TASK FORCE ON JURY SYSTEM IMPROVEMENTS

FINAL REPORT

April 15, 2003

Revised April 2004

Judicial Council of California • Administrative Office of the Courts

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PREFACE

For eight years the Judicial Council of California has been working on jury reform, first through its blue ribbon commission and then through its Task Force on Jury System Improvements. Now the recommended reforms are gradually being implemented. With their full enactment and support, California will lead the nation in showing proper respect for its jurors as the citizens who make its judicial system work.

There are countless individuals who have contributed to jury reform efforts in California overall and to the preparation of this report in particular. They include:

- Ronald M. George, Chief Justice of California, and members of the Judicial Council;
- Members of the Task Force on Jury System Improvements;
- All the members of the Blue Ribbon Commission on Jury System Improvement, chaired by Judge Roy Wonder (Ret.);
- Governor Gray Davis and members of the California Legislature;
- William C. Vickrey, Administrative Director of the Courts;
- Kim Taylor, lead staff to the task force from 1998 to 2000, and John A. Larson, lead staff to the task force from 2000 to 2002;
- Staff of the Administrative Office of the Courts, including Scott Bullerwell, Francine Byrne, James Carroll, Lusia Choate, Dexter Craig, Sherri Eng, Diane Eisenberg, Jane Evans, Maria Hawkey, Lynn Holton, Karen Jackson, Melissa Johnson, David Knight, Gavin Lane, Dag MacLeod, Lynne Mayo, Ellen McCarthy, Jane McCrea, Ralph McMullan, Fred Miller, Kristin Nichols, Mark Pothier, Richard Schauffler, Robert Schindewolf, Peter Shervanick, Marlene Smith, Theresa Sudo, C. Courtney Tucker, Claudia Westin, Nelson Wong, and Josely Yangco-Fronda;
- Professor J. Clark Kelso, primary author of the *Final Report of the Blue Ribbon Commission on Jury System Improvement* and consultant to the task force on peremptory challenges;
- Members of the Jury Education and Management Forum;
- G. Thomas Munsterman, Judge Michael Dann (Ret.), and staff of the National Center for State Courts;
- Tracy Moon, Justine Descollonges, and Sheila Buchanan of StudioMoon Identity Design; and
- The jurors of the state of California.

Dallas Holmes
Chair, Task Force on Jury System Improvements

EXECUTIVE SUMMARY

Several years ago, Californians experienced some high-profile jury trials that provided many citizens with their first views of actual trials as opposed to those depicted in films and television shows. Perhaps because of the often-confusing nature of trial procedure, as well as the expectations raised by highly unrealistic fictional portrayals of the jury trial system, members of the public and the body politic called for reform of the California jury system.

At the same time, a movement was burgeoning in courts nationwide to address long-standing issues related to jury selection, treatment, education, and trial practice. The time was ripe for an examination of juries in California and the recognition that our courts needed to consider real changes in the ways we choose our juries and conduct our trials.

Blue ribbon commission formed

In response to the widespread calls for change, the Chief Justice and the Judicial Council created the Blue Ribbon Commission on Jury System Improvement in 1995, with the State Bar of California and the California Judges Association as supporting sponsors. The council directed the commission to undertake a thorough and comprehensive review of all aspects of the jury system. The commission studied jury practices, held hearings to gather testimony, and reported its findings and recommendations for action. The commission's 100-page report, submitted to the council in May 1996, contained numerous recommendations to make the experience of the citizen juror less burdensome and more meaningful, including proposals for legislation, rules of court, standards of judicial administration, and constitutional revisions. The commission's intent was to push for the changes necessary to preserve and improve the jury system.

Blue Ribbon Commission

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.

Task force created

Blue ribbon commission (BRC) Recommendation 2.1 was a proposal to the Judicial Council to create a task force to oversee implementation of the commission's recommendations. The Chief Justice subsequently appointed members to the Task Force on Jury System Improvements for three-year terms beginning in October 1998. Chaired by Judge Dallas Holmes of the Superior Court of Riverside County, the task force was composed of superior court judges, appellate court justices, court administrators, and members of the bar, who provided guidance to the Judicial Council on implementing a wide range of jury reforms. To organize and address their wide-ranging tasks, the task force members formed "subject matter subcommittees" to address jury management, education, legislation and rules, and special projects. Recognizing the challenging scope of the responsibilities encompassed in the commission recommendations, the Chief Justice subsequently extended the task force's terms through December 31, 2002.

Blue Ribbon Commission

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.

The overarching principle embedded in the commission recommendations and in the subsequent activities of the task force is that everyone should share responsibility for improving the jury system. The commission recommended sets of complementary proposals in which judges, jury commissioners, lawyers, employers, and jurors were all asked to contribute to jury system reform. Some of the recommendations were readily accepted, and others were more visionary and controversial. If the council did not initially accept or approve a recommendation, an alternative was proposed—for example, education instead of a mandatory rule of court, or encouraging voluntary practices in lieu of legislation. In the course of their activities, whenever there were conflicting interests, the task force tried to make jurors' interests paramount.

Changes in the courts

Significant changes have taken place in the California court system since the commission issued its report in 1996. Responsibility for the funding of the courts has shifted to the state. All trial courts now have unified superior court organizations, which have eliminated the municipal court level of jurisdiction, resulting in new efficiencies as well as profound impacts upon courts' operations and organizational structures. And California has seen unprecedented economic growth that fueled record surpluses, followed by recession and the largest budget shortfall in history. Because of these monumental changes, courts have had to re-examine business practices and adjust to new demands in all areas, not the least of which are the changes being implemented in the jury system.

Organization of the final report

The accompanying report not only details the efforts made to achieve the commission's recommendations, but also reiterates the task force's support for certain legislative initiatives, rules of court, and suggestions for improving court practices that either did not become law initially or were deferred for later consideration. The report summarizes each BRC recommendation and outlines the efforts made to implement it. In certain instances the recommendation clearly defined an end product (for example BRC Recommendation 5.1, the production of a juror orientation video, or BRC Recommendation 3.21, the adoption of a "one-day or one-trial" rule of court). More often the recommendations called for changes that would require ongoing activities and monitoring beyond the life of the task force. Selected accomplishments and future actions proposed by the task force are summarized in the following sections. This report is also available on the Serranus Web site at http://serranus.courtinfo.ca.gov/reference/.

Jury administration and management

Recommendations of the commission pertaining to prospective jurors, jury treatment, and jury management are the most numerous—there are 29 of them. This focus is somewhat unusual in the realm of jury reform. It extends beyond the focus of most other states both in the breadth of the recommendations and in the acknowledgment of the crucial importance of efficient jury management.

Jury administration and management involve some of the most complex reform issues for individual courts, such as improving summoning practices and employing new technologies. The Administrative Office of the Courts (AOC) must play a pivotal role in leveraging resources toward greater efficiency in jury administration. The AOC should also continue to collaborate with jury management professionals through the Jury Education and Management Forum to improve the tracking and reporting of data concerning jury service and jury management practices, and to continue examining proposals to improve the system.

SELECTED ACCOMPLISHMENTS

- **Rule 861 of the California Rules of Court, implementing one-day or one-trial terms of jury service;**
- **First increase in jury fees since 1957;**
- **Rule 860, requiring jury commissioners to apply standards for hardship excuses;**
- **Development of a model juror summons that is understandable and has consumer appeal;**
- **Development of a *Juror Handbook* explaining the trial process and jurors' rights and responsibilities;**
- **Section 4.5 of the California Standards of Judicial Administration, encouraging implementation of a mechanism to respond to juror complaints;**

- Section 4.6 of the standards, encouraging the use of the National Change of Address system to update jury lists and reduce undeliverable summonses;
- Development of the Failure to Appear (FTA) Kit to assist courts in implementing effective programs to address summoned eligible jurors who fail to appear for jury service; and
- Section 25.6(h) of the standards, promoting court staff education on juror treatment through Center for Judicial Education and Research (CJER) materials and programs.

FUTURE ACTIONS

- Continue to raise juror pay toward a level that shows adequate respect for jurors' efforts and time away from their regular duties (at least the $40 per diem currently in effect in the federal courts), along with mileage reimbursement for their trips home as well as to the courthouse;
- Approve the model juror summons, and direct AOC staff to work with the courts to adapt their summonses to match this one-step model;
- Approve the *Juror Handbook* for statewide distribution;
- Promote legislation to create a tax credit for employers who pay regular compensation and benefits to employees while they are on jury duty;
- Obtain free public transportation for jurors to and from the courthouse;
- Provide free parking for jurors;
- Approve distribution of the FTA Kit;
- Promote on-site juror child-care programs and a child-care cost reimbursement pilot project;
- Amend rule 6.603 of the California Rules of Court for coordination and supervision of juror security to and from the courthouse; and
- Implement telephone standby in every court system to forestall unnecessary appearances by summoned jurors.

Jury selection and structure of the trial jury

The 18 recommendations pertaining to the process of jury selection and to the jury's structure (such as the number of peremptory challenges available and the requirement of unanimous jury verdicts in all cases) were the most controversial in the commission's report. Indeed, although the commission attempted to reach consensus on all issues, in these areas some commission members dissented, and a minority report was included when the report was presented to the Judicial Council. Similarly, when the council voted, some recommendations in this area passed with bare majorities and some were rejected.

Recognizing both the importance and the controversy of peremptory challenges in particular, the task force decided further debate was required. In May 2002 an entire day of a two-day task force meeting was devoted to discussing the policy and management implications of the high number—in fact, the highest in the nation—of peremptory challenges available to parties in California courts. The task force reviewed the history of the commission's deliberations on the issue and discussed

law review and journal articles on peremptory challenges that have been published since the 1996 submission of the commission report. The task force members also evaluated the profound changes in the California courts since 1996.

The task force subsequently approved a proposal to resubmit legislation calling for reductions in peremptory challenges in accord with the commission's original recommendations. Like the commission, the task force could not reach consensus and approved the proposal on a majority vote, as detailed in the full report.

Jury selection and jury structure (including peremptory challenges) remain areas where juror confidence and perceptions of the integrity of the system can be improved. Continued judicial education concerning the process of jury selection (BRC Recommendation 4.1) and consistent standards for ruling on challenges "for cause" are also critically important improvements.

SELECTED ACCOMPLISHMENTS

- Section 25.2(a) of the California Standards of Judicial Administration, promoting judicial officer education on juror treatment and on conducting jury trials, in particular the process of jury selection (voir dire) using CJER materials and programs; and
- Section 25.3(a) of the standards, promoting the development of CJER curricula on the treatment of jurors and on conducting jury trials, in particular the process of jury selection—*Bench Handbook: Jury Management* (rev. 2002); Juries: Strategies for Better Trials (video 3625); and other CJER curricula.

FUTURE ACTIONS

- Bring California into step with other states by promoting legislation to reduce the numbers of peremptory challenges available to parties in criminal and civil cases from the national highs to the numbers proposed in the original recommendations of the Blue Ribbon Commission;
- Institute concomitant judicial education requirements related to making determinations about challenges for cause;
- Adopt a standard questionnaire for use in jury selection in criminal cases, and implement its use through amended rules of court; and
- Approve a rule of court to require judicial officers to offer assistance to a jury that is at an impasse in its deliberations, including directing attorneys to make additional closing argument.

Trial procedures

Jury reform efforts in several states have been concentrated in the area of innovative trial court procedures. These efforts have ranged from a comprehensive set of court rules (Arizona) to a pilot program for statewide judicial education and outreach (Massachusetts). The 11 commission recommendations encompassing trial procedures varied from relatively simple actions, such as allowing jurors to take notes, to complex and controversial approaches, such as permitting jurors to discuss the case prior to final deliberations, after the Arizona model.

Improving the experience of jurors during trial is critical to the continued improvement of the jury system as a whole. Although the commission originally called for changes in practice to be implemented by rule or standard of judicial administration, in-court innovations thus far have been implemented through education. The task force supports the adoption of rules of court to institutionalize processes that have met with success in many of the state's trial courts and that are highly appreciated by jurors, lawyers, and judges. Proposed rules to be submitted for review are included in this report, which is also available on the Serranus Web site at http://serranus.courtinfo.ca.gov/reference/.

SELECTED ACCOMPLISHMENTS

- **Development, production, and distribution of *Ideals Made Real,* the first statewide juror orientation video;**
- **Educational materials recommending and outlining the use of juror-oriented trial procedures, such as trial time management, juror note-taking, compilation of juror notebooks, and instructions for deliberation; and**
- **Educational video—*Juries: Strategies for Better Trials* (video 3625)—demonstrating innovative trial techniques such as "mini-opening statements," the submission of juror questions, handling excuses based on hardship, preinstruction on substantive issues, and individual copies of final jury instructions.**

FUTURE ACTIONS

- Continue to assist jury commissioners in the use of ***Ideals Made Real,*** and promulgate the video for use by public service television stations, chambers of commerce, and service clubs;
- Convert section 8.9 of the California Standards of Judicial Administration, Trial Management Standards, to a rule of court, and encourage judges and counsel to set reasonable time limits for jury selection, opening statements, and closing arguments;
- Approve rules of court to provide for mini-opening statements by counsel to the jury panel before selection begins and to provide for preinstruction on substantive issues;
- Approve rules of court that require the trial judge to inform jurors that they may take notes and submit written questions;
- Approve a rule of court encouraging counsel to prepare juror notebooks in complex cases;
- Provide jurors with their own copies of the court's final instructions on the law, to aid in comprehension and counsel argument; and
- Approve a rule of court to allow judges in long civil trials to experiment with jury predeliberation discussions (after appropriate admonition), using the Arizona model.

Other activities and ongoing efforts

The task force undertook a variety of jury-related activities in addition to the original commission recommendations. The task force:

- Directed the launch of the California Courts Juror Web site, providing comprehensive online information and resources about jury service—www.courtinfo.ca.gov/jury/;
- Oversaw the enhancement of Juror Appreciation Week in California, an annual acknowledgment of the vital work performed by jurors, commemorated by the California Legislature and celebrated in the courts every second full week in May (Assem. Conc. Res. 118; Stats. 1998, ch. 47);
- Began, with the Citizens' Stamp Advisory Committee of the U.S. Postal Service, the process of obtaining a stamp commemorating jury service, and urged national court organizations to support the effort; and
- Approved a model graphic design package for jury materials statewide, to improve citizen response.

The task force urges continued support for outreach and research projects designed to sustain the jury reform effort beyond its sunset. Distributing the model graphic design package for juror communications to the courts that choose to use it, expanding the California Courts Juror Web site, and supporting outreach to employers are but a few of the efforts that are essential in building on the improvements already achieved.

Every court day our jurors demonstrate what we mean by the phrase "liberty and justice for all," and we believe our jury system is a national treasure. National opinion polls show that Americans rate the jury as one of the most highly regarded institutions in our justice system. Since the founding of our republic, trial by jury has been and remains what Pulitzer Prize winner Leonard Levy calls the "palladium of justice."

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JURY ADMINISTRATION AND MANAGEMENT

NATIONAL CHANGE OF ADDRESS

Summary of recommendation

The blue ribbon commission (BRC) noted that jury source lists typically contain inconsistencies and duplications that are not readily purged when jury commissioners combine lists. Recognizing that these errors can significantly increase the numbers of summonses that a jury commissioner must mail out—hence increasing both labor and the direct costs associated with postage—the commission urged the use of the National Change of Address (NCOA) system to update jury source lists and make courts' master lists more accurate.

