Final Report of the Blue Ribbon Commission on Jury System Improvement

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Chapter I
Executive Summary

A. Introduction to the Blue Ribbon Commission

The Judicial Council of California (the "Council"), the policy-making body for California's courts, created this Blue Ribbon Commission (the "Commission") to conduct a comprehensive evaluation of the jury system and to make timely recommendations for improvement. The Commission is made up of 26 members and is broadly representative of the diverse groups who regularly work with the courts and juries. The membership includes judges from municipal, superior and appellate courts, court administrators, legislators from the Assembly and Senate, a representative from the Governor's office, a district attorney, defense counsel, civil practitioners, and public members. The chair of the Commission is Judge Roy Wonder (Ret.) of the San Francisco Superior Court, and the vice-chair is Judge Charles B. Renfrew (Ret.) of the United States District Court for the Northern District of California.

The Commission was formed by the Council in December of 1995, and the State Bar of California and the California Judges Association agreed to participate as supporting sponsors. The Commission held its first meetings in January of 1996. The Commission divided its work over three subcommittees: Juror Pool, Treatment and Management, chaired by Mr. Michael Roddy, executive officer of the Superior and Municipal Courts of Sacramento County; Jury Selection and Trial Structure, chaired by Justice Patricia Bamattre-Manoukian of the Court of Appeal for the Sixth Appellate District; and Jury Functioning, chaired by Judge Judith McConnell of the San Diego County Superior Court. These three subcommittees met frequently in February, March and April to work through the long list of issues for consideration. Mr. Tom Munsterman of the National Center for State Courts, one of the country's leading authorities on juries, attended all meetings and significantly contributed to the Commission's discussions. Professor J. Clark Kelso of the University of the Pacific's McGeorge School of Law served as reporter for the Commission's deliberations and primary author of this Report.

Two full days of public hearings were conducted in March in Los Angeles and San Francisco. The Commission also received written comments and reports from several interested persons. Quotes from these sources are

interspersed throughout this report.

A draft of this Report was presented to the full Commission for its consideration in late March and again in late April for final approval. The Report was then submitted to the Council at its May meeting in Chico. A minority report dissenting in part appears in Appendix P.

The Commission commends the Council, the Legislature and the Governor for cooperatively supporting the Commission's work. Recognizing that many of the issues considered by the Commission would involve legislative action, Chief Justice Malcolm M. Lucas, chairperson of the Council, invited the participation of the chairs of the Assembly and Senate Judiciary Committees, the Assembly Public Safety Committee, the Senate Criminal Procedure Committee, and a representative from the Governor's office. Their participation has enriched the Commission's deliberations and has helped to ensure that the Commission's conclusions will receive full consideration in the legislative process.

B. Summary of Recommendations

The Commission considered hundreds of suggestions in crafting its recommendations. Some of the recommendations will command near universal assent. Others are going to create discomfort among one or more groups. Those who are involved with the jury system—jurors, judges, jury commissioners, attorneys, and California businesses—will be asked to make individual sacrifices that will redound to the benefit of all. The Commission's intent is to push for those changes that are necessary to preserve and improve the system.

Recommendation 1.1: In view of the fundamental importance of the jury system to public respect for the rule of law, the Judicial Council, the Legislature, the Governor, and the State Bar should seriously consider and support changes recommended by this Commission that are necessary to preserve, promote and improve the jury system.

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The Commission attempted in its deliberations to reach consensus on all issues. In many cases, a consensus was possible. On some issues (e.g., jury size, the number of peremptory challenges, and the requirement of unanimity), consensus was not possible. In these cases, the Commission adopted recommendations by majority vote (usually conducted by a show of hands of those present). This report clearly identifies those issues where consensus was not achieved, presents both the majority and minority arguments, and indicates the results of the votes taken by the Commission.

The specific recommendations adopted by the Commission are as follows:

1. Support for Commission Recommendations

Recommendation 1.1: In view of the fundamental importance of the jury system to public respect for the rule of law, the Judicial Council, the Legislature, the Governor, and the State Bar should seriously consider and support changes recommended by this Commission that are necessary to preserve, promote and improve the jury system.

2. Implementation of Recommendations and Continuing Oversight

Recommendation 2.1: The Judicial Council should create an Implementation Task Force on Jury System Improvements which would be responsible for overseeing implementation of the Commission's recommendations. Like the membership of the Commission, the Task Force's membership should be broadly representative of the diverse perspectives about the jury system.

3. The Jury Pool, Jury Treatment and Jury Management

Recommendation 3.1: The Judicial Council should adopt a Standard of Judicial Administration recommending use of the National Change of Address system to update jury source lists.

Recommendation 3.2: The Implementation Task Force should evaluate the results of an existing New York program to supplement its jury source lists with

welfare and unemployment lists and should then consider whether one or more California counties should conduct a pilot project supplementing the DMV and registered voters lists with other comprehensive lists of persons living in California.

Recommendation 3.3: The Judicial Council's Advisory Committee on Court Technology, in consultation with the Implementation Task Force, should review the cost, feasibility and efficacy of a statewide master jury list.

Recommendation 3.4: The Legislature should enact a statute clearly stating that jury service is a mandatory duty of all qualified citizens.

Recommendation 3.5: The Legislature should amend C.C.P. § 209 and Vehicle Code § 12805 to provide mandatory procedures for enforcing juror summons, including placing a hold upon driver's license renewals of those persons who fail to respond to a juror summons.

Recommendation 3.6: The Implementation Task Force should produce a format for a standardized jury summons for use, with appropriate modifications, around the State which is understandable and has consumer appeal.

Recommendation 3.7: Jury commissioners should, if feasible, adopt a one-step summons process (i.e., combined juror questionnaire and summons) to replace the two-step process (i.e., juror questionnaire followed by summons).

Recommendation 3.8: Jury commissioners and judges should actively promote the importance of the jury system and the duty to serve through all available channels of communication.

Recommendation 3.9: The Judicial Council should enact a Rule of Court to require jury commissioners to apply the standards regarding hardship excuses presently set forth in Section 4.5 of the Standards of Judicial Administration.

Recommendation 3.10: The Legislature should enact a child-care program for those jurors who must make special child-care arrangements as a result of jury service.

Recommendation 3.11: The Judicial Council should adopt a Rule of Court providing for mandatory judicial, court administrator, and jury staff team-training on juror treatment.

Recommendation 3.12: The Judicial Council should adopt a Rule of Court requiring jury commissioners to prepare a juror handbook which sets forth the juror's rights and responsibilities and explains juror services within the courthouse.

Recommendation 3.13: The Judicial Council should adopt a Rule of Court requiring the creation within each court of some reasonable mechanism for responding to juror complaints.

Recommendation 3.14: To reduce the burden of long-distance driving and to reduce parking problems, the Legislature should consider the propriety of measures requiring mass transit providers to offer free public transportation to and from courthouses for jurors.

Recommendation 3.15: The Legislature should amend C.C.P. § 215 to require courts to reimburse jurors for all reasonable and necessary parking expenses or to provide free parking consistent with local building and transportation policies.

Recommendation 3.16: Trial courts should review existing jury facilities in light of national standards and, at a minimum, should take whatever steps are necessary to bring all jury facilities up to those standards.

Recommendation 3.17: The presiding judge of the court should ensure that juror security within the courthouse and from juror parking facilities to the courthouse is properly coordinated and supervised by the court security officer.

Recommendation 3.18 (by a vote of 16 to 2): The Legislature should enact legislation providing that jurors will be identified throughout the jury selection process only by number and not by name, and that personal juror identifying information shall not be elicited during voir dire except on a showing of a compelling need.

Recommendation 3.19: The Legislature should enact a statute giving jurors the right to respond in chambers to questions during voir dire that elicit highly personal information and requiring that the court inform jurors of this right.

Recommendation 3.20: The Legislature should amend C.C.P. § 237 to ensure that personal juror identifying information is properly safeguarded in the context of post-verdict proceedings.

Recommendation 3.21: The Judicial Council should adopt a Rule of Court requiring by January 1998 adoption of a one trial - one day service requirement except in those counties which can demonstrate good cause why such a requirement is impractical.

Recommendation 3.22: The Judicial Council should adopt a Rule of Court requiring by January 1998 implementation of an "on-call" telephone stand-by system in every county except in those counties which can demonstrate good cause why such a system is impractical.

Recommendation 3.23: Presiding judges should discuss the topic of case predictability and late settlements with participants in the criminal justice system in meetings required by Rule of Court 227.8.

Recommendation 3.24: The Legislature should amend C.C.P. § 204 to provide that an eligible person shall be excused from service for a minimum of twelve months if he or she has completed jury service.

Recommendation 3.25: The Legislature should amend C.C.P. § 215 to provide for juror fees of $40 per day for each day of jury service after the first day and $50 per day for each day of jury service after the thirtieth day, and to provide for reimbursement to jurors at the rate of $0.28 per mile for travel to and from the court.

Recommendation 3.26: The Legislature should amend Section 230 of the Labor Code to require all employers to continue paying usual compensation and benefits to employees for the first three days of jury service if the employee has given reasonable notice to the employer of the service requirement.

Recommendation 3.27: The Legislature should adopt reasonable tax credits for those employers who voluntarily continue paying usual compensation and benefits to employees who are absent from work for more than three days on account of jury service.

Recommendation 3.28: The Legislature should amend the Unemployment Insurance Code to provide that, except for the first day, jury service constitutes an employment disability which entitles the employee to a claim in the amount of $40 per day (increased to $50 per day after the 30th day of service).

Recommendation 3.29: The Trial Court Presiding Judges Advisory Committee

and Court Administrators Advisory Committee should systematically monitor and study critical components of the jury system for the purpose of permitting more informed policy-making and management.

4. Jury Selection and Structure of the Trial Jury

Recommendation 4.1: The Judicial Council should amend Section 8.8 of the Standards of Judicial Administration to encourage the Center for Judicial Education and Research ("CJER") to produce educational materials and programs focused on the conduct of voir dire, particularly in criminal cases, that can be distributed to all judges for use and review.

Recommendation 4.2: The Judicial Council should amend Section 8.7 of the Standards of Judicial Administration to include a list of factors judges should consider when making the "good cause" determination under C.C.P. § 223.

Recommendation 4.3: Rules of Court 228.2 & 516.2, which give the trial court discretion to determine the appropriate method of supplementing the court's voir dire, should not be changed.

Recommendation 4.4: The Judicial Council should adopt a Standard of Judicial Administration encouraging the use of a statewide juror questionnaire to be developed by the Implementation Task Force to gather basic juror information, other than juror identification information, for use by the court and counsel in voir dire.

Recommendation 4.5: A reasonable and equal number of peremptory challenges must be given to each side in criminal and civil cases, and the trial court should be given discretion to increase the number of peremptory challenges for good cause in the interests of justice.

Recommendation 4.6 (by a series of majority votes): The Legislature should amend C.C.P. § 231 to provide each side with 12 peremptory challenges in cases where the offense charged is punishable with death or with life imprisonment, 6 peremptory challenges in all other felonies, and 3 peremptory challenges in all misdemeanors. (The votes are reported below in the text.)

Recommendation 4.7: There should be a proportional reduction in the number

of additional peremptory challenges given for multi-defendant cases.

Recommendation 4.8 (by a series of votes): The Legislature should amend C.C.P. § 231(c) to provide each party in a 2-party civil action with 3 peremptory challenges, and each side in all other civil actions with 6 peremptory challenges. (The votes are reported below in the text.)

Recommendation 4.9: In capital cases and felonies, the jury should consist of 12 persons.

Recommendation 4.10 (by a vote of 14 to 7): The Legislature should propose an amendment to the California Constitution, Article I, § 16, to provide for a jury of 8 persons in all misdemeanor cases or a lesser number agreed on by the parties.

Recommendation 4.11 (by a vote of 19 to 2): The Legislature should eliminate juries from those misdemeanors that do not carry any possible jail time.

Recommendation 4.12 (by a vote of 13 to 5): In civil cases within the jurisdiction of the superior court, the jury should consist of 12 persons or a lesser number agreed on by the parties.

Recommendation 4.13 (by a vote of 15 to 6): The Legislature should amend C.C.P. § 220 to provide that in civil cases within the jurisdiction of the municipal court, the jury should consist of 8 persons or a lesser number agreed on by the parties.

Recommendation 4.14: The Commission recommends that the Judicial Council conduct a short (e.g., 4-6 month), focused study to gather more reliable information regarding: (1) the percentage of hung juries and the vote split; (2) the reasons why individual juries are unable to reach a verdict (data that could be collected from a form to be filled out by the jury foreperson); and (3) the subsequent history of cases resulting in hung juries (e.g., number of cases retried with the results, number of cases pled, number of cases dropped). Data can be collected from court records and from files within the offices of county prosecutors and public defenders.

Recommendation 4.15: A unanimous verdict should continue to be required for criminal cases in which the punishment is death or life imprisonment.

Recommendation 4.16 (by a vote of 13 to 4): If the jury size in misdemeanor cases is reduced from 12 to 8 (as provided for in Recommendation 4.10), then unanimous verdicts should be required.

Recommendation 4.17 (by a vote of 20 to 1): After a jury reports it is deadlocked, the trial judge should reemphasize to the jury the importance of arriving at a verdict and each juror's duty to deliberate. The trial judge should also explain that the foreperson should report to the judge if any juror is refusing to participate in deliberations or has a bias not disclosed in voir dire.

Recommendation 4.18 (by a vote of 15 to 7): The Legislature should propose a constitutional amendment which provides that, except for good cause when the interests of justice require a unanimous verdict, trial judges shall accept an 11-1 verdict after the jury has deliberated for a reasonable period of time not less than 6 hours in all felonies, except where the punishment may be death or life imprisonment, and in all misdemeanors where the jury consists of 12 persons.

5. The Jury's Deliberative Function

Recommendation 5.1: The Implementation Task Force should produce a professional quality, statewide juror orientation videotape which can be used by jury commissioners, with or without modification, to satisfy the statutory obligation to provide juror orientation.

Recommendation 5.2: The Judicial Council should adopt a Rule of Court which requires the trial court to inform jurors of their right to take written notes and which gives the trial judge discretion to determine the post-verdict disposition of juror notes.

Recommendation 5.3: The Judicial Council should adopt a Standard of Judicial Administration recommending that judges permit jurors to submit written questions to the court which, subject to the discretion of the trial judge and the rules of evidence, may be asked of witnesses who are still on the stand. The Standard should include a pre-trial admonition explaining the procedure to jurors.

Recommendation 5.4: The Judicial Council should reconsider in January 1998

the issue of pre-deliberation discussions by jurors based on a review of the experience in Arizona. In the meantime, the Council should adopt a Standard of Judicial Administration that encourages trial judges to experiment in long civil trials with scheduled pre-deliberation discussions upon stipulation of counsel with appropriate admonitions regarding withholding judgment until deliberations have begun.

Recommendation 5.5: The Judicial Council should oppose legislation that would permit or require trial judges to inform the jury of its power of nullification.

Recommendation 5.6: The Judicial Council should adopt a Standard of Judicial Administration recommending that trial judges, in their discretion, pre-instruct the jury on the substantive law of issues involved in the case.

Recommendation 5.7: The Judicial Council should adopt a Standard of Judicial Administration that encourages counsel in cases involving highly complex subject matters jointly to develop a glossary of common terms which can be distributed to each juror at the beginning of trial.

Recommendation 5.8: The Judicial Council should appoint a Task Force on Jury Instructions to be charged with the responsibility of drafting jury instructions that accurately state the law using language that will be understandable to jurors. Proposed instructions should be submitted to the Judicial Council and the California Supreme Court for approval. The membership of the Task Force on Jury Instructions should be diverse, including judges, lawyers, representatives from the Committee on Standard Jury Instructions of the Superior Court of Los Angeles, linguists, communications experts, and other non-lawyers. The Task Force should be charged with completing its work no later than 18 months after its formation.

Recommendation 5.9: As part of final jury instructions, trial judges should suggest specific procedures for how to conduct the deliberations process.

Recommendation 5.10 (by a vote of 12 to 6): The Legislature should amend C.C.P. § 234 to give the trial judge discretion in civil cases to permit alternate jurors to observe but not participate in jury deliberations.

Recommendation 5.11: The Judicial Council should adopt a Standard of Judicial Administration recommending that trial judges actively manage trial proceedings with particular emphasis upon the needs of the jury. CJER should continue its

trial management training and develop materials on trial management that can be distributed to trial judges throughout the state.

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Chapter II
The Commission's Charge and Implementation of Recommendations

A. The Jury System in Crisis

The jury system in California is on the brink of collapse. To some, this statement may seem hyperbolic. But to jury commissioners, judges and attorneys who work with juries on a daily basis, collapse seems to be just around the corner.

The jury system is on the brink of collapse. Felony trials are now delayed because of a juror shortage.

The crisis manifests itself in public dissatisfaction with the jury system as it currently is structured and managed. The public is rendering its own judgment by refusing to show up for jury duty when called. There is no single cause for the dissatisfaction, which is why the scope of the Commission's charge includes *all* aspects of the jury system (many of which are interrelated). However, the results of the dissatisfaction are clear. Felony trials in several counties with large populations are now occasionally delayed because of an inability to provide sufficient jurors for the courtroom when needed.

Court and community leaders around the State have been actively responding to the challenge. In November of 1994, the Superior Court of Los Angeles issued a comprehensive report with recommendations to improve the jury system. *The Jury Report--A Blueprint for Change in the Los Angeles County Jury System*. The Citizens Economy and Efficiency Commission of Los Angeles County issued its own report in December of 1994. *The Management of Juries Within Los Angeles County*. Many of the recommendations found in those reports have already been implemented in Los Angeles County and are adopted in substantial form by this Commission.

> *"For many of us, a call to jury service is ten days of real financial or personal hardship for no community benefit. We wait around a court house under the control of a process that is poorly managed, insensitive to our needs, and we don't get to serve. Were the process accommodating in the slightest, and/or if we were actually needed to serve, then I would agree that avoidance of jury service would be reprehensible, but it isn't that way."* Letter from Robert J. Goldmann to the Commission, April 3, 1996.

Although Los Angeles has been one of the hardest hit jurisdictions and has been one of the first to respond comprehensively to juror issues, it is clear that the challenges facing our jury system go far beyond Los Angeles County. Other counties have witnessed declines in juror yields, and virtually all counties are seeing increasing demands for jury trials, particularly in criminal cases. *See, e.g., Jurors' Verdict: Make Reforms*, Sacramento Bee, A1 (Jan. 29, 1996) ("In Sacramento, where the number of criminal trials has doubled in the last three years, the number of potential jurors not responding to eligibility questionnaires has tripled."). In addition, exit interviews with jurors and public reaction as reflected in news media accounts reflect increasing public intolerance for a jury system that many perceive as out of control, unnecessary, costly, burdensome, and, in some cases, an obstacle to achieving justice.

Systematic review and reform of the jury system has been undertaken recently in other states. New York and Arizona have completed studies of the jury system within those states, and Arizona is in the process of implementing far-reaching reforms. The American Bar Association's Judicial Administration Division promulgated a revised commentary to its *Standards Relating to Juror Use and Management* in 1993. Mr. Tom Munsterman of the National Center for State Courts, a consultant to the Commission, was the chief support staff to the ABA's Committee on Jury Standards. The *Standards* are reproduced in Appendix E. California now joins the American Bar Association and other jurisdictions in re-examining one of the most important institutions to a free and democratic society: The Jury.

B. Previous Reports on the California Jury System

This Commission is not the first group in recent years to consider jury reform in California. As noted above, the Los Angeles Superior Court and The Citizens Economy and Efficiency Commission of Los Angeles County have

previously issued comprehensive reports of the jury system in Los Angeles. In January 1996, the State Bar of California conducted two State Bar Forums to consider issues relating to the jury system. Forum participants included both criminal and civil practitioners, consisting of district attorneys, city attorneys, public defenders, plaintiff attorneys, defense attorneys, business litigators, representatives of specialty bars and State Bar sections and committees, as well as several legislative staff, judges and court staff. Several Commission members participated in the State Bar Forums. On April 20, 1996, the State Bar Board of Governors adopted a statement of Principles Relating to Jury Reform which is reproduced in Appendix F.

The Judicial Council began its review of the jury with recommendations found in the California judiciary's 1993 futures report, *Justice in the Balance 2020*. Those recommendations were referred to the Council's Civil and Small Claims and Criminal Law Advisory Committees for review and action. In June 1995, members of the Judicial Council's Court Administrators Advisory Committee voted to form a jury issues subcommittee to perform a comprehensive and systemic review of jury issues and practices. The subcommittee actively coordinated its efforts with the Jury Education and Management (JEM) Forum, a statewide association of jury commissioners and managers. In July 1995, the jury issues subcommittees of the Civil and Small Claims, Court Administrators, and Criminal Law Advisory Committees met together to develop a project plan for presentation to the Executive Committee of the Judicial Council. The plan, approved by the Council at its October 1995 meeting, recommended establishing this Blue Ribbon Commission.

The Legislature has also been considering jury reform over the past year. On July 27, 1995, Senator Charles M. Calderon, Chairman of the Senate Committee on the Judiciary, convened an all-day public hearing on jury reform in Los Angeles to review a range of proposals directed at improving and strengthening the jury system. As of this spring, there are no fewer than 15 bills pending before the Legislature dealing with jury reform issues. *See, e.g.,* AB 2003 (Goldsmith); AB 2060 (Bowen); AB 2555 (Thompson); AB 2832 (Bordonaro); AB 2922 (Hawkins); AB 3079 (Baldwin); ACA 18 (Rainey); ACA 19 (Rainey); ACA 28 (Richter); SB 56 (Beverly); SB 2129 (Leslie); and SCA 24 (Calderon).

The Commission's efforts have been significantly aided by this abundance of recent, thoughtful study within California. The issues have been exhaustively examined by knowledgeable participants in the justice system, and,

in part as a result of this examination, the Commission promptly reached consensus on many of the issues. As will be seen in this report, consensus was not possible on all issues, but the Commission's discussions on even these issues was well-informed and reflected genuine disagreements over the wisdom of certain jury proposals.

C. The Commission's Charge

In his letter appointing Judge Roy Wonder as Chair of the Commission, Chief Justice Malcolm M. Lucas made the following pertinent observations:

"As you well know, the right to a jury trial is a fundamental tenet in our legal system and must be based on fairness and public confidence. At the same time, there is a growing consensus that there is room for improvement, and the objective should be to strengthen the system, not rebuild it.

"The right to a jury trial is a fundamental tenet in our legal system and must be based on fairness and public confidence." Chief Justice Malcolm M. Lucas.

"Over the past year, several Judicial Council standing advisory committees have expressed interest in addressing various aspects of the jury system and have established subcommittees to examine issues ranging from increased demands for jury trials in criminal cases and decreased yields of qualified jurors to improved jury selection and trial management procedures. The council believes that a thorough and comprehensive review of the jury system is both appropriate and timely and looks forward to your recommendations for improvement."

The Judicial Council charged the Commission as follows:

The Commission is to study, receive testimony, and develop recommended actions on, including but not limited to, the following issues and practices, and report back to the Judicial Council at its May 1996 meeting:

- Low Juror Yields
- Adequacy of Source Lists
- Rate of Non-Responses to Qualification Questionnaires
- Rate of Failure to Appear to Juror Summons
- Lack of Citizen Interest / Participation
- Term of Jury Service
- Level of Compensation
- Employer Continuation of Juror Salary
- Length of Trials
- Treatment of Jurors
- Concerns Regarding Juror Privacy and Security
- Inefficient Use of Juror Time
- Peremptory Challenges and Challenges for Cause
- Voir Dire of Jurors
- Complexity of Jury Instructions
- Juror Sequestration and Discharge
- Size of Juries
- Hung Juries and Alternatives to Unanimous Verdicts

D. Implementation of the Commission's Recommendations

The Commission makes over 50 recommendations for improvement. Some of the recommendations will require constitutional or statutory amendments. Others will require action by the Judicial Council. Still others involve long-term projects that will not be completed for several months or years. The Commission is concerned that without continuing oversight, implementation of many of the recommendations contained in this report will not be fully, promptly accomplished. Moreover, in dealing with an institution as complex as the jury system, it seems very likely that some recommendations for change will fall short in meeting their goals. Other recommendations may have unintended consequences that require further response. For these reasons, the Commission believes it would be advisable to create an Implementation Task Force on Jury System Improvements with a broadly representative membership similar to the Commission's membership.

Recommendation 2.1: The Judicial Council should create an Implementation Task Force on Jury System Improvements

which would be responsible for overseeing implementation of the Commission's recommendations. Like the membership of the Commission, the Task Force's membership should be broadly representative of the diverse perspectives about the jury system.

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Chapter III
The Jury Pool, Jury Treatment and Jury Management

One of the most serious problems the jury system faces relates to low juror yields. The yield represents the total number of prospective jurors reporting for service as a percent of the total number of names selected from the source list. The lower the yield, the higher the number of persons who must be contacted by the jury commissioner for service. Yield is affected by many factors. Persons selected from the source list drop out of the system because they are unqualified for service or have an undue hardship (either medical, financial or other), or because addresses are inaccurate, or, in some cases, because persons simply fail to appear. Low yields result in juries that are less representative of the community and cause the burdens of jury service to be concentrated among relatively few citizens. There is no single cause for the low numbers, and increasing those numbers is going to require significant efforts and substantial changes.

The overall goals of the recommendations in this chapter are to improve the representativeness of jury panels and spread the burdens and responsibilities of jury service as widely throughout the State as possible. The Commission believes these goals can be achieved by making clear to California's citizens that jury service is a mandatory requirement of citizenship, by reducing some of the more burdensome aspects of jury service, and by creating greater incentives for service.

A. The Jury Pool

Last year, nearly 500,000 Californians appeared in jury assembly rooms prepared to fulfill their civic responsibility to serve as jurors. The administrative processes employed to assemble this large group of persons are the primary responsibility of the jury commissioner. For purposes of this report, three aspects of those processes will be examined: (1) creation of the source lists, (2) sending out summons, and (3) hardship excuses.

1. Source Lists

The first step in the process of selecting a jury is to identify those persons within the vicinage who are eligible to serve on a jury. The jury commissioner randomly selects names from "the source list or lists" in order to create the "master jury list" (C.C.P. § 198(b)). In order to satisfy state and federal constitutional requirements, the source and master lists of jurors must consist of a representative cross-section of the community served by the court. *See Duren v. Missouri* (1979) 439 U.S. 357; *Taylor v. Louisiana* (1975) 419 U.S. 522; *People v. Wheeler* (1978) 22 Cal.3d 258; *Williams v. Superior Court* (1989) 49 Cal.3d 736.

Pursuant to statute, the jury commissioner creates the master list by randomly selecting names "from a source or sources inclusive of a representative cross section of the population of the area served by the court." C.C.P. § 197(a). Those sources "may" include "customer mailing lists, telephone directories, or utility company lists." Historically, in smaller counties, jury commissioners actually knew many or all of the residents, and the commissioner could generate the source list from his or her own head. As counties have grown, however, there has been increasing reliance upon easily accessible, relatively accurate, broad-based lists.

In many counties, the entire list is now drawn from only two sources: the list of registered voters and the Department of Motor Vehicles' list of licensed drivers and identification cardholders. Section 197(b) of the Code of Civil Procedure specifically provides that these two lists, "when substantially purged of duplicate names, shall be considered inclusive of a representative cross section of the population." A jury commissioner is thus statutorily permitted to rely solely upon the list of registered voters and licensed drivers and identification cardholders. The courts have upheld the constitutionality of these master lists against challenges based on the representative cross-section requirement. *People v. Sanders* (1990) 51 Cal.3d 471, 491-96 (upholding exclusive reliance upon list of registered voters); *People v. Harmon* (1989) 215 Cal.App.3d 552 (upholding reliance upon list of registered voters and DMV lists).

The addresses contained on the list of registered voters and DMV lists are not always accurate. Among other problems, persons who move often do not promptly change their voter registration or notify DMV. Those lists also

contain a certain number of names of persons who are dead, notwithstanding administrative efforts to remove those names. In addition, the sets of lists contain a certain number of inconsistencies and duplications that are not readily purged when the lists are combined by jury commissioners. Cumulatively, these errors can significantly increase the number of summons which a jury commissioner must mail out.

There are several methods of addressing these problems. First, some courts now update their master lists by using the National Change of Address list which is available from the United States Postal Service. *All* courts should take advantage of the National Change of Address system.

Recommendation 3.1: The Judicial Council should adopt a Standard of Judicial Administration recommending use of the National Change of Address system to update jury source lists.

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Second, the lists of registered voters and licensed drivers could be supplemented with other comprehensive lists of persons living in California, including such possibilities as utility company lists, state income tax lists, social security lists, lists of employees maintained for the State Disability Insurance program, private group medical plan insurance lists, or welfare and unemployment lists (which are now being used in New York). There are advantages (e.g., greater accuracy or comprehensiveness) and disadvantages (e.g., privacy concerns) associated with the use of any or all of these lists. Virtually all lists come with a certain irreducible number of errors, and the costs of merging these lists with voter and DMV lists and then purging duplicates may outweigh the marginal benefits of adding a few additional names to the master jury list. The Commission does not believe that the comparative advantages of any one or all of these lists are so compelling as to justify mandatory use by jury commissioners in creating the master list without additional experience and study. Under current law, individual counties may choose to use these lists, and one or more counties may conduct a pilot project to determine in practice the comparative benefits of additional source lists.

Recommendation 3.2: The Implementation Task Force should evaluate the results of an existing New York program to

supplement its jury source lists with welfare and unemployment lists and should then consider whether one or more California counties should conduct a pilot project supplementing the DMV and registered voters lists with other comprehensive lists of persons living in California.

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Ultimately, the Commission concludes that, although the registered voters and DMV lists contain some errors, the existing sources for creating the master jury list are adequate to the task. The Commission believes that the accuracy of those lists can be improved and that greater consistency from county to county could be achieved by greater statewide coordination of the process of creating the master jury list. The list of registered voters and DMV lists are maintained by state agencies (the Department of State and DMV) in computer databases. Instead of performing the merge and purge functions within each county, it may be that a more accurate and cost-effective list could be generated by one agency at the state level and then distributed to each county.

Recommendation 3.3: The Judicial Council's Advisory Committee on Court Technology, in consultation with the Implementation Task Force, should review the cost, feasibility and efficacy of a statewide master jury list.

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2. Summons Stage

The second step in jury selection is the summons stage. In the summons stage, the jury commissioner randomly selects names from the master jury list and sends those persons selected either (1) a qualification questionnaire to be returned to the court (which is then followed up by a summons for persons who are qualified to serve as jurors based upon answers to the questionnaire) or (2) a combined summons and qualification questionnaire. *See* C.C.P. § 198(c). The summons stage is recognized as one of the most critical components of the jury selection system. It is also, in many counties, a component that is desperately in

need of attention. In Los Angeles, for example, of the almost 4 million juror affidavits mailed in FY 1994-95, 36% did not respond and required follow-up (which resulted in an improved response rate), 15% were undeliverable as addressed, 12% were returned for updating, and 26% were excused either as not qualified (10%) or as undue hardship (16%). This left only 10% who were qualified and summoned (and only half of those, a total of 172,154 persons, actually served on juries). These numbers represent an "overall yield" of about 5% for Los Angeles County, which is low when compared to most other jurisdictions nationwide.

The low yield reflects, in part, a belief that jury service is neither mandatory nor worthwhile. The Commission is committed to changing those beliefs.

The low yield is troubling because it reflects, in part, a belief among a substantial portion of the public that jury service is not worthwhile and that the courts will not enforce the legal obligation represented by receipt of a summons. These beliefs are damaging not only to the jury system in particular, but also to overall public respect for the judiciary and the rule of law. The Commission is committed to the policy that jury service is a mandatory, civic responsibility. The Commission is also committed to making the necessary changes to convince the public that jury service is worthwhile.

Recommendation 3.4: The Legislature should enact a statute clearly stating that jury service is a mandatory duty of all qualified citizens.

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Simply stating in a statute that jury service is mandatory will not increase the number of persons who respond to jury summons, although it will clarify the issue for anyone who is confused. The Commission believes that an increase in numbers can be achieved through a measured reaction to failures-to-appear which includes the use of both carrots and sticks. The existing stick, *if enforced by the court*, comes in the form of C.C.P. § 209, which provides that a non-responsive juror "may be attached and compelled to attend; and, following an

order to show cause hearing, the court may find the prospective juror in contempt of court, punishable by fine, incarceration, or both." A number of counties employ Section 209 as a method of both compelling responses and, just as important, increasing general awareness within the community about the legal obligation of jury service. Enforcement efforts in these counties have generally been favorably received by the community and business interests. Enforcement is also consistent with the policy expressed in Section 4.5(a) of the Standards of Judicial Administration that "[t]he court and its staff should employ all necessary and appropriate means to assure that citizens fulfill this important civic responsibility [i.e., jury service]."

Persons who fail to respond to a juror summons may have a hold placed on their driver's license renewal.

There is obviously a resource allocation question which must be addressed in deciding how much use should be made of C.C.P. § 209. Peace officers cannot spend significant portions of their time arresting jurors. Sensitively and selectively employed, however, Section 209 enforcement actions have the potential substantially to increase overall yield, and the Commission recommends prudent use of this power. In addition, the Commission believes that a relatively inexpensive approach to enforcement in lieu of the order to show cause process involves placing a hold upon the driver's license renewal of a person who fails to respond to a jury summons. This hold, which would be lifted only upon satisfactory completion of a term of jury service, will be an efficient mechanism for driving home to the public the message that jury service is mandatory and that court orders cannot simply be ignored.

Recommendation 3.5: The Legislature should amend C.C.P. § 209 and Vehicle Code § 12805 to provide mandatory procedures for enforcing juror summons, including placing a hold upon driver's license renewals of those persons who fail to respond to a juror summons.

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> *"Most importantly, educate the public with an initial simple brochure that could be mailed at the same time jury summons are mailed. This could be read by the potential juror prior to completing any forms they receive. Please remember that a population of the public is intimidated by serving on jury duty."* Letter from Patricia J. Murray to the Commission, March 3, 1996.

As for the carrots, the Commission believes jury commissioners should consider a range of meaningful steps to improve the mechanics of the summons process and the public's understanding and appreciation of the jury system. Changes to the mechanics of the summons process include: (1) reviewing the content of summons with a view towards improving their appearance and understandability; and (2) reconsideration of a two-step approach used in some counties (i.e., questionnaire followed by summons) in favor of a one-step system (i.e., mailing a combined summons and questionnaire).

Recommendation 3.6: The Implementation Task Force should produce a format for a standardized jury summons for use, with appropriate modifications, around the State which is understandable and has consumer appeal.

Recommendation 3.7: Jury commissioners should, if feasible, adopt a one-step summons process (i.e., combined juror questionnaire and summons) to replace the two-step process (i.e., juror questionnaire followed by summons).

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Programs to enhance the public's understanding and appreciation of the jury system are central to increasing responsiveness to jury summons. Many of these educational messages and programs (such as juror orientation videotapes) will be delivered to those persons who do respond to their summons. As with any product, advertising by word of mouth from satisfied customers is one of the most important marketing objectives. Some courts have also successfully negotiated for public service announcements with the electronic mass media, and other courts used local cable channels to broadcast information about jury service. The Commission applauds these efforts to bring home to the largest possible audience the importance of jury service.

