Implementation of The Supreme Court Task Force on Jury Service's recommendations contained in this report will broaden citizen participation, improve the trial process, enhance the quality of justice and promote greater public confidence in the Ohio jury system.



SUPREME COURT OF OHIO
Task Force on Jury Service
Ohio Judicial Center
65 South Front Street
Columbus, Ohio 43215-3431
www.sconet.state.oh.us