Blue Ribbon Commission

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.

Task force implementation

The commission included in its report the text for a standard of judicial administration encouraging the use of the NCOA system to update jury source lists. The standard was circulated for comment and modified to include other, comparable means of updating besides the NCOA, to accommodate smaller courts' budgets. In 1997 the Judicial Council adopted section 4.6 of the California Standards of Judicial Administration.

In late 2000 the task force surveyed the trial courts to collect statewide data on jury management practices, including the use of the NCOA system. Of the 55 courts responding, 24 of them stated that they used the NCOA system to update their jury source lists. The courts not using the NCOA system tended to be small. Many courts also included change-of-address notices on summonses for prospective jurors. If the jurors received a forwarded summons or intended to move, they filled out and returned the notices so the courts' jury management data systems were kept up to date.

FUTURE ACTION

The Administrative Office of the Courts (AOC) will work to assist courts in acquiring technology to improve the efficiency of the summons process and reduce waste from duplication.

SUPPLEMENTAL SOURCE LISTS

Summary of recommendation

The blue ribbon commission identified other comprehensive lists of persons living in California, in addition to the traditional lists of registered voters and Department of Motor Vehicles (DMV) driver license and identification card holders, to potentially include in jury source lists. The commission concluded that, without additional experience or study, the comparative advantages of any one or all of these lists were not so compelling as to justify their mandatory use by jury commissioners in creating master lists. Thus the commission recommended an assessment of an existing program to supplement New York's jury source lists. Through this assessment the task force could ascertain whether to conduct pilot projects in California courts to determine the comparative benefits of additional source lists in practice.

Blue Ribbon Commission

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 Department of Motor Vehicles and registered voters lists with other comprehensive lists of persons living in California.

Task force implementation

In early 1999 the task force assigned this recommendation to the Juror Management Working Group. The working group decided to:

- Review the experience of the New York State Unified Court System to determine how useful supplemental lists are for increasing the pool of possible jurors;
- Find out if any California courts use more than two source lists; and
- Determine the need for a pilot project or study to evaluate further the effectiveness of supplementing existing source lists.

The New York State Unified Court System has a centralized juror management system administered by the Statewide Jury Office. The master source list contains approximately 12 million names. As mandated by the chief administrator of the New York court system, the master source list is an amalgamation of five separate lists maintained by the State of New York:

- Registered voters;
- Holders of DMV-issued driver licenses;
- State income taxpayers;
- Welfare recipients; and
- Unemployment recipients.

The registered voter list is the only statutorily required source list in New York. Welfare and unemployment rosters were added to supplement the other lists as part of a series of judicial reforms designed to increase access to justice. Statewide, the combined welfare and unemployment lists added a few hundred thousand names, but nearly half of those names existed on at least one of the other three lists already in use.

While New York has never conducted a formal analysis to determine how many of the people added to the master source list through either the welfare or unemployment rolls actually qualified for jury service, representatives of the courts estimate that the impact of these groups is minimal at best. Anecdotal evidence suggests that prospective jurors summoned from the welfare rolls are frequently excused for hardships based on child-care needs, financial needs, and the difficulty of traveling to court and that few new jurors are derived from this source. However, the New York court system's intent is to include as many people as possible in jury service.

Although no California courts supplement their source lists with welfare or unemployment lists, the Superior Court of Modoc County supplements its master list with public utility customer lists. The court reports marginally increased numbers of potential jurors from these lists. Utility lists may provide a few additional jurors, but their widespread use is not recommended because of the high potential for duplicates from established source lists and other possible problems (for example, in the case of rental property, the utility bill payer may be a building owner who does not actually live at the billing address).

Given the marginal results reported for the New York program and for the California court that does supplement its existing lists, the working group chose not to conduct a pilot project to supplement the DMV and registered voters lists with other lists of people living in California.

FUTURE ACTION

To increase yield and avoid duplication, the AOC will work with the DMV and the Secretary of State on ways to improve the quality of the source lists issued to the courts.

STATEWIDE JURY MASTER LIST

Summary of recommendation

The blue ribbon commission believed that the accuracy of individual courts' summoning lists could be improved and greater consistency from county to county could be achieved through the creation of a statewide master jury list. The commission also noted that the statewide master list might be more accurate and cost-effective if it could be generated by a single state agency and distributed to each county. Each individual court system could then finalize its list and summon jurors.

Blue Ribbon Commission

RECOMMENDATION 3.3

The Judicial Council's Court Technology Advisory Committee, in consultation with the implementation task force, should review the cost, feasibility, and efficacy of a statewide master jury list.

Task force implementation

The task force assigned this recommendation to the Juror Management Working Group in early 1999. The working group noted that this idea did not have much support from the trial courts and would

require considerable effort to implement. The task force directed the working group to determine whether a statewide master jury list was feasible in California.

After conducting extensive research, the working group reported in May 1999 the success of the master list programs of Illinois, Minnesota, Colorado, New York, and Massachusetts in meeting their respective courts' needs for jurors. The working group had also investigated software programs and ascertained that a statewide master jury list was feasible in California only if the Secretary of State made a statewide list of voters available. Although the results were promising, the operational complexities and costs of implementing and maintaining a statewide master jury list in California remain prohibitive.

FUTURE ACTION

The AOC is pursuing innovative ways to achieve economies of scale and reduce costs in juror operations, such as assembling jury source lists and summoning jurors on a regional basis using new printing and mass-mailing technologies.

MANDATORY DUTY

Summary of recommendation

The commission felt strongly that the law should state that jury service is a mandatory civic responsibility. Such a statement would help convince the public that (1) jury service is worthwhile and (2) courts will enforce the legal obligation represented by a jury summons.

Blue Ribbon Commission

RECOMMENDATION 3.4

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

Task force implementation

In 1996 Judicial Council–sponsored legislation was introduced to implement several of the commission's legislative recommendations (Sen. Bill 14 [Calderon], 1996), including blue ribbon commission (BRC) Recommendation 3.4. Although existing law states that the Legislature "recognizes that trial by jury is a cherished constitutional right, and that jury service is an obligation of citizenship" (Code Civ. Proc., § 191), the proposed legislation specified that jury service was *mandatory* for all qualified California citizens who were summoned or ordered to appear. (Italics added.)

The bill also contained revised procedures for enforcing mandatory jury service, most notably a contempt of court proceeding and the placing of holds on driver license renewals for those who failed to respond to a juror summons. (See BRC Recommendation 3.5.) However, in the bill's progression through committee, various provisions of it (in particular, the driver license holds) attracted opposition, and eventually the bill died, including the mandatory service language.

At the same time, a commission-proposed rule of court concerning excuses from jury service was circulated for comment. The proposed rule required jury commissioners to apply the standards regarding hardship excuses set forth in then–section 4.5 of the California Standards of Judicial Administration. (See BRC Recommendation 3.9.) The draft rule also contained language stating: "Jury service, unless excused by law, is a responsibility of citizenship. The court and its staff shall employ all necessary and appropriate means to ensure that citizens fulfill this important civic responsibility." The Judicial Council subsequently approved the rule, effective July 1, 1997, with this language intact. (See Cal. Rules of Court, rule 860(a).)

The task force believes that, although an unequivocal policy statement by the Legislature that jury service is mandatory would be ideal, the current language in section 191 of the Code of Civil Procedure, stating that jury service is an "obligation of citizenship" and the rule 860(a) language that jury service is a "responsibility of citizenship" adequately state the importance of juries in civic life. The task force has put these statements into practice by supporting jurors in meeting their service obligations and by developing and implementing tools for jury commissioners and judges to use in following up with jurors who fail to respond.

JUROR FAILURE TO APPEAR

Summary of recommendation

The blue ribbon commission felt that court actions employing section 209 of the Code of Civil Procedure to compel people to respond to jury summonses could substantially increase jury yields if the power were used prudently. Recognizing that the contempt process outlined in section 209 could tie up significant court resources, the commission recommended placing a hold on driver licenses for people who fail to respond to a jury summons, as a less expensive and more efficient way to stress that jury service is mandatory and court orders must not be ignored.

Blue Ribbon Commission

RECOMMENDATION 3.5

The Legislature should amend Code of Civil Procedure section 209 and Vehicle Code section 12805 to provide mandatory procedures for enforcing juror summonses, including placing a hold upon driver license renewals of those persons who fail to respond to a juror summons.

Task force implementation

The Judicial Council, at its July 1996 meeting, reviewed the commission's legislative recommendations and approved the following revised version of Recommendation 3.5:

> The Legislature should amend section 209 of the Code of Civil Procedure and section 12805 of the Vehicle Code to provide discretionary procedures for enforcing juror summonses, including placing a hold upon driver license renewals of those persons who fail to respond to a juror summons, only following and upon the issuance of an *Order to Show Cause re Contempt* and the failure of the jurors to appear at the hearing.

The recommendation was revised to assuage the council's concerns about assuring due process by adding an order to show cause requirement before a hold would be placed on a driver license renewal. In addition, to resolve council misgivings about the commission's recommendation to mandate the driver license hold process, the council-approved version preserved judicial discretion over failure-to-appear procedures.

In 1996 Judicial Council–sponsored legislation (Sen. Bill 14 [Calderon], 1996) was introduced to implement several of the commission's legislative recommendations, including Recommendation 3.5. Owing to continued concerns about lack of sufficient notice and the tying of nondriving offenses to driver license renewals, the portions of the bill pertaining to juror failure to appear were amended out (Sen. Com. on Judiciary, Analyses of Sen. Bill 14 [Calderon] as amended April 2 and May 5, 1997). Eventually the entire bill died.

In 1999 the task force recommended an alternative approach, providing local courts with guidance in the development and conduct of discretionary juror failure-to-appear programs. The task force's Special Projects Working Group reviewed and evaluated the practices of different courts (notably the Superior Court of San Joaquin County and the Superior Court of Stanislaus County) and developed a Failure to Appear (FTA) Kit, a set of model practices for use by judges and jury staff statewide.

The FTA Kit includes:

- A program guide that outlines, step by step, the procedures for following up with potential jurors who fail to respond to their summonses;
- Sample correspondence and notices of delinquency;
- Order to show cause, minute order, and judgment forms;
- Information about contempt and monetary sanctions;
- Sample scripts for judges and court personnel; and
- Sample press release to alert the public about a failure-to-appear program.

The draft FTA Kit was also submitted to the AOC's Office of the General Counsel (OGC) for review. Analysis focused on the appropriate type of contempt proceeding to employ against a potential juror who fails to respond to a jury summons and the applicability of the monetary sanctions available under section 177.5 of the California Code of Civil Procedure.

The draft FTA Kit was revised in 2001 and 2002, based on input from the OGC and from task force members, to provide a legally sound and efficient process for handling summoned jurors who do not appear in court. Because of continuing questions about the applicability of monetary sanctions available under section 177.5, the OGC and the AOC's Office of Governmental Affairs developed legislation to amend Code of Civil Procedure section 209.

Under section 209, courts may find prospective jurors who fail to appear in contempt of court. The full contempt process—which culminates in a formal hearing at which a delinquent juror has some of the rights of a criminal defendant—is

time-consuming and expensive for courts. The legislation authorizes the court, following notice and an opportunity to be heard, to impose monetary sanctions up to $1,500 on persons who are summoned but fail to appear for jury service. The monetary sanctions remedy would be in addition to the contempt remedy already available to the court.

The overall goal of the failure-to-appear program is to decrease the number of people who do not respond to a summons for jury service. It is not meant to be punitive for the prospective juror, but consequences are built in to the program. The FTA Kit is flexible, allowing local courts to establish the program at minimal cost and with little additional legal research. It is designed to make certain that the delinquent prospective juror's procedural due process rights are not violated while encouraging maximum response to the juror summons.

FUTURE ACTION

The task force finalized a draft FTA Kit for presentation to the Judicial Council and subsequent distribution to courts statewide, pending enactment of legislation amending section 209 of the Code of Civil Procedure.

MODEL JUROR SUMMONS

Summary of recommendation

The commission believed that changes to the mechanics of the summoning process were essential to help the public understand its obligations, respond to summonses properly, and ultimately perform jury service. Changes would include (1) improving the appearance and readability of the summons and (2) eliminating the costs of administering the sometimes-confusing two-step summoning process in favor of a one-step process.

Blue Ribbon Commission

RECOMMENDATION 3.6

The implementation task force should produce a format for a standardized jury summons—for use, with appropriate modifications, around the state—that is understandable and has consumer appeal.

Task force implementation

The Judicial Council charged the task force and the staff of the AOC with developing a model statewide juror summons (BRC Recommendation 3.6). The task force also implemented Recommendation 3.7 (replacing the two-step summons process) by designing the model as a one-step summons.

Beginning in early 1999 the task force's Juror Management Working Group collected and reviewed sample one-step summonses from courts around the state. The working group identified the basic components necessary for a summons and decided that introductory court information—such as dress code, court amenities, and frequently asked questions—should be inserted as a separate pamphlet with

the summons, allowing for a cleaner, more open layout for the model summons. The working group also recommended hiring a design consultant to synthesize the information into a single standardized document.

Blue Ribbon Commission

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).

The adoption of a "standardized jury summons for use, with appropriate modifications, around the state, that is understandable and has consumer appeal" became a legislative mandate with the passage of Assembly Bill 1814 (Stats. 2000, ch. 266). Also in 2000 a design consultant was retained, and initial drafts of the model summons and juror information pamphlet were presented to the task force in the fall of that year.

The working group and the task force periodically reviewed drafts of the model summons and information pamphlet throughout 2001 and 2002. Issues involving text and format that were discussed and resolved included:

- The "flow" of the directions and procedures on the summons that jurors must follow;
- Categories for disqualification and excuse from jury service;
- Privacy in relation to the information on the response card;
- Production and distribution costs;
- Streamlined content for the information pamphlet;
- A standard size for the model summons;
- The mailing of the summons and accompanying information pamphlet in an envelope rather than as a self-mailer; and
- Color combination and overall design of the documents.

Other interested groups were consulted throughout the development process. In October 2001 jury managers at the Jury Education and Management (JEM) Forum conference previewed draft versions of the documents, responding favorably and providing valuable feedback. The council's Access and Fairness Advisory Committee provided language to give potential jurors with disabilities notice to request accommodations prior to their service dates. And the AOC Office of the General Counsel provided input on the review and approval process for the model summons.

As part of a jury education and outreach campaign being coordinated by the AOC's Office of Communications (see BRC Recommendation 3.8), the model summons was put before potential citizen jurors in focus groups to gauge their reactions and assist in finalizing the document. The focus group members compared a draft model summons to an existing court summons and other prototypes. The model summons was the most favorably received and had a high incidence of the qualities the focus group members said would cause them to read and pay attention to the summons. Task force members also viewed videotape clips from some of the focus groups and used the suggestions of the focus group attendees for revising portions of the model.

A final step in the drafting process was the translation of the juror information pamphlet into plain language. The task force's initial draft tested at a high-school reading level (a good level of readability, given the relatively complex material involved); the revised version was brought to a mid-seventh-grade reading level. The goal was to make the pamphlet accessible to more readers without changing the essential meaning of the document.

The task force approved final drafts of the model summons and juror information pamphlet in November 2002. The next phase in the development of the model summons and pamphlet is a pilot test, which is under way in the superior court systems of Alameda, San Diego, Shasta, and Ventura Counties. The pilot is a real-world test using adaptations of the task force–approved version of the model summons and pamphlet in the pilot court systems. One component of the test is a comparison of compliance rates for the model summons to compliance rates for the summonses currently in use by these courts. In addition, randomly selected jurors will be surveyed about their reactions to the model summons and juror information pamphlet as well as to jury service in general.