Recommendation 3.8: Jury commissioners and judges should actively promote the importance of the jury system and the duty to serve through all available channels of communication.

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3. Hardship Exclusions

All citizens should share the obligations of jury service, and all citizens are presumptively competent to serve as jurors.

Exemptions and excuses for jury service are governed by C.C.P. § 204. At one time, certain classes of persons were exempt from jury service in California. Consistent with the recommendation of the American Bar Association, nearly all of those exemptions have been removed, and Section 204(a) now provides that "[n]o eligible person shall be exempt from service as a trial juror by reason of occupation, race, color, religion, sex, national origin, or economic status, or for any other reason." *See* American Bar Association, *Standards Relating to Juror Use and Management*, Standard 6(a) ("All automatic excuses or exemptions from jury service should be eliminated."). This language expresses California's strong policy that *all citizens* share the obligations of jury service and that *all citizens* are presumptively competent to serve as jurors.

Excuses from service are governed by Section 204(b), which provides that "[a]n eligible person may be excused from jury service only for undue hardship, upon themselves or upon the public, as defined by the Judicial Council." The Judicial Council has set forth the permitted excuses in Section 4.5(d) of the Standards of Judicial Administration, which are advisory only. The excuses include no means of transportation to the court, travel time to the court in excess of one and one-half hours, extreme financial burden, undue risk of material injury to the juror's property, mental impairment or disability that would expose the juror to an undue risk of mental or physical harm, the juror's

services are needed elsewhere for the protection of public health and safety, or a juror has a personal obligation to care for another and substitute care is either unavailable or available only by imposing an undue economic burden. The Commission is convinced that these advisory standards should be converted into a mandatory rule which all jury commissioners must follow. This will help to promote uniformity around the State and to reduce the overall number of hardship excuses granted.

Part and parcel of scrutinizing hardships is the jury commissioner's power to defer jury service if a specific date poses a hardship to a particular juror. Section 4.5 of the Standards of Judicial Administration require the jury commissioner to prefer deferring jury service over excusing a juror "for a temporary or marginal hardship." It is anticipated that as the grounds for excuse based on hardship are tightened, jury commissioners will more liberally apply policies for deferring jury service to accommodate the schedules of prospective jurors.

Recommendation 3.9: The Judicial Council should enact a Rule of Court to require jury commissioners to apply the standards regarding hardship excuses presently set forth in Section 4.5 of the Standards of Judicial Administration.

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The most common hardship excuse is the personal obligation to care for one's children where substitute care would impose an undue economic burden. In some counties, 60% of the hardship excuses involve lack of child care. The Commission believes that reasonable child care options must be made available to jurors.

The Commission believes that reasonable child care options must be made available to jurors.

Existing court facilities, many of which were built decades ago, were not designed to accommodate on-site child care, which means that jurors must generally rely upon private child care centers. Section 1.3 of the Standards of Judicial Administration, enacted in 1987, provides that "[e]ach court should

endeavor to provide a children's waiting room located in the courthouse for the use of minors under the age of 16 who are present on court premises as participants or who accompany persons who are participants in court proceedings. The waiting room should be supervised and open during normal court hours." Unfortunately, this advisory standard has not met the needs of jurors who require child care.

The Commission recommends that jurors who are not employed and who must make special child care arrangements as a result of jury service should be reimbursed for the actual, reasonable expenses of licensed day-care. A model child care program for jurors has been implemented in Colorado. In addition, some mechanism should be created to pay for child care given by a spouse who stays home from work while the other does jury service. Properly implemented, court-financed day-care has the real potential to increase overall yield as well as to send a strong message to the public about our commitment to the jury system.

Recommendation 3.10: The Legislature should enact a child-care program for those jurors who must make special child-care arrangements as a result of jury service.

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B. Juror Treatment

At times, there appears to be a serious disconnect between our rhetoric about juries and our actual treatment of jurors as individuals. Our rhetoric and law extol the importance of the jury system, ranking it on a par with fundamental due process protections and guarantees against tyrannical government. Yet jury facilities are all too often uncomfortable, unclean, antiquated and even unsafe. The courts "compensate" jurors at rates that do not even pay for lunch or parking. Jurors sitting in over-crowded jury rooms who are ordered around the courthouse begin to feel more like pawns than valued participants in the justice system. Attorneys and judges appear to conspire to keep jurors uninformed and, worse, waiting in the hall for court to begin. And, when the time finally comes to serve on a jury, the judge may discover cause to excuse particular jurors, and attorneys may, without offering any explanation

whatsoever, exercise peremptory challenges. Many persons come away from having been called for jury service with the feeling that their time was not well used by the court system. "Hurry up and wait" is a complaint commonly heard.

Our actions must match our rhetoric. Jurors must be treated with courtesy and respect.

The Commission unanimously agrees that all participants in the judicial system--judges, court staff, and attorneys--must treat each individual juror with the courtesy and respect due to a valued participant in the justice process. Our actions must match our rhetoric.

In its deliberations, the Commission divided this topic into six subdivisions: (1) general treatment by judges, court staff and attorneys; (2) transportation and parking; (3) juror facilities; (4) juror privacy; (5) length of term of service; and (6) juror fees.

1. Treatment by Court Staff, Attorneys and Judges

As courtrooms around the State are discovering, without a sufficient number of jurors, the wheels of justice come grinding to an abrupt halt. To bring jurors back into the system, we must radically adjust our perceptions, and we must treat jurors as critical participants in the justice system. We must reinforce a sense of community in the courthouse that includes jurors. Simply put, we can no longer afford to take jurors for granted; we must demonstrate to jurors that they are important.

> *"The jury room staff was discourteous, inflexible, and unpleasant causing much discontent and bad feeling in the jury room. If I were to treat people in my professional life the way the jury room staff treated jurors, I would be fired."* Letter to the Commission from Judy Weinstein.
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> *"The jury room staff at all three locations was courteous and pleasant at all times to all jurors. (I should point out that the staff did not know that I was a judge.) No one I spoke to considered the treatment we received to be demeaning or that we were maltreated in any way."* Letter to Commission from Commissioner and Justice Orville A. Armstrong (who was called for jury duty while serving on the Commission).

Jurors are people, not pawns. Court staff, attorneys and judges can reinforce the importance of jurors by treating them as individuals with dignity and respect. This means simple things like having sufficient staff to answer phone calls from jurors with questions, giving jurors understandable and timely instructions about where they are expected to be, and making the courthouse secure, comfortable and pleasant. While this may seem trite to some, a smile and "hello" can go a long way to making the courthouse juror friendly. The Commission recognizes the impossibility of pleasing everyone since one juror's perception of mistreatment may be contradicted by several others. The goal is to serve as many persons as possible in a respectful, dignified manner.

The Commission recommends that court administrators include within employee training programs materials dealing with juror issues and that court administrators distribute to all judicial officers and court employees information to help make the courthouse juror friendly. There should be mandatory judicial, administrator and jury staff team training on juror treatment. The Commission further recommends that courts explore employing jury docents or omsbudsmen responsible only for addressing juror requests for help or information. Finally, the jury commissioner should create a handbook for jurors setting forth their responsibilities and informing jurors about the services available within the courthouse.

In addition to these courthouse improvements, courts should reach out to the community through the Internet, public service announcements, juror appreciation weeks, and high school and college programs that highlight the importance of the jury system and promote jury service as an important civic responsibility. The message sent by most commercial advertising is that the customer and the customer's needs are important. Courts need to communicate

precisely the same message about jurors.

> *"Above all, we need to start educating everyone about the court and jury process while they are in history / civic classes at the high school level. Each student should spend a day in the eyes of a juror. They could observe cases, observe the jury selection process, visit the jury processing room, fill out a mock jury questionnaire and return to class with a classroom review and discussion on what was learned that day. Early education reaps rewards when someday this student becomes a juror candidate."* Letter from Patricia J. Murray to the Commission, March 3, 1996.

Recommendation 3.11: The Judicial Council should adopt a Rule of Court providing for mandatory judicial, court administrator, and jury staff team-training on juror treatment.

Recommendation 3.12: The Judicial Council should adopt a Rule of Court requiring jury commissioners to prepare a juror handbook which sets forth the juror's rights and responsibilities and explains juror services within the courthouse.

Recommendation 3.13: The Judicial Council should adopt a Rule of Court requiring the creation within each court of some reasonable mechanism for responding to juror complaints.

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2. Transportation and Parking

Getting to and from court should be as convenient as possible. It is inevitable that there will be significant travel time for many jurors since courtrooms are generally centralized within a small handful of buildings within a county. Thus, in some counties, jurors drive 100 miles or more to get to court. In more urban counties, the difficulties of travel within the city and parking offset some of the advantages of geographic compactness.

Jury commissioners in some counties have successfully negotiated arrangements with local transit providers to provide free public transportation to and from courthouses for jurors. The Commission endorses this innovative transportation program and believes it should be made available statewide.

Recommendation 3.14: To reduce the burden of long-distance driving and to reduce parking problems, the Legislature should consider the propriety of measures requiring mass transit providers to offer free public transportation to and from courthouses for jurors.

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Those jurors who travel to court in their own cars face the familiar problem of parking. In some counties, the only parking is located several blocks away from the court, and the cost of parking exceeds the fees presently paid to jurors (a topic discussed below). Security of parking facilities is also a problem in many counties. The Commission believes that the courts should provide parking or, alternatively, should reimburse jurors for the price of private parking facilities.

Recommendation 3.15: The Legislature should amend C.C.P. § 215 to require courts to reimburse jurors for all reasonable and necessary parking expenses or to provide free parking consistent with local building and transportation policies.

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3. Juror Facilities

The facilities we make available to jurors communicate very powerful messages about our commitment to the jury system and our respect for individual jurors. Respected guests should not be expected to wait for hours at a time in over-crowded, noisy rooms with uncomfortable chairs, inadequate bathroom facilities, and insufficient phone service. Yet these are precisely the characteristics of most jury assembly rooms around the state.

Improvements to existing facilities and new facilities must accommodate the needs of jurors.

Improving these conditions is a long-term project, especially since jury rooms are not the only public facilities in California that are desperately in need of repair and reconstruction. But the courts must not neglect this important aspect of long-range planning. In planning for improvements to existing facilities or for new facilities, careful attention needs to be paid to the needs of jurors.

National standards for jury facilities appear in no fewer than six publications. *See* American Bar Association, *Standards Relating to Juror Use and Management*, Standard 14; American Bar Association & American Institute of Architects, *The American Courthouse: Planning and Design for the Future* (1973); Judicial Council of California, *California Trial Court Facilities Standards* (1991); National Clearinghouse for Criminal Justice Planning and Architecture, *Guidelines for the Planning and Design of State Court Programs and Facilities, Volume B: Court System Planning Concepts - Jury Facilities* (1976); U.S. Department of Justice, *Space Management and the Courts: Design Handbook*; Judicial Conference of the United States, *U.S. Courts Design Guide* (1993). The Los Angeles Superior Court Management Systems Unit has printed a single document that summarizes these guidelines, and that document is reproduced in Appendix G. The Commission recommends that trial courts review existing jury facilities in light of national standards and take the necessary steps to bring all jury facilities up to those standards. While these standards establish a benchmark against which we should judge our efforts, it bears emphasis that these standards establish only the minimum and not necessarily the most desirable conditions for jury facilities. We must exceed the minimum when possible.

Recommendation 3.16: Trial courts should review existing jury facilities in light of national standards and, at a minimum, should take whatever steps are necessary to bring all jury facilities up to those standards.

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Of equal concern, some courts are located in comparatively unsafe areas. When this is true, the court should be responsible for insuring that jurors can both arrive and depart safely from the courthouse. In some areas, this means getting the jurors out before dark, or providing special security in the areas immediately surrounding the courthouse, or providing escorts by security officers. Juror security includes not only the spaces outside the courthouse, but also the jury assembly room and hallways within the courthouse. Many jurors report feeling insecure and intimidated while waiting in these public areas. Efforts must be made to make jurors feel secure throughout their term of service, a responsibility that falls upon the court security officer. *See* Standards of Judicial Administration, § 7.

Recommendation 3.17: The presiding judge of the court should ensure that juror security within the courthouse and from juror parking facilities to the courthouse is properly coordinated and supervised by the court security officer.

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4. Privacy

Jury service is a civic duty. Many persons, given a choice, would probably prefer *not* to serve as a juror. Yet for the jury system to continue functioning, the State must insist upon citizens fulfilling this important responsibility. One of the most serious potential burdens upon jurors has nothing to do with the inconvenience of service, or the condition of jury facilities, or the treatment by court staff and counsel. Rather, it has to do with the intrusion upon the right of privacy which occurs when a person is thrust involuntarily into a public arena and is required to make important public decisions (at times, life or death decisions).

The right of privacy in California has special constitutional status. By legislative initiative, the right to privacy was added to the California Constitution in 1972. The drafters of the initiative were especially concerned about informational privacy and, in particular, about the unrestrained proliferation of government and private databases containing personal information and the equally unrestrained distribution of that information. *See*

generally J. Clark Kelso, *California's Constitutional Right to Privacy*, 19 Pepperdine L. Rev. 328, 426 (1992) ("'The proliferation of government snooping and data collecting is threatening to destroy our traditional freedoms.'") (quoting from the Ballot Argument).

In the course of voir dire, jurors are compelled to disclose a significant amount of personal information in open court. That information may include the juror's identity, home address, place of work, marital status, the number and ages of children (if any), the spouse's place of employment, the juror's arrest record (if any), prior courtroom experience, the schools attended by the juror's children, the juror's medical status, financial status, and army record, and a wide range of other private life experiences. *See* Standards of Judicial Administration §§ 8(c)(20) & 8.5(b)(20).

> *"It is my opinion that the only person needing your full name is the Jury Commissioner. . . . With the courts addressing more violent crimes that might provoke or involve retaliation, drive by assaults, threats or potential hostility by the defendant's family or associates, jurors will remain at risk if their full name is stated . . . ."* Letter from Patricia J. Murray to the Commission, March 3, 1996.

The disclosure of this information in public is itself a burden upon each juror's right to informational privacy. But the public disclosure may have even more serious privacy and security consequences. After the trial has concluded, jurors may be hounded by reporters looking for stories, the juror's friends and family may be approached, and there is even the possibility of physical retaliation by a disappointed litigant. While such physical retaliation is extremely rare, the mere possibility may create fear within a juror's mind, affecting both how a juror responds to questions during voir dire and how a juror functions during the trial or during deliberations. Particularly in criminal trials of gang members, attempts to intimidate jurors during trial are becoming more frequent, and many jurors are plainly worried about the threat of intimidation or retaliation.

The Legislature has partially addressed this problem with legislation that requires the sealing of personal juror identifying information in criminal cases after the jury has rendered its verdict. C.C.P. § 237(a)(2). The Commission does not believe that this approach solves the problem. Sealing information contained in court records *after* the information has already been disclosed publicly and on the record is ineffective. The privacy right has already been lost.

Beginning in January of 1994, the Los Cerritos Municipal Court has experimented with a program in which jurors are identified only by number and personal identifying information is not permitted to be elicited during voir dire. The program was described in a paper that was presented to the Commission by Judge Philip K. Mautino, Presiding Judge of the Los Cerritos Municipal Court. Only those jurors who requested identification by number participated in the program. In 1994, over 2,800 jurors were called for service at the court, and only 6 people did *not* request identification by number. With a participation rate of 99.75%, this is obviously a popular program with jurors.

Identifying jurors only by number and preventing counsel from eliciting personal identification information about jurors has been criticized as jeopardizing the litigants' rights to a fair trial. Opponents make three arguments: First, a decision-maker who believes that he or she is effectively anonymous may behave in very different ways from a decision-maker who believes that he or she will be held publicly accountable. Authorizing anonymous juries harkens back in some sense to the evils of the Star Chamber. Second, an anonymous jury system sends a signal to jurors that there actually is something to fear in the courtroom, and that fear will naturally be directed in criminal cases at the accused. An anonymous jury system thus threatens to undermine the constitutional presumption of innocence. Third, counsel's ability to discover grounds for challenges for cause or to discover juror misconduct may be substantially impaired. While identification by number may increase juror honesty during voir dire because of the cloak of anonymity, the opposite tendency may be for jurors to conceal significant information because of the near impossibility of proving that statements made by someone who is unknown are inaccurate.

A majority of the Commission rejects these arguments and favors identifying jurors only by number. The Commission believes these improvements will help create a sense of security, encourage jury service, and thereby facilitate the creation of more representative jury panels, which will be to the benefit of all litigants and the interests of justice. *See generally* Nancy J. King, *Nameless Justice: The Case for the Routine Use of Anonymous Juries in Criminal Trials*, 49 Vand. L. Rev. 123 (1996). The criticism that jurors may change their decision-making processes because of identification by number is speculative. The analogy to the Star Chamber is inappropriate since the jury must still appear in public and deliver its verdict in public. Concerns about a signal being sent that there is something to fear are likewise speculative. Indeed, to the contrary, we already know that large numbers of jurors are in

fear of certain categories of defendants (e.g., defendants who are gang members). The proposal to identify jurors by number will actually *reduce* juror fear and permit decision-making to be unaffected by concerns of retribution. Finally, juror credibility during voir dire is not a serious issue except in the most unusual of cases. In all but the most extraordinary cases, counsel does not have the resources or the interest to investigate the accuracy of juror statements during voir dire. That is, in part, why peremptory challenges remain an important feature of jury selection (as discussed further below). On balance, it seems more likely that identifying jurors by number will decrease juror fear, increase juror honesty, and insulate jury deliberations from the corrupting influence of fear.

Jurors should not be required to surrender all rights to informational privacy.

Recognizing the importance of informational privacy under our State Constitution, and mindful of the burden placed upon jurors' privacy rights under our current system of voir dire, the Commission concludes by a vote of 16 to 2 that the disclosure of identifying information about a juror or a juror's family (e.g., name, home address, place of employment, spouse's place of employment, children's school, and similar information) should not be permitted during voir dire except on a showing of a compelling need. In order to implement this recommendation, the Legislature will need to enact a statute providing that jurors will be identified throughout the jury selection process by number and not by name. Jurors should not be required to surrender all rights to informational privacy.

Recommendation 3.18 (by a vote of 16 to 2): The Legislature should enact legislation providing that jurors will be identified throughout the jury selection process only by number and not by name, and that personal juror identifying information shall not be elicited during voir dire except on a showing of a compelling need.

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The Commission is also aware that some judges do not inform jurors that

they may request the opportunity to discuss exceptionally private matters in chambers with only the counsel and parties present. This is more than simply a matter of common courtesy. Jurors who have very personal information which is relevant to a question posed during voir dire are more likely to reveal that information in chambers than in open court. Giving jurors the right to answer a question in chambers and requiring that jurors be informed of that right will result in a more honest voir dire process and in jurors who are less fearful of being required to disclose very private information in public.

Recommendation 3.19: The Legislature should enact a statute giving jurors the right to respond in chambers to questions during voir dire that elicit highly personal information and requiring that the court inform jurors of this right.

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Identifying jurors by number throughout the process does not completely address the problem of juror privacy. After the jury's verdict has been recorded, counsel may desire to interview jurors for the legitimate purpose of establishing juror misconduct in support of a motion for a new trial. Section 237 of the Code of Civil Procedure provides a procedure by which a party may discover the identity of a juror after the verdict has been recorded. As presently drafted, the procedure requires the petitioner to establish a prima facie showing of good cause for disclosure. C.C.P. § 237(b). If such a showing is made and if there is no "compelling interest against disclosure" (e.g., "protecting jurors from threats or danger of physical harm"), the court is required to set the matter for a hearing. C.C.P. § 237(b). Upon setting the matter for a hearing, the court is required to "provide notice [of the hearing] to each affected former juror by personal service or by first-class mail." C.C.P. § 237(c). The juror "may appear in person, in writing, by telephone, or by counsel to protest the granting of the petition." C.C.P. § 237(c). In practice, jurors who receive this notice are likely to feel intimidated into making a personal appearance at court in circumstances that inevitably disclose the juror's identity. The Commission believes that Section 237 should be amended to provide appropriate protections for juror identifying information during this post-trial process.

Recommendation 3.20: The Legislature should amend C.C.P. § 237 to ensure that personal juror identifying information is

properly safeguarded in the context of post-verdict proceedings.

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5. Term of Service and Period of Repose

One of the most lasting negative impressions which a juror can take away from jury service is the feeling that his or her time has been wasted. From a juror's perspective, wasted time includes time spent waiting in the jury assembly room to be assigned to a courtroom, waiting outside the courtroom for significant periods of time either prior to voir dire or during the trial, or being directed to a courtroom or assigned to a panel only to be told after a delay that the case has suddenly settled. Jurors who are dismissed by peremptory challenges also come away feeling like their time has been wasted.

There is nothing more demoralizing for a juror than showing up at 8:30 a.m. and waiting around until 3:00 p.m. without being used, only to be told to return the next day.

The perception of wasted time is undoubtedly magnified by the uncertainty associated with jury service. There may be uncertainty about how many days a juror must appear at court to be available, uncertainty about how much time will be spent in jury selection where there is a significant chance of not being used, and uncertainty about how long a trial may last if chosen. There is probably nothing more demoralizing for a prospective juror than being told to show up at the jury assembly room at 8:30 a.m. and then waiting around until 3:00 p.m. without being used, only to be told to return the next day.

The goal should be to reduce as much as possible the time spent by jurors in the assembly rooms waiting to be called into service.

Some of the uncertainty can be reduced by adopting a simple term of service requirement. In some counties, for example, jurors are asked to come to court on the first day of service for orientation and then are requested to remain available through a phone-in system for up to nine additional court days with a guarantee that actual service on one jury (no matter how short the trial) will satisfy that juror's service requirement. The American Bar Association recommends "a term of service of one day or the completion of one trial, whichever is longer." *Standards Relating to Juror Use and Management*, Standard 5(a). One trial / one day systems require that a larger number of persons be summoned, but the benefits in terms of reducing the uncertainty regarding jury service substantially outweigh this cost. A short and certain length of service should decrease the number of persons who drop out of the system because of the economic hardship resulting from a one- or two-week service requirement, and that will result in a more representative jury panel. *Id.*, Standard 5, commentary, pp. 44-45. The goal should be to reduce as much as possible the time spent by jurors in the assembly rooms waiting to be called into service. Because of the importance the Commission attaches to reducing uncertainty in the length of service, the Commission recommends that all courts be required to adopt a one trial - one day service requirement by 1998 except on a showing of good cause why such a requirement is impractical.

Recommendation 3.21: The Judicial Council should adopt a Rule of Court requiring by January 1998 adoption of a one trial - one day service requirement except in those counties which can demonstrate good cause why such a requirement is impractical.

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It is apparent from practical experience that a one trial - one day service requirement works best if the court has already implemented an "on-call" telephone stand-by system. Even if a one trial - one day service requirement is *not* adopted, the "on-call" system conserves juror resources by giving the jury

commissioner the ability to manage juror attendance on a daily basis. The Commission recommends that all counties be required to implement an "on-call" system.

Recommendation 3.22: The Judicial Council should adopt a Rule of Court requiring by January 1998 implementation of an "on-call" telephone stand-by system in every county except in those counties which can demonstrate good cause why such a system is impractical.

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Significant uncertainty is introduced into the length of service by the prevalence of last-second settlements and pleas. In these cases, the jury commissioner has no choice but to have a complete panel of jurors standing by in the jury assembly room or in the hallway (which may mean over 40 jurors in an ordinary felony case). While a case settlement at this stage undoubtedly saves significant resources and is to be encouraged, eleventh-hour settlements plainly have a deleterious impact upon juror satisfaction and upon the cost of the jury system.

The Commission discussed various policies--such as settlement and plea cutoffs two days prior to trial--that might have the effect of causing settlements *before* a jury panel has been selected. Ultimately, however, the Commission decided not to recommend any statutory or rule changes with respect to settlements and pleas. California has a very strong policy in favor of settlement of disputes. In criminal cases, it often is not until the very last moments before trial that a prosecutor knows whether all of his or her witnesses will testify. Similarly, a defendant may not decide to accept a plea until faced with the imminent arrival in court of a jury. Because of these practical realities, any attempt to regulate the timing of settlements is likely to have unintended consequences upon other aspects of the justice system. The Commission recommends that presiding judges discuss the topic of case predictability and late settlements with participants in the criminal justice system in meetings required by Rule 227.8.

Recommendation 3.23: Presiding judges should discuss the topic of case predictability and late settlements with

participants in the criminal justice system in meetings required by Rule of Court 227.8.

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Finally, the Commission believes that a juror who has fulfilled his or her civil responsibility is entitled to a period of repose from jury service. The length of a period of repose depends upon a number of factors, including among other things the total juror yield within a county, the length of service and the number of jury trials demanded. Because these factors vary from county to county, a single statewide rule is not practical; however, a minimum standard should be established. The Commission recommends that a person who completes jury service be excused from further service for at least a period of twelve months. In those counties where it is practical, jurors should be excused from service for a greater period of time (e.g., two years or more). *See* American Bar Association, *Standards Relating to Juror Use and Management*, Standard 6(b) ("Eligible persons who are summoned may be excused from jury service if: . . . (ii) . . .they have been called for jury service during the two years preceding their summons.").

Recommendation 3.24: The Legislature should amend C.C.P. § 204 to provide that an eligible person shall be excused from service for a minimum of twelve months if he or she has completed jury service.

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6. Juror Fees

At present, unless a county or city provides for higher fees, jurors receive five dollars ($5) a day for each day of attendance as a juror, and reimbursement for mileage at the rate of ($0.15)

At $5 per day, California's juror fees are among the lowest in the nation.

fifteen cents per mile for each mile actually traveled in going to (but not going *from*) court as a juror. C.C.P. § 215. The $5 per day rate was enacted by the Legislature in 1957 (Cal. Stats. 1957, ch. 1406, § 3), and the $0.15 per mile rate was enacted by the Legislature in 1951 (Cal. Stats. 1951, ch. 1693, § 2). If these figures were adjusted to reflect inflation from 1957 to the present (based upon the California Consumer Price Index), jurors would receive $28.42 per day and $0.85 per mile. Because California has not changed its juror fees in almost 40 years, it is no surprise that California's juror fees are among the lowest in the nation. *See* Appendix H (listing juror fees for each state).

Although the individual rates ($5/day and $0.15/mile) are surely a paltry sum, in a court system as large as California's, total juror fee payments are in the tens of millions of dollars. In 1994-95, the State paid out almost $22 million in juror fees. Juror fees and mileage are budgeted at $23.2 million for 1995-96. A substantial increase in a juror's daily fee and mileage rate (e.g., to $40 per day and $0.28 per mile) with no other changes in the system would cost additional tens of millions of dollars.

Nevertheless, the Commission is convinced that an increase in juror fees and a reconsideration of juror compensation issues is long overdue. It is insulting to tell jurors that, in return for their service, the State will "compensate" them at a rate of $5 per day and $0.15 per mile to (but not from) the court. The message sent by these outdated rates is that California does not really value jurors' time. The Commission believes the increased costs of jury service should be shared among jurors, employers, employees, the counties, the State, and civil litigants. The interconnected package of proposals which follows spreads the annual costs of jury service among all of these groups. (For a rough estimate of some of the costs, *see* Appendix I.)

The Commission recommends that the daily fee for jury service be increased from $5 per day to $40 per day after the first day (and $50 per day after the thirtieth day). This increase underscores the State's commitment to the importance of jury service. Under this proposal, jurors will *not* receive a jury fee for the first day of service. The Commission believes it is fair and appropriate to require attendance at court for one day without receiving compensation from the court. This new rate is consistent with the recommendation of the Trial Court Budget Commission. It is also essentially equivalent with juror fees paid in federal court and would make California one of the leading states with respect to juror fees. *See* Appendix H (listing juror fees by state); American Bar Association, *Standards Relating to Juror Use and*

Management, Standard 15. The Commission further recommends that reimbursement for travel expenses be at the rate of $0.28 per mile for travel to *and* from the court. That is the rate now paid by the state for official travel. In traveling to and from court, jurors are plainly on official state business and should receive the same mileage fees paid to others who are similarly situated.

Recommendation 3.25: The Legislature should amend C.C.P. § 215 to provide for juror fees of $40 per day for each day of jury service after the first day and $50 per day for each day of jury service after the thirtieth day, and to provide for reimbursement to jurors at the rate of $0.28 per mile for travel to and from the court.

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Employers should be required to participate in supporting the jury system. At present, Labor Code § 230(a) provides that "[n]o employer shall discharge or in any manner discriminate against an employee for taking time off to serve as required by law on an inquest jury or trial jury, if such employee, prior to taking such time off, gives reasonable notice to the employer that he is required to serve." State law does *not* require employers to continue paying the salary of employees who are absent because of jury service. In fact, however, many employers (including the Federal, State and many local governmental units) have a policy of compensating employees for at least part, if not all, of an employee's jury service. Jury service is an important civic responsibility and a good educational experience. Enlightened corporate citizens, recognizing the importance of the jury system to respect for the rule of law, are to be commended for providing such tangible, direct support to the jury system.

The Commission believes that all employers, not just enlightened employers, should support the jury system by continuing to compensate employees for jury service. The burden should be shared equally among employers. For most employers, the most critical issues involve uncertainty. When will an employee be called? For how long must an employee be absent from work while waiting to serve on a jury? Once placed on a jury, how long will the employee be absent?

These uncertainties can be addressed. Jury commissioners in most

counties already have put in place flexible scheduling policies that permit persons who have received a summons to delay service until a more convenient time. Many counties have instituted call-in programs which help insure that an employee is not called away to the court unless there is a good chance the employee will be used as a juror.

The most significant uncertainty relates to trial time. While most cases are resolved within days, some cases require much more trial time. The Commission believes the best way to reduce this uncertainty is to require employers to compensate employees absent for jury service for only the first 3 days of jury service. This rule places a clear limit upon the employer's obligation and permits businesses to plan well in advance to accommodate this responsibility. The 3-day rule will provide a much needed financial assist to employees for the first few days of service and will provide much needed certainty to employers.

The Commission discussed whether the obligation should extend to *all* employers or only to employers that have a minimum, threshold number of employees (e.g., businesses which employ 5 or more persons). Proponents of a threshold argue that the financial burden on a small employer of paying employees for up to three days of jury service is arguably greater than the burden on a larger employer. Opponents observe that each business has the same risk of having employees called away for jury service, and that all businesses (large and small) can plan in advance how to accommodate this new requirement. Opponents also note that, as a matter of principle, all businesses should be required to contribute to the jury system and that drawing distinctions based upon the size of a business violates that principle. As the Supreme Court explained in *Dean v. Gadsden Times Publishing Corp*. (1973) 412 U.S. 543, where the Court upheld the constitutionality of requiring employers to continue an employee's usual compensation during jury service, "'[m]ost regulations of business necessarily impose financial burdens on the enterprise for which no compensation is paid. Those are part of the costs of our civilization.'" *Id.*, 412 U.S. at 544 (quoting *Day-Brite Lighting, Inc. v. Missouri*, 342 U.S. 421 at 424). By a vote of 14 to 7, the Commission decided that *all* employers should be required to continue paying compensation and benefits to employees for the first three days of jury service.

Recommendation 3.26: The Legislature should amend Section 230 of the Labor Code to require all employers to continue

paying usual compensation and benefits to employees for the first three days of jury service if the employee has given reasonable notice to the employer of the service requirement.

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The Commission is concerned that by requiring employers to pay usual compensation and benefits for the first three days of jury service, those employers which currently pay compensation and benefits for *all* days of jury service may reconsider their programs. The Commission also wants to avoid any implication that employers should pay for *only* the first three days of jury service. Jury service is a valuable experience for all employees and helps to create a more informed, involved work force. The Commission wants to encourage all employers to consider the benefits to themselves and to their employees of paying compensation and benefits throughout the term of jury service. Towards that end, the Commission recommends enactment of a reasonable tax credit for businesses which pay usual compensation and benefits beyond the three days recommended above.

Recommendation 3.27: The Legislature should adopt reasonable tax credits for those employers who voluntarily continue paying usual compensation and benefits to employees who are absent from work for more than three days on account of jury service.

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Private sector employees need to contribute to the system as well. As explained below, virtually all of the commissioners believe this can be accomplished most efficiently, effectively and fairly by recourse to an existing disability payment program: The Disability Insurance Program.

The Disability Insurance Program, established in 1946, provides benefits to eligible workers suffering a loss of wages when they are unable to perform their usual work because of a non-occupational illness, injury, pregnancy or participation in an alcohol or drug treatment program. State law currently requires coverage for employees working for employers with payrolls over $100 per calendar quarter. The program covers over 11 million workers. The

program specifically excludes some domestic workers, most governmental employees, employees of interstate railroads, and individuals claiming religious exemptions. Those employees not covered by the mandatory plan may elect to join a voluntary plan. At present, 95 percent of the workers are covered by the state plan, and 5 percent are covered by voluntary plans.

Disability payments are financed entirely by California employees through payroll deductions. Employers do not contribute to the fund, but are responsible for withholding the SDI tax for each employee and for filing wage reports for each employee. At present, the cost to the employee is 0.8 percent of the first $31,767 in wages (i.e., a maximum of $254 per year). The rate may be adjusted each year depending upon the balance in the disability fund and projections of claims upon the fund in coming years. Adjustments are made in tenths of a percentage point; a one-tenth of a percentage point increase in the rate (i.e., approximately $32 per year per employee) produces approximately $220 million in revenue annually.

To make jury service a basis for claims against the fund, Section 2626(b) of the Unemployment Insurance Code should be amended by adding the following to the definition of disability: "(5) Inability to work due to jury service, except for the first day of such service." A new section would then be added to the code to set the rate for jury service claims at $40 per day for the first 30 days of service, and $50 per day for each day over 30 days (the $10 increase reflects the additional burden which long trials place upon jurors). Administratively, payments could be made to jurors directly from the court with reimbursement from the fund. Alternatively, jurors could process a claim using forms that employers already have available. The details of administration would ultimately need to be worked out with the expert advice of the Employment Development Department, which administers the fund. A rough estimate suggests that demands on the SDI fund for jury service would constitute approximately $27 million annually (which may or may not trigger a change in the current SDI rate of 0.8 percent).

Opponents to this proposal may contend, among other things, that it represents an unfair burden upon California employees and that it threatens to expand the SDI program beyond its original intent into unchartered waters. The burden upon California employees which this proposal creates is modest. The Commission's package of juror fee proposals creates burdens upon employers, counties, litigants, jurors and the State; it is fair to ask employees to bear some of the costs of ensuring a smoothly functioning jury system. As for extending

the SDI program beyond its original intent, the Commission notes that SDI already covers physical conditions other than injuries or illnesses. Jury service is, in some sense, simply another physical condition that makes reporting to work impossible. Equally important, adding jury service to the list of disabilities in the SDI program will not open the door to adding other conditions to that list. Jury service is *sui generis* in its importance to the State, its multi-day service requirement, and its predictable cost. The basic purposes of the SDI program will not be undermined by adding jury service to the short list of disabilities.

Recommendation 3.28: The Legislature should amend the Unemployment Insurance Code to provide that, except for the first day, jury service constitutes an employment disability which entitles the employee to a claim in the amount of $40 per day (increased to $50 per day after the 30th day of service) .

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C. Jury Management

Throughout its deliberations, the Commission has been struck by the paucity of hard data that is available about the performance of jury systems in California and around the country. The numbers which are available (e.g., numbers of persons who respond to a summons, numbers of persons excused for hardship, numbers actually selected) do not provide much useful information to policy makers. The numbers can tell us that the system is approaching a crisis point, but the numbers do not tell us *why* or suggest how the numbers can be improved. These are the more important issues for policy makers. In the absence of systematically collected and analyzed data on these issues, the Commission has been forced to rely primarily upon the expertise of its members and the extensive experience of Mr. Tom Munsterman, consultant to the Commission from the National Center for State Courts.

The Commission believes that better policy can be made in the long run if we begin the systematic collection and analysis of information regarding jury management. This data collection effort should run the entire gamut of jury selection and use, from a systematic exploration of reasons why persons do not respond to summons, to actual data on time spent by jurors waiting in the jury

room, waiting in the hallways and working in courtrooms, to the number of and reasons for hung juries (*see infra* Recommendation 4.14).

The Commission is aware that designing systematic studies and collecting and analyzing data can be time-consuming and expensive. But the cost in not performing this vital function is to reduce significantly our capability to manage the jury system effectively and in the public's best interest. The Commission is convinced that the benefits to the policy-making process of continued, systematic study outweigh the costs of the effort.

Recommendation 3.29: The Trial Court Presiding Judges Advisory Committee and Court Administrators Advisory Committee should systematically monitor and study critical components of the jury system for the purpose of permitting more informed policy-making and management.

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Chapter IV
Jury Selection and Structure of the Trial Jury

The jury's role in the justice system is to represent the community's wisdom, experience, values and common sense in applying the law as given to it by the court to the facts as established by the evidence and found by the jury. To fulfill this role, the jury needs to reflect the diversity of the community and must consist of a fair cross-section of the community's population. In order to remain a respected institution, the jury must also be structured and selected so that it can render just verdicts consistent with law, and jurors must be willing and able to deliberate amongst themselves rationally.

The use of peremptory challenges to sculpt a jury to be predisposed to one side or the other and the increasing prevalence of jurors who are unwilling to participate rationally in deliberations are serious threats to the jury system. The Commission's ultimate goal in dealing with these issues is to reinforce the jury's central role in reaching just verdicts through a process of complete and informed deliberation devoid of bias and prejudice.

The Legislature has been actively considering this year a number of bills dealing with voir dire, peremptory challenges, the size of the jury and the requirement of unanimity: On voir dire, see AB 1065 (Richter), AB 2832 (Bordonaro); on peremptories, see AB 2003 (Goldsmith), AB 2060 (Bowen), SB 56 (Beverly), SB 1644 (Marks), SB 2159 (Leslie); on jury size, see ACA 28 (Richter), SB 56 (Beverly); and on unanimity, see ACA 18 (Rainey), SCA 24 (Calderon). Many of these bills have generated significant controversy and opposition because they change characteristics of the jury system that have been in place for hundreds of years. Juries have consisted of twelve persons for centuries. Unanimity in criminal cases has been a staple for almost as long. Peremptory challenges and voir dire have been central features of jury selection throughout American history, although the number of peremptory challenges and the conduct of voir dire varies widely around the country.

However, the fact that these proposals alter long-standing historical practice does not fully account for the intensity of the debate. Proposals to

change voir dire, peremptories, jury size and the unanimity requirement affect the jury selection and deliberation process in virtually *every* case in ways that pit powerful interests against each other. For example, significantly reducing the number of peremptory challenges, a proposal favored by many judges, courtroom observers, and ex-jurors, reduces attorney involvement and control which, not surprisingly, is strongly opposed by most lawyers. *See* Appendix F (State Bar Principles Relating to Jury Reform). As for reducing jury size and permitting non-unanimous verdicts, critics argue these proposals favor one group of repeat litigants (e.g., prosecutors) over another (e.g., defense counsel). When changes from the status quo are perceived as favoring one powerful group over another, controversy is to be expected. However, perceptions may be incorrect. The diverse and broadly representative membership on the Commission insured a full airing of these controversial issues.

This Report recites the reasonable arguments on both sides of these complex issues, indicates those areas where consensus was reached, and notes the degree of disagreement within the Commission by giving the vote on each issue where consensus was not possible.

A. The Juror Selection Process

1. The Need for Representative Jury Panels

A great deal of representative diversity is being lost in the early stages of the jury selection process.

The process of jury selection actually begins with the creation of the master jury list from various source lists, as discussed in Chapter III. Long before individual jurors are assigned to panels and courtrooms, hundreds of thousands of persons are dropped from the system. Many never receive their summons because of outdated addresses. Many others never respond to their jury summons. Others are excused from service because of undue hardship. The anecdotal experience of judges and counsel in Los Angeles is that the jury panels assigned to courtrooms are not truly representative of the community. A great deal of representative diversity is being lost in the early stages of the jury selection process.

The source list and summons stage of jury selection are inextricably linked to other issues in the jury selection process. More broadly representative jury panels will reduce concerns during the voir dire and challenge stages of jury selection about the quality of the jury. As noted in Chapter III, the Commission believes that improvements are needed in the jury summons process to reduce the number of persons who never respond to a jury summons and to provide for a more representative jury pool. These recommended improvements (e.g., making jury service truly mandatory by enforcing jury summons, making service more predictable and less burdensome on jurors and employers by adopting one trial / one day programs, and increasing juror pay) should make jury panels more representative of the community.

2. Improvements to Voir Dire

A properly conducted voir dire is critical to a fair trial and to promote respect by litigants and the public for the jury's decision. Voir dire permits the court and parties "to discover bias or prejudice with regard to the circumstances of the particular case." C.C.P. § 222.5. The information gathered during voir dire is generally the only basis for excusing jurors for cause or for attorneys exercising peremptory challenges. In order to facilitate proper challenges, voir dire questioning should consist of a "liberal and probing examination calculated" to discover disqualifying biases, prejudices or circumstances. C.C.P. § 222.5.

Voir dire in civil cases is governed by C.C.P. § 222.5. The trial judge begins voir dire with an initial examination to disclose grounds for excuses for cause. *See* Standards of Judicial Administration § 8. After the judge concludes the initial examination, counsel for both parties have the right to conduct questioning for the purpose of "enabl[ing] counsel to intelligently exercise both peremptory challenges and challenges for cause." C.C.P. § 222.5.

As a result of Proposition 115, enacted in 1990, voir dire in criminal cases is conducted exclusively by the court except "upon a showing of good cause," in which case the court may permit counsel to supplement the examination. C.C.P. § 223. Although the parties still have the right to exercise peremptory challenges in criminal cases, "[e]xamination of prospective jurors shall be conducted only in aid of the exercise of challenges for cause." C.C.P. § 223. *See Copley v. Superior Court* (1991) 228 Cal.App.3d 77, 83 n.5. Because of these changes in the law, voir dire in criminal cases has generally

been shortened, and in a number of cases, *both* prosecutors and defense counsel worry about whether sufficient information is being obtained during the process.

The Commission believes that the quality of voir dire in criminal cases can be improved. Pursuant to Proposition 115, judges have a much more critical role in criminal voir dire. Most judges had not engaged in extensive voir dire examinations for many years when Proposition 115 was approved, and there is no guarantee that new judicial appointees will have significant criminal trial experience. Section 8.8 of the Standards of Judicial Administration provides that "[a] judge assigned to jury trials should attend at least one educational program devoted to the conduct of voir dire." The Commission is concerned that this minimal level of training is simply insufficient to insure that trial judges, some of whom will not have had recent jury-trial experience, conduct an appropriately searching voir dire. The Commission recommends that Section 8.8 of the Standards of Judicial Administration be amended to encourage CJER to produce educational materials and programs focused on the conduct of voir dire, particularly in criminal cases, that can be distributed to all judges for use and review.

Recommendation 4.1: The Judicial Council should amend Section 8.8 of the Standards of Judicial Administration to encourage the Center for Judicial Education and Research to produce educational materials and programs focused on the conduct of voir dire, particularly in criminal cases, that can be distributed to all judges for use and review.

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According to Section 223 of the Code of Civil Procedure, counsel may be permitted to supplement the court's voir dire "upon a showing of good cause." Section 8.7 of the Standards of Judicial Administration provides further details regarding the good cause showing:

> "In making the determination of good cause for counsel to supplement the court's examination of prospective jurors in criminal cases under Code of Civil Procedure 223, the court should consider all relevant matters which may lead to a significant possibility of bias because of the nature of the case or

its participants.

> Good cause can be shown at any time during the jury selection process to expand the permissible scope of attorney participation in voir dire."

The first paragraph of Section 8.7 does very little more than simply suggest that the court consider "all relevant matters" in determining whether good cause exists. This standard provides very little guidance to trial courts in exercising their discretion under Section 223. The Commission recommends that Section 8.7 be amended to provide a list of factors which trial judges should consider in making the good cause determination, including the following: (a) the complexity of the case; (b) the number of defendants; (c) the severity of the possible penalty; (d) the need for the questioner to have substantial knowledge about the details of the case; and (e) any other factor which is relevant to determining whether supplementation of the court's voir dire would be in the interests of justice.

Recommendation 4.2: The Judicial Council should amend Section 8.7 of the Standards of Judicial Administration to include a list of factors judges should consider when making the "good cause" determination under C.C.P. § 223.

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Neither the existing Standard 8.7 nor the proposed amendment deals with the issue of the method by which counsel can supplement the court's voir dire. There are two major choices: counsel may be permitted to conduct the supplemental voir dire by asking questions directly to the panel, or counsel may submit additional questions to the judge either orally or in writing, and the judge may ask those questions of the panel in the court's discretion. Rules of Court 228.2 & 516.2 address this issue by giving the trial court discretion to determine the appropriate method of supplementation ("the court may conduct or permit counsel to conduct supplemental questioning as the court deems proper"). The Commission agrees with this approach. Each case is likely to be slightly different. When the supplemental question is simply one follow-up, it may be more convenient for counsel to suggest that the court ask the question. When appropriate supplemental questions may be extensive and require detailed knowledge of the case, it may be more convenient for counsel to conduct the

supplemental voir dire. The trial court is in the best position to decide which method best serves the needs of the case and the interests of justice.

Recommendation 4.3: Rules of Court 228.2 & 516.2, which give the trial court discretion to determine the appropriate method of supplementing the court's voir dire, should not be changed.

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Finally, the Commission has been impressed with one-page questionnaires that are in use at several courts around the state (e.g., Appendix J, Voir Dire Juror Questionnaire for the Superior and Municipal Courts of Sacramento County). These questionnaires include basic information about the juror, such as place of employment, marital status, prior involvement in litigation. This is information that usually is developed orally during voir dire. The questionnaire permits jurors to submit this information in a less stressful environment and is a more efficient mechanism for making the information available to counsel. The questionnaire in Sacramento County is filled out in triplicate using pressure sensitive forms, with one copy being given to each counsel and one copy given to the court. The Commission recommends that a statewide questionnaire be developed which jury commissioners may adopt to gather basic juror information for use by counsel and the court in conducting voir dire.

> *"I believe jurors have the right to remain anonymous. This form requests your full name, and I strongly believe this is a valid safety issue for the jurors and the Court to consider. The Court could use a number of alternatives to include the jurors' DMV number, their Social Security number, random numbers pre-assigned to jurors, or the last 3 letters in the jurors' last name. . . . Another objection I have is the necessity to list the name of the jurors' employer, age, sex and occupation of my children."* Letter to Commission from Ms. Patricia J. Murray, March 3, 1996.

As noted in Chapter III, juror privacy has become a concern in some courts. The questionnaire developed for voir dire purposes should protect that privacy interest. The questionnaire used in Sacramento permits jurors to write a "P" in any space where the juror wants the information to remain private. This option may not sufficiently protect the privacy interests of jurors. At a minimum, the Commission recommends that the questionnaire omit juror identification

information, including the juror's name, home address, employer address, and identification of a child's school.

Recommendation 4.4: The Judicial Council should adopt a Standard of Judicial Administration encouraging the use of a statewide juror questionnaire to be developed by the Implementation Task Force to gather basic juror information, other than juror identification information, for use by the court and counsel in voir dire.

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In complex and high-profile cases, a much longer questionnaire prepared by counsel may be necessary to conduct a thorough voir dire. Courts around the state are already using such questionnaires, and their use should be encouraged where appropriate. However, the Commission believes that the content of voir dire questionnaires must be carefully reviewed by the trial court to protect jurors' legitimate interest in privacy and to insure that questionnaires in criminal cases are seeking only information related to challenges for cause and, in civil cases, information related to challenges for cause and peremptory challenges.

3. Peremptory Challenges

a. The Debate Over and Need for Peremptory Challenges

Criticism of peremptory challenges comes from many quarters. From the juror's perspective, the use of peremptory challenges may represent an unjustified, personal attack by counsel or may appear to be used by counsel to sculpt or predispose a jury in one direction or another. There is naturally something frustrating in being called down to court for jury service only to be summarily dismissed without explanation. Juror respect for and confidence in the judicial system is undoubtedly reduced by the peremptory challenge process, and this has an impact upon the public's willingness to serve as jurors. Informal exit interviews with jurors in Los Angeles showed that almost 95% of the jurors who were dismissed as a result of a peremptory challenge had an unfavorable

view of the jury system, while those jurors who actually served on a jury had a favorable view of the jury system.

The existence of peremptory challenges also increases the number of persons who must be called for jury service (and, as a result, the cost of the jury system). In calculating the size of a jury panel for a particular case, jury commissioners add together the number of jurors (12), the number of alternatives (usually 0-3), the approximate number of good cause dismissals (which varies from case to case depending, in large part, upon the extent of media reporting about the case), and the total number of peremptory challenges (40 in a capital case, 20 in a felony, and so on). A reduction in the total number of peremptory challenges in a felony case from 10 per side to 6 per side would have a substantial effect upon the number of persons required to fill a jury panel. In an ordinary felony case, for example, the jury commissioner calls around 42 persons for a jury panel. Reducing the number of peremptory challenges per side from 10 to 6 would lead to a jury panel size of 34. The almost 20% decrease in the number of jurors required for each panel would directly translate into more jurors available for other courtrooms. The number of peremptory challenges clearly has an important impact upon the number of citizens required to be called to court for jury service.

> *"Our jury selection took approximately three (3) full days with challenges which removed some of the seemingly most qualified potential jurors from the panel. I understand the reason behind these challenges where each side wants to skew the panel in their favor. The problem is that some of the most qualified potential jurors don't end up serving and the judicial system ends up being the loser. I believe the number of challenges should be limited to a relatively small number with the judge dismissing (with the attorneys' concurrence) those jurors which obviously don't appear to be qualified thus saving the challenges for the attorneys."* Mr. Larry J. O'Connell, Letter to the Commission, March 7, 1996.

Peremptory challenges can defeat the attempt to create a trial jury that is a fair cross-section of the community. From creation of the source list through selection of a jury panel and the exercise of for-cause challenges, every effort is made to preserve the representativeness of the jury. Those efforts can be entirely frustrated by counsel's use of peremptory challenges. Counsel may, for example, exercise peremptory challenges to remove all persons with a college education from a jury.

Peremptory challenges have come under close constitutional scrutiny as a result of state and federal decisions proscribing peremptory challenges based

upon race- or gender-based stereotypes. *See People v. Wheeler* (1978) 22 Cal.3d 258; *Batson v. Kentucky* (1986) 476 U.S. 79; *J.E.B. v. Alabama* (1994) 114 S. Ct. 1419. Under these cases, "once the opponent of a peremptory challenge has made out a prima facie case of racial discrimination (step 1), the burden of production shifts to the proponent of the strike to come forward with a race-neutral explanation (step 2). If a race-neutral explanation is tendered, the trial court must then decide (step 3) whether the opponent of the strike has proved purposeful racial discrimination." *Purkett v. Elem* (1995) 115 S. Ct. 1769, 1770-71. The explanation given does not need to be sufficient to justify a juror's exclusion for cause. Instead, "[j]urors may be excused based on 'hunches' and even 'arbitrary' exclusion is permissible, so long as the reasons are not based on impermissible group bias." *People v. Turner* (1994) 8 Cal.4th 137, 164-165.

These constitutional limits have sparked broader criticism of peremptory challenges, leading many scholars to forecast or call for the outright abolition of the practice. *See, e.g.*, Susan A. Winchurch, *J.E.B. v. Alabama Ex Rel. T.B.: The Supreme Court Moves Closer to Elimination of the Peremptory Challenge*, 54 Md. L. Rev. 261 (1995); Felice Banker, *Eliminating a Safe Haven for Discrimination: Why New York Must Ban Peremptory Challenges From Jury Selection*, 3 J.L. & Policy 605 (1995). *See also Batson*, 476 U.S. at 102 (Marshall, J., concurring) (calling for abolition of peremptory challenges). *See generally* V. Hale Starr & Mark McCormick, *Jury Selection*, § 11.4.6 (1995 Supp.).

Notwithstanding these critiques, a substantial majority of the Commission believes peremptory challenges should continue to be part of our jury system. Parties to a dispute are likely to have greater confidence in the result reached when the parties have had some real input into the composition or identity of the decision-maker. This is why, for example, arbitration agreements usually permit each party to select one arbitrator with the third, neutral arbitrator selected by agreement of the two party arbitrators. *See, e.g.*, John S. Murray, Alan S. Rau, Edward F. Sherman, *Process of Dispute Resolution: The Role of Lawyers*, p. 391 (1989); Alan Scott Rau, *Resolving Disputes Over Attorneys' Fees: The Role of ADR*, 46 S.M.U. L. Rev. 2005, 2057 n.185 (1993). Especially in view of the limited grounds which constitute cause for a juror to be dismissed, it is important that parties to litigation continue to have the right to exercise peremptory challenges where bias is suspected but not provable. This direct input into the composition of the jury fosters greater confidence in the fairness of the jury and helps to support the legitimacy of the jury's verdict from the parties' perspective.

Peremptory challenges can also permit counsel for both sides to attempt to improve the perceived representativeness of the jury. A diversity of viewpoints, perspectives and experiences contributes to the effectiveness of the jury. Many attorneys contend that, in view of the large numbers of people who drop out of the system prior to being assigned to a courtroom, peremptory challenges are necessary to give counsel the opportunity to *restore* representativeness to the jury.

Peremptory challenges are also necessary because the voir dire process, even when conducted expertly, often does not explicitly reveal biases or prejudices that would, if revealed, constitute good cause for dismissal. Jurors in an ordinary voir dire conducted in open court tend to give very broad answers to questions and are more likely to forget, conceal or misrepresent information. *See, e.g.*, V. Hale Starr & Mark McCormick, *Jury Selection*, §§ 9.4-9.5 & 11.0.3 (2d ed. 1993). Because voir dire is generally conducted with all jurors present, it is common for jurors to "go to school" upon earlier responses. For example, when a potential bias appears to be present, a juror will be asked whether he or she can put aside the potential bias and decide the case on the facts presented in court and the law given by the judge. Jurors quickly learn what the appropriate response to this question is (depending upon whether the juror's desire is to remain on the jury or be dismissed). Anecdotally, one member of the Commission recalls a case where a juror was asked what one thing he most regretted in life. The first juror responded, "Not having completed more education." Every other juror in the panel gave an identical response to this question.

Since the responses to questions during voir dire often do not reveal actual biases or prejudices that may be the subject of challenges for cause, peremptory challenges are necessary to permit counsel to exercise an informed judgment about which jurors, notwithstanding their answers, will be unable to judge the case with an open mind. In other words, peremptory challenges are necessary to address the problem of strongly suspected, but not proven, biases on the jury.

Because of the above considerations, the Commission reached a consensus that a reasonable number of peremptory challenges must be given to each side equally in criminal and civil cases. The Commission also reached a consensus that the trial court should be given statutory discretion to increase the number of peremptory challenges for good cause in the interests of justice. This new discretion will be particularly important if, as recommended below, the

Legislature reduces the number of peremptory challenges.

Recommendation 4.5: A reasonable and equal number of peremptory challenges must be given to each side in criminal and civil cases, and the trial court should be given discretion to increase the number of peremptory challenges for good cause in the interests of justice.

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b. Reducing the Number of Peremptory Challenges

Although the Commission reached a consensus that a reasonable number of peremptory challenges must be given to each side equally, a consensus was not reached on what that number should be. Consensus was not possible on this issue primarily because there is no principled or empirical basis for settling upon any particular number. Proponents of a lower number than is presently allowed point to significant administrative savings, improved juror perceptions, less shaped and sculpted jury panels, and more representative juries. Opponents assert that the administrative savings and other benefits come at the cost of a jury that is more likely to be unrepresentative or populated by one or more jurors who have hidden biases or are not open-minded.

Traditionally, attorneys were never required to disclose the reasons for exercising peremptory challenges. Although attorneys have long claimed that peremptory challenges were used primarily to exclude persons who were biased and did not have an open mind, independent observers as well as some attorneys report that peremptories are often used to sculpt a jury that will be as favorable as possible to one side or the other. That is, prosecutors use peremptory challenges to create a pro-prosecution jury, and defense counsel use peremptories to create a pro-defense jury. In other words, each counsel's goal is to create a biased jury. According to this analysis, if the jury ultimately selected is, on balance, unbiased, that is not because counsel has tried to create an unbiased jury, but because counsels' efforts to create a biased jury cancel each other out.

If peremptories are being used more to sculpt a jury than to remove truly

closed-minded jurors, then a reasonable reduction in the number of peremptory challenges will not have a detrimental effect upon the conduct of jury trials. Neither prosecution nor defense, and neither plaintiffs nor defendants, are entitled to a decision-maker entirely of their choice. The adversary system is designed for both sides to a dispute to present their case to an unbiased, open-minded decision-maker. It should not be designed for both sides to use peremptory challenges in an attempt to introduce bias into the decision-maker.

California provides more peremptory challenges than nearly all other states, and twice the number recommended by the American Bar Association.

Although empirical research cannot establish with precision the number of peremptory challenges needed to cleanse a jury of bias, the rules adopted in other jurisdictions suggest that California provides counsel with too many peremptory challenges to achieve this legitimate goal. In criminal cases, California law provides each side with 20 peremptory challenges when the offense charged is punishable with death or life imprisonment, 6 peremptory challenges when the offense charged is punishable with a maximum term of imprisonment of 90 days or less, and 10 peremptory challenges in all other cases. C.C.P. § 231. California provides more peremptory challenges than nearly all other states (*see* Appendix K, listing peremptory challenges by state), and twice the number recommended by the American Bar Association. The ABA Standards provide for 10 peremptory challenges per side in capital cases, 5 peremptory challenges per side in all other felonies, and 3 peremptories per side in misdemeanors. *Standards Relating to Juror Use and Management*, Standard 9(d).

A very rough sense of the number of peremptories needed can be gleaned from probability tables that show the likelihood a jury will contain a determined number of persons who share some characteristic with a defined percentage of the overall population. (The complete table of probabilities appears in Appendix L.) For example, assuming that 10% of the jury pool would vote to convict regardless of the evidence presented (or, alternatively, that 10% of the jury pool would vote to acquit regardless of the evidence presented), we can expect that there will be 2 or more such persons on a 12-person jury in 34% of the cases, 3 or more such persons in 11% of the cases, 6

or more such persons in only .054% of the cases, and 10 or more such persons in virtually none of the cases. The "appropriate" number of peremptories depends upon what percentage of the jury pool is biased and unable to keep an open mind, the size of the jury, and counsels' ability to identify those jurors who are unable to keep an open mind but who are not challengeable for cause.

The probability figures described in the paragraph above support the Commission's conclusion that a reasonable number of peremptory challenges is necessary for both defendants and the People to receive a fair trial before an unbiased decision-maker. Assuming that only 10% of the jury pool has a disqualifying bias, two or more such persons will appear on a 12-person jury panel in one case out of three. Outright abolition of peremptory challenges poses too great a risk to a properly functioning jury system.

It also appears from the probabilities that giving each side 10 peremptories in non-capital felony cases (which is the current practice) for a total of 20 peremptories is unnecessary. Even if we assume that *25%* of the jury pool has a closed mind, the likelihood of a jury containing six or more such persons is 5%, the likelihood of 8 or more is .28%, and the likelihood of 10 or more is .004%. One or more of these persons may be dismissed for cause, and it therefore appears that giving *each side* 10 peremptory challenges invites counsel to use peremptories for purposes other than dismissing jurors who, in counsels' view, would have a closed mind and would not deliberate fairly. These other, illegitimate, purposes include sculpting a jury to be biased towards one side or the other, or using peremptories to challenge jurors based upon invalid stereotypes.

A majority of the Commission ultimately concluded that a reduction in the number of peremptory challenges in both criminal and civil cases would improve the jury system without significantly undermining counsels' legitimate concerns about undiscovered bias and representativeness. The Commission voted as follows:

Peremptory Challenges in Criminal Cases

- In cases where the punishment may be death, life without possibility of parole, and life with possibility of parole, a majority of the Commission voted to reduce the number of peremptories to 12 by a 16 to 7 vote. Specifically, retention of the current 20 peremptories per side received 7 votes, reducing

the number of peremptories to 12 per side received 5 votes, and reducing the number of peremptories to 10 per side received 11 votes. (Thus, a majority of the Commission (5 + 11 = 16) was in favor of a reduction in the number of peremptory challenges to at least 12, but a bare majority of the Commission (7 + 5 = 12) was against reducing the number of peremptory challenges to 10.)

- In all other felonies, a reduction from the current 10 peremptories per side to 6 peremptories per side was favored by a 15 to 7 vote. A separate vote was taken to retain the current level of 10 peremptories per side only for serious and violent felonies, and this proposal was rejected by a vote of 12 to 9.

- For all misdemeanors, retaining the current number of 10 peremptories per side received 5 votes, reducing the number to 5 peremptories per side received 1 vote, and reducing the number to 3 peremptories per side received 14 votes.

Recommendation 4.6 (by a series of majority votes): The Legislature should amend C.C.P. § 231 to provide each side with 12 peremptory challenges in cases where the offense charged is punishable with death or with life imprisonment, 6 peremptory challenges in all other felonies, and 3 peremptory challenges in all misdemeanors.

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Existing law provides for additional peremptory challenges to be given to each side in criminal actions involving more than one defendant and in civil actions involving more than 2 parties. By consensus, the Commission agreed that if there is any reduction in the number of peremptory challenges, there should be a proportional reduction in the number of additional peremptory challenges given in these cases. This proportional reduction is intended to achieve the same goals described above of reducing counsels' ability to use peremptories to sculpt or predispose the jury and to improve the representativeness of the jury.

Recommendation 4.7: There should be a proportional

reduction in the number of additional peremptory challenges given for multi-defendant cases.

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A majority of the Commission also believed there should be a reduction in the number of peremptory challenges in civil cases. Under current law, in two-party civil actions, each party is given 6 peremptory challenges. C.C.P. § 231(c). In cases where there are more than two parties, the court divides the parties into one or more "sides," and each side generally receives 8 peremptory challenges. C.C.P. § 231(c). This is more than double the number of peremptory challenges recommended by the American Bar Association. *Standards Relating to Juror Use and Management*, Standard 9(c) ("In civil cases, the number of peremptory challenges should not exceed three for each side."). Moreover, the same reasons which call for a reduction of peremptory challenges in criminal cases--such as a more representative and less sculpted jury--call for a similar reduction in civil cases. Indeed, the need for peremptory challenges to remove jurors suspected of bias in civil cases is less than the need in criminal cases since in civil cases, "three-fourths of the jury may render a verdict." Cal. Const., Art. I, § 16. Especially in light of the recommendation by a majority of the Commission to reduce the number of peremptory challenges in criminal cases, a reduction in the number of peremptory challenges for civil cases seemed appropriate. By consensus, the Commission agreed that, as a general matter, civil litigants in superior court should not have more peremptory challenges than criminal litigants in superior court, and that civil litigants in municipal court should not have more peremptory challenges than criminal litigants in municipal court.

The Commission voted as follows on the number of peremptory challenges in civil cases:

Peremptory Challenges in Civil Cases

- 12 votes: In a 2-party action, each side has 3 peremptory challenges. With more than two parties, each side receives 6 peremptory challenges.

- 6 votes: In all civil actions, each side receives 6 peremptory challenges.

- 4 votes: Retain the existing rule that each party receives 6 peremptory challenges, and in multi-party actions, each side receives 8 peremptory challenges.

Recommendation 4.8 (by a series of votes): The Legislature should amend C.C.P. § 231(c) to provide each party in a 2-party civil action with 3 peremptory challenges, and each side in all other civil actions with 6 peremptory challenges.

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Reducing the number of peremptories in criminal and civil cases and giving the court discretion to increase this number for good cause would essentially conform California law to the recommendations of the American Bar Association. *See Standards Relating to Juror Use and Management*, Standard 9(c) & (d) (recommending 10-5-3 for peremptory challenges in criminal cases, and 3 for peremptory challenges in civil cases). The reduction will bring significant relief to jury commissioners who are charged with the responsibility of producing for the courts enough jurors to staff pending trials. It will also pressure counsel to use peremptories less for sculpting the jury and more for removing jurors who truly are suspected of being unable to deliberate fairly. Finally, and perhaps most importantly, it should result in a reduction in the number of jurors who are summarily dismissed without explanation and who then leave the courthouse with an extremely unfavorable view of the jury system, determined never to participate in the future.

B. Structure of the Trial Jury

1. The Size of the Trial Jury

The trial jury in England has consisted of twelve persons for centuries, apparently from as early as the middle of the fourteenth century. *See, e.g.*, Richard S. Arnold, *Trial by Jury: The Constitutional Right to a Jury of Twelve in Civil Trials*, 22 Hofstra L. Rev. 1, 8 (1993). In the first few decades of colonization in America, there were brief experiments with juries of fewer than twelve persons (apparently because of the scarcity of colonists), but by the eighteenth century, American juries were uniformly composed of twelve

persons.

Although juries have traditionally consisted of twelve persons, the Supreme Court has recognized that the United States Constitution does not require that number to sit on a jury. In *Williams v. Florida* (1970) 399 U.S. 78, the Court found that the function of the jury was to ensure the common sense judgment of the community through community participation. The Court then reasoned that this function would be preserved as long as the jury was large enough to promote group deliberation free from outside attempts at intimidation and provide a fair possibility for obtaining a representative cross-section of the community. *Id.*, 399 U.S. at 99. Relying upon early jury research, the Court concluded that six person juries were constitutional under the Sixth Amendment in part because there was no discernible difference in the results reached by six and twelve person juries. *Id.*, 399 U.S. at 100-01. The Court's Sixth Amendment analysis in *Williams* was extended to the Seventh Amendment and federal civil trials in *Colgrove v. Battin* (1973) 413 U.S. 149.

The lower limit for jury size was set in *Ballew v. Georgia* (1978) 435 U.S. 223, where the Court held that juries of fewer than six persons in non-petty criminal cases failed to meet the Sixth Amendment's representativeness requirement. The Court subsequently held in *Burch v. Louisiana* (1979) 441 U.S. 130, that the states could not circumvent the six-person minimum by allowing six person juries to deliver non-unanimous verdicts.

The primary arguments for reducing the size of the jury from twelve persons are that it would reduce the time and expense of trials, thereby making jury trials more efficient, and that it would make more jurors available for other trials. Most researchers agree that a reduction in jury size would save time and money, and would generally improve trial efficiency. Just as with the reduction in the number of peremptory challenges, reducing the size of the jury would have a direct effect upon the number of persons jury commissioners would have to assign to each jury panel. Other researchers point out that, while there will be some cost savings, there will probably not be a significant savings in time. *See, e.g.*, Ralph Black, *The Impact of Jury Size on the Court System*, 12 Loy.U.L. Rev. 1103, 1121 (1979); William R. Pabst, Jr., *Statistical Studies of the Costs of Six-Man Versus Twelve-Man Juries*, 14 William & Mary L. Rev. 326 (1972).

Because of conflicting results, the question of jury size should not be decided on the basis of empirical studies.

Researchers have naturally focused their attention upon the critical question of whether smaller juries produce different results than twelve-person juries. The supposed equivalence of results was one of the key underpinnings of the Supreme Court's decision in *Williams*. Unfortunately, there is a considerable lack of consensus among researchers on this question. Several studies have concluded that there is no significant difference in the outcome of decisions between six and twelve person juries. *See, e.g.*, Joan B. Kessler, *An Empirical Study of Six- and Twelve-Member Jury Decision-Making Processes*, 6 U. Mich. J.L. Reform 712, 734 (1973); Lawrence R. Mills, *Six-Member and Twelve-Member Juries: An Empirical Study of Trial Results*, 6 U. Mich. J.L. Reform 671, 710-11 (1973). But other studies disagree with these results, finding that six person juries are more likely to convict than twelve person juries, and that six person juries produce more divergent (i.e., both higher and lower) damage judgments than twelve person juries (even though the number of pro-plaintiff and pro-defendant verdicts is roughly equivalent). *See, e.g.*, Dana Richard Katnik, *Statistical Analysis and Jury Size: Ballew v. State of Georgia*, 56 Denver L.J. 659, 670-71 (1979). Because of these conflicting results, the question of jury size should *not* be decided on the basis of empirical studies. *See* Paul Lermack, *No Right Number? Social Science Research and the Jury-Size Cases*, 54 N.Y.U. L. Rev. 951, 952 (1979) ("The history of jury-size studies and judicial use of them reveals that, because neither judges nor social scientists have understood that the place of empirical work in judicial decisions is dependent on how judges define legal questions, both judicial opinions and empirical studies have been inadequate.").

The law in other states serves as a partial guide for what has become acceptable jury size. As would be expected in our federal system, there is a great deal of variation among states. There are only eight states which allow, in some circumstances, juries of less than twelve persons in felony trials. Washington and Wisconsin allow parties to agree to a jury of less than twelve. Kansas requires that twelve person juries be seated, but allows fewer than twelve jurors to decide the case if it becomes necessary. Louisiana requires twelve jurors if the punishment is *necessarily* confinement at hard labor, but only six jurors if the punishment is only *possible* confinement at hard labor. Arizona has eight person juries, except in death penalty cases or when the

sentence which may be imposed is thirty years or more. Connecticut has six person juries except in death penalty cases unless the defendant elects to have a smaller jury. Florida has six person juries except for death penalty cases. Utah requires eight person juries and makes no exception for death penalty cases. The remaining states, the District of Columbia and the federal courts have twelve person juries in felony trials. *See* Appendix M (list of jury size by state).

Smaller juries are more prevalent in misdemeanor actions. Over thirty states either require or permit juries of less than twelve in misdemeanor actions, while fewer than twenty states require juries of twelve in all misdemeanor actions.

In civil actions, fewer than fifteen states have retained the twelve person jury without exception. Four states, including California, require twelve person juries unless the parties agree to fewer jurors. The remaining states and the District of Columbia either require juries of six or eight in all civil actions, or require juries of six or eight in small civil actions tried before courts of limited jurisdiction (e.g., where the amount in controversy does not exceed a jurisdictional amount such as $25,000 or $5,000).