FUTURE ACTION

After the pilot test is completed, the test's findings, the model summons, and the juror information pamphlet will be submitted for review and adoption by the Judicial Council. Staff of the AOC will provide technical assistance for courts in adapting their current summonses to the model, possibly pooling multiple courts' resources to save costs. With standardization, the AOC will explore the efficacy of producing regional or statewide summonses. (See BRC Recommendation 3.3.)

PUBLIC OUTREACH

Summary of recommendation

The blue ribbon commission stated in its report: "As with any product, advertising by word of mouth from satisfied customers is one of the most important marketing objectives."[1] As examples of successful techniques that reach large audiences, the commission cited practices such as negotiating for public service announcements in electronic mass media and presentations about the importance of jury service on local public-access cable.

Blue Ribbon Commission

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.

Task force implementation

Recommendation 3.8 was assigned to the task force's Education Working Group in 1999, and one of the working group's first goals was to provide support for judicial and court staff's community out-

[1] Judicial Council of California, *Final Report of the Blue Ribbon Commission on Jury System Improvement* (May 6, 1996) p. 24.

reach regarding the importance of jury service. The working group's tasks in this vein included:

- Developing and launching the California Juror Web site, which provides comprehensive online information and resources about jury service—www.courtinfo.ca.gov/jury/;
- Providing courts with packets of supporting materials for Juror Appreciation Week; and
- Encouraging judges and court staffs to appear before service clubs and community organizations to make presentations about jury system reforms, including the one-day or one-trial jury service system (see BRC Recommendations 3.21–3.22).

Task force members participated as presenters and attendees at national jury reform summits and seminars in Chicago, Phoenix, and New York to publicize the efforts under way in California, gain insight into jury reform efforts in other states and nations, and learn about the latest research. The task force also wrote a proposal to the Citizens' Stamp Advisory Committee of the U.S. Postal Service for a commemorative stamp representing jury service as a "theme of widespread national appeal and significance," and urged national court organizations to support the effort.

In 2001, following up on an idea first proposed by the Education Working Group, the Judicial Council approved funds for a jury education and outreach campaign specifically targeting employers. The campaign, developed by the AOC's Office of Communications in collaboration with the Jury System Improvement Program, aims to raise awareness of the one-day or one-trial jury service system among employers and to encourage employers to pay full compensation to employees while they serve on juries. (See BRC Recommendations 3.26–3.27.)

The outreach campaign used focus groups of potential jurors to test the model juror summons, determine how to include the one-day or one-trial message on the document, and learn about people's perceptions of the court system generally. (See BRC Recommendations 3.6–3.7.) The task force found the focus group results beneficial, and it encourages the use of focus groups to continue to develop public outreach messages. In addition, the juror orientation videotape *Ideals Made Real* is being used beyond jury assembly rooms, as a public outreach tool—for speaking events, on public-access cable, and in schools. (See BRC Recommendation 5.1.)

One way judges can convey the importance of jury service is by being jurors themselves. The task force emphasizes that, contrary to the attitude sometimes voiced that a judge's time is "better spent on the bench," jury service by judges is vital for them to gain perspective on the juror's experience. The public relations effect is very positive when judges at all levels, including appellate and federal judges, go through jury selection and sit on juries. When judges serve, they learn how difficult it is to wait and how challenging it can be to serve as a juror, and therefore are more motivated to make changes in their courtrooms.

FUTURE ACTION

The task force urges greater participation in public outreach about jury issues and sees two groups as court resources: (1) a court-community outreach committee composed of judges, citizens, and other community leaders; and (2) the court's jury committee.

STANDARDS FOR HARDSHIP EXCUSES

Summary of recommendation

The commission was convinced that converting the advisory standards in then–section 4.5 of the California Standards of Judicial Administration to a mandatory rule would promote statewide uniformity in the treatment of excuses from jury service for hardship. The commission also encouraged jury commissioners to use their discretionary authority liberally to defer jury service to a particular date, while narrowing the grounds for granting excuses under the new rule.

Blue Ribbon Commission

RECOMMENDATION 3.9

The Judicial Council should enact a rule of court to require jury commissioners to apply standards regarding hardship excuses presently set forth in section 4.5 of the Standards of Judicial Administration.

Task force implementation

The commission drafted a rule of court that would require jury commissioners to apply the standards for hardship excuses set forth in then–section 4.5 of the California Standards of Judicial Administration. In response to comments that giving the rule (as originally drafted) the force of law might subject judges to unwarranted disciplinary complaints from prospective jurors resisting service, the rule was modified to clarify that it applies only to jury commissioners in the exercise of their discretion. The Judicial Council adopted rule 860 of the California Rules of Court effective July 1, 1997.

In late 2000 the task force surveyed the state's trial court jury managers regarding the implementation of certain rules and standards, including rule 860. It is noteworthy that some court systems were unable to provide the requested data. Some surveys had data irregularities that appeared to be related to differing interpretations of survey terms. Forty-four of 56 responding court systems had usable data on the numbers of jurors excused due to hardship in fiscal year 1999–2000.

Despite problems with the data, general trends emerged, including the following:

- Statewide, financial circumstances (36 percent), disability (29 percent), and dependent care responsibilities (22 percent) were the top three reasons people were granted hardship excuses from jury service.
- The 44 court systems that had usable data excused a total of 1,278,890 prospective jurors in fiscal year 1999–2000.
- Trends among the 38 smallest court systems differed somewhat from the statewide trends. Financial hardships represented only 10 percent of the total number of hardships granted by the 38 smallest courts, as compared to

a range of 34 to 46 percent for financial hardship excuses in larger courts. The proportions of people excused due to disability (35 percent) and dependent care responsibilities (25 percent) were slightly higher for the 38 smallest court systems than for the state overall.

To assist judges, jury commissioners, and staff, the task force's Education Working Group collaborated with the Center for Judicial Education and Research (CJER) to develop educational materials on hardship excuses and other jury issues. Guidelines concerning hardship excuses are noted in *Bench Handbook: Jury Management*, first published by CJER in 2001. How to handle hardship excuses was also illustrated in a May 2001 educational satellite broadcast demonstrating in-court jury innovations to trial court judges, which is available as a videotape—*Juries: Strategies for Better Trials.*

FUTURE ACTION

The task force urges presiding judges, judges, and court administrators, through their respective courts' jury committees, to follow rule 860 and develop guidelines for determining excuses based on hardship for use throughout the court. Guidelines will afford fairness toward prospective jurors from courtroom to courtroom and still allow judicial discretion in individual cases.

CHILD CARE

Summary of recommendation

When making its recommendation, the blue ribbon commission cited the undue economic burden that paying for outside child care would impose on a significant number of potential jurors (many of whom had been excused for that reason). The commission also stressed that, in addition to reimbursement for outside care, a payment system should be created for a parent who stays home from work to provide child care that would normally be provided by the parent on jury duty.

Blue Ribbon Commission

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.

Task force implementation

The commission did not draft specific legislation pertaining to child care but recommended review of a Colorado child-care program for guidance. When the report of the blue ribbon commission was circulated for comment, concerns were raised about whether the courts should provide on-site child-care facilities, as opposed to reimbursing for child-care expenses, and the potential cost to the courts of whatever child-care program was enacted. The Judicial Council subsequently adopted Recommendation 3.10, stated as follows:

> The Judicial Council recommends that the Legislature enact a child-care cost reimbursement program for those jurors who certify that special child-care arrangements due to jury service have resulted in a financial hardship.

Reimbursement should be available to jurors in both civil and criminal trials. Parties are to bear costs in civil cases.

A child-care reimbursement proposal was included in Senate Bill 14, Judicial Council–sponsored legislation designed to implement commission recommendations. (Sen. Bill 14 [Calderon], 1996.) To address concerns about potential program costs, SB 14 was amended to propose a two-year pilot project reimbursing jurors' child-care and other dependent-care expenses at three court systems (one urban, one suburban, and one rural) under certain conditions:

- Fifty dollars per day would be paid for dependent care after the first day of jury service;
- A financial hardship would occur otherwise;
- Adequate state funding for the juror would be available; and
- The AOC would submit a report to the Legislature six months after project completion.

Although SB 14 (and the pilot child-care reimbursement proposal it contained) did not pass, from 1997 through 1999 other pieces of legislation, developed in concert with the AOC's Office of Governmental Affairs and the Legislation Working Group, were introduced that would have provided reimbursement for child-care and dependent-care expenses (see Assem. Bill 2551 [Migden], 1998; Assem. Bill 592 [Migden], 1999) and funds for children's waiting rooms that could also be used by jurors (see Assem. Bill 2806 [Pappan], 1998). None of these legislative initiatives was passed, owing to a variety of opposition, most notably involving cost.

In late 2000 the task force surveyed the state's trial court jury managers regarding various juror benefits, including the provision of child or dependent care. The survey showed almost no court systems providing child-care or dependent-care arrangements for jurors, and of those that did, almost all were children's waiting rooms intended for the children of litigants and witnesses in court cases. An exception was the Superior Court of Riverside County, which had entered into a partnership with the Riverside County Office of Education to make dedicated child-care centers for jurors and prospective jurors available at three court locations in the county. The task force supports more innovative partnerships like this one to meet a need that, when unmet, prevents many jurors from serving.

At the same time, the task force recognizes that many parents would rather not leave their children in a strange environment for a day or longer, no matter how high the quality of the care. Very often parents could make arrangements for child care with a known and trusted provider and be available for jury service, if not for the additional cost involved. This predicament represents a barrier to service that should be lowered so California's juries remain diverse and reflect all members of the community.

FUTURE ACTION

The task force urges that the AOC undertake a juror child-care reimbursement pilot project similar to those described in previously proposed legislation. A component of such a pilot should be a comparison of the numbers of jurors who fail to appear and/or request hardship excuses (1) in pilot courts that have child-care reimbursement and (2) in courts that do not. This type of information is key to supporting later legislation for child-care reimbursement for jurors.

TRAINING ON JUROR TREATMENT

Summary of recommendation

Along with education and training programs designed to encourage judicial officers, administrators, and staff to be accommodating to jurors, the commission recommended that courts employ jury docents or ombudsmen to specifically address juror needs and to answer questions. "The goal," according to the report, "is to serve as many persons as possible in a respectful, dignified manner."[2]

Blue Ribbon Commission

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.

Task force implementation

A rule of court mandating team training on juror treatment was first proposed in 1996 as part of the commission report. Because the proposed rule pertained to new requirements for judicial education, the Judicial Council referred Recommendation 3.11 to the governing committee of CJER to benefit from its expertise.

Recommendation 3.11 was combined with Recommendation 4.1 (proposing an amendment to the California Standards of Judicial Administration to provide curricula and education for judges on the process of jury selection). They were proposed by the CJER governing committee as amendments to the standards and adopted by the council effective January 1, 1998.[3] The sections pertaining to training on jury treatment are as follows:

- Section 25.2(a), promoting education of judicial officers in juror treatment and the process of jury selection, using CJER materials and programs;
- Section 25.3(a), promoting the development of CJER curricula on the treatment of jurors and the process of jury selection; and
- Section 25.6(h), encouraging the presiding judge of each trial court to ensure that all court administrators and court employees who interact with jurors are properly trained in the appropriate treatment of jurors.

[2] *Id.* at p. 29.

[3] Subsequently the standards for judicial branch education for both judges and court employees were consolidated, section 8.8 was repealed, and section 25 et seq. were amended and renumbered, effective January 1, 1999.

Although primarily designed for use by bench officers, *Bench Handbook: Jury Management* has information on the treatment of jurors that is also useful for administrators and staffs. The handbook includes:

- Recommendations stressing the importance of timeliness, punctuality, and attention to all prospective jurors, not just impaneled jurors;
- Guidelines for managing trial time efficiently (see BRC Recommendation 5.11);
- Sample scripts to use when discharging jurors, expressing appreciation for their efforts;
- Sample thank-you letters;
- Information about juror stress in emotionally charged cases; and
- Templates for juror exit questionnaires to gather feedback from jurors (see BRC Recommendation 3.13).

The appropriate treatment of jurors was also reviewed in the May 2001 educational satellite broadcast for trial court judges and is covered in the videotape—*Juries: Strategies for Better Trials*. In addition, the broadcast emphasized the benefit to jurors of using plain English, both in and out of the courtroom.

The task force feels one very important practice for demonstrating regard for jurors is the presence of a judge in the assembly room during jury orientation. A judge's thanking the prospective jurors in person and noting the importance of their service have a positive impact, and prospective jurors express how much they appreciate seeing a judicial officer in such a role. The bench handbook contains sample remarks for this purpose.

FUTURE ACTION

The task force urges presiding judges to continue coordinated training on juror treatment, taking advantage of new learning technologies and programs offered by CJER. Jury committees of courts around the state should consider implementing jury assembly room welcomes by judicial officers.

JUROR HANDBOOK

Summary of recommendation

The blue ribbon commission recommended that a juror handbook to help orient jurors be made available when jurors arrive at the courthouse. A handbook was also seen as demonstration of commitment to customer service and respect for the needs of jurors.

Task force implementation

The blue ribbon commission proposed a rule of court to require the use of a juror handbook. A draft rule was circulated for comment, and commentators suggested

that a general explanation of juror rights and responsibilities would be preferable to handbooks prepared by individual jury commissioners, who might include differing standards. Accordingly, the rule was modified to state that the council would prepare a model statewide handbook to which jury commissioners could add information about local services. However, because the rule would have required the Judicial Council to act on something that did not yet exist (that is, the handbook), the council did not approve a rule but instead directed the task force to develop a model handbook for later presentation to the council.

Blue Ribbon Commission

RECOMMENDATION 3.12

The Judicial Council should adopt a rule of court requiring jury commissioners to prepare a juror handbook that sets forth the juror's rights and responsibilities and explains juror services within the courthouse.

The project was assigned to the task force's Education Working Group, which worked with staff to develop the handbook's content. Sample handbooks were gathered and analyzed, and the working group reviewed drafts of a model handbook. In 2000 a design consultant was engaged to develop a consistent "look and feel" for the handbook, the statewide model summons (see BRC Recommendation 3.6), the statewide orientation video (see BRC Recommendation 5.1), and other jury products.

The task force refined the purpose of the handbook to make it another resource for juror orientation in the jury assembly room, expanding on the essential information contained in the model juror summons, with its accompanying information pamphlet, and the procedures described in the juror orientation video. At the same time as the handbook was being developed, a California Courts Juror Web site was developed to meet the needs for greater outreach and education for citizen jurors, at www.courtinfo.ca.gov/jury/. (See BRC Recommendation 3.8.) Materials from both the Web site and the orientation video were adapted so that the juror handbook would complement them.

AOC divisions and units, including the Office of Communications and the Office of the General Counsel, provided input for the handbook. After the task force approved the design format and initial content, jury managers were given an opportunity to provide feedback when a draft handbook was presented to the Jury Education and Management Forum in late 2001.

Recognizing the importance of making the handbook as readable as possible for the widest audience, the final revisions to the juror handbook consisted of a plain-language rewriting of the content in 2002. As with the juror information pamphlet accompanying the model juror summons (BRC Recommendations 3.6–3.7), the initial work had resulted in a high-school reading level, and the text was revised to have a mid-seventh-grade reading level. The resulting handbook is accessible to more readers, and the essential meanings have not changed.