In federal court, twelve person juries are required in all criminal cases. By virtue of Federal Rule of Civil Procedure 48, six person juries are used in civil trials unless a jury of twelve is demanded. However, if the court must excuse a juror, a valid verdict may be returned by the remaining jurors even absent a stipulation by the parties.

On December 13, 1994, the Committee on Rules of Practice and Procedure of the Judicial Conference of the United States issued a report unanimously recommending that Rule 48 be amended to require twelve person juries in civil cases. After reviewing the voluminous literature on jury size, the Committee found that twelve person juries were a more stable, deliberative body and better reflected the interests of minority groups. The Committee also found that the dollar savings, while not insignificant, were nevertheless small when compared to the overall judiciary budget and that savings in time were also not substantial. The proposed amendment has not yet been approved.

The California Constitution mandates twelve person juries in felony trials, and requires twelve person juries in misdemeanor and civil trials unless the parties agree to seat fewer jurors. Cal. Const., Art. I, § 16. The Legislature *may* permit juries of as few as eight persons in civil cases within the

jurisdiction of the municipal court (e.g., cases where the amount in controversy is $25,000 or less). Cal. Const., Art. I, § 16; C.C.P. § 86(a)(1). In 1988, the Legislature authorized eight-person juries in municipal court civil cases in Los Angeles County on an experimental basis. This pilot project ended in 1990, and the results were reported in G. Thomas Munsterman & Steven D. Penrod, *A Comparison of the Performance of Eight- and Twelve-Person Juries* (April 1990) (available from the Administrative Office of the Courts). The study concluded that having smaller juries (1) decreased diversity on the jury, (2) had no measurable impact upon plaintiff/defendant verdicts, (3) resulted in higher damage awards in those cases where the verdict was for the plaintiff, (4) had no significant, measurable impact upon the time required for impanelment, trial and deliberations, and (5) resulted in a 27% decrease in costs. Although the size of the jury was reduced in this study, the number of peremptory challenges was unchanged, which may account for some of the results on diversity and time required for impanelment. California law presently requires 12-person juries in all civil cases except on stipulation of counsel to a smaller number.

Jury Size in Capital Cases and Felonies

- The Commission reached a consensus on jury size for capital cases and felonies. The existing empirical evidence and widespread practice in other states does not support any reduction in the size of juries for these cases. The Commission recommends retaining twelve person juries for capital cases and felonies.

Recommendation 4.9: In capital cases and felonies, the jury should consist of 12 persons.

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The Commission did not reach consensus on the jury size requirements for other types of cases. The Commission voted as follows:

Jury Size in Misdemeanors

- By a vote of 14 to 7, the Commission favored amending the California Constitution to reduce the size of juries from 12 (current law) to 8 in all misdemeanor cases.

- By a vote of 14 to 7, the Commission favored amending the California Constitution to reduce the size of juries from 12 (current law) to 8 in those misdemeanors where the possible sentence is 6 months or less. A list of these misdemeanors appears in Appendix N.

- By a vote of 13 to 6, the Commission rejected a proposal to amend the California Constitution to eliminate the right to a jury in those misdemeanors where the possible sentence is 6 months or less. A list of these misdemeanors appears in Appendix N.

- By a vote of 19 to 2, the Commission recommended that juries should be eliminated from those misdemeanors that do not carry any possible jail time (e.g., Health & Safety Code § 11357(b)). This can be accomplished either by a constitutional amendment or by reclassifying these crimes as infractions.

Recommendation 4.10 (by a vote of 14 to 7): The Legislature should propose an amendment to the California Constitution, Article I, § 16, to provide for a jury of 8 persons in all misdemeanor cases or a lesser number agreed on by the parties.

Recommendation 4.11 (by a vote of 19 to 2): The Legislature should eliminate juries from those misdemeanors that do not carry any possible jail time.

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Jury Size in Civil Cases

- By a vote of 13 to 5, the Commission rejected a proposal to reduce from 12 to 8 the number of jurors for civil cases within the jurisdiction of the superior court. At present, the superior court's jurisdiction includes civil actions where the amount in controversy exceeds $25,000.

- By a vote of 15 to 6, the Commission recommended to provide

by statute for a reduction in jury size from 12 (current law) to 8 for civil cases within the jurisdiction of the municipal court. At present, the municipal court's jurisdiction includes civil actions where the amount in controversy is equal to or less than $25,000.

Recommendation 4.12 (by a vote of 13 to 5): In civil cases within the jurisdiction of the superior court, the jury should consist of 12 persons or a lesser number agreed on by the parties.

Recommendation 4.13 (by a vote of 15 to 6): The Legislature should amend C.C.P. § 220 to provide that in civil cases within the jurisdiction of the municipal court, the jury should consist of 8 persons or a lesser number agreed on by the parties.

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2. The Unanimity Requirement and Hung Juries

a. The Debate Over and Need for Unanimity

Unanimous verdicts have been a feature of English juries from around the mid- to late-Fourteenth century. As with the issue of jury size, the historical reasons for the unanimity requirement are uncertain. Although England utilized unanimous verdicts for centuries, in 1967 Parliament passed legislation authorizing 10-2 majority verdicts in criminal trials as long as the jury deliberated for at least two hours. This legislation was passed after authorities learned that several defendants associated with organized crime had been bribing and intimidating members of their juries.

Prior to 1972, it appeared from Supreme Court precedent that unanimity was a constitutional requirement under the Sixth and Seventh Amendments. *See Andres v. United States* (1948) 333 U.S. 740, 748-49; *Patton v. United States* (1930) 281 U.S. 276, 288-90; *Maxwell v. Pow* (1900) 176 U.S. 581, 586 (1900); *Thompson v. Utah* (1898) 170 U.S. 343, 353. The Court re-examined its position regarding unanimity in *Johnson v. Louisiana* (1972) 406 U.S. 356,

and *Apodaca v. Oregon* (1972) 406 U.S. 404. In approving non-unanimous verdicts, the Court explained that the essential function of the jury was to protect defendants from government oppression by interposing the common sense judgment of the community. The Court concluded that this function was not significantly affected by non-unanimous verdicts, and that non-unanimous verdicts did not interfere with the meaningful participation of any of the various segments of society, assuming that juries would continue deliberations until all issues were fully discussed. Because of Justice Powell's concurring opinion in *Apodaca*, while non-unanimous verdicts are permissible in state criminal trials, unanimity remains constitutionally mandated in federal trials. *Apodaca v. Oregon*, 406 U.S. 356, 369-72 (Powell, J., concurring).

Despite Supreme Court permission to use non-unanimous verdicts, only Louisiana and Oregon utilize nonunanimous verdicts in criminal cases. No state has changed its unanimity requirement in criminal cases in reaction to the decisions in *Johnson* and *Apodaca*. Unanimity is required in criminal cases in California by virtue of the California Constitution, Art. I, § 16. *People v. Feagley* (1975) 14 Cal.3d 338, 350 n.10.

Over thirty states permit non-unanimous verdicts in civil cases, at least in some circumstances, while almost twenty states, the District of Columbia and federal courts require unanimous verdicts in civil cases. California currently utilizes a three-quarter rule for civil trials. Cal. Const., Art. I, § 16. *See* Appendix M (list of unanimity requirements by jurisdiction).

Prosecutors argue that one or two persons, acting unreasonably or deliberately engaging in nullification, can prevent a conviction from properly being entered.

The unanimity issue in California relates only to criminal trials, since unanimity is not presently required in civil actions. Proponents of eliminating the unanimity requirement in criminal cases contend that a significant number of hung juries are the result of only one or two jurors who refuse to vote with the ten or eleven other jurors. Prosecutors in particular argue that one or two persons, acting unreasonably or deliberately engaging in nullification, can prevent a conviction from properly being entered. When ten or eleven persons agree on one result based on the beyond the reasonable doubt

standard, the system should not prevent entry of a guilty or not guilty verdict because one or two persons disagree. In our democratic system, decisions on historically important issues are routinely made on a less-than-unanimous basis. The jury system should not set a higher, and in some cases, unachievable standard. *See, e.g.*, California District Attorneys Association, *Non-Unanimous Jury Verdicts--A Necessary Criminal Justice Reform* (1995).

> *"Unanimous verdicts are sure and certain, and we obtain them day in and day out, and have for 200 years. It is the very unanimity of the decision which gives the system its strength."* Judge James T. Ford, Sacramento Superior Court.

Opponents of proposals to eliminate the unanimity requirement argue its important role in establishing proof beyond a reasonable doubt. If one juror has reasonable doubts, then the proof is not beyond a reasonable doubt. The unanimity requirement forces all members of a jury to consider the views of all other members. Unanimity thus protects minority viewpoints. Opponents also contend that the number of juries hung 11-1 or 10-2 is relatively small.

The debate over the numbers is confusing because of the absence of systematically collected, reliable statistics. The Los Angeles County Public Defender presented the Commission with rough data based on cases handled by that office over an 18 month period (the office represents about 70% of the defendants in the county). In this sample, hung juries occurred in approximately 13-15% of felony trials. Of those juries which hung, 21% hung 11-1 (15% for guilty, and 6% for not guilty), another 21% hung 10-2 (16% for guilty, and 5% for not guilty), and the remaining 58% hung with a division greater than 10-2. Since only approximately 10% of criminal cases ever go to trial, less than 1% of all criminal filings result in a 10-2 or 11-1 hung jury. Opponents also note that the hung jury rate in California and in Los Angeles County has been relatively constant between 10% and 15% for several decades, suggesting that there is no compelling reason for change today. Finally, the Los Angeles Public Defender tracked the subsequent history of cases resulting in a hung jury and discovered that a percentage of those cases, when retried, resulted in a not guilty verdict even though the initial jury had hung 11-1 or 10-2 in favor of guilt. For example, of the 15 felony cases that had hung 11-1 in favor of guilt and were retried, 3 (20%) resulted in a not guilty verdict, 3 (20%) resulted in a second hung jury, and 9 (60%) resulted in a guilty verdict. In response to these statistics, the District Attorney for Los Angeles noted the many difficulties of retrying a case, such as witnesses disappearing or refusing

to testify and memories fading, difficulties that undermine the rhetorical force of the numbers.

Both proponents and opponents rely in their arguments upon general information about the number of hung juries and the results on retrials, and upon anecdotal stories of juries that were hung by an irrational hold-out or juries that were turned around from conviction to acquittal (or vice-versa) by a single juror. Accurate, systematically collected data on the reasons for hung juries is simply unavailable. The Commission believes that additional data on the reasons for hung juries would help policy makers and trial participants better evaluate how well the jury system is working.

Recommendation 4.14: The Commission recommends that the Judicial Council conduct a short (e.g., 4-6 month), focused study to gather more reliable information regarding: (1) the percentage of hung juries and the vote split; (2) the reasons why individual juries are unable to reach a verdict (data that could be collected from a form to be filled out by the jury foreperson); and (3) the subsequent history of cases resulting in hung juries (e.g., number of cases retried with the results, number of cases pled, number of cases dropped). Data can be collected from court records and from files within the offices of county prosecutors and public defenders.

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Although the Commission believes more information about hung juries is desirable for the long-term and continuing improvement of the jury system, the decision whether to permit non-unanimous verdicts in criminal cases need not await another study. As one Commission member noted, statistical results can often support both sides of an argument. Moreover, Commission members were selected precisely because of their personal experience with the jury system. Finally, fundamental questions of principle (e.g., whether the unanimity requirement is necessary to implement the beyond a reasonable doubt standard) are just as important in resolving this issue as questions of empirical fact.

The Commission reached a virtual consensus that unanimity should continue to be required for criminal cases in which the punishment is death, life without a possibility of parole, or life with a possibility of parole (the so-called "life top" cases). The life top cases include all third-strike prosecutions where the penalty is 25 years to life. The Commission believes that the severity of the penalty mandates the unanimity requirement.

Recommendation 4.15: A unanimous verdict should continue to be required for criminal cases in which the punishment is death or life imprisonment.

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The Commission did not reach a consensus on the unanimity requirement in other criminal cases. A majority of the Commission voted to retain unanimity in all other criminal cases, but a different majority of the Commission voted to recommend a modified unanimity proposal, discussed below. The votes on the unanimity requirement broke down as follows:

The Unanimity Requirement

- By a margin of 13 to 10, the Commission favored unanimous verdicts in all other criminal cases. (This vote was effectively superseded by the vote reported below dealing with the "modified unanimity" proposal.)

- By a margin of 14 to 4, the Commission favored unanimous verdicts in misdemeanor cases if the jury size has been reduced to 8. (This vote was *not* superseded by the vote reported below dealing with the "modified unanimity" proposal.)

Recommendation 4.16 (by a vote of 14 to 4): If the jury size in misdemeanor cases is reduced from 12 to 8 (as provided for in Recommendation 4.10), then unanimous verdicts should be required.

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b. Addressing the Problem of Hung Juries and the Recalcitrant Juror

Eliminating the unanimity requirement is intended primarily to address the problem of an 11-1 or 10-2 hung jury where the hold-out jurors are refusing to deliberate, are engaging in nullification, or are simply unreasonable (e.g., ignoring the evidence). The Commission considered two other proposals to address this problem: (a) a special instruction to hung juries; and (b) permitting non-unanimous verdicts after a period of deliberation where the jury is hung (hereinafter referred to as a "modified unanimity" proposal).

CALJIC 17.40 is the standard instruction used to convey to jurors their duty to deliberate and was approved in *People v. Gainer* (1977) 19 Cal.3d 835, 856. It reads as follows:

> The People and the defendant are entitled to the individual opinion of each juror.
>
> Each of you must consider the evidence for the purpose of reaching a verdict if you can do so. Each of you must decide the case for yourself, but should do so only after discussing the evidence and instructions with the other jurors.
>
> Do not hesitate to change an opinion if you are convinced it is wrong. However, do not decide any question in a particular way because a majority of the jurors, or any of them, favor such a decision.
>
> Do not decide any issue in this case by chance, such as the drawing of lots or by any other chance determination.

The vast majority of the Commission concluded that this charge does not solve the problem of a juror who is deliberately refusing to deliberate, perhaps in an attempt to nullify the law. In fact, although CALJIC 17.40 is supposed to address the duty to deliberate, it does so in such a muted way as to be virtually useless. This language is likely to have little or no effect upon a juror who is not deliberating or who is biased. Furthermore, the charge does not tell the other jurors how to deal with a non-deliberating or biased juror. California law permits a judge to discharge a juror during deliberations who refuses to deliberate. *See* C.C.P. § 233. But unless the jury foreperson knows that he or she can bring to the attention of the judge the non-participation or bias of one or more jurors, the end result may be a hung jury. By a vote of 20 to 1, the Commission recommends that a jury instruction be given to tell jurors how to

deal with the problem of a non-deliberating or biased juror. By a vote of 19 to 1, the Commission recommends that this instruction be given only after the jury has reported a deadlock rather than before deliberations begin.

The Commission does not want to underestimate the difficulty of drafting an appropriate instruction that conveys each juror's duty to deliberate and informs the jury that a non-deliberating or biased juror may be reported to the judge. There is a risk that such an instruction will coerce a juror with a minority position into capitulating to the majority for no reason. *See People v. Gainer* (1977) 19 Cal.3d 835, 852. However, the Commission believes it is appropriate when a jury reports that it is hung to reemphasize the importance of arriving at a verdict, of following the judge's instructions on the law, and of the duty of each juror to hear and consider each other's arguments with open minds. The instruction should also advise the jury that everyone should be participating in deliberations and that the jury foreperson should report to the judge whether one or more jurors are refusing to deliberate or have a bias not disclosed in voir dire.

Recommendation 4.17 (by a vote of 20 to 1): After a jury reports it is deadlocked, the trial judge should reemphasize to the jury the importance of arriving at a verdict and each juror's duty to deliberate. The trial judge should also explain that the foreperson should report to the judge if any juror is refusing to participate in deliberations or has a bias not disclosed in voir dire.

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The Commission also considered a "modified unanimity" proposal to address the problem of irrational or non-deliberating jurors. As noted above, England has now adopted a modified unanimity approach where the judge is authorized to permit non-unanimous verdicts after the jury has deliberated for more than 2 hours. Several states permit non-unanimous verdicts in civil cases after the jury has deliberated for more than 6 hours. *See* Appendix M. The Commission spent a great deal of time considering the pros and cons of this proposal and the many procedural configurations which could be used to implement it.

In England, the judge can permit non-unanimous verdicts after only two hours of deliberation.

The modified unanimity approach has certain advantages over the straight non-unanimous verdict (where the jury can enter a verdict of 11-1 or 10-2 from the beginning). Modified unanimity forces the jury to begin its deliberations listening to all jurors and counting the votes of all jurors. In England, the judge can permit non-unanimous verdicts after only two hours of deliberation. Some members of the Commission expressed concern that this relatively short period of time virtually invites a 10-2 or 11-1 jury simply to wait it out until a non-unanimous verdict is permitted. This problem can be addressed in two ways: (a) make the period of time for deliberations prior to permitting a non-unanimous verdict long enough so that jurors are not tempted simply to delay deliberations; and (b) make it clear to the jury that the court is not *required* to permit a non-unanimous verdict and that the court *may* exercise its discretion by not permitting a non-unanimous verdict. The latter solution creates its own problematic dynamics between the judge and jury and creates a significant risk of differential treatment from courtroom to courtroom on a critically important aspect of the case. As set forth below, a majority of the Commission voted to require *at least* 6 hours of deliberation before non-unanimous verdicts are permitted. In most cases, this will mean that jurors will have to break for the evening before a non-unanimous verdict could be accepted. It seems unlikely that a jury would intentionally delay its deliberations for such a lengthy period of time, and this means that the minority viewpoints on the jury should have ample time to be voiced and considered.

The next issue is what role the trial judge should play in making the determination to permit a non-unanimous verdict. On one extreme, the trial judge could have total discretion to permit non-unanimous verdicts after 6 hours of deliberation; on the other extreme, non-unanimous verdicts could be *required* after 6 hours of deliberation, and the trial judge would effectively have no role to play in making the decision. The advantage of the total discretion approach is that it permits the trial judge to make a case-by-case determination about the necessity for and appropriateness of a non-unanimous verdict. A disadvantage is that judicial discretion may vary from courtroom to courtroom. Making non-unanimous verdicts mandatory immediately after 6 hours has the advantage of creating a clear, certain rule, but the disadvantage of not permitting any exceptions even when required by the interests of justice. As set forth below, a

slight majority of the Commission took the view that non-unanimous verdicts should be *required* after some reasonable period of time for deliberation as determined by the trial judge (but in no event less than 6 hours) *unless* the interests of justice require a unanimous verdict. This approach sets the standard for most cases while permitting the trial judge to exercise discretion in setting the precise period of time when nonunanimity will be permitted (but in no event less than 6 hours), and in limited circumstances, to require unanimity.

Where two jurors share the same minority position, it seems less likely the basis for that position is irrationality rather than a legitimate disagreement.

The final issue is whether to permit 10-2 or 11-1 verdicts. England permits 10-2 verdicts, and several of the pending constitutional amendments would permit 10-2 verdicts. A slight majority of the Commission favors permitting only 11-1, non-unanimous verdicts and not permitting 10-2 verdicts. The primary rationale for permitting *any* non-unanimous verdict is to address the problem of an irrational or non-deliberating juror. Where *two* jurors share the same minority position, it seems less likely that the basis for the minority position is irrationality rather than a legitimate disagreement.

On the modified unanimity proposal, the Commission voted as follows:

The Modified Unanimity Proposal

- The Commission voted 15 to 7 in favor of a modified unanimity procedure in which a non-unanimous verdict would be permitted after the jury had deliberated for at least 6 hours.
- If there is a modified unanimity procedure, 10 voted to permit 11-1 verdicts, and 8 voted to permit 10-2 verdicts.
- On the question of how much discretion should be given to the trial judge, the Commission voted as follows:
    - 9 votes: Except for good cause in the interests of justice, the trial judge shall accept a non-

unanimous verdict after a reasonable time of deliberation lasting not less than 6 hours.

- 6 votes: The trial judge may in his or her discretion accept a non-unanimous verdict after deliberation of not less than 6 hours.

- 4 votes: The trial judge shall accept a non-unanimous verdict after a reasonable time of deliberation lasting not less than 6 hours.

- By a vote of 11 to 6, the Commission recommended that the modified unanimity proposal should not apply to misdemeanors if the jury size in misdemeanors is reduced from 12 to 8.

Recommendation 4.18 (by a vote of 15 to 7): The Legislature should propose a constitutional amendment which provides that, except for good cause when the interests of justice require a unanimous verdict, trial judges shall accept an 11-1 verdict after the jury has deliberated for a reasonable period of time not less than 6 hours in all felonies, except where the punishment may be death or life imprisonment, and in all misdemeanors where the jury consists of 12 persons.

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Chapter V
The Jury's Deliberative Function

Historically, juries were active participants in the fact-finding and dispute-resolution process. For example, during the reign of Henry II (1154-1189), the twelve citizens who were part of the Grand Assize, which decided disputes about ownership of land, were expected to know something about the dispute or, if they didn't know prior to the trial, were expected to find out by independent investigation. Over the course of the next several hundred years, the functions of witness and jury were separated, and juries were expected to decide the case on the basis of in-court testimony.

From the sixteenth century forward, jurors have had an increasingly passive role. Jurors were not permitted to ask questions during the trial, and rules of evidence were developed to limit the information that was received by the jury. Instead of judging both issues of fact and law, judges began to assert for themselves the power to declare the law in the form of jury instructions which jurors were expected to follow. Ultimately, jurors were regarded as "passive fact finders." Hon. B. Michael Dann, *"Learning Lessons" and "Speaking Rights:" Creating Educated and Democratic Juries*, 68 Ind. L.J. 1229, 1232. *See also* Steven J. Adler, *The Jury: Disorder in the Court*, pp. 235-36 (1994).

Social science research teaches that we should permit jurors to be much more active during the trial.

Social science research over the past thirty years raises the question of whether we have swung too far in the direction of juror passivity. This research shows that learning takes place most efficiently when the student is actively engaged and that persons handle the stress of processing new information through social discussion of that information. As applied to juries, this research suggests that we should permit jurors to be much more active. Jurors should be encouraged to take notes, ask questions, and discuss the case among themselves as the case progresses.

Jury research over the past two decades also establishes that our traditional method of instructing the jury about the law creates difficult hurdles for jurors to surmount. First, we have traditionally given instructions orally. But it now is well known that most persons retain only a fraction of what is heard (as compared with what is seen). Second, many jury instructions include technical legal jargon, and jury instructions are often syntactically complex, directly reflecting the complexity of the law. But jurors, most of whom are not educated in the law, have great difficulty understanding many of the words used and concepts expressed. *See, e.g.*, Walter W. Steele, Jr. & Elizabeth G. Thornburg, *Jury Instructions: A Persistent Failure to Communicate*, 74 Judicature 249 (1991); J. Alexander Tanford, *The Law and Psychology of Jury Instructions*, 69 Neb. L. Rev. 71 (1990). Third, in California, judges do not assist juries by explaining how the law might be applied to the facts presented in the trial. That function is performed by the advocates in closing argument. But in many cases, jurors are left with very different interpretations of the instructions from competing counsel and no practical way of resolving those conflicts.

This chapter focuses upon how to improve the jurors' deliberative function. The Commission has broken this topic down into seven parts: (a) juror orientation; (b) note-taking; (c) juror questions; (d) jury discussions; (e) jury instructions; (f) alternate jurors; and (g) trial management.

Professional juries would not have the same credibility as lay juries, and the legitimacy of verdicts rendered by representatives of the community is one of the most important characteristics of the jury system.

The Commission decided not to consider sequestration, which is related to jurors' deliberative function, because sequestration is an issue that arises so infrequently, and each case raises issues unique to that case. The Commission also rejected consideration of replacing the current jury system with professional juries. It would be nearly impossible to have a professional jury be representative of the community, and the Commission is convinced that important constitutional and social values are advanced by having ordinary members of the community involved in the justice system. Ultimately,

professional juries would not have the same credibility as lay juries, and the legitimacy of verdicts rendered by representatives of the community is one of the most important characteristics of the jury system.

A. Juror Orientation Programs

To most citizens, the court system is a mystery. The Commission on the Future of the California Courts retained a professional polling firm to gather, among other things, information regarding the extent of the public's knowledge about and experience with the court system. As explained in the Futures Commission's report, "Commission survey results reveal that by and large Californians do not know a great deal about their courts. More than 60 percent of those polled claim limited familiarity with the judicial branch. Forty percent say they know little more than the location and name of their court. . . . [¶] As to actual experience with the courts, most Californians have had only indirect contact with the third branch. Only one-fifth of Californians have ever served on a jury or appeared as a witness in a case. Only 17 percent have ever been parties to a civil case, and only 10 percent have ever been a victim or defendant in a criminal matter." (*Justice in the Balance--2020*, p. 84)

The judiciary has a special obligation to make its processes understandable to those hundreds of thousands of persons who must make use of the system and are not represented by counsel. As noted elsewhere in this Report, we must develop a more consumer-friendly interface between the courts and the public.

Orientation for jurors is particularly important since jurors play such a critical role in the justice system. In addition to making jurors feel welcome and important (*see supra* Chapter III), we need to educate jurors about their role in the process. The jury commissioner is specifically charged by statute with the obligation to "provide orientation for new jurors, which shall include necessary basic information concerning jury service." C.C.P. § 214.

The Commission viewed two orientation videotapes that are in use in Los Angeles and Sacramento. Both are professional quality productions which convey information about the historical development of juries, the importance of juries in our constitutional system of government, the basic differences between civil and criminal cases, the role of various participants in the court system

(e.g., judge, juror, bailiffs, court clerks, counsel, witnesses and parties), the process of jury selection and voir dire, the order of proof, and the deliberation function. The Commission found the tapes to be informative and educational. Because of the professional quality, the videotapes also held the viewers' attention.

The videotape developed for Los Angeles had a certain amount of information that was peculiar to the Los Angeles court system, and it would therefore not be appropriate for use in other counties without modification. The localized information in the videotape was appropriate for Los Angeles juries, and the Commission does not believe that a single videotape should be mandated for all counties. However, in those counties where there is no existing videotape, or the quality of the videotaped orientation is marginal, a statewide juror orientation tape would be of great value. Moreover, a statewide tape could be modified to suit the special needs of particular counties.

Recommendation 5.1: The Judicial Council should produce a professional quality, statewide juror orientation videotape which can be used by jury commissioners, with or without modification, to satisfy the statutory obligation to provide juror orientation.

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B. Note-Taking by Jurors

For many years in the United States, jurors were not permitted to take notes of testimony during the trial. The theory was that jurors were supposed to decide the case solely on the basis of evidence presented in the courtroom, and juror notes threatened to undermine that principle since jurors might ultimately decide the case on the basis of what appeared in a juror notebook even if that did not accurately reflect what happened in the courtroom. Opponents to juror note-taking believed it was likely that notes taken during trial would not accurately reflect testimony since jurors, unlike court reporters, are not trained in the art of taking verbatim notes, and jurors would not know during the trial what testimony would be particularly significant. Critics contended that jurors would ultimately give too much weight to what had been written down in juror

notebooks and too little weight to what actually happened in the courtroom.

In California, jurors have been taking notes in courtrooms for years. The Commission endorses this practice.

Although there are some risks associated with permitting jurors to take notes, the benefits appear substantially to outweigh those risks. Even in a short trial (e.g., two or three days), jurors' comprehension of a case may be significantly improved by permitting note-taking. In lengthy trials, jurors are very likely to feel absolutely lost unless they are permitted to take notes during the trial. The *ABA Standards Relating to Juror Use and Management* now encourage note-taking by jurors. *See* Standard 16(c) & pp 150-51 (1993). In California, jurors have been taking notes in courtrooms for many years. It is a practice that judges and counsel have accepted and embraced. The Commission endorses the practice of permitting jurors to take notes during trial and believes it is time to enact that practice into law.

When the trial is complete, the appropriate disposition of juror notes may become an issue. On the one hand, juror notes might be a source of information to counsel regarding jury deliberations. In order to keep juror notes from being used by counsel as the basis for a possible attack upon a jury verdict, it is arguable that the best practice is to have juror notes destroyed at the end of a trial. On the other hand, juror notes will be considered by most jurors to be their own private work-product, and therefore not something to be disclosed or destroyed without consent. For many jurors, the notes may be treated as a souvenir, and mandatory destruction seems to be an overreaction to a speculative problem.

At present, the practice varies from courtroom to courtroom. Some judges require that notes be turned into the court for destruction; other judges permit notes to be taken home by the jurors. The trial judge is in the best position to determine, on a case by case basis, whether the risk of permitting jurors to keep their notes outweighs the privacy interests and possible benefits to jurors of retaining their notes. The Commission concludes that the trial court should exercise its discretion in determining the appropriate disposition of juror notes.

Recommendation 5.2: The Judicial Council should adopt a Rule of Court which requires the trial court to inform jurors of their right to take written notes and which gives the trial judge discretion to determine the post-verdict disposition of juror notes.

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C. Questioning of Witnesses by Jurors

Although the primary responsibility for developing evidence in the courtroom lies with counsel, courts around the country have begun to permit jurors to submit questions to the judge during the trial which, if legally and factually appropriate, may be asked of a witness. As explained in the *ABA Standards Relating to Juror Use and Management*, while jurors should not be encouraged to ask questions, there should be a well-defined procedure which permits juror questions to be posed. *See* Standard 16(c) & p. 149. (This section deals only with juror questions directed to witnesses prior to the commencement of deliberations. Juror questions after deliberations have begun are handled by the trial judge pursuant to well established procedures.)

Scholars and courts have identified the following benefits to permitting jurors to ask occasional questions:

- The accuracy of the decision-making process will be improved.
- Jurors' doubts and uncertainties about testimony will be alleviated.
- Jurors will be more confident in their verdict. Jurors will be satisfied that they possessed all of the information necessary to reach a verdict.
- Jurors will be more involved in the trial process, which could heighten jurors' overall satisfaction with the trial.
- Allowing the jury to play a more active role will instill in jurors a better understanding of the importance of their responsibility.
- The credibility of the jury will be increased.
- The jury's decision will be accorded greater legitimacy by the public.

- Such questions may help inform the attorneys about issues in the case that the jurors do not understand, what points need further clarification, and if there are any juror biases.
- Juror questions may reveal important evidence or issues that were left out by the lawyers.
- Allowing juries to pose questions to witnesses will serve as a check upon the judge's and lawyers' power.

See Hon. B. Michael Dann, *"Learning Lessons" and "Speaking Rights": Creating Educated and Democratic Juries*, 68 Ind. L.J. 1229, 1253 (1993); Hedieh Nasheri & Richard J. Rudolph, *An Active Jury: Should Courts Encourage Jurors to Participate in the Questioning Process?*, 16 Am. J. Trial Advoc. 109, 143-49; Larry Heuer & Steven Penrod, *Some Suggestions for the Critical Appraisal of a More Active Jury*, 85 Nw. U.L. Rev. 226, 232 (1990); Larry Heuer & Steven Penrod, *Increasing Jurors' Participation in Trials: A Field Experiment with Jury Notetaking and Question Asking*, 12 Law & Human Behavior 231, 233-34 (1988).

Because the practice is comparatively novel, criticisms have often taken the form of somewhat speculative predictions about why the practice would not work or would create problems for counsel. The fears have included the following:

- Jury questioning procedures would be overly burdensome and disruptive to courtroom proceedings. Juror questions may upset courtroom decorum or the speed of the trial. They may also upset the balance in the adversarial system.
- Jurors might ask inappropriate or prejudicial questions because they do not know the rules of evidence and procedure, which could lead to several problems:
  - -- lawyers might be reluctant to object for fear of angering the jurors.
  - -- if a lawyer objects, the juror might be embarrassed or angry.
  - -- if a lawyer's objection to a question is sustained, the jury might draw inappropriate inferences.
- Juror questioning may create a bias among jurors that would interfere with the constitutional requirements of due process and a fair trial.
- Juror questions might upset the lawyer's strategy or result in

unwanted surprises.

- Juror questioning may cause jurors to become overly involved and lose their objectivity and impartiality.
- Jurors might place too much emphasis on the answers to their own questions.
- An individual juror's question and the answer elicited may take on a stronger significance to the jury than those questions and answers presented and received in the normal adversarial manner.
- Jurors who are the most active in the trial may be the most influential during deliberation.
- Juror questions would be an impractical procedure and would present a nuisance to the judge and courtroom staff.

See Hedieh Nasheri & Richard J. Rudolph, *An Active Jury: Should Courts Encourage Jurors to Participate in the Questioning Process?*, 16 Am. J. Trial Advoc. 109, 118-27 (1992); Larry Heuer & Steven Penrod, *Some Suggestions for the Critical Appraisal of a More Active Jury*, 85 Nw. U.L. Rev. 226, 233 (1990); Larry Heuer & Steven Penrod, *Increasing Jurors' Participation in Trials: A Field Experiment with Jury Notetaking and Question Asking*, 12 Law & Human Behavior 231, 233-34 (1988). *See also DeBenedetto v. Goodyear Tire & Rubber Co.* (4th Cir. 1985) 754 F.2d 512, 515-17.

These concerns have led a few state supreme courts to reject juror questioning. *See Morrison v. State* (Tex. 1992) 845 S.W.2d 882, 888-89; *State v. Zima* (Neb. 1991) 468 N.W.2d 377, 380; *State v. Williamson* (Ga. 1981) 279 S.E.2d 203. However, the majority of states have permitted the practice, although it is not encouraged in any jurisdiction. *See* Jonathan M. Purver, Annotation, *Propriety of Jurors Asking Questions in Open Court During Course of Trial*, 31 A.L.R.3d 872 (1995).

Larry Heuer and Steven Penrod conducted a field study in Wisconsin state courts in 1988 to evaluate the pros and cons of juror questioning. *Increasing Jurors' Participation in Trials: A Field Experiment with Jury Notetaking and Question Asking*, 12 Law & Human Behavior 231 (1988). The findings were as follows: First, it was not found that allowing juror questions uncovered important issues in the trial or increased the jurors' satisfaction with trial procedure. It was found that juror questions did alleviate juror doubts about the trial testimony. Also, juror questions were effective in providing lawyers with feedback about the jurors' perception of the trial. No evidence was found to support the prediction that juror questions would cause the trial to

move more slowly or would upset lawyer strategy. It was not shown that the question-asking procedure was a nuisance to courtroom staff. Lawyers were not found to be overly reluctant to object to inappropriate questions from jurors, and jurors did not report being embarrassed or angry when attorneys objected to their questions. Moreover, properly handled, objections should be handled at sidebar when the attorneys are shown the question, and jurors therefore should not know whether an objection has been raised.

Several judges on the Commission have been permitting jurors to submit written questions for many years. Their experience is similar to the results found by Heuer and Penrod. On balance, the Commission believes the benefits of juror questioning outweigh the largely speculative concerns that have been raised about the practice. The Commission recommends that juror questioning be allowed in all cases subject to the discretion of the judge and the rules of evidence. To implement this recommendation, a Standard of Judicial Administration should be adopted encouraging trial judges to permit juror questioning. Judges who exercise their discretion to permit such questioning should give a pre-trial admonition which includes, in substance, the following:

> During the course of this trial you may have some questions that you wish to have asked.
>
> If you wish to ask a question, please write out your question and hand it to the bailiff. The court will allow each attorney to examine the question.
>
> Whether your question will be asked by one of the lawyers or by the judge after you have submitted it depends upon many factors. The attorneys and the Court have a broad overview of the case and may choose not to ask the question. The question may call for an answer which the Court or attorneys may feel is inadmissible because of the Constitution or laws of the United States or the State of California. The question may call for an answer which may be unreliable or untrustworthy.
>
> You may not draw any inference when a question is not asked nor may you guess or speculate as to why the question was not asked nor what the answer might have been.

Recommendation 5.3: The Judicial Council should adopt a Standard of Judicial Administration recommending that judges permit jurors to submit written questions to the court which,

subject to the discretion of the trial judge and the rules of evidence, may be asked of witnesses who are still on the stand. The Standard should include a pre-trial admonition explaining the procedure to jurors.

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D. Pre-Deliberation Discussions

One of the cardinal rules of jury deliberation in the United States is that jurors are not permitted to discuss the case prior to the commencement of deliberations. In California, this principle is provided for by a statute which requires jurors to be admonished regarding their duty not to discuss the case with anyone or amongst themselves prior to deliberations. Penal Code § 1122.

Human beings process new information and reduce stress in part by talking to other persons. The proscription against jurors talking amongst themselves about the case thus runs contrary to basic human psychological needs. It is ironic that the one thing which jurors have in common--they are all sitting together watching a case develop--is precisely the one thing they are not permitted to talk about. The stress on jurors is particularly acute in longer trials. Several studies suggest that the rule is violated by substantial numbers of jurors. *See* Honorable B. Michael Dann, *"Learning Lessons" and "Speaking Rights": Creating Educated and Democratic Juries*, 68 Ind. L.J. 1229, 1263-64 (1993) ("In two surveys that asked jurors whether they thought their fellow jurors had discussed the case prior to deliberation, eleven percent of the jurors responded affirmatively to one survey, and forty-four percent to the other. Given that the jurors were admonished not to discuss such matters prior to deliberation, one might assume that these results are conservative.").

> *"English juries are told not to discuss the case outside the jury room, now or ever. However, it is unimaginable that they should be told not to discuss the case among themselves, and they are not. . . . The suggestion [that jurors not discuss the case among themselves during the trial] cuts across the very function of the jury. It does much to explain the length of jury deliberations."* Letter to Commission from Mr. Keith Wedmore, English Barrister.

To address this issue, some advocate permitting jurors to discuss a case while

the case is still on-going, which is the ordinary practice in England. This might be accomplished in several ways. First, jurors could simply be permitted to talk to each other informally about the case. Second, in long trials, the court could schedule periodic times (e.g., the end of the day or just after lunch) when the jury could engage in discussions as a group.

The proposal to permit pre-deliberation discussions among jurors raises serious concerns. Delaying discussion until deliberation is intended to help jurors maintain an open mind. Pre-deliberation discussions might encourage jurors to become locked into positions before all of the evidence is in. Civil and criminal defendants would arguably be particularly disadvantaged because the jury would probably have had several discussions before the defense even begins to put on its case. Finally, the distinction between discussions and deliberations is tenuous at best. If a jury is permitted to retire to the jury room mid-trial for "discussions," it is easy to imagine those discussions quickly turning into deliberations. In fact, it is difficult to imagine how such discussions could avoid becoming deliberations.

Arizona has decided to experiment with pre-deliberation discussions in civil cases, and to consider juror discussions in criminal cases after resolution of a constitutional challenge to the procedure. Pursuant to a newly adopted rule, "the jurors shall be instructed that they will be permitted to discuss the evidence among themselves in the jury room during recesses from trial when all are present, as long as they reserve judgment about the outcome of the case until deliberations commence. Notwithstanding the foregoing, the jurors' discussion of the evidence among themselves during recesses may be limited or prohibited by the court for good cause." Arizona Rules of Civil Procedure, Rule 39(f). According to the comment to Rule 39(f), "[i]n exercising its discretion to limit or prohibit jurors' permission to discuss the evidence among themselves during recesses, the trial court should consider the length of the trial, the nature and complexity of the issues, the makeup of the jury, and other factors that may be relevant on a case by case basis."

The Commission believes that the risks associated with pre-deliberation discussions outweigh the benefits, and the Commission therefore recommends that the rule barring discussions about a case prior to deliberations be continued in place. Nevertheless, the Commission acknowledges the value to jurors of permitting discussion, particularly in long cases. The Commission therefore recommends that the experiment with pre-deliberation discussions being conducted in Arizona should be monitored for its results, and that California

judges should be encouraged to experiment in long civil trials with scheduled pre-deliberation discussions upon stipulation of counsel.

Recommendation 5.4: The Judicial Council should reconsider in January 1998 the issue of pre-deliberation discussions by jurors based on a review of the experience in Arizona. In the meantime, the Council should adopt a Standard of Judicial Administration that encourages trial judges to experiment in long civil trials with scheduled pre-deliberation discussions upon stipulation of counsel with appropriate admonitions regarding withholding judgment until deliberations have begun.

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E. Simplification of Jury Instructions

As the Supreme Court explained in *Sparf v. United States* (1895) 156 U.S. 52, "it is the duty of juries in criminal cases to take the law from the court and apply that law to the facts as they find them to be from the evidence." *Id.*, 156 U.S. at 102. The "law from the court" is today in the form of jury instructions that are given from judge to jury throughout the case. The jury is required to apply the law as given in the instructions to the facts of the case as found by the jury. *See* Penal Code § 1126 ("Although the jury has the power to find a general verdict, which includes questions of law as well as of fact, they are bound, nevertheless, to receive as law what is laid down as such by the court.").

The Commission is firmly opposed to any change in the functions of judge and jury, and, in particular, to informing the jury about its power of nullification. *See, e.g.*, AB 3079 (Baldwin). Nullification refers to those cases where the members of the jury disregard the law as instructed by the court and, instead, decide the case according to their own personal preferences (which may include preferences based upon entirely illegitimate, irrational, and even constitutionally suspect bases). As a practical matter, jury nullification can occur under existing law only because of the extraordinarily narrow

circumstances in which a court will examine the conduct of jury deliberations. But the practical reality that nullification can occur does not mean the practice should be sanctioned or encouraged. To the contrary, permitting jurors to decide cases according to their own individual predilections undermines the most fundamental precepts of our democracy. We are a country of laws, not of persons, and respect for the Rule of Law demands that juries, no less than any other organ of government, render decisions based upon the law, and not personal whim. The Commission is unanimously and emphatically opposed to jury nullification and proposals to inform the jury of this power.

Recommendation 5.5: The Judicial Council should oppose legislation that would permit or require trial judges to inform the jury of its power of nullification.

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Each judge is responsible for giving instructions to the jury that are appropriate for the case and accurately state the law. Improper instructions, if prejudicial, can give rise to reversals. In order to reduce the likelihood of improper instructions, every state has adopted some form of pattern jury instructions. Responsibility for drafting pattern instructions has been assumed by a variety of groups: state bar associations, judicial conferences, informal associations of judges, administrative offices, trial and defense lawyers associations, law schools, judicial colleges, and private authors. *See* Robert G. Neiland, *Pattern Jury Instructions: A Critical Look at a Modern Movement to Improve the Jury System*, p. 10 (American Judicature Society 1979).

In almost all states, pattern instructions are not mandatory, and judges retain discretion to modify an instruction as appropriate to the case. As a practical matter, judges tend to give pattern instructions verbatim, particularly those instructions expressly approved in appellate decisions, in order to reduce significantly the possibility of error. But the power to re-write an instruction still resides with the judge.

In a number of states, however, the use of pattern instructions has been made mandatory. For example, Illinois Supreme Court Rule 25-1 provides as follows:

"Whenever Illinois Pattern Instructions (IPI) contains an

> instruction applicable in a civil case, giving due consideration to the facts and the prevailing law, and the court determines that the jury should be instructed on that subject, the IPI instruction *shall* be used, unless the court determines that it does not accurately state the law." (Emphasis added)

Five other states have followed this approach, making the giving of pattern instructions mandatory. Mich. Court Rule 2.516; New Mex. Sup. Court Rule 1-051(D); Mo. Sup. Court Rule 28.01 & 70.02; Colo. Rules of Civ. Proc. 51.1.

The pattern jury instructions in CALJIC and BAJI have achieved a quasi-official status because of their quality.

In California, CALJIC (California Jury Instructions Criminal) and BAJI (Book of Approved Jury Instructions (Civil)) are the predominate source for pattern jury instructions. Both works are prepared by The Committee on Standard Jury Instructions of the Superior Court of Los Angeles County, which has been producing pattern jury instructions since the 1930's. The Committee on Standard Jury Instructions is not a law-making body, and CALJIC and BAJI do not have the authority of positive law. However, as a result of the extremely high caliber of work put into CALJIC and BAJI, and because individual CALJIC and BAJI instructions have been expressly approved by appellate courts over the years, these volumes have become quasi-official in California courts. Their authority is so well respected that Section 5 of the Standards of Judicial Administration, adopted in response to a 1969 Judicial Council report on jury instructions, "recommend[s] that the judge use the BAJI or CALJIC instruction unless he finds that a different instruction would more adequately, accurately or clearly state the law."

It is no secret that jury instructions as presently given in California and elsewhere are, on occasion, simply impenetrable to the ordinary juror (and, in the case of certain instructions, to the ordinary jurist as well). Just recently, the California Supreme Court approved the giving of a modified instruction defining "reasonable doubt" which omitted the phrase "moral certainty" because the phrase was confusing to jurors. *People v. Freeman* (1995) 8 Cal.4th 450, *cert. denied*, 115 S.Ct. 2592 (1995). Individual members of the Commission have

their own "hit list" of instructions that are not understandable. One of the witnesses at the Commission's public hearing in Los Angeles highlighted the problem of complex, impenetrable instructions by simply reading the instruction given in every case defining direct and circumstantial evidence. We include the instruction here, and the reader is encouraged to read the instruction out loud (perhaps to friends or a family member) for the proper effect:

> "Evidence consists of testimony of witnesses, writings, material objects, or anything presented to the senses and offered to prove the existence or non-existence of a fact.
>
> Evidence is either direct or circumstantial.
>
> Direct evidence is evidence that directly proves a fact, without the necessity of an inference. It is evidence which by itself, if found to be true, establishes that fact.
>
> Circumstantial evidence is evidence that, if found to be true, proves a fact from which an inference of the existence of another fact may be drawn.
>
> An inference is a deduction of fact that may logically and reasonably be drawn from another fact or group of facts established by the evidence.
>
> It is not necessary that facts be proved by direct evidence. They may be proved also by circumstantial evidence or by a combination of direct evidence and circumstantial evidence. Both direct and circumstantial evidence are acceptable as a means of proof. Neither is entitled to any greater weight than the other." (CALJIC 2.00)

Members of the Commission note that many trial judges, aware of the difficulty which jurors have understanding CALJIC 2.00, supplement the instruction with an example (e.g., when you see a rabbit running across a snow-covered field, that is direct evidence of that fact; when you see rabbit tracks across a snow-covered field, that is circumstantial evidence that a rabbit ran across the field).

At present, the jury must observe the trial with virtually no guidance from the court about what legal requirements must be met by the parties.

In addition to

problems of comprehendability, we presently handicap jurors by reserving nearly all substantive instructions until *after* the trial has concluded. Jurors receive pre-instructions regarding the basics of trial procedure and the jury's role, but the jury is generally *not* given instructions defining the elements of all claims or defenses that will arise during the trial. This means the jury must observe the trial with virtually no guidance from the court about what legal requirements must be met by the parties. The Commission is concerned that waiting until after the trial to give substantive instructions and then giving instructions that are not readily understandable by the average juror results in a seriously flawed trial process.

The Commission believes that jury instructions can be made more useful to the jury if the following two recommendations are adopted: (1) Jurors should be given basic substantive instructions *before* the trial begins, and (2) Jury instructions should be redrafted in more understandable language.

The first recommendation should be relatively simple to implement. Before beginning a trial, counsel must already have in mind the elements of the law on which the judge will ultimately instruct the jury. There should therefore be little difficulty in requiring counsel to resolve contentions regarding jury instructions before trial begins. There is no doubt that events during trial may make one or more instructions moot and may require that additional instructions be given. The pre-trial instructions should explain to the jury that the instructions are *preliminary* and that the *final* instructions given at the end of the trial will be what the jury must use in reaching its decision. The Commission strongly believes that the risk of giving the jury a few too many instructions at the beginning of the trial is substantially outweighed by the benefit of having a jury that is more focused upon the issues in the case.

Recommendation 5.6: The Judicial Council should adopt a Standard of Judicial Administration which encourages trial judges, in their discretion, to pre-instruct the jury on the substantive law of issues involved in the case.

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In addition to receiving pre-trial instructions on the law, the Commission believes it is appropriate in certain cases to distribute to jurors written glossaries of complex, technical or scientific terms that may arise during the trial. Written

glossaries would not be required in every case, of course, but where the trial will involve complex, scientific testimony, a set of definitions of common terms would significantly aid the jury in understanding the testimony.

Recommendation 5.7: The Judicial Council should adopt a Standard of Judicial Administration that encourages counsel in cases involving highly complex subject matters jointly to develop a glossary of common terms which can be distributed to each juror at the beginning of trial.

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The second recommendation above, that jury instructions be redrafted in more understandable language, will not be simple to implement. There are, in fact, extremely difficult issues involved in redrafting jury instructions. Nevertheless, the Commission is committed to moving forward on this difficult issue.

The first problem is that jury instructions must be written for *two* audiences. The first audience is the jury. The second audience consists of state and federal appellate judges and, in the case of a federal habeas claim, federal district court judges. These two audiences have very different characteristics and responsibilities which make it virtually impossible successfully to communicate with both audiences using the same language.

The members of the jury generally do not come to court already educated in the law. Juries are generally responsible for deciding only one case with a group of strangers, and the decision in that case is likely to have only limited consequences. Jurors are not required publicly to explain their reasoning and are not required to write an opinion justifying the result reached.

By contrast, the judicial audience is well educated in the law. Appellate judges are responsible for deciding many cases in a collegial setting, usually with other judges who know each other. Once a cause is properly before an appellate court, the appellate judges are required to set forth the reasons in support of their decision in a written opinion. Cal. Const., Art. VI, § 14. Because of those written opinions and the doctrine of *stare decisis*, decisions in one appeal have long-term consequences, affecting the resolution of thousands or millions of disputes.

Given the different characteristics of these two audiences, a trial judge must long for the ability to use two completely different vocabularies in addressing juries and in addressing the appellate courts. However, that is not the system in which trial judges operate. Instead, the trial judge must attempt to communicate the substance of the law to the jury in such a way that the same words are found acceptable to the appellate audience. In fact, of course, the two audiences are not of equal weight. Ultimately, the trial judge must be cognizant of what the sophisticated appellate audience demands, and if that audience demands language that is too complex for the ordinary juror, the trial judge has no choice but to comply (even when the trial judge knows that the result of complying is to confuse the jury).

This first problem was emphasized to the Commission in a meeting with some members of The Committee on Standard Jury Instructions of the Superior Court of Los Angeles County. The Committee's Preface to the 1994 edition of BAJI explains the problem as follows:

> "Our Committee always strives to write instructions that are accurate, brief, neutral and understandable. However, the Committee also feels an obligation to reduce the possibility of trial error by adopting the language of cases and statutes. If we took the language of a statute and reworded it in a manner that we thought was more understandable, it might help a particular jury, but it would also be an invitation to an appeal and perhaps lead to a reversal. Thus the reason for the conservative approach to adopting language that is already written in the law. A further problem is, of course, that many of our cases involve multiple, complex legal theories that cannot be made very simple. However, with that background, we still strive to help juries in the painful process of understanding their instructions." (BAJI, pp. xx-xi)

The second problem, as noted near the end of the Preface, is that complex legal concepts sometimes require equally complex vocabulary. In short, words make a difference. In the definition above for circumstantial evidence, for example, there really are no good synonyms for "inference" or "deduction," even though those words may not have a clear meaning to many jurors. Because word choice does make a difference, simplification may result in the jury being given instructions that do not properly state the law. In essence, the trial judge may have a choice between two evils: (a) instructions

that properly state the law but which some jurors may not understand; and (b) instructions that nearly all jurors understand but which do not properly state the law. Error (a) is probably preferable to error (b). Error (b) undoubtedly gives the jurors an incorrect statement of the law; by contrast, error (a) may or may not result in the jury receiving an incorrect statement of the law since, even if some jurors do not understand the instructions, the jury as a whole may do quite well.

Although the process of clarifying and simplifying jury instructions will not be easy, the Commission is convinced that the task must be undertaken. Part of making the judicial system more understandable and juror-friendly is speaking to jurors in words which jurors can readily understand. Moreover, the Commission is convinced that the two problems identified above can be overcome.

In discussions with representatives from The Committee on Standard Jury Instructions of the Superior Court of Los Angeles, it was pointed out that the Committee's work does not have the force of law or the imprimatur of the California Supreme Court and that, as a result, the Committee was constrained in drafting jury instructions to adopt a somewhat conservative approach. The Commission agrees that a jury instruction drafting project could potentially introduce more confusion into the law unless the results of the drafting are presumptively lawful or have the preliminary approval of the Supreme Court of California. For these reasons, the Commission does not believe The Committee on Standard Jury Instructions of the Superior Court of Los Angeles is the appropriate group to undertake this project.

Recommendation 5.8: The Judicial Council should appoint a Task Force on Jury Instructions to be charged with the responsibility of drafting jury instructions that accurately state the law using language that will be understandable to jurors. Proposed instructions should be submitted to the Judicial Council and the California Supreme Court for approval. The membership of the Task Force on Jury Instructions should be diverse, including judges, lawyers, representatives from the Committee on Standard Jury Instructions of the Superior Court of Los Angeles, linguists, communications experts, and

other non-lawyers. The Task Force should be charged with completing its work no later than 18 months after its formation.

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Finally, the Commission notes that jurors at present enter the jury deliberation room with only a vague sense of how to conduct deliberations. The last instruction to the jury directs them to select a foreperson who will preside over deliberations. *See* CALJIC 17.50. This is the only guidance given to the jury about appropriate procedures for deliberation. The Commission believes that the jury can be given additional help with an instruction that suggests a method for conducting deliberations which insures that all viewpoints will be heard and that the evidence will be fully considered. A suggested instruction appears in Appendix O.

Recommendation 5.9: As part of final jury instructions, trial judges should suggest specific procedures for how to conduct the deliberations process.

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F. The Use of Alternate Jurors

Although juries consist of only 12 persons, trial courts usually require several additional jurors, known as "alternative jurors," to be selected and to observe the trial in case one or more of the 12 jurors must be discharged before the jury has returned its verdict. When a juror is discharged, one of the alternate jurors is randomly selected to replace the discharged juror. C.C.P. § 234.

Alternates are *not* permitted to participate in deliberations or even to be present in the jury room when deliberations are being

Alternates do not experience the same sense of closure as jurors who participate in deliberations.

conducted by the jury. Alternate jurors report dissatisfaction at having been required to attend trials and then been denied the opportunity even to observe deliberations. Alternates do not experience the same sense of closure as jurors who participate in deliberations. On stipulation of the parties, one trial judge on the Commission has experimented for several years with permitting alternates in civil cases to sit in the jury room during deliberations but not to participate. She reports that alternates who have been permitted to observe deliberations have been very appreciative and that there has never been any difficulty with the procedure (such as an alternate who attempted to participate in deliberations).

Several members of the Commission expressed concern that, in the close confines of a jury deliberation room, it would be very difficult for alternates to observe without participating. Alternates might make faces or talk amongst themselves in ways that would communicate their views to the jurors. Moreover, in lengthy trials where jurors and alternates have gotten to know each other, it is quite easy to imagine jurors inviting comments from the alternates during deliberation.

By a vote of 12 to 6, the Commission recommends that C.C.P. § 234 be amended to give the trial judge discretion in civil cases to permit alternates to observe but not participate in jury deliberations.

Recommendation 5.10 (by a vote of 12 to 6): The Legislature should amend C.C.P. § 234 to give the trial judge discretion in civil cases to permit alternate jurors to observe but not participate in jury deliberations.

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G. Trial Management Standards

The quality of the jury's deliberations depends in part upon the quality of the trial. In a poorly-managed trial, jurors will enter the jury room tired, confused and so upset about judicial procedures that the most important consideration will be how to get home as quickly as possible. In a well-managed trial, jurors will enter the jury room with a clear understanding of the factual disputes and the evidence relating to those disputes, with an appreciation for

how well counsel has presented the case, and with energy to focus upon the task of deliberation.

The trial judge is ultimately responsible for managing the trial and the courtroom. To aid the jury in its deliberative function, trial judges must actively manage the proceedings to insure that evidence is presented in an orderly fashion, the jury's time in the courtroom listening to testimony is maximized, and there are no substantial interruptions in the proceedings.

Additionally, proper trial management must reduce the burdens placed on jurors so as to allow a true representative panel to sit on cases which last more than several days. This can be done by shortening the overall number of trial days or by scheduling trial time during the day to give jurors a chance to attend to personal or business matters (e.g., trial from 8 a.m. until 1 p.m., or trial from 1 p.m. to 6 p.m.). As with other recommendations throughout this report, reducing the burden on jurors will ultimately make jury service more acceptable and worthwhile, resulting in an increase in juror yield and representativeness.

Trial management standards should include, at a minimum, the following:

1. Judicial trial management--General Principle: The trial judge has the responsibility to manage the trial proceedings. The judge should be prepared to preside and take appropriate action to ensure that all parties are prepared to proceed, the trial commences as scheduled, all parties have a fair opportunity to present evidence, and the trial proceeds to conclusion without unnecessary interruption.

2. The trial judge and trial counsel should participate in a trial management conference before trial.

3. After consultation with counsel the judge should set reasonable time limits.

4. The trial judge should arrange the court's docket to start trial as scheduled and provide parties the number of hours set each day for the trial.

5. The judge should ensure that once trial has begun, momentum is maintained.

6. The judge has ultimate responsibility to ensure a fair trial.

7. Judges should maintain appropriate decorum and formality of trial proceedings.

8. Judges should be receptive to using technology in managing the trial and the presentation of evidence.

9. Judges should attempt to maintain continuity in days of trial and hours of trial.

10. Judges should schedule presentation of arguments on legal issues at the beginning or end of the day so as not to interrupt the presentation of evidence and to maximize the jury's time for hearing evidence.

11. Judges should permit sidebar conferences only when absolutely necessary, and sidebar conferences should be kept as short as possible.

12. In longer trials, the court should consider scheduling trial days to permit jurors time during each day for personal business so as to encourage a more representative panel.

Recommendation 5.11: The Judicial Council should adopt a Standard of Judicial Administration recommending that trial judges actively manage trial proceedings with particular emphasis upon the needs of the jury. CJER should continue its trial management training and develop materials on trial management that can be distributed to trial judges throughout the state.

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Appendix A
Proposed Amendments to the California Constitution

Recommendation 4.10: The Legislature should propose an amendment to the California Constitution, Article I, § 16, to provide for a jury of 8 persons or a lesser number agreed on by the parties in all misdemeanor cases.

Recommendation 4.18: The Legislature should propose a constitutional amendment which provides that, except for good cause when the interests of justice require a unanimous verdict, trial judges shall accept an 11-1 verdict after the jury has deliberated for a reasonable period of time not less than 6 hours in all felonies, except where the punishment may be death or life imprisonment, and in all misdemeanors where the jury consists of 12 persons.

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Article I, Section 16, of the California Constitution should be amended as follows:

Sec. 16. Trial by jury is an inviolate right and shall be secured to all ~~,~~ ~~but in a civil cause three-fourths of the jury may render a verdict~~ . A jury may be waived in a criminal cause by the consent of both parties expressed in open court by the defendant and the defendant's counsel. In a civil cause a jury may be waived by the consent of the parties expressed as prescribed by statute.

In civil causes the jury shall consist of 12 persons or a lesser number agreed on by the parties in open court. In civil causes in municipal ~~or justice~~ court the Legislature may provide that the jury shall consist of eight persons or a lesser number agreed on by the parties in open court. <u>In a civil cause three-fourths of the jury may render a verdict.</u>

In criminal actions in which a felony is charged, the jury shall consist of 12 persons. In criminal actions in which a misdemeanor is charged, the jury shall consist of ~~12~~ 8 persons or a lesser number agreed on by the parties in open court. In criminal actions in which the penalty may be death or life imprisonment, and in all misdemeanors, the jury may render only a unanimous verdict. In all other criminal actions, after the jury has deliberated for a reasonable period of time as determined by the court, but not less than six hours, eleven members of the jury may render a verdict, except the court may in any criminal action require a unanimous verdict for good cause and in the interests of justice.

Note

Recommendation 4.18 contains a contingency. If the jury size in misdemeanors is reduced to 8, then the Commission recommends requiring unanimous verdicts. If the jury size in misdemeanors remains at 12, then the Commission recommends requiring unanimous verdicts only for the first 6 hours of deliberation, after which a verdict could be rendered by 11 jurors.

By a 19 to 2 vote, the Commission recommended that juries should be eliminated from those misdemeanors that do not carry any possible jail time (e.g., Health & Safety Code § 11357(b)). This can be accomplished either by recategorizing these misdemeanors as infractions or by amending the constitution to provide for no jury trial for those misdemeanors that do not carry any possible jail time.

Appendix B
Proposed Amendments to the Codes

Recommendation 3.4: The Legislature should enact a statute clearly stating that jury service is a mandatory duty of all qualified citizens.

Section 191.5 should be added to the Code of Civil Procedure as follows:

Sec. 191.5. Jury service is mandatory for all California citizens who meet the requirements under Section 203 of this chapter. Mandatory service is defined as each qualified juror who is summoned or is ordered to appear, shall serve as summoned or as ordered as a duty of California citizenship.

Qualified jurors who fail to appear as summoned or as ordered shall be subject to the procedures and legal consequences set forth in Section 209 of this chapter.

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Recommendation 3.5: The Legislature should amend C.C.P. § 209 and Vehicle Code § 12805 to provide mandatory procedures for enforcing juror summons, including placing a hold upon driver's license renewals of persons who fail to respond to a juror summons.

Section 209 of the Code of Civil Procedure should be amended as follows:

Sec. 209. Any prospective trial juror who has been summoned or ordered for service, and who fails to attend upon the court as directed or to respond to the court or jury commissioner and to be excused from attendance, may be attached and compelled to attend ~~; and, following an order to show cause hearing, the court may find the prospective juror in contempt of court, punishable by fine, incarceration, or both, as otherwise provided by law.~~ pursuant to a procedure to be adopted by each jury commissioner which shall

include the following elements:

(a) Issuance of an Order to Show Cause re Contempt to each juror who fails to appear or, alternatively, to a reasonable sampling of those jurors who fail to appear. The size of any sampling of jurors may be determined by the jury commissioner. An Order to Show Cause re Contempt may either be personally served by a law enforcement officer or by mail by the jury commissioner.

(b) Upon hearing the contempt matter, the court shall find the juror to be either in contempt or not in contempt of court. Upon finding a juror in contempt, the court may fine or incarcerate the juror, or both, as otherwise provided by law.

(c) In the event that the jury commissioner uses a random sampling of jurors, the jury commissioner shall submit to the Department of Motor Vehicles the names of all jurors who fail to appear but whose names are not selected as a part of such random sampling. A license renewal hold will be placed against each such name pursuant to the provisions of the Vehicle Code until such time as the juror satisfies his or her term of jury service. The jury commissioner must thereupon certify to the Department of Motor Vehicles that such term of jury service has been satisfied, and the license renewal hold shall be released forthwith.

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Section 12805 of the Vehicle Code should be amended as follows:

Sec. 12805. Grounds requiring refusal of license; mandatory grounds

The department shall not issue a driver's license to, or renew a driver's license of, any person:

(a) - (g)

(h) Who has failed to satisfy his or her term of jury service as reported to the Department of Motor Vehicles by a jury commissioner.

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Recommendation 3.18. The Legislature should enact legislation providing that jurors will be identified throughout the jury selection process only by number and not by name, and that personal juror identifying information shall not be elicited during voir dire except on a showing of a compelling need.

Section 219.5 should be added to the Code of Civil Procedure as follows:

Sec. 219.5. Each juror shall be assigned by the jury commissioner an identification number to distinguish the juror from all other jurors simultaneously called for service. Jurors shall be identified on a trial jury panel only by their assigned identification number.

Section 222 of the Code of Civil Procedure should be amended as follows:

Sec. 222. (a) Except as provided in subdivision (b), when an action is called for trial by jury, the clerk, or the judge where there is no clerk, shall randomly select the ~~names~~ identification numbers of the jurors for voir dire, until the jury is selected or the panel is exhausted.

(b) When the jury commissioner has provided the court with a listing of the trial jury panel in random order, the court shall seat prospective jurors for voir dire in the order provided by the panel list.

Section 222.3 should be added to the Code of Civil Procedure as follows:

Sec. 222.3. Jurors shall be identified throughout the voir dire process in both civil and criminal actions by identification number only. Except on a showing of a compelling need, it shall be improper for counsel or the court to elicit personal juror identification information during voir dire, including but not limited to the name, home address, home or work telephone number, and exact location of an employer or school, of the juror, juror's spouse or juror's children. The court may find counsel in contempt of court for a violation of this section, punishable by fine, incarceration, or both, as otherwise provided by law.

Note

Paragraph 5 of Section 234 also needs to be amended from "draw the name of an alternate" to "draw the identification number of an alternate". The amendment appears below.

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Recommendation 3.24: The Legislature should amend C.C.P. § 204 to provide that an eligible person shall be excused from service for a minimum of twelve months if he or she has completed jury service.

Section 204 of the Code of Civil Procedure should be amended as follows:

Sec. 204. (a) No eligible person shall be exempt from service as a trial juror by reason of occupation, race, color, religion, sex, national origin, or economic status, or for any other reason. No person shall be excused from service as a trial juror except as specified in subdivision (b).

(b) An eligible person may be excused from jury service only for undue hardship, upon themselves or upon the public, as defined by the Judicial Council. An eligible person shall be excused from service for a minimum of twelve months if he or she has completed jury service.

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Recommendation 3.15: The Legislature should amend C.C.P. § 215 to require courts to reimburse jurors for all reasonable and necessary parking expenses or to provide free parking consistent with local building and transportation policies.

Recommendation 3.25: The Legislature should amend C.C.P. § 215 to provide for juror fees of $40 per day for each day of jury service after the first day and $50 per day for each day of jury service after the thirtieth day, and to provide for reimbursement to jurors at the rate of $0.28 per mile for travel to and from the court.

Section 215 of the Code of Civil Procedure should be amended as follows:

Sec. 215. (a) Unless a higher fee is provided for each day's attendance by county or city and county ordinance, the fee for jurors in the superior ~~,~~ and municipal ~~, and justice~~ courts, in civil and criminal cases, is ~~five~~ forty dollars ($ ~~5~~ 40) a day for each day's attendance as a juror after the first day and fifty dollars ($50) a day for each day's attendance as a juror after the thirtieth day. Those jurors who are eligible to receive disability benefits pursuant to the Unemployment Insurance Code, Division 1, Part 2, shall not receive the fee provided for in this subdivision.

(b) Unless a higher rate of mileage is otherwise provided by statute or by county or city and county ordinance, jurors in the superior ~~,~~ and municipal ~~, and justice~~ courts shall be reimbursed for mileage at the rate of ~~fifteen~~ twenty-eight cents ($ ~~0.15~~ 0.28) per mile for each mile actually traveled in attending court as juror, ~~in going only~~ both coming and going. Jurors shall be reimbursed for reasonable and necessary parking expenses.

(~~b~~ c) In criminal cases, the board of supervisors of each county shall make sufficient appropriations for the payment of the fees provided for in this section.

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Recommendation 3.10: The Legislature should enact a child-care program for those jurors who must make special child-care arrangements as a result of jury service.

Note

The Commission did not study the details of a child-care program. The Legislature can look for some guidance to Colorado and other jurisdictions which have already implemented such programs.

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Recommendation 3.26: The Legislature should amend Section 230 of the Labor Code to require all employers to continue

paying usual compensation and benefits to employees for the first three days of jury service if the employee has given reasonable notice to the employer of the service requirement.

Section 230 of the Labor Code should be amended as follows:

Sec. 230. (a) No employer shall discharge or in any manner discriminate against an employee for taking time off to serve as required by law on an inquest jury or trial jury, if such employee, prior to taking such time off, gives reasonable notice to the employer that he is required to serve.

(b) No employer shall make any deduction in the usual compensation or benefits otherwise due to an employee who is required to take time off for the first three days of jury service, if such employee, prior to taking such time off, gives reasonable notice to the employer that he is required to serve.

(c) No employer shall discharge or in any manner discriminate against an employee for taking time off to appear in court as a witness as required by law, if such employee, prior to taking such time off, gives reasonable notice to the employer that he is required to appear in court.

(~~c~~ d) Any employee who is discharged, threatened with discharge, demoted, suspended, or in any other manner discriminated against in the terms and conditions of such employment by his employer because such employee has taken time off to serve on an inquest or trial jury or to appear in court as a witness shall be entitled to reinstatement and reimbursement for lost wages and work benefits caused by such acts of the employer. Any employer who willfully refuses to rehire, promote, or otherwise restore an employee or former employee who has been determined to be eligible for such rehiring or promotion by a grievance procedure, arbitration, or hearing authorized by law, is guilty of a misdemeanor.

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Recommendation 3.27: The Legislature should enact reasonable tax credits for those employers who voluntarily continue paying usual compensation and benefits to employees who are absent from work for more than three days on account

of jury service.

Note

The Commission did not address the question of what would constitute a "reasonable" tax credit.

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Recommendation 3.28: The Legislature should amend the Unemployment Insurance Code to provide that, except for the first day, jury service constitutes an employment disability which entitles the employee to a claim in the amount of $40 per day (increased to $50 per day after the 30th day of service).

Section 2626 of the Unemployment Insurance Code should be amended as follows:

Sec. 2626. Disability or disabled defined

(a) An individual shall be deemed disabled on any day in which, because of his or her physical or mental condition, he or she is unable to perform his or her regular or customary work.

(b) For purposes of this section, "disability" or "disabled" includes:

(1) Illness or injury, whether physical or mental, including any illness or injury resulting from pregnancy, childbirth, or related medical condition.

(2) Inability to work because of a written order from a state or local health officer to an individual infected with, or suspected of being infected with, a communicable disease.

(3) Acute alcoholism being medically treated or, to the extent specified in Section 2626.1, resident status in an alcoholic recovery home.

(4) Acute drug-induced illness being medically treated or, to the extent specified in Section 2626.2, resident status in a drug-free residential facility.

(5) Inability to work due to jury service, except for the first day of such service.

Section 2627 of the Unemployment Insurance Code should be amended as follows:

Sec. 2627. Amount of, and eligibility for, benefits.