The task force approved the juror handbook in November 2002 for presentation to the Judicial Council.

FUTURE ACTION

After approval by the Judicial Council, AOC staff will produce and distribute a master version of the juror handbook statewide and an electronic version for local court adaptation. It is anticipated that the handbook will also be useful in school classrooms.

RESPONDING TO JUROR COMPLAINTS

Summary of recommendation

The commission stressed that jurors cannot be taken for granted and must be treated as crucial participants in the justice system. Recommendation 3.13 reinforces that it is essential to be responsive to jurors and to learn from their feedback.

Blue Ribbon Commission

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.

Task force implementation

The blue ribbon commission proposed a rule of court that would have required courts to establish a juror response mechanism. The draft rule was circulated and received no objections. However, after circulation the reviewers agreed that the proposal should be put forward as a standard of judicial administration rather than as a mandatory rule, to accommodate courts whose budgets would make it difficult to implement such a requirement. Subsequently, the Judicial Council adopted section 4.5 of the California Standards of Judicial Administration—Juror Complaints—effective July 1, 1997.

In late 2000 the task force surveyed the state's trial court jury managers regarding the implementation of rules and standards, including section 4.5. On the issue of responding to juror complaints, most courts indicated that procedures were in place. However, the nature of these procedures appeared to vary considerably:

- Most responding courts (73 percent) indicated that they had some type of procedure in place to handle juror complaints.
- Courts indicated that the complaint processes ranged from very informal systems (for example, the jury manager was available to talk to jurors) to more formal and structured procedures in which jurors completed and submitted detailed forms documenting their complaints.

Juror complaint procedures are another topic included in *Bench Handbook: Jury Management*. Trial judges are advised about the importance of treating jurors with respect and having a process to respond to complaints per section 4.5. The bench handbook also contains examples of juror service questionnaires and surveys that can be adapted by the courts.

The task force agrees that the needs of jurors should be one of the court's highest priorities. A juror is analogous in many ways to the court's "customer," albeit not

always a willing one, and courts should strive to be more customer focused. Hearing, responding to, and learning from the concerns, frustrations, and, yes, positive feedback of jurors is essential to continued improvement of the system. Providing a means for jurors to give courts their comments is a basic requirement.

FREE PUBLIC TRANSIT

Summary of recommendation

The blue ribbon commission observed that jury commissioners in some counties had successfully negotiated arrangements with local transit providers to provide free public transportation to and from courthouses for jurors. The commission endorsed this practice as innovative and believed it should be made available statewide.

Blue Ribbon Commission

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.

Task force implementation

The task force's Juror Management Working Group was given the responsibility to:

- Develop a standard of judicial administration encouraging courts to develop partnerships with mass transit providers; and
- Research how prevalent the service was in California courts.

In 2000 the working group found that only a few of the larger California trial court systems offered free or subsidized transit programs for jurors. The working group also determined at that time that free public transportation was not feasible in all counties and that guidelines would be preferable to legislation, a rule, or a standard owing to the lack of uniformity in mass transit systems statewide.

FUTURE ACTION

The task force urges that model guidelines and procedures for developing free mass transit programs for jurors be developed and disseminated through the Judicial Council's Trial Court Presiding Judges and Court Executives Advisory Committees.

JUROR PARKING

Summary of recommendation

The blue ribbon commission believed that the courts should provide parking or, alternatively, reimburse jurors for private parking expenses. It recommended that the Legislature amend section 215 of the Code of Civil Procedure to require courts to do so. In many instances, jurors and court employees share public parking lots, resulting in inadequate parking for jurors. In addition, jurors are often forced to pay more for parking than they receive in fees for their services.

Blue Ribbon Commission

RECOMMENDATION 3.15

The Legislature should amend Code of Civil Procedure section 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.

Task force implementation

In January 1999 the task force's Juror Management Working Group was assigned to take action on this recommendation. The working group was charged with:

- Researching the effectiveness of programs already being offered; and
- Developing a proposal to seek state funding to cover parking fees by making them allowable costs under rule 810 of the California Rules of Court, which addresses the costs of court operations.

The working group found that at least 45 of the 58 trial courts offered some form of subsidy for parking. For instance:

- Twenty-one courts provided parking passes;
- One court provided vouchers;
- Thirty-six courts had parking lots reserved for juror parking; and
- Eight courts offered jurors reimbursement for parking fees.

Because of the difficulties and sensitivities surrounding changes to rule 810, the Executive Office of the AOC recommended a strategy to obviate the need for parking reimbursement: increasing the daily fee for jurors.

FUTURE ACTION

The AOC will continue to advocate for higher juror fees and work with courts to encourage innovative public and private partnerships to fund parking for jurors.

JURY FACILITIES

Summary of recommendation

The blue ribbon commission urged the trial courts to analyze their jury facilities and execute plans for improvement in accordance with national standards, recognizing the importance of jury facilities as a critical aspect of long-range facilities

planning. The issue of jury facilities continues to be important—especially in light of recent legislation that will transfer all court facilities to state ownership.

Blue Ribbon Commission

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.

Task force implementation

In early 1999 the task force charged the Juror Management Working Group with:

- Developing a standard of judicial administration regarding appropriate standards for jury facilities so that any new construction would provide for adequate jury facilities; and
- Coordinating their efforts with the Judicial Council's Task Force on Court Facilities.

The working group assisted the Task Force on Court Facilities with drafting guidelines for jury facilities. The working group decided against pursuing a standard of judicial administration when it learned that legislation was being pursued that would transfer the ownership of court facilities from local governments to the state government.

FUTURE ACTION

The transfer of ownership of court facilities to the state provides the AOC with a central point from which to implement consistent minimum standards for jury facilities as courthouses are built and renovated statewide.

JUROR SECURITY

Summary of recommendation

The commission recognized that juror security is not an issue just for the areas surrounding the courthouse. Because of inadequate juror facilities, in many courts jurors wait in hallways and assembly areas with litigants, witnesses, and other court users, which sometimes leaves them feeling insecure and intimidated.

Blue Ribbon Commission

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.

Task force implementation

In 1999 the task force's Juror Management Working Group established two courses of action to implement Recommendation 3.17. The working group decided to (1) seek an amendment to then–rule 205 of the California Rules of Court (duties of the presiding judge) and (2) work with the Court Security Subcommittee of the Judicial Council's Court Executives Advisory Committee (CEAC) to make sure that juror security was included in all court security plans.

At the time CEAC's Court Security Subcommittee was developing a branchwide security plan that would include all of the associated costs under rule 810 of the California Rules of Court. Subsequently the subcommittee was identified as the *single forum* through which all court security proposals would be coordinated and cost implications considered. The task force decided to hold off on proposing any amendment to rule 205 while the subcommittee proceeded with its work.

In 2001 the task force, feeling that juror security was a critical issue to address separately in the rules, decided to propose an amendment to rule 6.603 of the California Rules of Court (authority and duties of presiding judge).[4] During their discussion of the proposed, task force members raised concerns about the court's jurisdiction and liability issues. Therefore, the task force drafted the proposal concerning the presiding judges' duties to make a distinction between (1) court security officers' overseeing security *within* the courthouse and (2) court security officers' coordinating security *between* parking facilities and the courthouse with other law enforcement agencies.

Security is a national concern, no less so in courthouses. Jurors are giving their time and services to render verdicts in cases that sometimes arise from highly dangerous activities. Courthouses must be safe havens. Jurors especially should not have to be concerned about personal safety, and their security needs should be a top priority for presiding judges.

FUTURE ACTION

The task force approved the following draft amendment to rule 6.603 of the California Rules of Court for presentation to the Judicial Council.

Rule 6.603. Authority and duties of presiding judge

(a)–(b) * * *

(c) [Duties]

(1)–(8) * * *

(9) *(Planning)* The presiding judge shall:

(A) Prepare, with the assistance of appropriate court committees and appropriate input from the community, a long-range strategic plan that is consistent with the plan and policies of the Judicial Council, for adoption in accordance with procedures established by local rules or policies; ~~and~~

(B) Ensure that the court regularly and actively examines access issues, including, but not limited to, any physical, language, or economic barriers that impede the fair administration of justice~~.~~; and

(C) Provide that the court security officer addresses juror security within the courthouse and coordinates juror security from juror parking facilities to the courthouse with other law enforcement agencies.

[4] Cal. Rules of Court, rule 205 repealed effective January 1, 2001; Cal. Rules of Court, rule 6.603 adopted effective January 1, 2001.

(10)–(11) * * *

(d) * * *

JUROR IDENTIFICATION AND PRIVACY

Summary of recommendations

The blue ribbon commission took note of three arguments against enacting legislation to require identification of jurors only by number and against legislation designed to prevent counsel from eliciting personal information about jurors during jury selection:

1. Anonymous decision makers may act differently from those who know they are publicly accountable;
2. Anonymous juries send a signal that there is something to fear, potentially prejudicing the jury against the accused in a criminal case; and
3. It is harder to uncover bias in a potential juror when counsel is not allowed to ask revealing, and sometimes sensitive, questions.

In the end, however, the majority of the commission members felt these concerns were outweighed by benefits, such as:

- Identifying jurors by number would decrease the jurors' apprehension and cause them to be more open during jury selection.
- Deliberations would be freed from decisions based on fear of retribution rather than on the evidence.

Likewise, recognizing the importance of jurors' privacy rights, the commission concluded that disclosure of personal identifying information about jurors should be permitted only upon a showing of compelling need.

Blue Ribbon Commission

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.

Task force implementation

The Judicial Council passed Recommendation 3.18 by a vote of 9 to 8, echoing the differences of opinion expressed about the proposal by some commission members and commentators when the commission report was circulated for comment. Those opposing the proposal felt that a legislative mandate requiring juror identification only by number during jury selection in *all* cases was too broad and would remove judicial discretion. Concerns were also raised about the costs of implementing data systems to match and track identification numbers with names in courts that summoned large numbers of jurors. The council subsequently stated that it would support but not sponsor legislation to implement Recommendation 3.18.

In 1999 legislation was introduced to require juror identification only by number in criminal cases. (Assem. Bill 310 [Leach], 1999.) The bill failed in the Assembly's

Judiciary Committee owing to concerns about the constitutional issues surrounding anonymous juries. Newspaper publishers voiced strong opposition, as well. Members of the Judiciary Committee were aware of the success of the Los Cerritos Municipal Court's *voluntary* program of identifying jurors by number and decided that a statewide blanket rule was not necessary. They decided to leave the matter to individual jurisdictions.

In 1999 task force member Judge Jacqueline A. Connor of the Superior Court of Los Angeles County demonstrated juror satisfaction with the technique through a pilot study in the Los Angeles court that tested and tracked selected jury innovations. Ten judges participated in the pilot project, five from civil courts and five from criminal courts. Juror identification by number in criminal cases was one of the techniques tracked. Questionnaires were distributed, and the experiences of jurors, judges, and counsel were documented.

- Over 92 percent of the responding jurors strongly advocated juror identification numbers in lieu of names, stating repeatedly that it was essential and that it permitted them to focus on the evidence without being concerned about their privacy.
- Many noted that the case was about the parties and not about them, and several complimented the judge for protecting their privacy.
- Several jurors also indicated a strong interest in greater protection, objecting to the fact that they were asked the names of their employers and the cities they lived in. It appeared that many jurors were aware that the attorneys had access to their names.

Recommendation 3.19 also generated opposition when the commission report was circulated for comment. As with the opposition to Recommendation 3.18, those commenting regarded as unwise a mandated procedure that weakened judicial discretion over the procedures for questioning the jury panel during jury selection. Accordingly, the council approved development of a rule of court to implement Recommendation 3.19, rather than sponsoring legislation.

In 1999 the task force assigned the recommendation to the Legislation Working Group to develop a rule. However, the working group reported that a rule was not necessary because moving to chambers to have jurors respond to questions (as opposed to a sidebar conference or similar means to assure privacy) seemed administratively burdensome and unnecessarily time-consuming. The task force decided that a best-practices approach through guidelines and education was preferable to legislation or a rule of court.

Recommendation 3.20, a proposal similar to Recommendation 3.18, did not attract opposition. Recommendation 3.20 called for legislation to ensure safeguarding of personal identifying information about jurors after a verdict has been rendered.

Blue Ribbon Commission

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 Code of Civil Procedure section 237 to ensure that personal juror identifying information is properly safeguarded in the context of postverdict proceedings.

Commentators generally saw the proposal as necessary for juror privacy. The blue ribbon commission's intent was to strengthen the existing safeguards on postverdict release of jurors' personal information in section 237 of the Code of Civil Procedure. These protections were limited to criminal cases—legislation had been passed in 1996 to amend section 237 to clarify access to juror information and the meaning of sealed records (Stats. 1996, ch. 636), and the California Rules of Court had been amended to clarify the procedures for removing jurors' personal identifying information from the record on appeal (Cal. Rules of Court, rule 31.3). The blue ribbon commission also wished to extend privacy protections to both criminal and civil cases.

To address these issues, CJER incorporated guidelines for bench officers on juror identification and privacy in *Bench Handbook: Jury Management*. The handbook includes:

- Recommendations to use numbers to refer to jurors in all phases of a trial;
- Procedures for allowing responses regarding sensitive information during jury selection;
- Encouragement to use questionnaires for jury selection (see BRC Recommendation 4.4); and
- Guidance on postverdict meetings with jurors and advice on releasing juror information.

Juror privacy should be a high priority. While it is always necessary to balance the constitutional rights of those accused with the jurors' rights to privacy, release of private juror information should be administered carefully and diligently.

ONE-DAY OR ONE-TRIAL SYSTEM

Summary of recommendations

The commission felt strongly that reducing a juror's sense that his or her time has been wasted was one of the most critical components of improving the public's impression of jury service. Requiring one-day or one-trial terms of jury service was cited as key to the goal of reducing the time jurors spend in jury assembly rooms, which at the time of the commission report could be as long as two weeks. The commission saw on-call telephone standby notice to potential jurors as a critical part of operating a one-day or one-trial system. The commission felt that even if a one-day or one-trial system was not adopted, on-call telephone standby notice should be a minimum requirement in every county, to conserve juror resources and manage jurors effectively.

Blue Ribbon Commission

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 that can demonstrate good cause why such a requirement is impractical.

Task force implementation

A rule of court requiring one-day or one-trial terms of jury service and implementation of on-call systems was first proposed in 1996 as part of the commission report.

Because of the potentially large implementation challenges required by the proposed rule, the Judicial Council decided it was not ready to circulate for comment. The rule proposal was passed to the task force for further study and development.

In 1998 Judicial Council-sponsored legislation was passed that required trial courts to limit jury service to "either one trial or one day on call" by January 1, 2000, unless an exemption was granted by the Judicial Council. (Stats. 1998, ch. 714.) The legislation also required the council to adopt a rule of court to implement the new system.

Blue Ribbon Commission

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.

An assessment was made of the number of courts that already had a form of one-day or one-trial jury service and an on-call standby system. AOC staff subsequently drafted a rule that was circulated for public comment. After formation of the task force, the Legislation Working Group assumed responsibility for the development of the rule and analysis of the comments.

The draft rule was revised to define the difference between same-day on-call notice for attendance at the court and previous-day telephone standby notice. To accommodate courts with high volumes of jurors and to assist in calendar management, up to five days of previous-day notice by telephone standby were included in the draft rule.