Except as provided in Section 2627.1, a ~~A~~ disabled individual is eligible to receive disability benefits equal to one-seventh of his or her weekly benefit amount for each full day during which he or she is unemployed due to a disability only if the director finds that:

(a) He or she has made a claim for disability benefits as required by authorized regulations.

(b) He or she has been unemployed and disabled for a waiting period of seven consecutive days during each disability benefit period with respect to which waiting period no disability benefits are payable.

(c) Except as provided in Sections 2626.1, 2626.2, and 2709, he or she has submitted to such reasonable examinations as the director may require for the purpose of determining his or her disability.

(d) Except as provided in Section 2708.1, he or she has filed a certificate as required by Section 2708 or 2709.

Section 2627.1 should be added to the Unemployment Compensation Code as follows:

Sec. 2627.1. Amount of, and eligibility for, benefits for jury service.

Notwithstanding Section 2627, an individual who is disabled by reason of subdivision (b)(5) of Section 2626 is eligible to receive disability benefits equal to $40 per day for the first 29 days of disability and $50 per day for each day after the twenty-ninth day of disability.

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Recommendation 4.5: A reasonable number of peremptory challenges must be given to each side equally in criminal and civil cases, and the trial court should be given discretion to increase the number of peremptory challenges for good cause in the interests of justice.

Recommendation 4.6: The Legislature should amend C.C.P. § 231 to provide each side with 12 peremptory challenges in cases where the offense charged is punishable with death, or with life imprisonment, 6 peremptory challenges in all other felonies, and 3 peremptory challenges in all misdemeanors.

Recommendation 4.7: There should be a proportional reduction in the number of additional peremptory challenges given for multi-defendant cases.

Recommendation 4.8: The Legislature should amend C.C.P. § 231(c) to provide each party in a 2-party civil action with 3 peremptory challenges, and each side in all other civil actions with 6 peremptory challenges.

Section 231 of the Code of Civil Procedure should be amended as follows:

Sec 231. (a) In criminal cases, if the offense charged is punishable with death, or with imprisonment in the state prison for life, the defendant is entitled to ~~20~~ 12 and the people to ~~20~~ 12 peremptory challenges. Except as provided in subdivision (b), in a trial for any other offense, the defendant is entitled to ~~10~~ 6 and the state to ~~10~~ 6 peremptory challenges. When two or more defendants are jointly tried, their challenges shall be exercised jointly, but each defendant shall also be entitled to ~~five~~ three additional challenges which may be exercised separately, and the people shall also be entitled to additional challenges equal to the number of all the additional separate challenges allowed the defendants.

(b) If the offense charged is ~~punishable with a maximum term of imprisonment of 90 days or less~~ a misdemeanor, the defendant is entitled to ~~six~~ three and the state to ~~six~~ three peremptory challenges. When two or more

defendants are jointly tried, their challenges shall be exercised jointly, but each defendant shall also be entitled to ~~four~~ two additional challenges which may be exercise separately, and the state shall also be entitled to additional challenges equal to the number of all the additional separate challenges allowed the defendants.

(c) In civil cases, each party shall be entitled to ~~six~~ three peremptory challenges. If there are more than two parties, the court shall, for the purpose of allotting peremptory challenges, divide the parties into two or more sides according to their respective interests in the issues. Each side shall be entitled to ~~eight~~ six peremptory challenges. If there are several parties on a side, the court shall grant such additional peremptory challenges to a side as the interests of justice may require; provided that the peremptory challenges of one side shall not exceed the aggregate number of peremptory challenges of all other sides. If any party on a side does not use his or her full share of peremptory challenges, the unused challenges may be used by the other party or parties on the same side.

(d) In any criminal or civil action, the court may, in its discretion, increase the number of peremptory challenges for good cause in the interests of justice.

(e) Peremptory challenges shall be taken or passed by the sides alternately, commencing with the plaintiff or people; and each party shall be entitled to have the panel full before exercising any peremptory challenge. When each side passes consecutively, the jury shall then be sworn, unless the court, for good cause, shall otherwise order. The number of peremptory challenges remaining with a side shall not be diminished by any passing of a peremptory challenge.

(~~e~~ f) If all the parties on both sides pass consecutively, the jury shall then be sworn, unless the court, for good cause, shall otherwise order. The number of peremptory challenges remaining with a side shall not be diminished by any passing of a peremptory challenge.

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Recommendation 4.13: The Legislature should amend C.C.P. § 220 to provide that in civil cases within the jurisdiction of the

municipal court, the jury should consist of 8 persons or a lesser number agreed on by the parites.

Section 220 of the Code of Civil Procedure should be amended as follows:

Sec. 220. A trial by jury shall consist of 12 persons, except that (a) in civil actions within the jurisdiction of the superior court ~~and cases of misdemeanor~~, it may consist of 12 or any number less than 12, upon which the parties may agree ; and

(b) in civil actions within the jurisdiction of the municipal court and cases of misdemeanor, it shall consist of 8 persons or any number less than 8, upon which the parties may agree.

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Recommendation 5.10 (by a 12-6 vote): The Legislature should amend C.C.P. § 234 to give the trial judge discretion in civil cases to permit alternate jurors to observe but not participate in jury deliberations.

Section 234 of the Code of Civil Procedure should be amended as follows:

Sec. 234. Whenever, in the opinion of a judge of ~~superior, municipal, or justice~~ superior or municipal court about to try a civil or criminal action or proceeding, the trial is likely to be a protracted one, or upon stipulation of the parties, the court may cause an entry to that effect to be made in the minutes of the court and thereupon, immediately after the jury is impaneled and sworn, the court may direct the calling of one or more additional jurors, in its discretion, to be known as "alternate jurors."

These alternate jurors shall be drawn from the same source, and in the same manner, and have the same qualifications, as the jurors already sworn, and shall be subject to the same examination and challenges. However, each side, or each defendant, as provided in Section 231, shall be entitled to as many peremptory challenges to the alternate jurors as there are alternate jurors called.

The alternate jurors shall be seated so as to have equal power and

facilities for seeing and hearing the proceedings in the case, and shall take the same oath as the jurors already selected, and shall, unless excused by the court, attend at all times upon the trial of the cause in company with the other jurors, but shall not participate in deliberations unless ordered by the court, and for a failure to do so are liable to be punished for contempt. In civil causes, the court may, in its discretion, permit alternate jurors to observe deliberations. If the court exercises its discretion to permit alternate jurors to observe, the court shall instruct the alternate jurors that it is their duty not to participate in deliberations in any way whatsoever.

They shall obey the orders of and be bound by the admonition of the court, upon each adjournment of the court; but if the regular jurors are ordered to be kept in the custody of the sheriff, marshal, or constable during the trial of the cause, the alternate jurors shall also be kept in confinement with the other jurors; and upon final submission of the case to the jury, the alternate jurors shall be kept in the custody of the sheriff, marshal, or constable who shall not suffer any communication to be made to them except by order of the court, and shall not be discharged until the original jurors are discharged, except as provided in this section.

If at any time, whether before or after the final submission of the case to the jury, a juror dies or becomes ill, or upon other good cause shown to the court is found to be unable to perform his or her duty, or if a juror requests a discharge and good cause appears therefor, the court may order the juror to be discharged and draw the ~~name~~ identification number of an alternate, who shall then take his or her place in the jury box, and be subject to the same rules and regulations as though he or she ~~has~~ had been selected as one of the original jurors.

All laws relative to fees, expenses, and mileage or transportation of jurors shall be applicable to alternate jurors, except that in civil ~~case~~ cases the sums for fees and mileage or transportation need not be deposited until the judge directs alternate jurors to be impaneled.

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Appendix C
Proposed Amendments to the Rules of Court

Title II, Division V (Rules Relating to Justice Courts), should be repealed, and a new Division V (Rules Relating to Juries), should be adopted in its place.

Recommendation 3.9: The Judicial Council should enact a Rule of Court to require jury commissioners to apply the standards regarding hardship excuses presently set forth in Section 4.5 of the Standards of Judicial Administration.

Section 4.5 of the Standards of Judicial Administration should be repealed, and a new Rule 701 should be adopted as follows:

Rule 701. Granting Excuses from Jury Service

(a) [Duty of Citizenship] Jury service, unless excused by law, is a responsibility of citizenship. The court and its staff should employ all necessary and appropriate means to assure that citizens fulfill this important civic responsibility.

(b) [Written Court Policy] Each court shall adopt a written policy governing the granting of excuses from jury service on grounds of undue hardship pursuant to section 200 of the Code of Civil Procedure. The policy shall incorporate the following principles:

(1) No class or category of persons shall be automatically excluded from jury duty except as provided by law.

(2) A statutory exemption from jury service should be granted only when the eligible person claims it.

(3) Deferring jury service should be preferred to excusing a prospective juror for a temporary or marginal hardship.

(4) Inconvenience to a prospective juror or an employer is not an

adequate reason to be excused from jury duty, although it may be considered a ground for deferral.

(c) [Requests to Be Excused] All requests to be excused from jury service that are granted for undue hardship must be in writing from the prospective juror, reduced to writing, or placed on the court's record. The prospective juror should support the request with facts specifying the hardship and a statement why the circumstances constituting the undue hardship cannot be avoided by deferring the prospective juror's service.

(d) [Grounds Constituting Undue Hardship] The policy adopted pursuant to subdivision (b) shall specifically provide that an excuse on the ground of undue hardship may be granted for any of the following reasons:

(1) The prospective juror has no reasonably available means of public or private transportation to the court.

(2) The prospective juror must travel an excessive distance. Unless otherwise established by statute or local rule, an excessive distance is reasonable travel time that exceeds one and one-half hours from the prospective juror's home to the court.

(3) The prospective juror will bear an extreme financial burden. In determining whether to excuse the prospective juror, consideration should be given to

(i) the sources of the prospective juror's household income,

(ii) the availability and extent of income reimbursement,

(iii) the expected length of service, and

(iv) whether service can reasonably be expected to compromise that person's ability to support himself or herself or his or her dependents, or so disrupt the economic stability of any individual as to be against the interests of justice.

(4) The prospective juror will bear an undue risk of material injury to or destruction of the prospective juror's property or property entrusted to the prospective juror, where it is not feasible to make alternative arrangements to

alleviate the risk. In determining whether to excuse the prospective juror, consideration should be given to

(i) the nature of the property,

(ii) the source and duration of the risk,

(iii) the probability that the risk will be realized,

(iv) the reason why alternative arrangements to protect the property cannot be made, and

(v) whether material injury to or destruction of the property will so disrupt the economic stability of any individual as to be against the interests of justice.

(5) The prospective juror has a physical or mental disability or impairment, not affecting that person's competence to act as a juror, that would expose the potential juror to undue risk of mental or physical harm. In any individual case, except where the person is aged 70 years or older, the prospective juror may be required to furnish verification or a method of verification of the disability or impairment, its probable duration, and the particular reasons for the person's inability to serve as a juror.

(6) The prospective juror's services are immediately needed for the protection of the public health and safety, and it is not feasible to make alternative arrangements to relieve the person of those responsibilities during the period of service as a juror without substantially reducing essential public services.

(7) The prospective juror has a personal obligation to provide actual and necessary care to another, including sick, aged, or infirm dependents, or a child who requires the prospective juror's personal care and attention, and no comparable substitute care is either available or practical without imposing an undue economic hardship on the prospective juror or person cared for. Where the request to be excused is based on care provided to a sick, disabled, or infirm person, the prospective juror may be required to furnish verification or a method of verification that the person being cared for is in need of regular and personal care.

(e) [Prior Jury Service] A prospective juror who has served on a grand or trial jury service or was summoned and appeared for jury service in any state or federal court during the immediately preceding 12 months shall be excused from service on request. The jury commissioner, in his or her discretion, may establish a longer period of repose.

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Recommendation 3.11: The Judicial Council should adopt a Rule of Court providing for mandatory judicial, court administrator, and jury staff team-training on juror treatment.

A new Rule 710 should be adopted as follows:

Rule 710. Mandatory Juror-Treatment Training.

Each judge, court administrator and jury staff employee shall attend at least one training program on the treatment of jurors.

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Recommendation 3.12: The Judicial Council should adopt a Rule of Court requiring jury commissioners to prepare a juror handbook which sets forth the juror's rights and responsibilities and explains juror services within the courthouse.

A new Rule 711 should be adopted as follows:

Rule 711. Juror Handbook.

Each jury commissioner shall prepare a juror handbook that sets forth the juror's rights and responsibilities and explains juror services within the courthouse.

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Recommendation 3.13: The Judicial Council should adopt a

Rule of Court requiring the creation within each court of some reasonable mechanism for responding to juror complaints.

A new Rule 712 should be adopted as follows:

Rule 712. Juror Complaints.

Each court shall establish a reasonable mechanism for receiving and responding to juror complaints.

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Recommendation 3.21: The Judicial Council should adopt a Rule of Court requiring by January 1998 adoption of a one trial - one day service requirement except in those counties which can demonstrate good cause why such a requirement is impractical.

Recommendation 3.22: The Judicial Council should adopt a Rule of Court requiring by January 1998 implementation of an "on-call" telephone stand-by system in every county except in those counties which can demonstrate good cause why such a system is impractical.

A new Rule 720 should be adopted as follows:

Rule 720. Term of Service and On-Call Systems.

(a) No later than January 1998, each court shall implement a one trial / one day jury service requirement except in those counties which can demonstrate to the Judicial Council good cause why such a requirement is impractical.

(b) No later than January 1998, each court shall implement an on-call telephone stand-by system for jurors except in those counties which can demonstrate to the Judicial Council good cause why such a system is impractical.

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Recommendation 5.2: The Judicial Council should adopt a Rule of Court which requires the trial court to inform jurors of their right to take written notes and which gives the trial judge discretion to determine the post-verdict disposition of juror notes.

A new Rule 730 should be adopted as follows:

Rule 730. Juror Note-Taking.

Jurors shall be permitted to take written notes in all civil and criminal cases. The trial judge shall inform jurors of their right to take written notes at the beginning of the trial. After the verdict and before the jury is discharged, the trial judge shall determine in his or her discretion whether juror notebooks, if any, must be turned into the court or may be retained by the jurors.

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Appendix D
Proposed Amendments to the Standards of Judicial Administration

Recommendation 3.1: The Judicial Council should adopt a Standard of Judicial Administration recommending use of the National Change of Address system to update jury source lists.

A new Section 4.6 should be added to the Standards of Judicial Administration as follows:

Sec. 4.6. Accuracy of Master Jury List

The jury commissioner should utilize the National Change of Address system to update jury source lists and create as accurate a list as reasonably practical.

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Recommendation 4.1: The Judicial Council should amend Section 8.8 of the Standards of Judicial Administration to encourage the Center for Judicial Education and Research to produce educational materials and programs focused on the conduct of voir dire, particularly in criminal cases, that can be distributed to all judges for use and review.

Section 8.8 of the Standards of Judicial Administration should be amended as follows:

Sec. 8.8. Judicial Education

A judge assigned to jury trial should attend at least one educational program devoted to the conduct of voir dire. The Center for Judicial Education and Research should produce educational materials and programs on voir dire

that can be distributed to all judges for use and review.

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Recommendation 4.2: The Judicial Council should amend Section 8.7 of the Standards of Judicial Administration to include a list of factors judges should consider when making the "good cause" determination under C.C.P. § 223.

Section 8.7 of the Standards of Judicial Administration should be amended as follows:

Sec. 8.7. Matters Relevant to Counsel Participation in Jury Selection in Criminal Cases.

In making the determination of good cause for counsel to supplement the court's examination of prospective jurors in criminal cases under Code of Civil Procedure section 223, the court should consider all relevant matters which may lead to a significant possibility of bias because of the nature of the case or its participants. The court should consider, among other factors, the complexity of the case, the number of defendants, the severity of the possible penalty, the need for the questioner to have substantial knowledge about the details of the case, and any other factor which is relevant to determining whether supplementation of the court's voir dire would be in the interests of justice.

Good cause can be shown at any time during the jury selection process to expand the permissible scope of attorney participation in voir dire.

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Recommendation 4.4: The Judicial Council should adopt a Standard of Judicial Administration encouraging the use of a statewide juror questionnaire to be developed by the Implementation Task Force to gather basic juror information, other than juror identification information, for use by the court and counsel in voir dire.

Note

The Implementation Task Force is encouraged to examine the voir dire questionnaire used in Sacramento County as the basis for a statewide model. *See* Appendix J.

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Recommendation 5.3: The Judicial Council should adopt a Standard of Judicial Administration recommending that judges permit jurors to submit written questions to the court which, subject to the discretion of the trial judge and the rules of evidence, may be asked of witnesses who are still on the stand. The Standard should include a pre-trial admonition explaining the procedure to jurors.

Recommendation 5.6: The Judicial Council should adopt a Standard of Judicial Administration recommending that trial judges, in their discretion, pre-instruct the jury on the substantive law of issues involved in the case.

Recommendation 5.7: The Judicial Council should adopt a Standard of Judicial Administration that encourages counsel in cases involving highly complex subject matters jointly to develop a glossary of common terms which can be distributed to each juror at the beginning of trial.

A new Section 5.5 should be added to the Standards of Judicial Administration as follows:

Sec. 5.5. Pre-Instructions

(a) Trial judges should, in their discretion, instruct the jury before trial begins on the basic substantive law of issues involved in the case, including the basic elements of claims and defenses. The trial judge should explain to the jury

that the jurors must ultimately be guided by the final instructions given at the end of the trial and that legal issues, claims and/or defenses may change during the trial.

(b) Trial judges should permit jurors during the trial to submit to the court written questions which, subject to the discretion of the trial judge and the rules of evidence, may be asked of witnesses who are still on the stand. Trial judges who decide to permit this practice should deliver in substance the following instruction to jurors before trial begins:

> During the course of this trial you may have some questions that you wish to have asked.
>
> If you wish to ask a question, please write out your question and hand it to the bailiff. The court will allow each attorney to examine the question.
>
> Whether your question will be asked by one of the lawyers or by the judge after you have submitted it depends upon many factors. The attorneys and the Court have a broad overview of the case and may choose not to ask the question. The question may call for an answer which the Court or attorneys may feel is inadmissible because of the Constitution or laws of the United States or the State of California. The question may call for an answer which may be unreliable or untrustworthy.
>
> You may not draw any inference when a question is not asked nor may you guess or speculate as to why the question was not asked nor what the answer might have been.

(c) In cases involving highly complex subject matters, the trial court should encourage counsel jointly to develop a glossary of common terms which can be distributed to each juror at the beginning of trial.

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Recommendation 5.4: The Judicial Council should reconsider in January 1998 the issue of pre-deliberation discussions by jurors based on a review of the experience in Arizona. In the meantime, the Council should adopt a Standard of Judicial Administration that encourages trial judges to experiment in long civil trials with scheduled pre-deliberation discussions

upon stipulation of counsel with appropriate admonitions regarding withholding judgment until deliberations have begun.

A new Section 5.6 should be added to the Standards of Judicial Administration as follows:

Sec. 5.6. Pre-Deliberation Discussions.

In long civil trials, the trial court should consider seeking a stipulation from counsel to permit the jury to conduct scheduled, pre-deliberation discussions as the trial progresses. If counsel stipulates to pre-deliberation discussions, the trial court should carefully instruct the jurors regarding their duty to withhold judgment until deliberations commence after the presentation of evidence has concluded and the jury has been finally instructed.

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Recommendation 5.11: The Judicial Council should adopt a Standard of Judicial Administration recommending that trial judges actively manage trial proceedings with particular emphasis upon the needs of the jury. CJER should continue its trial management training and develop materials on trial management that can be distributed to trial judges throughout the state.

A new Section 8.9 should be added to the Standards of Judicial Administration as follows:

Sec. 8.9. Trial Management Standards

(a) [General Principles] The trial judge has the responsibility to manage the trial proceedings. The judge should be prepared to preside and take appropriate action to ensure that all parties are prepared to proceed, the trial commences as scheduled, all parties have a fair opportunity to present evidence, and the trial proceeds to conclusion without unnecessary interruption. When the trial involves a jury, the trial judge should manage proceedings with particular

emphasis upon the needs of the jury.

(b) [Techniques of Trial Management] The trial judge should employ the following trial management techniques:

(1) The trial judge and trial counsel should participate in a trial management conference before trial.

(2) After consultation with counsel the judge should set reasonable time limits.

(3) The trial judge should arrange the court's docket to start trial as scheduled and provide parties the number of hours set each day for the trial.

(4) The judge should ensure that once trial has begun, momentum is maintained.

(5) The judge has the ultimate responsibility to ensure a fair trial.

(6) Judges should maintain appropriate decorum and formality of trial proceedings.

(7) Judges should be receptive to using technology in managing the trial and the presentation of evidence.

(8) Judges should attempt to maintain continuity in days of trial and hours of trial.

(9) Judges should schedule presentation of arguments on legal issues at the beginning or end of the day so as not to interrupt the presentation of evidence.

(10) Judges should permit sidebar conferences only when absolutely necessary, and sidebar conferences should be kept as short as possible.

(11) In longer trials, the court should consider scheduling trial days to permit jurors time during each day for personal business so as to encourage a more representative panel.

Appendix E
ABA Standards Relating to Juror Use and Management

These standards were promulgated by the American Bar Association's Judicial Administration Division Committee on Jury Standards. The complete *Standards* along with commentary, references and suggested methods of implementation can be ordered from the American Bar Association Publication Order Center, P.O. Box 10892, Chicago, Illinois 60610-0892.

STANDARDS RELATING TO JUROR USE AND MANAGEMENT

PART A. STANDARDS RELATING TO SELECTION OF PROSPECTIVE JURORS

Standard 1: Opportunity for Jury 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, or any other factor that discriminates against a cognizable group in the jurisdiction.

Standard 2: Jury Source List

(a) 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.

(b) The jury source list should be representative and should be as inclusive of the adult population in the jurisdiction as is feasible.

(c) The court should periodically review the jury source list for its representativeness and inclusiveness of the adult population in the jurisdiction.

(d) Should the court determine that improvement is needed in the representativeness or inclusiveness of the jury source list, appropriate

corrective action should be taken.

Standard 3: Random Selection Procedures

(a) 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.

(b) Random selection procedures should be employed in
- (i) selecting persons to be summoned for jury service;
- (ii) assigning prospective jurors to panels; and
- (iii) calling prospective jurors for voir dire.

(c) Departures from the principle of random selection are appropriate
- (i) to exclude persons ineligible for service in accordance with Standard 4;
- (ii) to excuse or defer prospective jurors in accordance with Standard 6;
- (iii) to remove prospective jurors for cause or if challenged peremptorily in accordance with Standards 8 and 9; and
- (iv) 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.

Standard 4: Eligibility for Jury Service

All persons should be eligible for jury service except those who
- (a) are less than eighteen years of age, or
- (b) are not citizens of the United States, or
- (c) are not residents of the jurisdiction in which they have been summoned to serve, or
- (d) are not able to communicate in the English language, or
- (e) have been convicted of a felony and have not had their civil rights restored.

Standard 5: Term of and Availability for Jury Service

The time that persons are called upon to perform jury service and to be available therefore, 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.

(b) Persons should not be required to maintain a status of availability for jury service for longer than two weeks except in areas with few jury trials when it may be appropriate for persons to be available for service over a longer period of time.

Standard 6: Exemption, Excuse and Deferral

(a) All automatic excuses or exemptions from jury service should be eliminated.

(b) Eligible persons who are summoned may be excused from jury service only if:
  (i) their ability to receive and evaluate information is so impaired that they are unable to perform their duties as jurors and they are excused for this reason by a judge; or
  (ii) they request to be excused because their service would be a continuing hardship to them or to members of the public, or they have been called for jury service during the two years preceding their summons, and they are excused by a judge or duly authorized court official.

(c) Deferrals of jury service for reasonably short periods of time may be permitted by a judge or duly authorized court official.

(d) Requests for excuses and deferrals and their disposition should be written or otherwise made of record. Specific uniform guidelines for determining such requests should be adopted by the court.

PART B. STANDARDS RELATING TO SELECTION OF A PARTICULAR JURY

Standard 7: Voir Dire

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

(a) To reduce the time required for voir dire, basic background information regarding panel members should be made available in writing to counsel for each party on the day on which jury selection is to begin.

(b) The trial judge should conduct initial voir dire examination. Counsel should be permitted to question panel members for a reasonable period of time.

(c) The judge should ensure that the privacy of prospective jurors is reasonably protected, and that the questioning by counsel is consistent with the purpose of the voir dire process.

(d) In criminal cases, the voir dire process should always be held on the record. In civil cases, the voir dire process should be held on the record unless waived by the parties.

Standard 8: Removal from the Jury Panel for Cause

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

Standard 9: Peremptory Challenges

(a) The number of and procedure for exercising peremptory challenges should be uniform throughout the state.

(b) Peremptory challenges should be limited to a number no larger than necessary to provide reasonable assurance of obtaining an unbiased jury.

(c) In civil cases, the number of peremptory challenges should not exceed three for each side.

(d) In criminal cases, the number of peremptory challenges should not exceed
   (i) ten for each side when a death sentence may be imposed upon conviction;
   (ii) five for each side when a sentence of imprisonment for more than six months may be imposed upon conviction; or

(iii) three for each side when a sentence of incarceration of six months or fewer, or when only a penalty not involving incarceration may be imposed.

One additional peremptory challenge should be allowed for each defendant in a multi-defendant criminal proceeding.

(e) Where juries of fewer than twelve persons are used in civil or petty offense cases, the number of peremptory challenges should not exceed two for each side.

(f) One peremptory challenge should be allowed to each side in a civil or criminal proceeding for every two alternate jurors to be seated.

(g) The trial judge should have the authority to allow additional peremptory challenges when justified.

(h) Following completion of the voir dire examination, counsel should exercise their peremptory challenges by alternately striking names from the list of panel members until each side has exhausted or waived the permitted number of challenges.

PART C. STANDARDS RELATING TO EFFICIENT JURY MANAGEMENT

Standard 10: Administration of the Jury System

The responsibility for administration of the jury system should be vested exclusively in the judicial branch of government.

(a) All procedures concerning jury selection and service should be governed by court rules and regulations promulgated by the state's highest court or judicial council.

(b) A single unified jury system should be established in any area in which two or more courts conduct jury trials. This applies whether they are of the same or of differing subject matter or geographic jurisdiction.

(c) Responsibility for administering the jury system should be vested in a single administrator acting under the supervision of a presiding judge of the court.

Standard 11: Notification and Summoning Procedures

(a) The notice summoning a person to jury service and the questionnaire eliciting information regarding that person should be
  (i) combined in a single document;
  (ii) phrased so as to be readily understood by an individual unfamiliar with the legal and jury systems; and
  (iii) delivered by first class mail.

(b) A summons should clearly explain how and when the recipient must respond and the consequences of a failure to respond.

(c) The questionnaire should be phrased and organized so as to facilitate quick and accurate screening, and should request only that information essential for
  (i) determining whether a person meets the criteria for eligibility;
  (ii) providing basic background information ordinarily sought during voir dire examination; and
  (iii) efficiently managing the jury system.

(d) Policies and procedures should be established for enforcing a summons to report for jury service and for monitoring failures to respond to a summons.

Standard 12: Monitoring the Jury System

Courts should collect and analyze information regarding the performance of the jury system on a regular basis in order to ensure
  (a) the representativeness and inclusiveness of the jury source list;
  (b) the effectiveness of qualification and summoning procedures;
  (c) the responsiveness of individual citizens to jury duty summonses;
  (d) the efficient use of jurors; and
  (e) the cost effectiveness of the jury system.

Standard 13: Juror Use

(a) Courts should employ the services of prospective jurors so as to achieve optimum use with a minimum o inconvenience of jurors.

(b) Courts should determine the minimally sufficient number of jurors

needed to accommodate trial activity. This information and appropriate management techniques should be used to adjust both the number of individuals summoned for jury duty and the number assigned to jury panels.

(c) Courts should ensure that each prospective juror who has reported to the courthouse is assigned o a courtroom for voir dire before any prospective juror is assigned a second time.

(d) Courts should coordinate jury management and calendar management to make effective use of jurors.

Standard 14: Jury Facilities

Courts should provide an adequate and suitable environment for jurors.

(a) The entrance and registration area should be clearly identified and appropriately designed to accommodate the daily flow of prospective jurors to the courthouse.

(b) Jurors should be accommodated in pleasant waiting facilities furnished with suitable amenities.

(c) 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.

(d) To the extent feasible, juror facilities should be arranged to minimize contact between jurors, parties, counsel and the public.

Standard 15: Juror Compensation

(a) Persons called for jury service should receive:
  (i) A nominal amount in recognition of out-of-pocket expenses for the first day they report to the courthouse.
  (ii) A reasonable fee for each succeeding day they report.

(b) Such amounts and fees should be paid promptly.

(c) State law should prohibit employers from discharging, laying off,

denying advancement opportunities to, or otherwise penalizing employees who miss work because of jury service.

PART D. STANDARDS RELATING TO JUROR PERFORMANCE AND DELIBERATIONS

Standard 16: Juror Orientation and Instruction

(a) Courts should provide some form of orientation or instructions to persons called for jury service:
- (i) upon initial contact prior to service;
- (ii) upon first appearance at the courthouse;
- (iii) upon reporting to a courthouse for voir dire;
- (iv) directly following empanelment;
- (v) during the trial;
- (vi) prior to deliberations; and
- (vii) after the verdict has been rendered or when a proceeding is terminated without a verdict.

(b) Orientation programs should be
- (i) Designed to increase prospective jurors' understanding of the judicial system and prepare them to serve competently as jurors.
- (ii) presented in a uniform and efficient manner using a combination of written, oral and audiovisual materials.

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

(d) Before dismissing a jury at the conclusion of a case, the trial judge should
  (i) release the jurors from their duty of confidentiality;
  (ii) explain their rights regarding inquires from counsel or the press; and
  (iii) either advise them that they are discharged from service or specify where they must report.

  The judge should express appreciation to the jurors for their service, but the judge should not express approval or disapproval of the result of the deliberation.

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

Standard 17: Jury Size and Unanimity of Verdict

(a) Juries in criminal cases should consist of:
  (i) twelve persons if a penalty of confinement for more than six months may be imposed upon conviction;
  (ii) at least six persons if the maximum period of confinement that may be imposed upon conviction is six months or fewer.

  A unanimous decision should be required for a verdict in all criminal cases heard by a jury.

(b) Juries in civil cases should consist of no fewer than six and no more than twelve persons. It is acceptable to have either unanimous or nonunanimous verdicts in civil cases, provided however that a civil jury should not be authorized to return a verdict which is concurred in by less than three-quarters of its members.

Standard 18: Jury Deliberations

Jury deliberations should take place under conditions and pursuant to procedures that are designed to ensure impartiality and to enhance rational decision-making.

(a) The judge should instruct the jury concerning appropriate procedures to be followed during deliberations set forth in Standard 16(c).

(b) The deliberation room should conform to the recommendations set forth in Standard 14(c).

(c) The jury should not be sequestered except under the circumstances and procedures set forth in Standard 19.

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

(e) Training should be provided to personnel who escort and assist jurors during deliberation.

Standard 19: Sequestration of Jurors

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

(b) The trial judge should have the discretion to sequester a jury on the motion of counsel or on the judge's initiative, and the responsibility to oversee the conditions of sequestration.

(c) Standard procedures should be promulgated to make certain that:
(i) the purpose of sequestration is achieved; and
(ii) the inconvenience and discomfort of the sequestered jurors is minimized.

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

Appendix F
State Bar Principles Relating to Jury Reform

Approved by the State Bar Board of Governors on April 20, 1996

Juror Pool and Treatment and Management of Jurors

One of the primary goals of the justice system should be to ensure that the jury pool reflects a representative cross-section of the community and spreads jury service across as broad a proportion of citizens as possible. The burden and inconvenience of jury service, combined with a lack of understanding and respect for the jury system, discourages potential jurors from serving and interferes with reaching this goal. In order to encourage citizen participation in jury service:

1. The burden and inconvenience of jury service should be reduced to the greatest extent possible.

2. In considering the issue of higher compensation for jury service, any proposals should take into account their impact on employers and public funds.

3. Employers should be encouraged to compensate their employees while they are on jury service.

4. The term of jury service should be reduced, with the goal being implementation of a one trial / one day system.

5. Jurors' time should be used as efficiently as possible and judges should be trained concerning the efficient use of jurors.

6. Jurors' waiting time should be minimized and necessary delays should be explained to jurors.

7. Efforts should be made to educate the public and potential jurors about the importance of the jury system to our justice system and our system of government.

Along with reducing the burden and inconvenience of jury service, a clear message should be communicated to the public that all citizens are expected to perform jury service when called:

8. Stricter and more uniform policies with regard to excuses from jury service should be adopted.

9. Efforts to enforce jury service requirements should be strengthened and publicized.

Jury Selection and Structure

The jury system is a time-honored institution, and structural changes should be approached with great caution to ensure, among other things, that an appropriate balance between the efficient operation of the justice system and the need for fair, impartial and representative juries is maintained.

10. Peremptory challenges serve a valid function and their number should not be reduced.

11. Measures to decrease the time and cost of jury selection, other than reducing the number of peremptory challenges, should be explored.

12. Twelve represents a time-honored number of persons needed to ensure adequate deliberation and full discussion of all relevant issues in cases tried to juries. Jury size should not be decreased in capital cases, other felony criminal cases or civil cases in superior court; irrespective of the type of case, jury size should be decreased only with the consent of the parties.

Jury Functioning

The rules relating to jury functioning should be designed to promote intelligent jury deliberations. Changes which would further this goal without adversely affecting the rights of litigants should be pursued:

13. Appropriate procedures to allow jurors to ask questions should be explored, including submission of questions anonymously and in writing, review by the judge in consultation with counsel, and

opportunity for parties to object to questions.

14. Jurors should be permitted to take notes in all cases.

15. Courts should be encouraged to provide appropriate instructions to the jury at the beginning of the case.

16. Jury instructions should be simplified and clarified.

17. Written copies of jury instructions should be provided to jurors in all cases.

18. Jury deliberations should not be permitted before the issues to be decided have been tried and argued, and full instructions given.

Appendix G
Jury Facilities Industry Standards

Source: **The information in this appendix was drawn from a compilation prepared by the Los Angeles Superior Court Management Systems Unit. For a copy of the complete compilation, contact the Los Angeles Superior Court.**

ENTRANCE

American Bar Association
1. Should be immediately identifiable upon entry into the courthouse.
2. Designed so jury staf has control over entrance into jury facilities (limited access and security).

The American Courthouse
1. Should adjoin waiting area but should be at least visually separated.
2. Lighting should be lower than other jury areas.

National Clearinghouse
1. Immediately visible from main public circulation system.
2. Located to control access to jury facilities.
3. Counter height (28"-30") so staff will be at eye level with juror when seated.
4. Lighting 50FC direct lighting.

REGISTRATION AREA

American Bar Association
1. Immediately visible at entry of jury area.
2. Should be situated adjacent to entrance.

The American Courthouse
1. Counter height should permit both juror and staff to be seated.
2. Cloak room should be accessible from entrance area.

California Trial Court Facilities
1. Space allocation for processing clerk is 80 sq. ft. Per clerk. This should include counter area.