The Judicial Council adopted rule 861 of the California Rules of Court, effective July 1, 1999, requiring courts to implement one-day or one-trial jury service and on-call and standby notice systems by January 1, 2000. Exemptions from the implementation of one-day or one-trial could be granted to courts for good cause (cost and population constraints being major factors). Exemptions, lasting up to two years, from the requirement to limit same-day on-call notice to one day were available for courts to give them time to acquire the necessary technology.

The council subsequently approved a two-year extension for the Superior Court of Los Angeles County to implement its one-day or one-trial system and meet the requirement to limit same-day on-call notice to no more than one day. The council also approved a six-month extension for the Superior Court of Alpine County's one-day or one-trial system implementation. A four-month extension of the requirement to limit same-day on-call notice to no more than one day was also granted to the Superior Court of Yolo County. Technical assistance was offered to the courts for the rollout of their one-day or one-trial systems.

In late 2000 the task force surveyed the state's trial court jury managers regarding the implementation of rule 861. Fifty-five courts responded to survey questions about the one-day or one-trial service requirement.

- The vast majority of the courts reported that one-day or one-trial programs were uniform countywide. Only three courts (6 percent) reported that they did not have uniform one-day or one-trial programs countywide.

- Almost two-thirds of the courts indicated that they employed on-call same-day notification of jurors. Of the 20 courts that did not, 18 were small courts.
- The number of days of previous-day telephone standby notice ranged from one to five. Five days was the most popular; this time period was used by 66 percent of the courts that reported this information.

Jury program managers reported that juror satisfaction had increased with the implementation of one-day or one-trial systems. They reported increased costs to administer the programs, as well. In early 2002 the Superior Court of Los Angeles County completed the phase-in of one-day or one-trial service and the limiting of same-day on-call notification to one day in all the county's court locations. The council granted the Superior Court of Alpine County a five-year exemption from the requirement of implementing a one-day or one-trial system, with an agreement that the court would implement one-day or one-trial terms of jury service to the fullest extent possible.

One-day or one-trial service has been a boon to jurors statewide. Combined with the requirement that jurors not serve more than once in a 12-month period (see Cal. Rules of Court, rule 860(e) and BRC Recommendation 3.24), jurors now serve for no more than one day or one trial in one year. One-day or one-trial service has also presented possibly the largest administrative challenge in jury management in recent decades.

For example, with the full implementation of a one-day or one-trial system in the Superior Court of Los Angeles County, there have been reports that the people being sent to jury selection are angrier than before, owing to the stringent policies on hardship excuses that are necessary to yield enough jurors. This is a morale issue for judges, and jurors arguing for hardship determinations can cause jury selection to take longer. To address these problems, the court has implemented innovative panel size guidelines and time limits within which jury selection with an assembled panel must begin or the panel will be made available for another case. (See BRC Recommendation 3.23.) Guidelines of this type are essential for managing the number of jurors needed daily and making one-day or one-trial service work.

FUTURE ACTION

An employer outreach campaign to raise awareness of one-day or one-trial service is under way (see BRC Recommendation 3.27), and the AOC plans to assist courts with acquiring interactive voice-response telephone systems so courts can more effectively process responses to juror summonses.

CASE PREDICTABILITY

Summary of recommendation

Blue ribbon commission members were very concerned about the use of jury panels as leverage or devices to influence parties toward settlement, leading to juror

frustration. They discussed settlement and plea cutoffs (such as two days prior to trial). However, the commission recognized that California has a very strong policy in favor of settlement of disputes and decided that, in lieu of statutory or rule of court mandates, each jurisdiction should be encouraged to discuss ways to reduce panel-driven settlements.

Blue Ribbon Commission

RECOMMENDATION 3.23

Presiding judges should discuss the topics of case predictability and late settlements with participants in the criminal justice system in meetings required by rule 227.8 of the California Rules of Court.

Task force implementation

The commission realized that late settlements often lead to summoning too many jurors to fill panels for cases set for trial. Prospective jurors who never leave the jury assembly room often report frustration, feeling their time has been wasted and that the court is being mismanaged.

Recommendation 3.23 recognizes that the criminal justice system meetings required by rule 227.8 provide an excellent opportunity to address case predictability and the need to avoid late settlements when possible. The proposal was assigned to the task force's Education Working Group. The working group decided to formally recommend to CJER that it add information about late settlements and case predictability to educational materials about jury trials and conference materials for presiding judges. The chair of the task force subsequently contacted the chair of the CJER governing committee about incorporating jury system educational materials into CJER's programs. *Bench Handbook: Jury Management* includes information about late settlements and case predictability.

Innovative strategies that could be employed to address issues related to late settlements include:

- Some courts have adopted local guidelines for the use of jury panels. For example, the Superior Court of Los Angeles County requires a panel to be used within 20 minutes of its being called for a case, or it is reassigned. (See BRC Recommendation 3.22.) The court reports the technique has increased efficiency and has not discouraged settlements.
- Other courts require the attorneys representing settling parties to appear in the jury assembly room to explain the settlement process and to thank prospective jurors who are no longer needed owing to the settlement. Alternatively, a trial judge whose case has settled can thank the jurors in the assembly room. Either practice is more appropriate for civil cases than for criminal plea bargains.

EXCUSE FROM SERVICE FOR 12 MONTHS

Summary of recommendation

The commission believed that jurors who had fulfilled their responsibilities should not have to serve again for a significant period. The 12-month time frame proposed

in Recommendation 3.24 was intended as a minimum standard. If courts could establish a longer period of time to excuse jurors who have served, the commission maintained, they should be encouraged to do so.

Blue Ribbon Commission

RECOMMENDATION 3.24

The Legislature should amend Code of Civil Procedure section 204 to provide that an eligible person shall be excused from service for a minimum of 12 months if he or she has completed jury service.

Task force implementation

The recommendation was assigned to the task force's Legislation Working Group, which noted that the subject of this recommendation was already covered by rule 860(e) of the California Rules of Court, effective July 1, 1997.

A one-year excuse has worked well in combination with rule 861 of the California Rules of Court, which requires one-day or one-trial terms of jury service. (See BRC Recommendations 3.21–3.22.) In fact, many jurisdictions are able to excuse jurors for two and even three years after completion of jury service. Because the recommendation is being effectively implemented through a rule, the task force feels no legislation is necessary.

JUROR FEES AND MILEAGE

Summary of recommendation

The blue ribbon commission called the rate paid to California jurors for daily service and mileage "insulting."[5] The commission demonstrated that if the $5-per-day fee and $0.15-per-mile mileage reimbursement had merely been adjusted for inflation since they were enacted in the 1950s, jurors would receive $28.42 per day and $0.85 per mile in 1996 dollars.

Task force implementation

Based on a review of comments received about Recommendation 3.25 when the blue ribbon commission report was circulated for comment, the Judicial Council approved the proposal calling for increased juror compensation, with the additional statement that any increase should be assured through state funds. Comments reflected concerns about the potential increased costs, but there was widespread recognition of the importance of raising the fee above $5 per day and the mileage reimbursement above $0.15 cents per mile one way. Because of the financial impact of pending state trial court funding legislation (Stats. 1997, ch. 850), the council approved an incremental increase in juror compensation.

Subsequently, Judicial Council–sponsored legislation was introduced to implement the first phase of increased juror fees and mileage reimbursement (Sen. Bill 14 [Calderon], 1996, calling for juror fees of $16 per day after the first day and mileage reimbursement of $0.28 per mile one way for jurors traveling more than 50

[5] Judicial Council of California, p. 42.

miles). Although Senate Bill 14 did not pass, from 1997 through 1999 various pieces of legislation that called for increased juror fees, developed in concert with the AOC's Office of Governmental Affairs and the task force's Jury Management Working Group, were introduced. (See Assem. Bill 2551 [Migden], 1998, calling for $40 per diem and $0.28 round-trip mileage reimbursement; Assem. Bill 592 [Migden], 1999, calling for $15 per diem and mileage and dependent-care reimbursement up to $50 per day.)

Blue Ribbon Commission

RECOMMENDATION 3.25

The Legislature should amend Code of Civil Procedure section 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 30th day, and to provide for reimbursement to jurors at the rate of $0.28 per mile for travel to and from the court.

Ultimately juror fees were raised to $15 a day for the second and subsequent days of jury service, starting July 1, 2000. (Stats. 2000, ch. 127.) This represented the first raise in juror pay in California since 1957. First-day juror pay was eliminated in concert with the implementation of one-day or one-trial jury service. (See BRC Recommendation 3.21.) Because the length of jury service was being considerably shortened for most jurors, a contribution of one day to jury service on the part of citizens was not seen as a significant hardship. In addition, the savings from eliminating the first-day payment helped fund the increased payment for jurors whose service extended beyond one day.

However, juror mileage reimbursement remained at $0.15 per mile one way for all days of service. In many court systems, this resulted in a great number of checks being cut for very small amounts of money—to reimburse jurors who traveled a few miles and served for only one day. The administrative costs were often much greater than the amount of the reimbursement.

To eliminate this wasteful practice, legislation was passed effective January 1, 2003, that eliminated first-day mileage and increased the reimbursement rate for mileage to $0.34 per mile, matching the then-current rate for state employees. (Stats. 2002, ch. 144.) Reimbursement was still paid for one-way travel only, however, so the result would be essentially revenue neutral; the anticipated savings from eliminating first-day mileage reimbursements were projected to fund the increased reimbursements for second- and subsequent-day service.

The task force commends the Judicial Council and the staff of the Administrative Office of the Courts for achieving the first increases in juror pay and mileage reimbursement since 1957. However, there is more to be accomplished, and the task force reiterates that no commission recommendation is more important than continuing efforts to raise juror pay to a respectable level.

Although higher juror pay results in higher demands on state funds, increases in juror fees and mileage reimbursements do not have to mean directly increased costs to the state. Tax credits for employers who pay employees regular wages and benefits while on jury service (thereby obviating the need to directly reimburse these jurors with state funds—see BRC Recommendation 3.27), partnerships with transit agencies to provide free mass transit (see BRC Recommendation 3.14), and free or low-cost parking (see BRC Recommendation 3.15) all assist in keeping juror

fees and mileage reimbursement costs low. These savings and modest increases in state funding can make higher levels of juror pay and mileage reimbursement available to those who have little to no other sources of income but are willing and able to serve on juries.

FUTURE ACTION

The task force stresses the importance of increasing juror pay to at least the level of that offered by the federal judiciary (currently $40 per day). In addition, the antiquated practice of reimbursing jurors for mileage "in going only" (that is, one way) should be ended in favor of round-trip mileage reimbursement at the state rate.

EMPLOYER COMPENSATION

Summary of recommendation

Blue Ribbon Commission

RECOMMENDATION 3.26

The Legislature should amend Labor Code section 230 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.

The commission believed that the uncertainties about when and for how long an employee would be summoned for jury service (a frequent complaint of employers that was used to argue against compensating employees for jury service) could be addressed by allowing employees to defer jury service to a time certain and by adopting a one-day or one-trial service requirement. (See BRC Recommendations 3.21–3.22.) The commission discussed whether all employers or only those with a threshold minimum number of employees should be obligated to pay employees while on jury service. A majority of the commission members felt that as a matter of principle all employers should contribute to the jury system.

Task force implementation

The Judicial Council rejected Recommendation 3.26 because of the mandated costs that would have to be borne by employers. As an alternative, the council amended Recommendation 3.27, a tax-credit incentive proposal for employers.

Some states require employers to pay their employees for at least part of the duration of their jury service. For example, Colorado and Massachusetts require employers to pay for the first three days of service; in Connecticut, employers must pay for the first five days.

Although the task force believes that there is merit to the idea of employers' bearing some of the costs of the jury system, instituting a requirement that even large employers—let alone small businesses—pay employees while on jury service does not seem politically realistic at this time. The task force urges continued cooperation with the business community to encourage the practice of paying employee jurors through such innovative tools as employer tax credits, greater outreach, and programs recognizing corporate citizenship in this area.

TAX CREDIT

Summary of recommendation

The blue ribbon commission wanted to encourage employers to pay compensation and benefits beyond the mandatory three days called for in Recommendation 3.26. A tax credit was viewed as a creative incentive for this practice.

> ***Blue Ribbon Commission***
>
> **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.

Task force implementation

The Judicial Council approved Recommendation 3.27 but struck the phrase "for more than three days"; the tax credit would apply for *all* days of jury service for which an absent employee is paid his or her usual compensation and benefits. The three-day threshold was eliminated because the council had rejected Recommendation 3.26, which would have required employers to pay usual compensation and benefits to employees for the first three days of jury service. The revised proposal was an incentive plan to encourage employers to pay compensation and benefits voluntarily for an employee's entire period of jury service.

In 1996 Judicial Council–sponsored legislation was introduced to implement several of the commission's legislative recommendations (Sen. Bill 14 [Calderon], 1996), including Recommendation 3.27. However, in the bill's progression through committee, concerns about potential costs to the state, particularly in light of pending state trial court funding legislation (Stats. 1997, ch. 850), led to the tax-credit provisions' being struck. The entire bill eventually died.

In 2001 the task force decided to explore resurrecting the tax-credit legislation, recognizing it as a crucial element in addressing one of the most critical problems facing citizen jurors: the potential hardship of not being paid or being forced to use vacation or leave time to serve. Employer tax credits, especially if they are simple to claim, represent an innovative way to partner with employers to encourage participation in jury service. As the commission observed, jury service is an enriching experience that helps create a more informed, involved workforce.[6] At the same time, the task force has encouraged development of an employer outreach campaign regarding payment for juror employees.

In early 2002, appreciating the need for a sound assessment of potential fiscal impact in order for legislation to be successful, the task force also urged study of the potential costs of the tax credit. Currently, a jury education and outreach campaign targeting employers is under way, as is research on current employer pay practices and juror salaries to determine cost models for proposed legislation.

[6] *Id.* at p. 45.

FUTURE ACTION

The task force approved the following proposed additions to the California Revenue and Taxation Code for presentation to the Judicial Council. They are based on the original legislation proposed in Senate Bill 14 (Calderon, 1996). The task force urges the compilation of cost model research results and continued outreach to employers to support the tax credit.

Personal Income Tax
17053.*XX*

(a) For each taxable year beginning on or after January 1, 2005, there shall be allowed as a credit against the "net tax" (as defined by Section 17039) an amount equal to 50 percent of the amount paid or incurred as compensation by the taxpayer during the taxable year to an employee for the period that the employee serves on a jury trial pursuant to Chapter 1 (commencing with Section 190) of Title 3 of Part 1 of the Code of Civil Procedure.

(b) In the case where the credit allowed by this section exceeds the "net tax," the excess may be carried over to reduce the "net tax" in the following year, and succeeding years if necessary, until the credit has been exhausted.

Corporation Income Tax
236*XX*

(a) For each taxable year beginning on or after January 1, 2005, there shall be allowed as a credit against the "tax," (as defined by Section 23036) an amount equal to 50 percent of the amount paid or incurred as compensation by the taxpayer during the taxable year to an employee for the period that the employee serves on a jury trial jury pursuant to Chapter 1 (commencing with Section 190) of Title 3 of the Part 1 of the Code of Civil Procedure.

(b) In the case where the credit allowed by this section exceeds the "tax," the excess may be carried over to reduce the "tax" in the following year, and succeeding years if necessary, until the credit is exhausted.