National Clearinghouse
1. Seating to be provided for jurors awaiting check-in. They should not have to stand while waiting.
2. Person at counter should not be able to look into lounge, staff work area or assembly areas.
3. Noise from staff area and lounge should be buffered from counter area.
4. 10-15 sq. ft. Per expected person waiting in area needed for milling area (minimum 100 sq. ft.). Additional waiting area space with seating at same specifications needed.
5. Listing of recommended equipment and furnishings provided.
6. Lighting at 50FC direct; Lighting at 80FC for work area / counter.

United States Courts Design Guide
1. 100 net sq. ft. of work space per clerk at the check-in counter.
2. Couches and work carrels should be included in furnishing of lounge area. Tables to accommodate wheel chair access should be included.

JUROR LOUNGE AREA / ASSEMBLY AREA

American Bar Association
1. Should be adjacent to entry and registration area.
2. Area should be multi-purpose room with area for quiet activities and another for talking, TV and another for writing or games / puzzles.

The American Courthouse
1. Jury lounge and assembly area recommended unit square footage:
    - Noisy activity area: 9 to 15 sq.ft./pp
    - Informal lounge: 8 to 15 sq.ft./pp
    - Group activity area: 12 to 15 sq.ft./pp
    - Individual activity: 6 to 40 sq.ft./pp
2. Recommended lighting 10 to 20 FC.
3. Recommended sound suppression ratings:
    - General lounge area: 35 to 40 STC
    - Work carrels: 30 to 40 FTC
4. Assembly and lounge area may be same. Clear area for movement.

5. Lounge area should be large open area with moveable and storable chairs.
6. Storage area for equipment and periodicals.
7. Provide individual work spaces with desk and chair for private work areas.
8. Easily accessible to restrooms, food and beverages.

California Trial Court Facilities

1. Specifications and standards for jury assembly area including space needs, furnishings and jury movement 8-12 sq.ft. per juror.
2. Lighting standards:
    - Courtroom litigation area: 75-90 FC
    - Courtroom public area: 30 FC
    - Reception areas: 75-90 FC
    - Courtroom conference area: 50 FC
3. Sound / Acoustics standards:
    - Conference rooms: 40-50 STC

National Clearinghouse

1. Space standards:
    - Assembly area: 6-10 sq.ft. per juror (includes circulation space)
    - Noisy activity area: 9-15 sq.ft./pp
    - Informal lounge: 8-15 sq.ft./pp
    - Group activity area: 12-15 sq.ft./pp
    - Individual activity: 6-40 sq.ft./pp
2. Lighting 30 to 80 FC with variety of lighting for different sections.
3. Area should be acoustically and visually isolated from the public area and from other court operations.
4. Jury assembly area, if separate from the lounge area, should be located closer to the public access areas than the lounge.

United States Courts Design Guide

1. 15 to 20 sq.ft. per juror.
2. Lighting level of 30-40 FTC. Assembly area should be lit by direct fluorescent units. Lounge area should have some direct incadescent units.
3. Acoustics standard:
    - Lounge area: 40 NC
    - Assembly area: 35 NC

Acoustics should be designed to 35 NC maximum with a RASTI of at least 0.8 using a sound system in the assembly area. All other areas should be designed for 40 NC.

4. HVAC: 10ACH with 80-85% air return. Temperature controls for summer

74-76F, winter 70-74F.
5. Silent duress alarm button should be provided at check-in counter. For additional security, a security officer should be stationed outside of the jury assembly / lounge area.

JUROR IMPANELING AREA

National Clearinghouse
1. Suggested square footage per person:

Judge:	30-40 sq.ft.
Clerk:	20-30 sq.ft.
Bailiff:	10-20 sq.ft.
Ct reporter:	10-30 sq.ft.
Jurors:	10-20 sq.ft./pp
Spectators:	6-10 sq.ft./pp

2. Size of room to be determined by size of panel sent to each courtroom.
3. Impaneling room accessible to the public.

COURTROOM AREAS / JURY BOX

The American Courthouse
1. In courtroom space requirements:

Furniture area:	4-5 sq.ft. per juror
Movement area:	4-5 sq.ft. per juror

2. Ranking of jurors in order of importance for visual communication.
3. Located next to entrance to deliberation room.
4. Not close to other court participants or the public.

California Trial Court Facilities
1. Counsel seated at table should not be closer than six feet from the first rank of juror seating.
2. Lighting standard: 75-90 FC.
3. Sound/acoustics: 50 STC.
4. Economies of construction and deviation from traditional norms should be evaluated on a one to one room ratio.
5. Recommend 75% ratio of jury deliberation rooms to court rooms.
6. Jury sight lines: The furthest juror from the witness should see at least the prosecutor's profile.

7. Avoid jury being able to hear bench conferences.

JURY DELIBERATION ROOM

American Bar Association
1. Must be well-ventilated room.
2. Equipped with chalkboard and tack-board on the wall.
3. Closets and restrooms should be near the room entrance.
4. Soundproof rooms.
5. Should not have any windows with public exposure.

The American Courthouse
1. Recommended unit square footage 20 to 27 sq.ft. per juror.
2. Recommended lighting 30 FC.
3. Recommended sound suppression ratings for area 45 to 50 STC.
4. Recommend a round table.
5. Soundproof room, windows should not provide public exposure, separate restrooms, and water fountain.

California Trial Court Facilities
1. Lighting standards: 50FC.
2. Sound/acoustics standard: 50 STC.
3. Soundproofing required for jury deliberation rooms.
4. Public restrooms should not be located along common wall with jury deliberation room.

Space Management and the Courts
1. Space should be designed into a jury deliberation area for the bailiff stationed to guard the deliberating jury.

United States Courts Design Guide
1. 520 sq.ft. per room.
2. Lighting level of 50-75 FTC, lights should be controlable for reading and viewing of videos or projections.
3. Sound acoustics standards: 30 NC with a minimum RASTI value of 0.8. Doors into the room should be fully gasketed. Wall isolation should be 65 db NIC.
4. HVAC should be individually controlled in each jury room. HVAC: 8ACH with 100% air exhaust. Temperature controls for summer 74-76F, winter 70-

74F.

JURORS CONTACT WITH NON-JURORS

American Bar Association
1. Jurors should have access to exit from the courthouse without having to confront parties in the case which they served.
2. Jurors should be able to avoid intrusion from interested parties during the case.

The American Courthouse
1. Jurors sitting on cases should not be seated with the general public in the cafeteria.

National Clearinghouse
1. Areas should be acoustically and visually isolated from the public area and from other court operations.

Space Management and the Courts
1. Jurors should be separated from public in courtroom.
2. Jurors should be at least six feet frim the closest counsel table to prevent overhearing conversations.

SECURITY / EMERGENCY

American Bar Association
1. Check-in station should be at entrance to the juror area to control access.
2. Jury deliberation rooms should not have any windows with public exposure.
3. Institute a visible identification badge for jurors.

The American Courthouse
1. Separate screened off eating area should be available for sitting jurors away from the general public.

California Trial Court Facilities
1. Provisions for emergency lighting, HVAC, and communications are essential.
2. Public restrooms should not be located along common wall with jury

deliberation room.

National Clearinghouse
1. Registration area should be located to control access to jury facilities.
2. Public should not have access to or through the staf work area. A gate or door should separate the public area from the office areas.

Space Management and the Courts
1. Bailiff station should be between the public areaand the jury.
2. Space should be designed into a jury deliberation area for the bailiff stationed to guard the deliberating jury.

United States Courts Design Guide
1. Silent duress alarm button should be provided at check-in counter. For additional security a security officer should be stationed outside of the jury assembly / lounge areas.

PARKING

California Trial Court Facilities
1. Lighting standard 5FC.

TRAFFIC FLOW

California Trial Court Facilities
1. Jury entrance into jury deliberation room should be located adjacent to the jury box.

STAFF OFFICE AREA

American Bar Association
1. Juror check in. Jury manager's office should be directly accessible from the entrance.

The American Courthouse
1. Recommended square footage for clerical area: 44 to 63 sq.ft. per clerk.
2. Recommended lighting:

Waiting area: 10 to 20 FC
Office areas: 100 FC

3. Recommended sound suppression ratings: 35-50 STC.
4. Check-in counter should have storage space below the counter for necessary forms.
5. Staff work and processing area should adjoin but be visually and physically separate from the front counter area.
6. Jury operations should be contiguous but office of Jury Commissioner can be located elsewhere.

California Trial Court Facilities

1. Lighting standards:
   Clerical work area: 90-100FC
   Reception area: 75-90 FC
2. Sound / acoustics standards:
   Office space: 25 STC

National Clearinghouse

1. Front counter staff should be allowed 65-120 sq.ft. plus circulation space per receptionist.
2. Jury Commissioner's office, jury office staff and front counter area should be adjacent to each other to facilitate paper flow.
3. Front counter staff work areas at right angle with counter for easy access to work area and to eliminate aisle.
4. Public should not have access to or through the staff work area. A gate or door should separate the public area from the office areas.

United States Courts Design Guide

1. 100 sq.ft. for ofice area. 150 sq.ft. for reception / check-in area.
2. Lighting level of 60-75 FTC.

Appendix H
Juror Fees by State

Source: **National Center for State Courts, *State Court Organization 1993*, Table 35.**

Alabama	$10 per day
Alaska	$25 per day
Arizona	$12 per day
Arkansas	$20 per day
California	**$5 per day minimum (may vary among counties)**
Colorado	$0 for first 3 days, then $50 per day
Connecticut	$0 for first 5 days (employers required to pay regular wages), then $50 per day
Delaware	$15 per day
D.C.	$0 for first day, then $30 per day
Florida	$10 per day
Georgia	$5-$35 per day
Hawaii	$30 per day
Idaho	$10 per half-day
Illinois	$4-$15 per day (varies among counties)
Indiana	$7.50 per day if not selected, $17.50 per day if selected
Iowa	$10 per day
Kansas	$10 per day
Kentucky	$12.50 per day
Louisiana	$12 per day for civil, $12-$25 per day for criminal
Maine	$10 per day
Maryland	$15 per day (varies among counties)
Massachusetts	employer pays first 3 days, then $50 per day
Michigan	$15 per day
Minnesota	$15 per day
Mississippi	$15 per day
Missouri	$6 per day
Montana	$25 per day
Nebraska	$20 per day
Nevada	$15 per day for first 5 days, then $30 per day
New Hampshire	$10 per half-day
New Jersey	$5 per day
New Mexico	$4.25 per hour

New York	$15 per day
North Carolina	$12 per day for first 5 days, then $30 per day
North Dakota	$25 per day
Ohio	varies among counties
Oklahoma	$12.50 per day
Oregon	$10 per day
Pennsylvania	$9 per day for first 3 days, then $25 per day
Rhode Island	$15 per day
South Carolina	$10 per day
South Dakota	$40 per day
Tennessee	$10 per day
Texas	$6-$30 per day
Utah	$17 per day
Vermont	$30 per day
Virginia	$30 per day
Washington	$10-$25 per day
West Virginia	$15 per day
Wisconsin	$16 minimum per day
Wyoming	$30 per day for first 4 days, then $50 per day
Puerto Rico	$8-$10 per day
Federal Courts	$40 per day

Appendix I
Estimated Costs of Increased Jury Fees

Assumptions for Estimates

1. Based on FY 1994-95 figures, assuming one trial / one day in all counties:

1,600,000 people serve / year
3,132,000 juror days served / year
1,532,000 juror days served beyond first day / year

2. Government workers are currently required to turn in juror fees to their employer. Under the new rules, government workers, who as a matter of general practice receive usual compensation and benefits throughout the period of jury service, will not receive the $40 or $50 juror fee (but can seek reimbursement for mileage, parking and child care expenses). Government workers comprise 8.9% (2,027,000 million) of the total population 18 and over (22,831,761). Thus, of the 1,532,000 juror days served beyond the first day, only 1,396,000 juror days (91.1%) will receive juror fees.

3. Parking will be reimbursed on average at the rate of $5 per day for all jurors.

4. Approximately five percent of the jurors will request child care reimbursement. The $15 / day figure is based upon the Colorado system.

5. Based upon FY 1994-95, 25% of jury trials are civil, and 75% of jury trials are criminal. Civil litigants pay for jury fees as part of costs, and the State pays jury fees in criminal cases.

6. SDI covers approximately 11 million persons, which is approximately 48% of the 22,831,761 persons in California 18 and over.

Estimates of Costs

Fees (2d-30th day)	$40 x 1,396,000 = $55.8M
Fees (> 30 days)	$0.8M (@ $50 / day)
Mileage (all days)	3,132,000 x $0.28 x 2 x 8.33 miles (one way) = $14.6M
Parking (all days)	3,132,000 x $5 / day = $15.66M
Child Care (all days)	3,132,000 x .05 x $15 / day = $2.35M

Fees (2d-30th day)	55.8M
Fees (> 30 days)	.8M
Mileage (all days)	14.6M
Parking (all days)	15.66M
Child Care (all days)	2.35M
	$89.21M

Paid By (in millions)

	Fees (1st 30)	Fees (> 30)	Miles	Parkg	Child Care	
Civil litigants (25%)	13.95	0.2	3.65	3.91	0.59	= 22.30
SDI (48%)	26.78	0.38				= 27.16
State (remainder)	15.07	0.22	10.95	11.75	1.76	= 39.75
	55.8	0.8	14.6	15.66	2.35	= 89.21

Changes (in millions)

	Now	Proposed
Litigants	4.4	22.30
SDI	0.0	27.16
State	13.1	39.75
	17.5	89.21

Appendix J
Voir Dire Questionnaire

Source: This model questionnaire is based upon the questionnaire in use at Sacramento Superior and Municipal Courts.

PANEL: _____ JUROR NUMBER: _____

To facilitate the jury selection process, the court requires that you provide the information requested below under penalty of perjury. The completed questionnaire will be a public record and open to public inspection. If you feel that any question requires an answer which is too sensitive (personal or private) to be included in a public record, you have the right to request a private hearing rather than filling out the answer in writing. If you prefer to have a private hearing for a sensitive question, write "P" (for "private") in the space provided for the answer.

QUALIFICATIONS

I am able to read and understand English.	Yes No	I am now serving as a grand juror in a court of this state.	No Yes
I am a citizen of the United States.	Yes No	I am under a court appointed conservatorship.	No Yes
I am eighteen years of age or older.	Yes No	I am a peace officer pursuant to 830.1 or 830.2(c) PC.	No Yes
I am a resident of Sacramento County	Yes No	I have been convicted of a felony. If so, answer yes unless you have received a full pardon.	No Yes

1. Marital Status: Married _____ Single _____ Divorced _____ Widowed _____
2. Education: Highest grade level completed _____ Degrees: _____
3. Occupation: _____ Previous Occupation: _____
   Employer: _____ Previous Employer: _____
4. Information regarding spouse or other adults with whom you reside:
   Occupation: _____ Previous Occupation: _____
   Employer: _____ Previous Employer: _____
5. Information about your children or step-children: [ ] I have no childen or step-children.

AGE	SEX	OCCUPATION	AGE	SEX	OCCUPATION	AGE	SEX	OCCUPATION
_____	____	_____	____	____	_____	____	____	_____
_____	____	_____	____	____	_____	____	____	_____
_____	____	_____	____	____	_____	____	____	_____

6. Military service: Branch _____ Highest Rank _____ Specialty _____
   Did you have any involvement with the military criminal justice system? If yes, explain _____
7. Prior jury service: (For each case, without disclosing the results, indicate yes or no, did the case end in a verdict?)

YEAR	TYPE OF CASE	YES/NO	YEAR	TYPE OF CASE	YES/NO
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____

8. In what area of Sacramento do you live (neighborhood)? _____
9. Have you, a close friend or relative ever been employed by a law enforcement agency (federal, state, or local?) If yes, what agency? _____
10. Have you, a close friend or relative ever been a victim of crime? If yes, state the nature of the crime(s). _____
11. Have you, a close friend or relative ever been arrested for a crime (including driving under the influence)? If yes, state the nature of the crime(s) _____
12. Except as revealed in question 10 or 11 above, have you, a close friend or relative, ever been witness to a crime? If yes, state the nature of the crime(s) _____

I hereby declare under penalty of perjury that the foregoing is true and correct. (2015.5 CCP) Executed at Sacramento, County of Sacramento, California.

Date _____ Signature _____

Appendix K
Number of Peremptory Challenges by State

Source: National Center for State Courts, *State Court Organization 1993*, Table 36.

	Capital	Felony	Misdemeanor	Civil
Alabama	12	6	3	6
Alaska	--	6 (state) 10 (def.)	3	3
Arizona	10	6	6	4
Arkansas	10 (state) 12 (def.)	6 (state) 8 (def.)	3	3
California	20	10	10 or 6	6
Colorado	10	5	3	4
Connecticut	25	15 (life) 6 (other)	3	3
Delaware	20	6	6	3
D.C.	--	10	3	3
Florida	10	6	3	3
Georgia	10 (state) 20 (def.)	6 (state) 12 (def.)	2 (state) 4 (def.)	6
Hawaii	12	3	3	3
Idaho	10	6	6	4
Illinois	20	10	5	5
Indiana	20	10	5	3
Iowa	8	6	4	4
Kansas	--	12, 8 or 6	3	3
Kentucky	5 (state) 8 (def.)	5 (state) 8 (def.)	3	3
Louisiana	12	12 or 6	6	6
Maine	10	8	4	3
Maryland	10 (state) 20 (def.)	5 (state) 10 (def.)	4	4
Massachusetts	12	4	4	4
Michigan	15 (state) 20 (def.)	5	3	3
Minnesota	9 (state) 15 (def.)	9 or 3 (state) 15 or 5 (def.)	3 (state) 5 (def.)	2

	Capital	Felony	Misdemeanor	Civil
Mississippi	12	6	6	4
Missouri	9	6	2	3
Montana	8	6 or 3	6 or 3	4
Nebraska	12	6	3	3
Nevada	8	4	4	4
New Hampshire	10 (state) 20 (def.)	15 or 3	3	3
New Jersey	12 (state) 20 (def.)	12 (state) 20 (def.)	10	6
New Mexico	8 (state) 12 (def.)	3 (state) 5 (def.)	3 (state) 5 (def.)	5 or 3
New York	--	15	3	3
North Carolina	14	6	6	8
North Dakota	15	10	6 or 3	4 or 3
Ohio	6	4	3	3
Oklahoma	9	5	3	3
Oregon	12	6	6	3
Pennsylvania	20	7	5	4
Rhode Island	--	6	3	2
South Carolina	5 (state) 10 (def.)	5 (state) 10 (def.)	5	4
South Dakota	20	10	3	3
Tennessee	8 (state) 15 (def.)	4 (state) 8 (def.)	3	4
Texas	15	10	5	6
Utah	10	4	3	3
Vermont	--	6	6	6
Virginia	4	4	3	3
Washington	12	6	3	3
West Virginia	--	2 (state) 6 (def.)	4	4
Wisconsin	--	6 or 4	4	3
Wyoming	12	8	4	3
Puerto Rico	--	10	5	No jury
Federal Courts	20	6 (U.S.) 10 (def.)	3	3

Appendix L
Probability of Finding Persons on a 12-Person Jury Who Share a Characteristic

PROBABILITY OF FINDING x OR MORE PERSONS ON A 12-PERSON JURY WHO SHARE A PARTICULAR CHARACTERISTIC THAT IS FOUND IN y% OF THE POPULATION

	x = 2	3	4	5	6	7	8	9	10	11	12
5%	0.11836	0.01957	0.00224	0.00018	0.00001	0.00000	0.00000	0.00000	0.00000	0.00000	0.00000
10%	0.34100	0.11087	0.02564	0.00433	0.00054	0.00005	0.00000	0.00000	0.00000	0.00000	0.00000
15%	0.55654	0.26418	0.09221	0.02392	0.00464	0.00067	0.00007	0.00001	0.00000	0.00000	0.00000
20%	0.72512	0.44165	0.20543	0.07256	0.01941	0.00390	0.00058	0.00006	0.00000	0.00000	0.00000
25%	0.84162	0.60932	0.35122	0.15764	0.05440	0.01425	0.00278	0.00039	0.00004	0.00000	0.00000
30%	0.91497	0.74718	0.50748	0.27634	0.11785	0.03860	0.00949	0.00169	0.00021	0.00002	0.00000
35%	0.95756	0.84871	0.65335	0.41665	0.21274	0.08463	0.02551	0.00561	0.00085	0.00008	0.00000
40%	0.98041	0.91656	0.77466	0.56182	0.33479	0.15821	0.05731	0.01527	0.00281	0.00032	0.00002
45%	0.99171	0.95786	0.86553	0.69557	0.47307	0.26069	0.11174	0.03557	0.00788	0.00108	0.00007
50%	0.99683	0.98071	0.92700	0.80615	0.61279	0.38721	0.19385	0.07300	0.01929	0.00317	0.00024
55%	0.99892	0.99212	0.96443	0.88826	0.73931	0.52693	0.30443	0.13447	0.04214	0.00829	0.00077
60%	0.99968	0.99719	0.98473	0.94269	0.84179	0.66521	0.43818	0.22534	0.08344	0.01959	0.00218
65%	0.99992	0.99915	0.99439	0.97449	0.91537	0.78726	0.58335	0.34665	0.15129	0.04244	0.00569
70%	0.99998	0.99979	0.99831	0.99051	0.96140	0.88215	0.72366	0.49252	0.25282	0.08503	0.01384
75%	1.00000	0.99996	0.99961	0.99722	0.98575	0.94560	0.84236	0.64878	0.39068	0.15838	0.03168
80%	1.00000	1.00000	0.99994	0.99942	0.99610	0.98059	0.92744	0.79457	0.55835	0.27488	0.06872
85%	1.00000	1.00000	0.99999	0.99993	0.99933	0.99536	0.97608	0.90779	0.73582	0.44346	0.14224
90%	1.00000	1.00000	1.00000	1.00000	0.99995	0.99946	0.99567	0.97436	0.88913	0.65900	0.28243
95%	1.00000	1.00000	1.00000	1.00000	1.00000	0.99999	0.99982	0.99776	0.98043	0.88164	0.54036

ASSUMPTIONS: (1) Each person is selected randomly from the population; (2) The selections are independent of each other.

Appendix M
Jury Size and Verdict Rules by State

Source: National Center for State Courts, *State Court Organization 1993*, Table 37. This excerpt of the complete table includes only the highest trial court of general jurisdiction within the state.

	Felonies	Misdemeanors	Civil
Alabama	12 (unanimous)	12 (unanimous)	12 (unanimous)
Alaska	12 (unanimous)	6 (unanimous)	12 (5/6ths)
Arizona	8 (unanimous)	6 (unanimous)	8 (3/4ths)
	12 (if capital or > 30 years prison; unanimous)		
Arkansas	12 (unanimous)	6 or 12 (unanimous)	12 (3/4ths)
California	**12 (unanimous)**	**12 or < by consent (unanimous)**	**12 or < by consent (3/4ths)**
Colorado	12 (unanimous)	6 (unanimous)	6 (unanimous)
Connecticut	6 (unanimous)	6 (unanimous)	6 (unanimous)
	12 (if capital)		
Delaware	12 (unanimous)	12 (unanimous)	12 (unanimous)
D.C.	12 (unanimous)	12 (unanimous)	6 or 12 (unanimous)
Florida	6 (unanimous)	6 (unanimous)	6 (unanimous)
	12 (if capital)		12 (eminent domain)
Georgia	12 (unanimous)	6 (unanimous)	12 (unanimous), 6 ($10,000 or less)
Hawaii	12 (unanimous)	12 (unanimous)	12 (5/6ths)
Idaho	12 (unanimous)	6 (unanimous)	12 (3/4ths)
Illinois	12 (unanimous)	12 (unanimous)	6 or 12 (unanimous)
Indiana	12 (unanimous)	6 (unanimous)	6 (unanimous)
Iowa	12 (unanimous)	6 (unanimous), 12 (if aggravated)	8 (unanimous, 7/8ths after 6 hrs.)
Kansas	12 (unanimous)	6 (unanimous)	12 (> $5,000)(7/8ths) 6 (unanimous)
Kentucky	12 (unanimous)	12 (unanimous)	12 (3/4ths)
Louisiana	12 (capital; unanimous)	6 (unanimous)	12 (3/4ths)
	12 (*necessarily* hard labor; 5/6ths)		
	6 (*may* be hard labor; unanimous)		

	Felonies	Misdemeanors	Civil
Maine	12 (unanimous)	12 (unanimous)	8 (3/4ths)
Maryland	12 (unanimous)	12 (unanimous)	12 (unanimous)
Massachusetts	12 (unanimous)	12 (unanimous)	12 (5/6ths)
Michigan	12 (unanimous)	12 (unanimous)	6 (5/6ths)
Minnesota	12 (unanimous)	6 (unanimous)	6 (5/6ths)
Mississippi	12 (unanimous)	6 (unanimous)	12 (3/4ths)
Missouri	12 (unanimous)	12 (unanimous)	12 (3/4ths)
Montana	12 (unanimous)	12 (unanimous)	12 (2/3rds)
Nebraska	12 (unanimous)	12 (unanimous)	12 (unanimous,5/6ths after 6 hrs.)
Nevada	12 (unanimous)	12 (unanimous)	12 (3/4ths)
New Hampshire	12 (unanimous)	12 (unanimous)	12 (unanimous)
New Jersey	12 (unanimous)	12 (unanimous)	6 or 12 (5/6ths)
New Mexico	12 (unanimous)	12 (unanimous)	12 (5/6ths)
New York	12 (unanimous)	6 (unanimous)	6 (5/6ths)
North Carolina	12 (unanimous)	12 (unanimous)	12 (unanimous)
North Dakota	12 (unanimous)	6 or 12 (unanimous)	6 or 12 (unanimous)
Ohio	12 (unanimous)	8 (unanimous)	8 or 12 (3/4ths)
Oklahoma	12 (unanimous)	6 (3/4ths)	12 (> $2,500)(3/4ths) 6 ($2,500 or less)
Oregon	12 (5/6ths; if murder, unanimous)	6 (5/6ths)	12 (3/4ths)
Pennsylvania	12 (unanimous)	12 (unanimous)	12 (5/6ths)
Rhode Island	12 (unanimous)	12 (unanimous)	12 (5/6ths)
South Carolina	12 (unanimous)	12 (unanimous)	12 (unanimous)
South Dakota	12 (unanimous)	12 (unanimous)	12 (5/6ths)
Tennessee	12 (unanimous)	12 (unanimous)	12 (unanimous)
Texas	12 (unanimous)	12 (unanimous)	12 (5/6ths)
Utah	8 (unanimous)	8 (unanimous)	8 (3/4ths)
Vermont	12 (unanimous)	12 (unanimous)	12 (unanimous)
Virginia	12 (unanimous)	7 (unanimous)	5 or 7 (unanimous)
Washington	12 or < if consent (unanimous)	12 or < if consent (unanimous)	6 or 12 (5/6ths)
West Virginia	12 (unanimous)	12 (unanimous)	6 (unanimous)
Wisconsin	12 or < if consent (unanimous)	12 or < if consent (unanimous)	6 or 12 (5/6ths)
Wyoming	12 (unanimous)	12 (unanimous)	6 or 12 (5/6ths)
Puerto Rico	12 (3/4ths)	12 (unanimous)	No jury
Federal Courts	12 (unanimous)	12 (unanimous)	6 or 12 (unanimous)

Appendix N
Misdemeanors Where Punishment Is 6 Months or Less

BUSINESS AND PROFESSIONS CODE

§ 128. Consumer affairs; Unlawful sale of equipment, supplies and services
§ 652. Healing arts; unearned rebates, refunds and discounts; Violation; offense; suspension or revocation of license
§ 652.5. Violation whether or not licensed
§ 1000-15. Chiropractors; Noncompliance with and violations of act
§ 1287. Clinical laboratory technology; Violation as misdemeanor; penalty
§ 1701. Dentistry; Sales, purchase, or barter of diploma, license or transcript; counterfeiting and alteration; false affidavit; unlicensed practice; practice under assumed name
§ 2533.3. Speech-language pathologists and audiologists; Violation; misdemeanor; punishment
§ 2585. Qualifications of dietitians and registered dieticians; unlawful use of title; penalty; nutritional advice and services
§ 2670. Physical therapy; Violation as misdemeanor
§ 2970. Psychologists; Violation; offense; punishment
§ 3532. Physician assistants; Violations; misdemeanor
§ 3535. Osteopathic physician assistants; Employment qualifications; scope of practice; supervision; application; fees; violations
§ 3755. Respiratory therapy; Unprofessional conduct; penalties
§ 3763. Respiratory therapy; Violations; offense; punishment
§ 3905. Nursing Homes; Necessity of license; exceptions
§ 4382. Pharmacy; Violations generally; offense; punishment
§ 4831. Veterinary Medicine; Violations; misdemeanor; penalty
§ 4983. Marriage, family and child counselors; Violation; misdemeanor; punishment
§ 4996.12. Clinical social workers; Violations; penalties
§ 5120. Accountants; Violations as misdemeanor; certification to local enforcement officer
§ 5536. Architecture; Misdemeanors; practice without license or holding self out as architect or registered building designer; preparation of plans, specifications and instruments of service

§ 5640. Landscape architecture; Unlicensed use of title as misdemeanor
§ 6094.5. Attorneys; Time period for action by disciplinary agency after receipt of complaint; inquiries concerning disciplinary status
§ 6128. Unlawful practice of law; Deceit, collusion, delay of suit and improper receipt of money as misdemeanor
§ 6129. Unlawful practice of law; Buying claim as misdemeanor
§ 7028. Contractors; Contracting without license; second and subsequent offenses; limitation of actions
§ 7028.15. Submission of a bid to a public agency without a license; misdemeanor; exceptions; previous conviction; fine; application; citation to public officer or employee; verification of license status
§ 7402. Barbering and cosmetology; Violation of chapter; penalty
§ 7719. Funeral directors and embalmers; Punishment
§ 7739. Funeral directors and embalmers; preneed funeral arrangements; Violations; penalties
§ 8553. Structural pest control operators; Violation as misdemeanor
§ 9850. Electronic and appliance repair dealers; Violation; penalty
§ 9889.20. Automotive repair; Misdemeanor; punishment
§ 9998.8. Foreign labor contractors; Criminal penalties and civil actions
§ 10085. Real estate commissioner; Materials used in obtaining advance fee agreements; submission to commissioner; order; violations
§ 10185. Real estate regulations; Violation of provisions; misdemeanor
§ 10512. Oil and gas brokerage; False representations in advertisements, pamphlets, etc.; offense; punishment; discipline of licensee; prosecutor
§ 12615.5. Fair packaging and labeling act; Violations; misdemeanor
§ 13531. Sale of motor vehicle fuel to public; display of prices of 3 major grades; exemptions; violations and punishment; enforcement; injunctive relief
§ 14436. Container brands; Violations; offense; punishment
§ 16603. Required purchase of horror comic book as condition to other purchases
§ 16604. Required purchase of magazine, book or other publication as condition to other purchases
§ 17100. Unfair trade practices; Offense; punishment
§ 17500. False advertising; False or misleading statements
§ 17511.4. Telephonic sellers; Filing information; exemption information
§ 17511.8. Soliciting prospective purchasers on behalf of unregistered telephonic seller prohibited; violation, misdemeanor
§ 17531. Secondhand, used, defective, second grade, or blemished merchandise; required statement

§ 17537. Unlawful advertising; conditional offer of prizes or gifts
§ 17538. Telephone, mail order, or catalog sales or leases; requirement of delivery, refund, or offer of substitution of goods or services within 30 days; notices; requisites; definitions; violations; punishment
§ 17538.5. Businesses selling consumer goods or services; disclosure of legal name and address; punishment; exceptions; commercial mail receiving agencies; requirements; liability
§ 17568. Motel and motor court rate signs; Offense; punishment
§ 17572. Advertising; vending machines; Violation; misdemeanor
§ 17577.4. Advertising; water treatment devices; Violation; misdemeanor
§ 17581. Advertising; environmental representations; Violations; punishment
§ 17776. Trading stamp companies; Discontinuance of issuance of stamps by merchants; notice; contents; posting; violations
§ 18872. Boxing, wrestling, and martial arts; Offense of destroying, or aiding and abetting in destruction of, ticket or ticket stub to contest, match, or exhibition
§ 19220. Home furnishings; Violation; offense; punishment
§ 21608. Secondhand goods; junk; Violations; offenses; punishment
§ 21645. Secondhand goods; tangible personal property; Violations; misdemeanor; punishment
§ 21667. Swap meets; Violations; misdemeanor; punishment
§ 22132. Precious metal marking; the platinum group; Violations; offense; defense
§ 22500. Ticket sellers; Permanent business address; local license; criminal and civil penalties
§ 25503.6. Beer manufacturers or winegrowers; outdoor stadiums or enclosed arenas; conditions for purchase of advertising from or on behalf of on-sale retail licensee; coercion or illegal inducement; offense; punishment
§ 25503.8. Winegrowers and beer manufacturers; purchase of advertising space and time from or on behalf of on-sale retail licensee; conditions
§ 25503.24. Market research by manufacturers, etc.; purchase of off-sale retail data on purchases and sales; limitations; illegal inducement; penalties
§ 25503.26. Beer manufacturers, winegrowers, or distilled spirits manufacturers; purchase of advertising space and time from or on behalf of on-sale retail licensee; conditions
§ 25503.85. Winegrowers and distilled spirits or beer manufacturers; purchase of advertising space and time from or on behalf of on-sale retail licensees; limitations; zoos or aquariums; conditions; fines and penalties

§ 25616. False reports; refusal to permit inspection; falsification of records, etc.; punishment
§ 25617. Offense and punishment not otherwise specified
§ 25659.5. Keg beer identification tag; placement on sale; signature on receipt; violations; misdemeanor; fees to state; disposition

CIVIL CODE

§ 607f. Humane officers; appointment; qualifications; record; term; revocation of appointment; training course attendance; authority; arrests; misrepresentation; offenses
§ 1788.16. Communications simulating legal or judicial process or governmental authorization; unlawful practice in consumer debt collection; misdemeanor; punishment
§ 1881.1. Private bulk storage of grain; Offense and punishment; irregularity of notice or posting, effect on sale
§ 2941.5. Mortgages; Obligation to execute certificate of discharge, satisfaction, or request for reconveyance; penalty
§ 2985.51. Divisions of real property; statement of compliance with Subdivision Map Act; violations; remedies of vendee; misdemeanor

EDUCATION CODE

§ 32051. Hazing; prohibition; violation; misdemeanor
§ 39842. Unauthorized entry; offense; punishment; notice
§ 44810. Willful interference with classroom conduct
§ 49079. Notification to teacher; pupil who has engaged in acts constituting grounds for suspension or expulsion; civil or criminal liability; misdemeanor; fine; confidential information; application of section
§ 49079. Notification to teacher of pupils whose actions are grounds for suspension or expulsion; liability for disclosure of information; offense; punishment
§ 94333. Agent's permit; application for permit; violations; punishment
§ 94334. Agency authorization; application contents; violations; punishment

ELECTIONS CODE

§ 18108. Voter registration assistance for consideration; failure to comply with statutory requirements; misdemeanor; penalties; exemptions

FAMILY CODE

§ 530. Confidential marriage licenses; Compliance with chapter; violation; penalty

FINANCIAL CODE

§ 21201. Pawnbroker regulations; written contract to be furnished borrower; contents; notice; retention and redemption of pledged articles; foreclosure; sale of pledged property

FISH AND GAME CODE

§ 12002. General provisions; Penalty for misdemeanor

FOOD AND AGRICULTURAL CODE

§ 9165. Poultry quarantine; Diseased animals and poultry; Violation of division; punishment
§ 9701. Diseased animals and poultry; animal quarantine; Punishment
§ 11891. Pest control; Violations of division or regulations; misdemeanor
§ 12996. Agricultural chemicals, livestock remedies; economic poisons; Violations of provisions of division or regulations relating to pesticides; criminal penalties
§ 16421. Animals at large; Offense; punishment
§ 19306. Slaughtered animals; horsemeat and pet food; Failure to keep records; refusal to exhibit, or destruction of, records; violations; punishment
§ 20221. Cattle protection; Offense; punishment
§ 23071. Horses, mules, burros, sheep and swine; Offense; punishment
§ 26681. Poultry sale, possession and transportation; Offense; punishment
§ 27671. Egg products; Offense; punishment
§ 29675. Honey production; Warning tag; permit for possession; penalty
§ 29676. Honey production; Avoiding inspection; penalty
§ 29701. Honey production; Offense; punishment
§ 31402. Regulation of dogs; Violation resulting in death or serious injury to livestock or poultry; punishment
§ 41551. Certification, processing and canning of canned foods; Offense; punishment
§ 42945. Fruit, nut, and vegetable standards; Warning tag or notice; movement of product; removal, etc., of tag; penalty
§ 42948. Fruit, nut, and vegetable standards; Refusal of inspection; penalty
§ 42949. Fruit, nut, and vegetable standards; Alteration of inspection certificate
§ 42951. Fruit, nut, and vegetable standards; Adulteration of solutions or chemicals or alteration of instruments or devices used for enforcement or regulatory purposes; offense; penalties
§ 42971. Fruit, nut, and vegetable standards; Offense; punishment
§ 43100. Fruit, nut, and vegetable standards; Use of California-Grown seal in labeling or advertising; fee; rules and regulations; misdemeanors

§ 44974. Avocados standards; Violation or threatened violation; injunctive relief; civil penalty; fine for infraction; inspection or certification refusal; each violation as separate; joinder of parties; jurisdiction
§ 44986. Unlawful use of certification stamp on avocados
§ 45041. Avocados; Violations; penalties; subsequent offenses
§ 53541. Nursery stock grades and standards; Offense; punishment
§ 61571. Milk marketing; Offense; punishment
§ 62401. Stabilization and marketing of milk; Violations; misdemeanors; fines; imprisonment
§ 67111. California avocado commission; Misdemeanor; punishment
§ 68111. California kiwifruit commission; Misdemeanors
§ 69091. California pistachio commission; Misdemeanors
§ 72111. California wheat commission; Misdemeanor offenses
§ 73301. California navel orange commission; Violations; misdemeanors; fines and penalties
§ 75151. California egg commissions; Violations; misdemeanors
§ 76161. California cherry commission; Violations
§ 77491. California strawberry commission; Misdemeanor violations

GOVERNMENT CODE

§ 8665. California emergency services; Violations; punishment
§ 12975. Fair Employment and Housing; Willful interference with duties of department or commission or willful violation of orders of commission relating to employment; misdemeanor; punishment
§ 12976. Department of Fair Employment and Housing; Willful violation of recordkeeping requirements; misdemeanor; punishment
§ 15372.121. Tourism marketing act; Criminal liability; false information; misdemeanor; punishment
§ 15619. Board of Equalization; Prohibition against divulging information; power of governor
§ 27011. County treasurer; Deposit of private money prohibited; penalty

HARBORS AND NAVIGATION CODE

§ 308. Mooring to or damaging buoy or beacon of federal government; misdemeanor; punishment
§ 668. Operation and equipment of vessels; Violations; punishment; probation
§ 774.3. Charter boat safety; Violation; misdemeanor; civil penalty; injunction

HEALTH AND SAFETY CODE

§ 1189.62. Family physician training programs; Loan assumption assistance; contracts
§ 1562.3. Adult residential facilities; operator and staff training programs; administrator certification; penalties; registry of certificate holders
§ 1564. Residence in facility within one mile of elementary school by person convicted of sex offense against minor prohibited
§ 1569.616. Administrator certification program; completion required; exemptions; hours of instruction; false representation; offense; renewal, forfeiture, or revocation of certification; fee
§ 1595.2. Adult day health care act; Violations; offense
§ 8101. Cemetery vandalism; Crimes; punishment
§ 9675. Cemeteries; Violations; offense; penalty; costs
§ 11100. Controlled substances; Transactions reported; exemptions; punishment; offenses involving minors
§ 11162.5. Prescriptions; Official blanks; counterfeit; punishment
§ 11357. Marijuana; Unauthorized possession; punishment; prior conviction; possession in school or on school grounds
§ 11377. Controlled substances; Unauthorized possession; punishment
§ 12400. High explosives; Misdemeanors
§ 13112. Fire protection; Violation; misdemeanor; penalty
§ 13190.4. Portable fire extinguishers; Violation; penalty; separate offenses
§ 13199. Automatic fire extinguisher systems; Violations; penalties
§ 13215. High rise structures; Unlawful construction or maintenance; misdemeanor; punishment; separate offenses
§ 13223. Fire protection emergency procedures; Violations; misdemeanor; penalty
§ 17995. Buildings used for human habitation; Misdemeanor; punishment
§ 17995.2. Contempt of court; second or subsequent time; offense; penalty
§ 25190. Hazardous waste control; Violators guilty of misdemeanor; subsequent violations
§ 25244.23. Trade secrets designated by generator; nondisclosure; regulations; information available to department and governmental agencies; availability of source reduction approaches information; refusal to disclose; prohibited disclosures; punishment
§ 25284.4. Tank integrity tester licensing; fees; examination; field experience; course of studies; civil liability of testers; sanctions
§ 25997.8. Safety glazing materials; Violation; misdemeanor
§ 42400. Nonvehicular air pollution control; Misdemeanors; separate offenses; liability of employee or independent contractor
§ 43020. Vehicular air pollution control; Penalties

§ 44058. Motor vehicle inspection; Violations; misdemeanor offense in lieu of civil penalties
§ 102475. Certificate of live birth; confidential portion; release of copy or information; misdemeanor; civil action
§ 108295. Hazardous substances; Punishment for violations
§ 109575. Manufacture, distribution, or possession with intent to distribute imitation controlled substance
§ 112130. Wholesale food processors; Misdemeanor; penalty; separate offense for each day
§ 112240. Sanitary control of shellfish; Violations as misdemeanors; punishment
§ 112635. Frozen foods; Violations; offense; punishment
§ 112855. Canneries; Misdemeanor; penalty
§ 113935. Retail food practices; Violation; misdemeanor; punishment
§ 115995. Safe recreational water use; Violation; misdemeanor; penalty
§ 116065. Swimming pool sanitation; Violation; misdemeanor; penalty
§ 119090. Electrical hazards; Violations; misdemeanor; punishment

INSURANCE CODE

§ 782. Misrepresentation of policies; Misdemeanor

LABOR CODE

§ 23. General provisions; Penalty for misdemeanor
§ 139.2. Medical evaluators; qualifications; appointment of panels; standards and procedures; suspension or termination of privilege to serve as evaluator
§ 408. Bonds and photographs; Violations; misdemeanor; penalty
§ 971. Solicitation of employees by misrepresentation; Violations; misdemeanor; penalty
§ 1199.5. Wages, hours and working conditions; Misdemeanors; fines not more than $10,000; imprisonment not more than six months
§ 1303. Occupational privileges; minors; Violation; misdemeanor; penalty
§ 1308. Occupations prohibited to minors; persons causing employment; penalties; exceptions
§ 1309. Employment of minors in prohibited occupations; penalties
§ 1391. Hours of employment of minors; violation; misdemeanor; penalty
§ 1695.7. Farm labor contractors; Copy of state license provided to grower; letter of authorization; failure to provide copy of license; penalties; civil actions; definitions
§ 1697. Farm labor contractors; Violations; misdemeanor; penalty; civil

action by aggrieved employee; engaging in farm contracting activities after license suspension or revocation; penalties
§ 2658.5. Industrial homework; Unlicensed persons; employment of homeworkers; permitting home manufacture; misdemeanor; penalty
§ 3095. Apprenticeship; Discrimination as misdemeanor; penalty
§ 6321. Advance notice of inspection or investigation; offense
§ 6423. OSHA; Misdemeanors; penalties
§ 7205. Construction elevators; Violation; misdemeanor; penalty
§ 7329. Window cleaners; Persons required to install devices; failure to comply with requirements; misdemeanor
§ 7378. Cranes; Fraudulent certification; misdemeanor; sentence or fine
§ 7379. Cranes; Certification by unlicensed persons; misdemeanor; sentence or fine

MILITARY AND VETERANS CODE

§ 1820. Veterans' organizations and insignia; Badges and insignia

PENAL CODE

§ 132.5. Witnesses to crimes; consideration for providing information obtained as a result of witnessing event; violations; penalties; application of section
§ 132.5. Witnesses; legislative findings and declarations; prohibitions on receipt of money for information; offense; exceptions
§ 146a. Impersonating an officer; punishment
§ 153. Compounding or concealing misdemeanor; punishment
§ 241. Assault; punishment
§ 243.4. Sexual battery
§ 273. Paying or receiving money or thing of value to parent for placement for, or consent to, adoption of child
§ 273.6. Intentional and knowing violation of court order to prevent harassment, disturbing the peace, or unlawful threats of violence; penalties
§ 290.4. Sex offender registration; compilation of information for specified offenses; "900" telephone number; income deposit; subdirectory for sexual habitual offenders; violations; penalties; report to legislature
§ 302. Disturbing religious meetings; punishment; community service; waiver
§ 308. Tobacco; smoking paraphernalia; selling or furnishing to persons under 18; misdemeanor or civil violation; penalty; disbursement of penalties collected; defenses; persons liable; penalty for purchasing or receiving; posting copy of act by dealers; individual franchises or business locations a separate entity; legislative intent to regulate; sale or

furnishing to minor inmates
§ 310.5. Minor victim of unlawful sex act; parent and perpetrator contract; payment of money or other consideration; violation; penalty
§ 318. Place of illegal gambling or prostitution; prevailing upon person to visit; punishment
§ 330. Gaming defined; punishment
§ 330a. Slot machines; card dice; dice of more than six faces; possession or permitting within building; punishment
§ 330.1. Slot machines or devices; manufacture, ownership, sale, possession, transportation, etc.; punishment; definition
§ 337.2. Touting; punishment
§ 365.6. Interference, harassment or obstruction of guide dog user or guide dog; offense; punishment
§ 365.7. Knowing and fraudulent representation as owner or trainer of guide, signal or service dog; penalty
§ 374.3. Dumping; public or private road or property; private owners; fine; additional probation conditions; commercial quantities; punishment
§ 380. Toluene, sale or distribution; second and subsequent offenders
§ 381a. Dairy products; use of inaccurate or false testing devices; punishment
§ 383. Sale of adulterated or tainted food, beverage, drug, or medicine; punishment; inspection and analysis costs; definitions of drug and food; standards for determining adulteration
§ 384a. Trees, shrubs, ferns, etc.; cutting, destroying or removing from highway rights-of-way or public or private lands without permit; punishment; enforcement; confiscation; exceptions
§ 384.5. Minor forest products; removal and transport; bill of sale; written permits; exception for transport by passenger vehicle; punishment
§ 399.5. Dogs trained to fight, attack, or kill causing injury; negligence of owner or custodian; hearing; exceptions
§ 415.5. Disturbance of peace of school, community college, university or state university
§ 417. Drawing, exhibiting, or using firearm or deadly weapon; self defense; peace officers
§ 422.9. Violations of civil rights orders; misdemeanor; second and subsequent violations; responsibility for enforcement
§ 452. Unlawfully causing a fire of any structure, forest land or property; great bodily injury; inhabited structure or property; punishment
§ 463. Looting during emergency; punishment; probation; definitions; consensual entry
§ 532a. False financial statements; punishment

§ 532f. False financial statements; loan secured by real property; person other than applicant; applicant; punishment
§ 536. Statement of sales by commission merchants, brokers, agents, factors or consignees; punishment
§ 537. Defrauding innkeepers, etc.
§ 537e. Removal or alteration of manufacturer's serial number or identification mark; purchase, sale, possession, etc.; disposition
§ 537f. Rebuilt storage batteries; regulation of sale; label
§ 538f. False impersonation; Public utility employee; offense; punishment; construction with other laws
§ 560.6. Goods, wares or merchandise stored or deposited in warehouse; unlawful issuance or transfer of receipt, certificate or other instrument
§ 565. Misdemeanor; use, possession, obliteration or destruction of brand registrations by unauthorized persons
§ 587c. Railroads; fraudulent evasion of fare; punishment
§ 594. Vandalism; penalty
§ 596. Poisoning animals; exceptions; posting warning signs
§ 602. Trespasses constituting misdemeanors; enumeration
§ 602.8. Lands under cultivation, enclosed by fence or posted; entry without written permission; punishment; exemptions
§ 625b. Aircraft; tampering with, injuring, damaging or destroying; punishment
§ 626.2. Unauthorized entry upon campus or facility of a community college, a state university, or the university after suspension or dismissal; punishment
§ 626.4. Notice of withdrawal of consent; report; action on report; reinstatement of consent; hearing; unlawful entry upon campus or facility; punishment
§ 626.6. Committing act, or entry upon campus or facility to commit act, likely to interfere with peaceful activities; direction to leave; refusal to leave or reentry; punishment
§ 626.7. Failure to leave campus or facility; wrongful return; penalties; notice; exceptions
§ 626.8. Disruptive presence at schools; specified sex offender
§ 626.85. Drug offenders; presence on school grounds; offense; punishment; notification
§ 627.7. Access to school premises; Misdemeanors; punishment
§ 627.8. Access to school premises; Subsequent violations; punishment
§ 640.5. Graffiti; facilities or vehicles of governmental entity; fine; community service; misdemeanor

§ 640.6. Graffiti; fine; community service; misdemeanor
§ 640.7. Violations of s 640.5, 640.6 or 594 on or within 100 feet of a highway or its appurtenances; misdemeanor; community service
§ 646. Solicitation of personal injury claims with intent to sue out of state; offense; punishment
§ 653h. Misappropriation of recorded music for commercial advantage or private financial gain
§ 653o. Animals; endangered species; prohibited imports; severability of provisions
§ 653q. Seals; importation, possession or sale of dead body or parts
§ 653s. Articles containing unauthorized recordation of sounds of live performances; transportation; definitions; presumption of ownership; proper witnesses; violations; punishment
§ 653t. Amateur or citizen's band radio; emergency communication interference; violation; penalty
§ 653w. Failure to disclose origin of recording or audiovisual work; violations; punishment
§ 653x. Telephone calls to 911; intent to annoy or harass; emergency response costs
§ 653.55. Preparation of immigration matter; false or misleading statements; misdemeanor
§ 1370.1. Developmental disability of defendant; procedure
§ 1550.2. Delivery of prisoner to agent of demanding state without appearance before magistrate; offense; punishment
§ 2772. Imprisonment; Interference with work; furnishing prohibited articles; interference with discipline; punishment; arrest without warrant
§ 2790. Interference with work; furnishing prohibited articles; interference with discipline; punishment; arrest without warrant
§ 2887. Sale of prison goods made outside California; Violations; punishment
§ 4574. Firearms, deadly weapons or explosives; bringing into prison, camp, jail, etc.; punishment
§ 11166.5. Mandatory child abuse reporters; statement of knowledge of duty to report
§ 11167.5. Confidentiality of child abuse reports; violations; disclosure
§ 11172. Immunity from liability; liability for false child abuse reports; attorneys' fees; failure to report; offense
§ 12025. Carrying weapon concealed within vehicle or on person; offense; arms in holster or sheath

PUBLIC RESOURCES CODE

§ 3236. Oil and gas conservation; Offenses and penalties for failure to comply with act
§ 3754. Geothermal resources; Offenses
§ 3911. Tunnel rights, millsites, and mining claims; Recording copy of notice and statement of boundary markings; false statement; misdemeanor; penalty
§ 3913. Affidavits of work performed, improvements made or maintenance fees paid on mining claims; contents; false statements; offense; penalty
§ 3916. Unlawful removal, alteration or destruction of stake, post, monument or notice of location; offense; punishment
§ 4601. Protection of forest, range and forage lands; Penalty
§ 4714.5. Eucalyptus wood containing live eucalyptus longhorn borers; transportation; misdemeanor
§ 5048. Mono lake tufa state reserve; Penalty; application of section, enforcement of section
§ 5560. Regional park, park and open-space, and open-space districts; Violation of ordinance, rule or regulation, punishment; jurisdiction
§ 6314. Destruction or removal of abandoned shipwrecks, archeological sites or historic resources in submerged lands
§ 30319. Development permit application; disclosure of witnesses; punishment
§ 33211.6. Dumping refuse on property posted against dumping; injuring, defacing, or destroying property; violation of posted conditions of use; misdemeanors, punishment
§ 33602. Coachella valley mountains conservancy; Adoption of regulations
§ 48680. Oil recycling enhancement; Violations; punishments; civil penalties

PUBLIC UTILITIES CODE

§ 1034.5. Advertising as passenger stage corporation without valid certificate; penalty
§ 1037. Certificates of public convenience and necessity; passenger stage corporations; Violation; penalty
§ 5414.5. Charter-party carriers; Misrepresentation; operating without valid certificate or permit; punishment
§ 16043. Public utility districts; Adverse interest in contracts; offense; punishment
§ 120450. Transit development boards; Nonpayment of fare; punishment
§ 120450.5. Transit development boards; Giving false information to public officer engaged in enforcement of provisions of article
§ 120451. Unauthorized operation or manipulation of, tampering or interference with, or loitering in or about transit facilities

§ 120452. Unauthorized entering into, climbing upon, holding onto, or attaching oneself to vehicles
§ 125450. North San Diego County transit development board; Nonpayment of a fare
§ 125451. North San Diego county transit development; False information
§ 125452. North San Diego county transit development board; Unauthorized operation or manipulation of transit facilities; loitering
§ 125453. North San Diego county transit development board; Unauthorized entering, climbing, holding, or attaching oneself to transit vehicles

REVENUE AND TAXATION CODE

§ 461. False statements; offense; penalties
§ 462. Refusal to give information; falsification; penalties
§ 8401. Evasion of tax by diversion from tax exempt use; conspiracy; offenses; punishment; separate offenses
§ 8402. Non-payment of tax; failure to file statements; falsification; violations; offense; punishment
§ 9351. Dispensing fuel; failure to collect use fuel tax; penalty; exception
§ 32551. False return; refusal to examination; falsification of records; punishment
§ 32554. Alcoholic beverage tax; Punishment, generally
§ 43603. Hazardous substances tax law; False returns; prevention of inspections or examinations; falsification or failure to keep records; penalty
§ 43605. Hazardous substances tax law; Violations lacking specific penalties; penalty
§ 45952. Integrated waste management fee; False return or report; refusal of inspection of records; failure to keep or alteration of records
§ 45954. Integrated waste management fee law; Violations of part not otherwise provided for; penalty for misdemeanor
§ 46702. Oil spill response, prevention and administration; False returns or records; refusal to permit inspections; penalty
§ 46704. Oil spill response, prevention and administration; Violations not specifically provided for in part; penalty
§ 55362. False returns or reports; prevention of inspection or examinations; falsification or failure to keep record; penalty
§ 55364. Violations lacking specific penalties or punishments; violation and punishment
§ 60706. Diesel fuel tax law; Punishment of offenses

VEHICLE CODE

§ 4463. Forgery, alteration, counterfeit or falsification of registration, license plate, certificate, license, etc. or disabled persons placard; loan or use of placard; penalties
§ 10851.5. Theft of binder chains
§ 20002. Accident reports; Duty where property damaged
§ 21651. Passing; Driving on right side; Divided highways
§ 21713. Passing; Privately-owned armored cars
§ 21963. Visually handicapped pedestrian
§ 25262. Flashing and colored lights; Armored cars
§ 31618. Transportation of explosives; Violation
§ 34506. Safety regulations; Violations: misdemeanors
§ 34520. Compliance with federal drug-testing requirements; test results and records; penalties; exemptions
§ 35784. Violation of weight permit
§ 38318. Throwing substances at off-highway motor vehicles
§ 38318.5. Malicious removal or alteration of safety or guidance signs; placement of cable, chain or rope

WATER CODE

§ 5008. Recordation of water extractions and diversions; Willful misstatement; offense; punishment
§ 5107. Statements of water diversions and use; Willful misstatement; punishment
§ 22089. Watermaster service; Violations; misdemeanor; punishment
§ 55334. County waterworks districts; Violation of district regulations or ordinances

WATER CODE APPENDIX

§ 40-24. Registration of water producing facilities; fine for nonregistration; definitions
§ 40-29.1. Filing false or fraudulent water production statement; misdemeanor; penalty
§ 40-35.1. Injuring, removing or tampering with meters; misdemeanor; penalty
§ 60-26.4. Registration of water-producing facilities; violation; penalty
§ 60-26.16. Interfering or tampering with measuring device; filing fraudulent statements
§ 65-4.4. Registration of water producing facilities
§ 65-4.16. Tampering with meters; punishment
§ 66-7.1. Conflict of interest

§ 66-39. Water-producing facilities; registration
§ 66-50. Interference with water-measuring device; failure to file water-production statement; interference with seal; false or fraudulent statements; misdemeanor
§ 70-7.5. Registration of facilities; measuring devices; new facilities
§ 70-7.17. Interference or tampering with measuring devices; punishment
§ 70-11.5. Misdemeanors; penalties; enforcement
§ 99-14.24. Registration of water-producing facilities; equipment with water-measuring devices
§ 99-14.36. Other criminal acts; punishment
§ 118-361. Interference with water measuring device, failure to report or breaking seal to abandoned facility; violation; penalty
§ 133-422. Ordinance violations; punishment

WELFARE AND INSTITUTIONS CODE

§ 10980. Unlawful acts; misdemeanors; punishment; felonies
§ 11350.6. Enforcement of support order or judgment; authority of board to withhold issuance or renewal of license
§ 11350.6. Enforcement of support order or judgment; authority of board to withhold issuance or renewal of license
§ 14408. Presentation of benefits to prospective enrollees; marketing plan; approval; sanctions; standards; door-to-door solicitation; presentation of health care options to Medi-Cal and AFDC recipients; health fairs; certification of marketing representatives
§ 14409. Aid and medical assistance; Misrepresentations; penalties; misdemeanor
§ 15630. Mandated reporters; known or suspected elder abuse; telephone reports; failure to report; penalty
§ 15633. Confidentiality of elder reports; disclosures
§ 15634. Civil or criminal liability of reporter of elder abuse

Appendix O
Suggested Instruction for Jury Deliberation Procedures

The following comments are suggestions to aid your procedure in the jury room, and it is not mandatory that you follow them.

When you first get in the jury room, take some time to get acquainted before you select a presiding juror. This helps you in choosing a presiding juror and in speaking more freely when you start your work, which saves time. Each of you might take a few minutes to introduce yourselves with your name, what you prefer to be called, and how you feel about being in the room together. All the jurors should feel free to comment, give feedback and ask questions. That prevents others from being bored and lets the speaker know he or she is heard. It also energizes the group and that helps everyone concentrate.

Then look for a presiding juror who is (1) a good listener and observer of who isn't participating, (2) who can organize the evidence and tasks, (3) who can be certain everyone is heard fairly, and (4) who can help jurors understand why different persons have different opinions.

Discuss the case before you take any vote on a verdict to avoid people feeling committed or defensive.

Remember there are no experts in the jury room. Each of you is to reach your own decision.

Some suggestions to assist jurors, especially the presiding juror, are as follows:

(1) Make a list of things the jury must decide. Make summaries as you proceed in a complicated case. Have someone take notes to keep track of the process.

(2) Be certain everybody gets heard and nobody monopolizes the time. Discuss jurors' concerns and questions.

(3) Be certain everybody is respectful of each other and nobody gets unduly pressured.

(4) If you have a disagreement, with majority and minority viewpoints expressed, do not automatically assume the majority is correct, but use that as an opportunity to re-examine your assumptions.

(5) Remind jurors to follow the Court's instructions if they forget, for example, if they want to base a decision on inadmissible evidence or want to testify as an expert or want to bring in legal advice or evidence from sources outside the courtroom.

(6) If you reach a deadlock, you may wish to make a chart with two sheets of paper on the wall. List the evidence and reasoning supporting each position, not just to find the longer list, but the better decision under the Court's instructions on the law.

If the Court has given you a special verdict, each juror should keep track of that juror's answers in case the Court wants to know how each juror voted on each issue.

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Appendix P
Minority Report

The minority report which follows was submitted by Commissioner Mary E. Alexander.

Commissioner Gerald L. Chaleff concurs with the minority report.

Commissioner John A. Clarke concurs with the minority report with respect to jury size and non-unanimous verdicts, but concurs with the majority report on the issue of peremptory challenges.

Commissioner Gil Garcetti concurs with the minority report with respect to the issue of peremptory challenges.

Commissioners Raymond C. Marshall and Orville A. Armstrong concur in principle with the minority report.

Minority Report of the Blue Ribbon Commission on Jury System Improvement

This report addresses three recommendations of the Commission that the minority opposes: Jury size, nonunanimous verdicts and peremptory challenges. We believe that the foremost objective of this Commission is to "preserve, protect, and defend" the jury system consistent with the oath of office taken by all judges and lawyers. As aptly put by the Honorable James T. Ford, "It appears that despite reverent repetition for 200 years, a single highly publicized celebrity murder case has the power to threaten these hallmark values of American society."

The minority supports the reforms suggested in the majority report that make jury service mandatory and improve juror treatment, such as free juror parking, increased juror compensation, improved juror facilities, judicial outreach about the jury system and improved jury instructions. Concerns expressed about public perception of the jury system can best be addressed by

those reforms instead of dismantling the jury system through reduced peremptory challenges, reduced jury size and less than unanimous juries.

Jury Size

The majority voted to (1) decrease jury size in Municipal Court from 12 to 8 in civil cases and in misdemeanor criminal cases, (2) eliminate the jury in misdemeanor cases that do not result in confinement and (3) reduce jury size from 12 to 8 in misdemeanor cases where the possible sentence is 6 months or less.

Neither the de minimus savings of time nor of money should supersede one's right to a fair trial.

"Trial by jury is an inviolate right and shall be secured to all …" *Cal. Const. Art. I, §16*. Reducing jury size will have the effect of abridging one's right to a trial by jury. Although this constitutional right may be waived by the party, a fundamental right cannot be limited due to the State's interest to save money. Further, as was demonstrated with a Los Angeles pilot project, the cost savings affiliated with a smaller jury are nebulous. *See attached article discussing the findings*. The current twelve person jury works well and that it should not be eliminated for minimal, if any, cost savings.

The reliability of smaller juries was called in to question in the State Bar forums. Participants noted that "smaller juries would increase the risk that one or several jurors would dominate the jury. It was seen as more difficult for one dominant individual to corral eleven other people than five or seven."

As to cost savings, Judge Ford testified that "First, the bulk of jury selection is vior dire of the jury panel as a whole, and not individually. Only a minor increment of time is required for selecting 12 jurors instead of 9. I have selected 164 juries. There is virtually nothing to be gained by changing the number and much to be lost."

The twelve person jury system is more equitable than a smaller jury system.

Jury trials involve an evaluation of the facts by peers in the community. The twelve person jury evolved as an appropriate trier because a twelve-person jury represents a better cross section of the community with more diverse and open views. Reducing the number of jurors lessens the likelihood of having at least one minority as a member of the jury.

Judy Rothschild, Ph.D., a researcher and consultant with the National Jury Project/West, testified about the issue of representativeness, and its twin issue, diversity. She considered the percentage of individuals sharing a characteristic in the population, and compared it with the probability that no one with that characteristic would appear in a five-person jury versus a twelve-person jury. For example, Ms. Rothschild points out that if 15% of the population is African American, the chance of no African American being seated on a six-person jury is three times more likely than on a twelve-person jury.

Richard Lempart noted, "It is from the interchange of diverse views, perspectives and experiences that the truth emerges, … diversity also allows prejudices to be counterbalanced."

The National Center for State Court's study of the municipal court eight person jury experiment showed that eight person juries were under-representative of minorities. Participants in the State Bar jury forums suggest that "if jury size is reduced, diversity of all forms, e.g., race, gender, education level and occupation might be eliminated."

Nonunanimous Juries

The majority voted to retain unanimous verdicts in cases involving death or life without possibility of parole. For all other criminal matters, the majority voted for a "modified" unanimity standard. A trial judge, except for good cause in the interests of justice, shall accept an 11-1 nonunanimous verdict after a reasonable time of deliberation, in no event lasting less than 6 hours. If misdemeanor jury size is reduced to 8, unanimity shall be retained.

The unanimity issue relates only to criminal trials.

There is no evidence supporting the need for less than unanimous verdicts.

Where a person's life or liberty is at stake, there should be full deliberation and agreement by the jurors. Statistics show that there are actually a very small percentage of juries that hang 11-1 or 10-2. A report by the Los Angeles County Public Defender shows only about 11% of all jury trials in Los Angeles between 1985 and 1995. Judge Ford challenges that number as extreme, and notes that in his experience, less than 4% of criminal trials result in mistrials or 10-2 or 11-1.

Based on the LAPD statistics, State Bar participants argued that "cases generally hang when there are serious proof problems with respect to the defendant's guilt."

The requirement of unanimity assures full deliberation.

The Public Defender's statistics on what happens after a hung jury are telling. Between 7/1/94 and 1/10/96, of the 42% of cases set for retrial, more than half resulted in either a not guilty verdict or a second hung jury. Those number show what is wrong with nonunanimity: These people would have been sent away. A trial is not merely designed to achieve a verdict, but rather to achieve justice. Eliminating deliberations because a plurality reach a verdict, increases the likelihood of convicting innocent people.

Permitting nonunanimous jury verdicts gives up an assurance of justice without a savings in court time. Judge Ford testified that "post trial motions will escalate in these cases, and the public will lose confidence in the results of the system." Participants in the State Bar forums also believe that "in the long run non unanimous [sic] verdicts would undermine public confidence in the jury system." Those participants noted lack of confidence would be "especially pronounced in minority communities with high rates of minority defendant found guilty by non-unanimous jurors on which minority jurors voted to acquit." Further, minority jurors "often bring a different perspective, e.g., about the conduct of police, to the jury room." Nonunanimous verdicts would allow majority jurors to ignore these different perspectives.

Peremptory Challenges

The majority voted to reduce the number of peremptories in criminal cases where the penalty is death or life imprisonment to 12 peremptories for each side. In all other felonies, peremptories for each side shall be reduced from 10 to 6. In all misdemeanors, peremptories for each side shall be reduced from 10 to 3. In civil cases, peremptories for each party shall be reduced to three in a two-party case; if there are more than two parties, each side shall have 6 peremptory challenges.

Peremptory challenges are critical in assuring a fair and impartial jury.

In the quest to select a fair and impartial jury, peremptory challenges are absolutely critical. Bias is subtle and difficult to prove. An impartial jury is part of the constitutional guarantee, and any intrusion into the elimination of

bias must fall under particular scrutiny.

A recent State Bar report on peremptory challenges shows that the "overwhelming majority . . . expressed the view that peremptory challenges do promote the impanelment of a fair and impartial jury." The participants in the State Bar forums "considered peremptory challenges an important tool for eliminating potential jurors with extreme views and hidden biases whose impanelment would interfere with impartial jury deliberations." Further, the report concluded that peremptories "produce an equilibrium assuring more centrist, balanced juries; that peremptories give the litigants more assurance of the jury's fairness and help to legitimize the jury's verdict or award; that peremptory challenges reduce the number of hung juries; and that peremptories are at the heart of right to a jury trial under the 7th amendment.

Peremptories are important to handle "jurors who appear to have hidden agendas or biases where these do not arise to the level of a successful challenge for cause." Participants in the State Bar forum noted "that is often nearly impossible to get potential jurors to admit bias and judges are reluctant to adopt an adversarial posture with jurors."

The overwhelming majority of both criminal and civil attorneys participating in the State Bar forums "support maintaining the current number of peremptory challenges."

Consider a woman who has been sexually harassed by her employer. A potential juror is a male executive who doesn't think sexual advances inappropriate in workplace, but he says he can be fair and impartial. Because he says he can be fair, he is not excused for cause. Can the woman receive a fair trial? Maybe. It is also important to maintain the perception of a fair trail to the public and the litigants. Reduction of peremptories destroys both the fact and perception of fairness.

On the other side, a defendant may face a juror who has a bias against large corporations and who believes that individuals should generally prevail over corporations. That juror also promises to be fair and impartial. Should the defendant have to take that risk?

In a letter opposing AB 2060, which would have eliminated peremptory challenges, Eleanore Zicherman, Ph.D. wrote:

> Most jurors strive to be fair. However, there is no doubt whatsoever that particular issues in certain cases trigger for jurors closely held beliefs, attitudes or life experiences that affect their impartiality. In most courts a juror is excused for cause only if the juror will unequivocally and publicly state that they have a bias which they cannot put aside. Unfortunately, this rarely happens for a variety of reasons. It is in the nature of bias that some people with strong biases often do not recognize that their position is biased; it is simply 'what they think.' . . . Some jurors, in order to explain their biases, would have to discuss in open court experiences which are personal, unpleasant or painful.

Peremptory challenges are limited in number, generally six to a side in civil cases, and allow a party to excuse a juror even though no statutory challenge for cause can be made. Case law protects against the improper use of peremptory challenges. We have safeguards against abuses of peremptory challenges.

Eliminating peremptory challenges will not save court time.

Peremptory challenges hasten rather than impede the juror selection process. Prolonged examination to seek cause for discharge is avoided by judicious use of peremptory challenges. Further, the chance of mistrial is increased by reducing peremptory challenges. This important constitutional right must not be cast away in the name of efficiency.

Mr. Godfrey Lehman, a public member writes: "Jury reform? The correct answer is: Leave the jury alone. Don't touch it. Don't destroy the bulwark of unanimity. Don't reduce its size. In general, stop messing around, for interference with the jury is creating the 'abuses' complained of."

The Jury

> The institution of the jury, if confined to criminal causes, is always in danger; but when once it is introduced into civil proceedings, it defies the aggressions of time and man . . . The jury, and more especially the civil jury, serves to communicate the spirit of the judges to the minds of all the citizens; and this spirit, with the habits which attend it, is the soundest preparation for free institutions. It imbues all classes with a respect for the thing judged and with the notion of right. If these two elements be removed, the love of independence becomes a mere destructive passion. It teaches men to practice equity; every man learns to judge his neighbor as he would himself by judged . . It invests each citizen with a kind of magistracy; it makes them all feel the duties which they are bound to discharge towards society and the part which they take in its government. By obliging me to turn their attention to other affairs then their own, it rubs off that private selfishness which is the rust of society. *Alexis de Tocqueville, Democracy in America, 284-5*.