UNEMPLOYMENT INSURANCE

Summary of recommendation

Employees pay into the California State Disability Insurance program. The commission believed that by making the inability to work owing to jury service a defined "disability" for which employees could make a claim against the fund, employees would also be contributing to increased juror pay.

Blue Ribbon Commission

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 that entitles the employee to a claim in the amount of $40 per day (increase to $50 per day after the 30th day of service).

Task force implementation

The Judicial Council rejected Recommendation 3.28 because of concerns over increased costs to employees paying into the insurance fund to cover absences from work owing to jury service and the overall appropriateness of deeming jury service a type of disability.

Although the concept is innovative and deserving of further study, the task force believes that an increase in juror fees (see Recommendation 3.25) and a tax credit for employers who pay employees regular compensation and benefits while on jury service (see Recommendation 3.27) are more effective immediate avenues to address financial hardships and increase juror service. Moreover, the demands on the State Disability Insurance fund in recent years and its resulting depletion have shown that the fund is perhaps best suited to the original purposes for which it was created.

JURY SYSTEM MONITORING AND STUDY

Summary of recommendation

Blue ribbon commission members observed that the lack of reliable data about jury system management and practices made developing their recommendations difficult at times. They stressed that systematic collection and analysis of jury management information were essential to long-range policy development and the overall public interest, and that the benefits far outweigh the costs associated with developing and implementing studies and improved data tracking systems.

Blue Ribbon Commission

RECOMMENDATION 3.29

The Trial Court Presiding Judges Advisory Committee and Court Executives Advisory Committee should systematically monitor and study critical components of the jury system for the purpose of permitting more informed policymaking and management.

Task force implementation

The task force recognized that the presiding judges and court executives have a stake in policy decisions related to juries and that these groups should monitor and study jury management practices to assure the integrity of policy decisions. The Judicial Council's Trial Court Presiding Judges Advisory Committee appointed liaisons to the task force to keep itself apprised of progress. But to provide more in-depth information about jury practices statewide, the task force's Special Projects Working Group recommended surveying all the courts' presiding judges and jury managers. The working group oversaw the development of surveys designed to gather information on critical components of jury administration and judicial practices, including the implementation of legislative and rule of court requirements initiated by the commission and the task force.

In late 2000 the task force implemented the Jury Survey 2000 to gather information about fiscal year 1999–2000 operations. Through the process, it learned that some court systems were unable to provide the requested data and there were differing interpretations of survey terms that resulted in data irregularities. Nevertheless, the survey provided a good general base of information from which future questions and studies can be refined to elicit more usable data in particular areas, such as jury management and innovative trial practices. Highlights of the 2000 survey were distributed to the trial courts for use during Juror Appreciation Week in 2001.

To address the data inconsistencies that were shown in the 2000 survey, AOC Office of Court Research staff, in collaboration with Jury System Improvement Project staff, formed a Jury Data Working Group made up of certain members of the task force and other trial court jury managers. The group is working toward standardizing jury data in order to support legislation and allocations of juror funds and to respond to frequently asked questions. In fact, the terminology developed for the model juror summons is one of the sources being used to develop data definitions for future surveys. (See BRC Recommendations 3.6–3.7.)

Toward the end of its tenure, the task force discussed which body should continue the commission's and the task force's jury reform efforts after the term of the task force ends. Owing to the wide range of responsibilities already given to the Court Executives and Trial Court Presiding Judges Advisory Committees, the task force does not recommend forming a jury issues subcommittee from these groups. Several task force members feel that a standing advisory committee on jury issues is warranted. In the end, reaching the audiences that can best inform proposals and make changes happen for the betterment of jurors is of utmost importance. These goals may best be achieved by (1) charging staff of the AOC to work closely with the state's jury managers who compose the Jury Education and Management (JEM) Forum and (2) recruiting trial judges (including presiding judges) committed to jury reform to act as judicial liaisons to JEM. The task force specifically requests that the council consider additional institutional methods to assure that jury reform efforts in California stay at the forefront and the state's judiciary continues to lead the country in this crucial area.

FUTURE ACTION

The task force recommends future collaboration with JEM through judicial liaisons and regular presentations on jury issues and policy recommendations at meetings of the Trial Court Presiding Judges and Court Executives Advisory Committees.

II

JURY SELECTION AND STRUCTURE OF THE TRIAL JURY

EDUCATION ON THE PROCESS OF JURY SELECTION

Summary of recommendation

The blue ribbon commission was concerned that the level of training for trial judges on conducting jury selection (voir dire) was insufficient. As the commission noted: "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."[7]

Blue Ribbon Commission

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.

Task force implementation

The commission first proposed amending the California Standards of Judicial Administration in its 1996 report. At that time, the Administrative Office of the Courts' (AOC) Center for Judicial Education and Research (CJER) offered programs that included voir dire components but no program devoted exclusively to the jury selection process. The Judicial Council referred Recommendation 4.1 to the CJER governing committee in order to benefit from its expertise.

Recommendation 4.1 was combined with Recommendation 3.11 (calling for a rule of court mandating team training on juror treatment). The CJER governing committee put forward the two recommendations as proposed amendments to the Standards of Judicial Administration, and the council put the amendments into effect on January 1, 1998.[8] The sections pertaining to jury education for judicial officers are:

- Section 25.2(a), promoting judicial officer education on juror treatment and the process of jury selection using CJER materials and programs; and

[7] Judicial Council of California, *Final Report of the Blue Ribbon Commission on Jury System Improvement* (May 6, 1996) p. 51.

[8] Subsequently the standards for judicial branch education for both judges and court employees were consolidated, section 8.8 was repealed, and section 25 et seq. were amended and renumbered, effective January 1, 1999.

- Section 25.3(a), promoting the development of CJER curricula on the treatment of jurors and the process of jury selection.

The task force's Education Working Group collaborated with CJER to develop educational materials and guidelines on jury issues, and guidance for trial court judges on the process of jury selection is provided in *Bench Handbook: Jury Management*. The handbook includes:

- Guidelines and procedures for questioning the jury panel during jury selection in criminal and civil cases (see blue ribbon commission [BRC] Recommendations 4.2–4.3);
- Sample prospective juror questionnaires (see BRC Recommendation 4.4);
- A voir dire checklist that includes sample scripts and guidelines for treatment of jurors, including recommendations about juror identification and privacy (see BRC Recommendations 3.18–3.20); and
- Recommendations on trial management—such as time limits on jury selection, preset by judge and counsel (see BRC Recommendation 5.11).

The process of jury selection was further illustrated in the May 2001 satellite broadcast demonstrating in-court jury innovations—*Juries: Strategies for Better Trials.*

The task force strongly feels that education concentrating on the process of jury selection is critical for judges conducting jury trials. Jury selection is an important process that can be slow, frustrating, and mystifying to prospective jurors. Education focused on jury selection can provide judges with the knowledge, techniques, and control needed to make the process fair to the parties and efficient for people giving up their time for jury service.

FUTURE ACTION

The task force urges that stand-alone jury-related education programs be developed and included in both New Judge Orientation and the continuing judicial education programs offered by CJER. Such programs should include a segment on rulings on challenges for cause during jury selection. (See BRC Recommendations 4.6–4.8, related to peremptory challenges.)

COUNSEL PARTICIPATION IN JURY SELECTION

Summary of recommendations

At the time the commission's report was issued, trial judges were charged with conducting jury selection (voir dire) in criminal cases. Code of Civil Procedure section 223 permitted counsel to supplement the court's voir dire "upon a showing of good cause." The commission felt that section 8.7 of the California Standards of Judicial Administration did not provide enough guidance to trial court judges about what constituted good cause for allowing counsel to participate. However, the commission thought that the rules of court giving trial courts discretion, on a case-by-case

basis, over the *methods* of supplemental voir dire were appropriate and should not be changed.

Task force implementation

An amendment to section 8.7 of the California Standards of Judicial Administration listing factors that a court should consider when deciding if there is good cause to allow counsel to supplement the court's questioning of prospective jurors in criminal cases was first proposed in 1996 as part of the commission report and was circulated for comment. Although there were no objections to the proposal from commentators, the Judicial Council, following its Rules and Projects Committee's recommendation, did not approve the draft standard and instead referred the proposals it contained to the CJER and AOC staffs to develop educational programs and possible policy statements.

In 1999 legislation was introduced that reinstated the participation of counsel in jury selection for criminal cases in California courts. (Assem. Bill 2406; Stats. 2000, ch. 192.) Assembly Bill 2406 requires the court to conduct an initial examination and thereafter give counsel for each party the right to question any or all of the prospective jurors. The examination is to be conducted only to assist in the exercise of challenges for cause. The amount of time and the format for direct questioning by the parties is within the discretion of the court. *(Ibid.)* The legislation rendered Recommendation 4.2 obsolete and necessitated the repeal of section 8.7 effective January 1, 2001.

Blue Ribbon Commission

RECOMMENDATION 4.2

The Judicial Council should amend section 8.7 of the California Standards of Judicial Administration to include a list of factors judges should consider when making the "good cause" determination under Code of Civil Procedure section 223.

RECOMMENDATION 4.3

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

An extensive section about the process of jury selection, including the examination of prospective jurors by counsel, is included in *Bench Handbook: Jury Management.* (See BRC Recommendation 4.1.) Jury selection procedures were further illustrated in the May 2001 satellite broadcast demonstrating in-court jury innovations—*Juries: Strategies for Better Trials.*

With the inclusion of counsel in the process of jury selection, the task force reiterates the importance of using a juror's time efficiently. To that end, counsel and judges are urged to set reasonable time limits on the duration of jury selection (see BRC Recommendation 5.11) and to use questionnaires to assist in the jury selection process (see BRC Recommendation 4.4). If additional guidelines are needed to establish time limits on counsel's examination of prospective jurors—limits that are allowed under the legislation—the Judicial Council's Criminal Law Advisory Committee should oversee this process.

JUROR QUESTIONNAIRE

Summary of recommendation

The commission observed that the use of questionnaires for jury selection was an efficient way to gather basic juror information and was less stressful for prospective jurors than asking them questions in open court. The commission emphasized that any questionnaire developed by the task force to accomplish this goal should protect the privacy interests of prospective jurors.

Blue Ribbon Commission

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.

Task force implementation

Although a model jury selection (voir dire) questionnaire for use in criminal cases was included in the commission's report, a draft standard of judicial administration encouraging the use of a statewide questionnaire was not. Instead, the commission delegated to the task force the development and implementation of a statewide questionnaire for use in criminal cases. Rule 228 of the California Rules of Court already recommended the use of a questionnaire for jury selection in civil cases. Judicial Council form MC-001, *Juror Questionnaire for Civil Cases,* had been developed for this purpose.

The task force's Education Working Group collaborated with CJER to develop guidelines on the use of questionnaires to assist in jury selection. Recommendations on how to employ questionnaires are included in *Bench Handbook: Jury Management.* A sample prospective juror questionnaire was also included as part of the jury selection process presented in the May 2001 educational satellite broadcast—*Juries: Strategies for Better Trials.*

In January 2002 the task force decided to propose a rule of court on the use of questionnaires for prospective jurors in criminal cases. Subsequently the task force developed and approved draft amendments to rules 4.200 and 4.201 of the California Rules of Court to implement a juror questionnaire in criminal cases, and directed staff to develop and submit for review, circulation, and approval a criminal case questionnaire based on form MC-001.

FUTURE ACTION

The task force approved the following draft amendments to rules 4.200 and 4.201 of the California Rules of Court (based on language from rule 228) for presentation to the Judicial Council, implementing the use of a separately developed ***Juror Questionnaire for Criminal Cases*** form.

Rule 4.200. Pre–voir dire conference in criminal cases

(a) [The conference] Before jury selection begins in criminal cases, the court shall conduct a conference with counsel to determine:

(1) a brief outline of the nature of the case, including a summary of the criminal charges;

(2) the names of persons counsel intend to call as witnesses at trial;

(3) the People's theory of culpability and the defendant's theories;

(4) the procedures for deciding requests for excuse for hardship and challenges for cause; and

(5) the areas of inquiry and specific questions to be asked by the court and, as permitted by the court, by counsel and any time limits on counsel's examination.

The judge shall, if requested, excuse the defendant from then disclosing any defense theory.

(b) [Written questions] The court may require that all questions to be asked of prospective jurors, either orally or by written questionnaire, shall be submitted to the court and opposing counsel in writing before the conference. The *Juror Questionnaire for Criminal Cases* (Judicial Council form MC-*XXX*) may be used.

Advisory Committee Comment:
Use in conjunction with Standard 8.5.

Rule 4.201. Supplemental voir dire in criminal cases

In criminal jury trials, to select a fair and impartial jury, the trial judge shall conduct an initial examination of the prospective jurors orally, or by written questionnaire, or by both methods. *The Juror Questionnaire for Criminal Cases* (Judicial Council form MC-*XXX*) may be used. ~~a~~ After completion of the initial examination, the court shall permit counsel to conduct supplemental questioning as provided in Code of Civil Procedure section 223.

NONSPECIFIC NUMBER OF PEREMPTORY CHALLENGES

Summary of recommendation

Although the blue ribbon commission determined that peremptory challenges are necessary tools to remedy strongly suspected but unproven jury biases, the commission had great difficulty reaching consensus on the proper number of peremptory challenges in different case types. Recommendation 4.5 represents the following principles related to peremptory challenges where the commission reached consensus:

- Whatever the number of peremptories ultimately granted to the parties, they should be reasonable and equal for each side; and
- Statutory discretion should be provided for judges to increase peremptories in the interest of justice.

Blue Ribbon Commission

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.

Task force implementation

The Judicial Council rejected Recommendation 4.5 in favor of recommendations designating specific changes in the numbers of peremptory challenges available to the parties in California courts. (See BRC Recommendations 4.6–4.8.)

PEREMPTORY CHALLENGES

Summary of recommendations

The commission could not reach unanimity on what the reduced numbers of peremptory challenges should be. The American Bar Association Standards for Juror Use and Management and the mean and median of current practices nationwide were examined. Eventually the blue ribbon commission's recommended reduced numbers of peremptories were slightly higher than the mean and median of other states. The attorney members of the commission joined the minority report prepared by the Consumer Attorneys of California, calling for no reduction in the numbers of peremptory challenges. The attorneys maintained that peremptory challenges are an important tool for attorneys: they help create fair and impartial juries, and they help produce equilibrium by eliminating extreme jurors and creating a centrist balance, thereby reducing the number of hung juries.

Blue Ribbon Commission

RECOMMENDATION 4.6

The Legislature should amend Code of Civil Procedure section 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 multidefendant cases.

RECOMMENDATION 4.8

The Legislature should amend Code of Civil Procedure section 231(c) to provide each party in a two-party civil action with 3 peremptory challenges, and each side in all other civil actions with 6 peremptory challenges.

Task force implementation

When the commission report was presented to the Judicial Council in July 1996, the council votes approving the peremptory challenge proposals were very narrow—Recommendation 4.6 was approved by a 9-to-7 vote and Recommendation 4.7 by a 9-to-5 vote. The council changed the wording of Recommendation 4.8 to propose different numbers of peremptory challenges in superior court and municipal court (that is, unlimited- and limited-jurisdiction) civil cases. The changes were as follows:

> The Judicial Council recommends maintaining the current number of peremptory challenges in superior court civil actions and reducing the number of peremptory challenges in municipal court trials to three challenges per side in two-party civil actions and four challenges per side in multi-party litigation.

In November 1996, following the recommendation of its Policy Coordination and Liaison Committee, the Judicial Council decided not to sponsor legislation seeking reductions in allowed peremptory challenges, owing to the controversy and political capital needed to surmount the opposition. The recommendations were passed to the task force for further study and development.

Feeling that the issue of peremptory challenges was still critical to jury reform from both policy and operational perspectives, the task force devoted one day of a two-day meeting in May 2002 entirely to the subject of peremptory challenges. Task force members began their discussion with a presentation by Professor J. Clark Kelso on the historical background of the blue ribbon commission's recommendations, then continued with a dialogue among task force members, centered on what

has changed since the commission issued its recommendations in 1996 and what new arguments might be available if reducing the number of peremptories continued to be a recommended course of action.

Article reviews

At the January 2002 task force meeting, the chair requested that task force members volunteer to come to the next meeting prepared to summarize a law review or journal article on peremptory challenges to stimulate group discussion. At the May meeting the chair developed a list of pros and cons of peremptory challenges, gleaned from the discussions of the differing points of view and philosophies contained in the readings. The arguments developed were:

Peremptory Challenges

Arguments in Favor	*Arguments Against*
• Allow parties to retain jurors they want—get rid of jurors who give counsel "hard looks."	• Undermine citizen confidence in jury system to be fair and impartial.
• Trials are for justice to parties, not to protect jurors.	• Disrespectful to jurors.
• Necessary backup to challenges for cause.	• Have caused judicial atrophy of the challenge for cause.
• Time-tested.	• Wasteful.
• Recognize that group affinities exist.	• Equal protection rights of jurors should be enforced.
• Protect against undisclosed bias.	• Perpetuate bias and stereotyping.
• *Batson/Wheeler* challenges act as buffers against removal of jurors on account of race or gender for mere belief that such jurors cannot be fair.	• Difficult to prevail on *Batson/Wheeler* challenges and to surmount "neutral" rationalizations.
• Allow attorneys to take advantage of their experience.	• Apparent caprice in application.
• Compensate for inadequate voir dire.	• Better to improve education in voir dire practices and challenges for cause.

The task force members discussed future courses of action in light of their examination of the history, current debate, and research about peremptory challenges. The members were reminded that they had previously agreed not to look behind the policy recommendations of the blue ribbon commission, so they did not go beyond what was originally proposed by that group. However, a course of action to follow after the sunset of the task force was developed.

The task force discussed the need for more information on the use of peremptory challenges—the type of information being developed in an AOC-sponsored National Center for State Courts study on voir dire practices. Task force members differed over whether additional information on current practices would help guide further action—given that little had been added to the body of knowledge represented in the articles since 1996. Some members felt further study would be helpful for obtaining objective, current information that could be used to counter the passions the issue of peremptories sometimes elicits. Others pointed out that a study might not help persuade members of the legal community but would help with political decision makers. The task force decided to endorse the study design presented.

The task force members also reflected on other changes in the courts that had taken place since the original recommendations that might alter the political debate. They include:

- The fact that three-strikes cases may have increased the frequency of cases in which higher numbers of peremptories are used;
- The reintroduction of counsel participation in voir dire in criminal cases (see BRC Recommendation 4.2);
- The introduction of one-day or one-trial terms of jury service (see BRC Recommendations 3.21–3.22); and
- The increased emphasis in the courts on public trust and confidence and the necessity for responsible oversight of the public fisc because of the state's assumption of trial court funding from the counties.

Attorney members of the task force pointed out that peremptory challenges represent a source of public trust and confidence for certain communities that could view any reduction in the number of challenges as a reduction in legal rights. It was pointed out that a cultural and community view exists that peremptory challenges are a mechanism to ensure fairness and balance for both sides in a legal proceeding, and that the bar's widespread devotion to peremptory challenges stems from the feeling of attorneys that they are serving their constituencies and clients by exercising these challenges.

These task force members also emphasized the need for increased commitment by trial judges to training and education on reviewing challenges for cause. It was proposed that any recommendation for reducing peremptory challenges be linked to improvements in the procedures used for determining challenges for cause and in the process of jury selection.

Task force proposal

The Task Force on Jury System Improvements proposed developing and introducing legislation to implement the blue ribbon commission's recommendations to reduce peremptory challenges, owing to the following factors that had developed since the commission made its recommendations in 1996:

- The introduction of one-day or one-trial terms of jury service according to rule 861 of the California Rules of Court;
- The additional costs to the court system and the increased numbers of the public who are summoned under one-day or one-trial terms of jury service;
- The need to further enhance public trust and confidence in the state's court system;
- The implementation of three-strikes legislation; and
- The reintroduction of attorney-led voir dire in criminal cases.

The Task Force on Jury System Improvements further recommended that "any reduction in peremptories be accompanied by improved education and training for judges on determining challenges for cause and the process of voir dire."

The task force approved the proposal by a vote of 7 to 3, with one abstention.

FUTURE ACTION

The task force approved the following draft amendment to the California Code of Civil Procedure for presentation to the Judicial Council. It is based on the original recommendations of the blue ribbon commission.

231. Peremptory challenges; number; joint defendants; passing challenges

(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 felony offense, the defendant is entitled to ~~10~~ 6 and the ~~state~~ people 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~~ 3 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~~ as a misdemeanor, the defendant is entitled to ~~six~~ 3 and the ~~state~~ people to ~~six~~ 3 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~~ 2 additional challenges which may be exercised separately, and the ~~state~~ people 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~~ 3 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~~ 6 peremptory challenges. If there are

several parties on a side, the court shall divide the challenges among them as nearly equally as possible. If there are more than two sides, 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)–(e) * * *

JURY SIZE

Summary of recommendations

The commission members had difficulty achieving consensus on the issue of jury size. They commented that researchers differed about whether time and cost savings would result from summoning fewer jurors for smaller juries in certain case types. Similarly, studies of whether smaller juries produce different outcomes than traditional 12-person juries have had mixed results. The commission did note a California study, released in 1990, of a pilot program involving 8-person juries in municipal court civil cases. The study showed that, while cost savings might be achieved, jury diversity decreased, and when the verdict was for the plaintiff, somewhat higher awards were given.[9] The commission was able to reach consensus on Recommendation 4.9, concluding that the existing empirical evidence and practices nationwide warranted retaining the traditional 12-person jury for capital cases and felonies. Majority votes of the commission determined the jury size proposals in Recommendations 4.10–4.13.

Blue Ribbon Commission

RECOMMENDATION 4.9

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

RECOMMENDATION 4.10

The Legislature should propose an amendment to the California Constitution, Article I, section 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

The Legislature should eliminate juries from those misdemeanors that do not carry any possible jail time.

Task force implementation

Based on a review of comments received when the commission report was circulated for comment, the Judicial Council rejected BRC Recommendations 4.10 and 4.11. Recommendation 4.10 was rejected in part because of concerns about lessening diversity with smaller juries in misdemeanor cases. Recommendation 4.11 was rejected because, at the time the council reviewed the proposal, there was only one code section that set out misdemeanors that did not carry incarceration as a possible punishment—Health and Safety Code section 11357(b)—and the council did not feel the political effort required to amend the California Constitution was warranted for such a narrow class of cases.

[9] Administrative Office of the Courts, *A Comparison of the Performance of Eight- and Twelve-Person Juries* (April 1990).

Because the blue ribbon commission rejected a proposal to reduce juries from 12 members to 8 members for superior court civil cases, BRC Recommendation 4.12 was a restatement of existing law. (See Code Civ. Proc., § 220.) The distinction was drawn because Recommendation 4.13 urged the Legislature to amend Code of Civil Procedure section 220 to reduce the number of jurors to 8 for civil cases in "the jurisdiction of the municipal court." The Constitution of California permits a reduction of this type subject to legislation to enact the change. (Cal. Const., art. I, § 16.)

Blue Ribbon Commission

RECOMMENDATION 4.12

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

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.

In 1996 Judicial Council–sponsored legislation was introduced to implement several of the commission's legislative recommendations (Sen. Bill 14 [Calderon], 1996), including Recommendation 4.13. Opponents cited the possibility of less diverse juries and vague estimates of cost savings resulting from a reduction in jury size in municipal court civil cases, and the portions of the bill about reducing jury size were amended out. (Sen. Com. on Judiciary, Analysis of Sen. Bill 14 [Calderon] as amended April 2, 1997.) Eventually the entire bill died.

The task force's Special Projects Working Group felt that completing research on peremptory challenges before drafting any proposals on jury size would be important. Information about jury composition, panel sizes, and use of peremptories could be relevant to discussions about reducing jury size; therefore, the working group recommended revisiting the issue after studies on the jury selection process are complete. Research on the voir dire process, and peremptory challenges in particular, is currently under way. (See BRC Recommendations 4.5–4.8.)

No other state but California has a 12-person jury for every trial. However, the task force feels that reducing jury sizes is not as critical to jury reform as other efforts, given the amount of controversy the issue raises, the political capital that must be expended to achieve the goal, and new indications in the literature that reductions in size may affect results.

Other practices have a much greater impact than smaller jury sizes on reducing the number of jurors called and the amount of time jurors spend in court. Examples of such reforms are discussed in more detail in this report. They include:

- Less burdensome summoning practices, exemplified by one-day or one-trial jury service, standard jury panel sizes, and the model juror summons (see part I of this report);
- Better jury management and improved juror treatment, resulting from judicial education about the process of jury selection (voir dire) and a possible reduction in peremptory challenges (addressed in this part); and
- More focused trial management (including setting time limits) and jury trial innovations that aid in juror comprehension and decision making (see part III).

HUNG JURY STUDY

Summary of recommendation

The blue ribbon commission observed that the debate about unanimous verdicts (see BRC Recommendations 4.15, 4.16, and 4.18) frequently involved perceptions about hung juries. Both sides in the discussion relied on anecdotal evidence and general information about the frequency of hung juries, and stories about irrational jurors and decisions that turned on the whims of a single holdout. The commission believed policymakers would be assisted by additional study and data about hung juries, their effects on the efficiency of the jury system, and their effects on perceptions of fair and rational jury trial outcomes.

Blue Ribbon Commission

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.

Task force implementation

Because the outcomes of a study of hung juries would be relevant to the legislative proposal on nonunanimous verdicts contained in Recommendation 4.18, the task force assigned Recommendation 4.14 to its Legislation Working Group. Concurrently, in 1999, with a grant from the National Institute of Justice, the National Center for State Courts began a nationwide study of hung juries, with the Superior Court of Los Angeles County acting as the pilot for the study's methodology. The working group and task force were advised on the development of the study by task force member Judge Jacqueline A. Connor of the Superior Court of Los Angeles County.

After a pretest in the Los Angeles court in 1999, the test instrument was refined. Throughout 2000 and 2001, data were gathered from Los Angeles and courts in Arizona, New York, and Washington, D.C. The results were analyzed, and the final report was issued in September 2002. (National Center for State Courts, *Are Hung Juries a Problem?* (September 2002).)

In general, the report concludes that hung juries are not a pervasive problem. Moreover, juries fail to agree for a variety of reasons, most commonly because some jurors feel the evidence is lacking. Other factors that seem to influence juries to hang are situations where some jurors feel the defendants are "overcharged" by prosecutors, confusion about how to proceed in deliberations, and concerns about fairness, although situations of clear jury nullification were almost impossible to uncover. The complete report is available online at www.ncsconline.org/WC/Publications/Res_Juries_HungJuriesPub.pdf. (See also BRC Recommendation 4.18.)

After additional discussions, the task force concurred that at this time hung juries are not enough of a problem in California to warrant any substantial effort at study or reform.

UNANIMOUS VERDICTS

Summary of recommendations

As in its discussions of peremptory challenges and jury sizes, the blue ribbon commission could not reach consensus on whether unanimous verdicts should continue to be required in all cases or if nonunanimous verdicts should be permitted in certain case types. The commission believed that the severity of the penalties in death and life imprisonment cases required a unanimous verdict. Also, because of the lower number of jurors that would be deliberating, the commission decided to recommend unanimous verdicts if the jury size in misdemeanor cases was reduced from 12 to 8 persons.

Blue Ribbon Commission

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

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.

Task force implementation

The unanimity requirement for death penalty and life imprisonment cases set forth in Recommendation 4.15 was a restatement of existing law. The unanimous verdict called for in Recommendation 4.16 was dependent on the reduction in jury size called for in Recommendation 4.10, which was rejected by the Judicial Council. However, the commission made a separate recommendation favoring *non*unanimous jury verdicts for all cases except those where the punishment might be death or life imprisonment. (See BRC Recommendation 4.18.)

REOPENING ARGUMENT TO ASSIST JURORS AT IMPASSE

Summary of recommendation

The commission noted that eliminating the unanimity requirement was primarily intended to solve the perceived problem of 11-to-1 and 10-to-2 vote splits involving jurors who refused to deliberate. The commission felt a more direct instruction could be drafted to inform each juror of his or her duty to deliberate and that jurors could report a nondeliberating or biased juror to the judge.[10] The commission acknowledged the difficulty of drafting such an instruction in a way that avoids coercing jurors who hold minority points of view into agreeing with the majority.

Blue Ribbon Commission

RECOMMENDATION 4.17

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.

Task force implementation

When implementing Recommendation 4.17, the task force recognized that hung juries do not always result from recalcitrant jurors' refusing to deliberate but also result from disagreements between sin-

[10] A subsequent 2002 California Supreme Court decision imposed limits on when jurors may properly report fellow jurors for misconduct. See *People v. Engleman* (2002) 28 Cal.4th 436.

cere jurors and from jurors' confusion. The commission's recommendation was assigned in 1999 to the task force's Education Working Group, which expanded the proposal to address the need of some jurors for clarification while deliberating, by including an option to reopen argument. Reopening argument when the jury is at an impasse in its deliberations is a successful jury practice that in Arizona is mandated by court rule. (17 A.R.S. Rules Crim. Proc., rule 22.4.) The purpose of reopening argument is to clarify issues that the jury has identified, especially factual points they may be struggling with, and to offer both sides an opportunity to make additional argument. By doing so, a jury may be better able to reach a verdict and avoid a mistrial.

Guidance for trial court judges facing jurors who are unable to agree on a verdict is provided in *Bench Handbook: Jury Management.* The handbook includes procedures and sample scripts for addressing jurors when they are unable to agree. It also advises judges never to use a "dynamite" instruction intended to break a deadlock in a criminal case.[11] Reopening argument is not intended to be coercive but is an offer of assistance to the members of the jury, which they may choose or not choose to employ. The technique of reopening argument and a sample judge's script were included as part of the May 2001 educational satellite broadcast demonstrating in-court jury innovations—*Juries: Strategies for Better Trials.*

Reopening argument and other techniques to assist jurors at an impasse have proven to be effective tools that demonstrate understanding of the jurors' often difficult tasks. Rather than merely rehearing testimony during a read-back or rereading instructions, jurors can have specific questions answered, potentially saving time in deliberations and avoiding costly mistrials. The opportunity for an additional chance to persuade after learning about the jury's specific concerns also is beneficial to trial attorneys. Accordingly, in 2002 the task force decided to propose a rule of court to require the practice in California courts.

FUTURE ACTION

The task force approved the following draft rule of court for presentation to the Judicial Council. It is based in part on rule 22.4 of the Arizona Rules of Criminal Procedure, *supra.*

Rule *XXX.X.* Assisting jurors at impasse

After a jury reports that it has reached an impasse in its deliberations, the trial judge must, in the presence of counsel, reemphasize to the jury the importance of arriving at a verdict and ask whether the court and counsel can assist jurors with their deliberations. This assistance can include: giving additional instructions; clarifying previous instructions; directing attorneys to make additional closing argument; reopening the evidence for limited purposes; a combination of these measures; or taking no action.

[11] *Bench Handbook: Jury Management* (CJER 2002 rev.) § 3.26.

NONUNANIMOUS VERDICTS

Summary of recommendation

Recommendation 4.18 is a "modified unanimity" proposal. It was based on concepts that originated in English law, allowing 10-to-2 majority verdicts in criminal trials as long as the jury had already deliberated for at least two hours. The commission formulated its recommendation after a series of majority votes. These votes determined that:

- The procedure was limited to 11-to-1 verdicts;
- The amount of time should be reasonable and not less than six hours (to avoid jurors' merely taking a vote and "waiting out" a holdout juror); and
- The judge should have discretion to require a unanimous verdict for good cause.

Blue Ribbon Commission

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 to 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.

Task force implementation

During the May 1996 presentation of the commission's report to the Judicial Council, a minority report of the commission stating opposition to nonunanimous verdicts was also presented. The council subsequently passed a motion to forward Recommendation 4.18 to the Legislature, stating no position of the council but expressing a willingness to undertake any study the Legislature might need in order to act on the policy proposal.

The Legislature did not pursue a study or a constitutional amendment to effect nonunanimous jury verdicts. However, the hung jury study of the National Center for State Courts (NCSC) has data from the Superior Court of Los Angeles County (the state's largest court jurisdiction) showing that, while mistrials resulting from 11-to-1 and 10-to-2 vote splits account for 42 percent of all mistrials on average, as a proportion of overall cases tried such vote splits are rare, accounting for only 8.2 percent of all jury trials. (National Center for State Courts, *Are Hung Juries a Problem?* (September 2002).) The complete report is available online at www.ncsconline.org/WC/Publications/Res_Juries_HungJuriesPub.pdf. (See also BRC Recommendation 4.14.)

Given the results of the NCSC study and other jury reform practices that have higher priority, there was no significant support on the task force for changing the current unanimity requirement.

III

TRIAL PROCEDURES

JUROR ORIENTATION VIDEOTAPE

Summary of recommendation

The blue ribbon commission noted that jury commissioners are charged by statute to "provide orientation for new jurors, which shall include necessary basic information concerning jury service." (Code Civ. Proc., § 214.) After viewing sample orientation videotapes, the commission concluded that a standard videotape prepared for statewide use would be an effective informational and educational tool, especially in courts without their own video orientations.

Blue Ribbon Commission

RECOMMENDATION 5.1

The implementation task force should produce a professional-quality statewide juror orientation videotape that can be used by jury commissioners, with or without modification, to satisfy the statutory obligation to provide juror orientation.

Task force implementation

In December 1999 the task force approved the juror orientation video concept and assigned the project to an Ad Hoc Video Working Group to develop the video through all its phases: script development, preproduction, production, postproduction, and evaluation. Judges, executive officers, defense attorneys, district attorneys, plaintiff attorneys, and consultants were involved in this process. The final product, *Ideals Made Real,* is the first statewide juror orientation videotape produced by the California courts.

The production of the video occurred over a three-year period. It included several opportunities for review, input from interested parties, and revisions. The groups that had an opportunity to review the tape included the Task Force on Jury System Improvements, the Jury Education and Management Forum (a statewide group of trial court jury managers), and the Judicial Council's Trial Court Presiding Judges and Court Executive Officers Advisory Committees.

Three entities within the Administrative Office of the Courts (AOC)—the Office of Communications, the Center for Judicial Education and Research (CJER), and the Office of the General Counsel—provided technical oversight. G. Thomas Munsterman, Director of the Center for Jury Studies at the National Center for State Courts, and video production consultants also provided considerable input and direction during the development of the video. Moreover, the video was piloted

in three courts, receiving an overwhelmingly favorable response, prior to its presentation to the council for approval in April 2002.

The main objectives of the juror orientation video are to (1) inform prospective jurors about the trial process and their roles in it and, (2) by acknowledging the importance of jurors in the administration of justice in our state, discourage people from avoiding jury duty. Since its approval by the council in 2002, the juror orientation video has been seen by hundreds of thousands of prospective jurors each year.

Using a mock trial setting, the video presents information about the phases of a jury trial:

- Jury selection,
- The trial, and
- Jury deliberations.

A brief overview of the importance of the jury system in American history is also presented. Interspersed throughout are testimonials from former jurors about their experiences.

In May 2002 the AOC distributed the juror orientation video—accompanied by written materials, including a press kit and a sample speech—to each trial court. The rollout coincided with Juror Appreciation Week, which, by legislative resolution, is held annually in the second full week in May (Assem. Conc. Res. 118; Stats. 1998, ch. 47).

Additional uses for *Ideals Made Real* have arisen since its premiere in jury assembly rooms:

- Several court systems have made arrangements with local public-access cable channels to broadcast the video to the general public at regular intervals.
- Judges have used the video and accompanying speakers' bureau materials in presentations before bench, bar, and civic organizations.
- Schools have begun using the video as part of their civics and government curricula.

Implementation costs

The video production costs totaled $85,000, including:

- Approximately $69,000 for taping, editing, postproduction graphics, and closed captioning;
- $6,000 for reproduction, videotapes, and packaging; and
- $10,000 for production and printing of accompanying materials.

JUROR NOTE-TAKING

Summary of recommendation

The commission noted in its report that the American Bar Association (ABA) Standards Related to Juror Use and Management encourage note-taking by jurors. (See standard 16(c).) The commission concluded that the trial judge is in the best position to determine, case by case, whether the privacy interests and possible benefits to jurors of retaining notes they have taken during a trial are outweighed by the risk of a verdict challenge or a reversal.

Blue Ribbon Commission

RECOMMENDATION 5.2

The Judicial Council should adopt a rule of court that requires the trial court to inform jurors of their right to take written notes and that gives the trial judge discretion to determine the post-verdict disposition of juror notes.

Task force implementation

A rule of court to establish the practice of juror note-taking was first drafted and proposed in 1996 as part of the blue ribbon commission's report. The commission noted that juror note-taking was one of the more common in-court juror benefits practiced in California courts. The Judicial Council referred the draft rule to its Rules and Projects Committee. The committee, in turn, decided not to circulate the rule for comment but called for further study of juror note-taking in courts statewide and for the development of educational materials in lieu of making the practice mandatory.

In late 2000 the task force surveyed the state's trial court presiding judges regarding the practice of juror note-taking. The results were as follows:

- Nearly all of the presiding judges who responded indicated that all of the judges in their courts allowed jurors to take written notes during trials.
- The courts affirming the use of this practice included the state's three largest—those in Los Angeles, San Diego, and Orange Counties.
- Only four courts indicated that, at most, one-half or fewer of their judges allowed this practice for jurors.

In addition, the task force's Education Working Group collaborated with CJER to develop educational materials and guidelines on issues involving better juror comprehension and an improved overall juror experience. Guidance for trial court judges on juror note-taking is provided in *Bench Handbook: Jury Management,* which includes a sample instruction and remarks on disposition of jurors' notes. The practice of note-taking was further illustrated in the May 2001 satellite broadcast demonstrating in-court jury innovations—*Juries: Strategies for Better Trials.*

Because the practice of juror note-taking is in such wide use in California courts and educational materials are available to support judicial implementation, the task force decided to put forward a draft rule of court to mandate the procedure. Note-taking enhances juror comprehension and promotes greater attentiveness during trials. Concerns about jurors' giving too much weight to notes and not enough to watching what actually occurs in the courtroom have not been borne out by experience. Note-taking is a simple and effective aid for jurors, just as it is for judges.

FUTURE ACTION

The task force approved the following draft rule of court for presentation to the Judicial Council. It is based on the rule proposed by the blue ribbon commission. Because *Bench Handbook: Jury Management* provides assistance to bench officers on post-trial disposition of notes, the task force deleted from the proposed rule the text regarding judicial discretion in the disposition of notes. An additional line requiring the court to provide "suitable" note-taking materials (meaning paper and writing implements only) was added.

Rule 862. Juror notetaking

Jurors will be permitted to take written notes in all civil and criminal cases. The trial judge must inform jurors of the right to take written notes at the beginning of the trial. The court must provide materials suitable for this purpose.

SUBMISSION OF QUESTIONS BY JURORS

Summary of recommendation

The Blue Ribbon Commission concluded that the overall process of juror decision making would be improved if judges were encouraged to permit jurors to submit questions. The commission referred to the ABA Standards Related to Juror Use and Management when making their recommendation about juror questions. As explained in the standards, although jurors should not be encouraged to ask direct questions, there should be a well-defined procedure permitting questions to be posed. (See standard 16(c)(i).)

Blue Ribbon Commission

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 that, 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 pretrial admonition explaining the procedure to jurors.

Task force implementation

A standard of judicial administration encouraging trial judges to permit juror questioning was first proposed in 1996 as part of the blue ribbon commission's report. The draft standard that was circulated for comment also encouraged preinstruction on substantive law (see BRC Recommendation 5.6) and the creation of glossaries in complex cases (see BRC Recommendation 5.7). Commentators voiced concerns that allowing jurors to ask questions would result in their becoming advocates rather than judges of the facts. The Judicial Council, following the Rules and Projects Committee's recommendation, did not approve the standard and referred the proposals it contained to the CJER and AOC staffs to develop educational programs and possible policy statements.

In 1999 task force member Judge Jacqueline A. Connor of the Superior Court of Los Angeles County led a pilot study that tested and tracked selected jury innovations. Ten judges of the Superior Court of Los Angeles County, five from civil courts and five from criminal courts, participated in the pilot project. The procedure for juror

questions was one of the innovations tracked. More than 200 juror questionnaires were received, and the experiences of both judges and counsel were documented.

- Ninety-two percent of responding jurors reacted *very* positively to the practice of allowing jurors to ask questions.
- It was the experience of all of the courts that questions, if asked at all, did not impose any time problems or interruptions affecting the presentation of the evidence. It was the experience of most of the courts and counsel that jurors asked questions rarely (in approximately 25 percent of the trials)—despite the permission—and that, at most, only a few questions were submitted.
- The scenario of jurors turning into advocates did not materialize. In fact, the permission resulted in unexpectedly few jurors' taking advantage of the opportunity. The overwhelming majority, including those who did not ask questions, believed that their role in the system was improved by being permitted to ask questions and that the permission kept them more "involved" in the trial as it unfolded.
- When questions were asked, there was a benefit to counsel in that (1) an issue that, unbeknownst to counsel, was confusing or unclear to jurors was resolved and (2) counsel gained insight into jurors' concerns and what appeared significant to them.

In addition, the 2000 task force survey of the state's trial court presiding judges asked about the practice of allowing juror questions. The survey showed that:

- The practice of allowing jurors to submit written questions during trial varied widely statewide.
- Whereas the practice of allowing jurors to submit written questions during trial was employed to some degree in most court systems, it was a uniform judicial practice in only a small number of courts.

Guidance for trial court judges on juror questions also is provided in *Bench Handbook: Jury Management*. The handbook includes a sample instruction and a procedure for reviewing and submitting questions from jurors. The practice was further illustrated in the May 2001 educational satellite broadcast—*Juries: Strategies for Better Trials*.

The practice of allowing jurors to submit questions has been used on a mandatory basis in Arizona for years, and the bench and bar report it works well. Equally positive results are seen in a growing number of California courts where the practice has been implemented. The task force decided to propose a rule of court to mandate the procedure statewide because the concerns about permitting jurors to ask questions are far outweighed by the benefits, including the following:

- Jurors' doubts and uncertainties about the meaning of evidence are reduced.
- Jurors are more confident in their verdicts, satisfied that they have all the necessary information.
- Attorneys are made aware of issues that require further clarification for jurors or evidence that may be lacking.
- Jurors are more involved in the trial process.

Allowing jurors to ask questions (under the limited conditions set forth below) also bolsters the credibility of the decisions jurors reach and enhances legitimacy. The practice has been validated by the California Supreme Court in *People v. Cummings* (1993) 4 Cal.4th 1233, 1305–1306 and *People v. Ochoa* (1998) 19 Cal.4th 353, 418. The guidelines developed since the submission of the commission report in 1996 make implementation straightforward.

FUTURE ACTION

The task force approved the following draft rule of court for presentation to the Judicial Council. It is based on the original standard of judicial administration proposed by the blue ribbon commission. Because *Bench Handbook: Jury Management* contains a model admonition and procedures for submission of questions by jurors, the task force streamlined the proposed rule.

Rule 863. Juror questions

The trial judge must inform jurors that they may submit to the court written questions directed to witnesses or to the court. Opportunity must be given to counsel to object to such questions out of the presence of the jury. Notwithstanding the foregoing, for good cause the court may prohibit or limit the submission of questions.

PREDELIBERATION DISCUSSIONS

Summary of recommendation

The commission felt that distinctions between discussions and deliberations were hard to discern and that predeliberation discussions might lead jurors to decide before all the evidence had been presented. Defendants could be at a disadvantage in such cases. Accordingly, the commission felt the risks of predeliberation discussions outweighed the benefits and recommended against a rule that would allow discussions prior to deliberations. However, the commission also felt that the outcomes of a field test of the practice in Arizona were worthy of study and that, while those outcomes were awaited, a standard of judicial administration should encourage experimentation with the practice in lengthy civil trials in California.

Blue Ribbon Commission

RECOMMENDATION 5.4

The Judicial Council should reconsider in January 1998 the issue of predeliberation 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 predeliberation discussions upon stipulation of counsel, with appropriate admonitions regarding withholding judgment until deliberations have begun.

Task force implementation

A standard of judicial administration encouraging experimentation with predeliberation discussions was first proposed in 1996 as part of the blue ribbon commission's report. Because of concern that the proposed standard was inconsistent with section 611 of the Code of Civil Procedure (requiring the court to admonish jurors that it is their duty to refrain from discussing or forming an opinion about the case prior to deliberations) and the controversial nature of the proposal, the Judicial Council decided to

await the outcomes of the Arizona courts' field tests prior to encouraging experimentation in California.

As part of its jury reform effort, Arizona had amended its rules of court in 1995 to permit jurors in civil cases to discuss the evidence among themselves prior to the start of deliberations, provided all jurors were present. (16 A.R.S. Rules of Civil Procedure, rule 39(f).) In 2000 the initial outcomes of a study conducted by the National Center for State Courts (NCSC) to evaluate predeliberation discussions in Arizona were first presented to the task force. The study measured the outcomes of civil cases randomly assigned in 1997 and 1998 to either a "trial discussions" condition or a "no discussions" condition, as well as analyzed the experiences of jurors, judges, lawyers, and litigants. From the jurors' perspectives, the initial findings showed that when juries took advantage of the option of predeliberation discussions, the discussions were rated as helpful in resolving confusion about testimony and evidence.

The task force took up the issue again in 2002 when the final results of the NCSC study were published.[12] In general, predeliberation discussions about evidence did not appear to lead to measurable prejudgment or prejudice among jurors. Although discussions did not appear to improve the dynamics of the decision-making process during actual deliberations, jurors reported increased understanding of the evidence and appreciation for having outlets for thoughts and questions as the cases progressed.[13]

When discussing whether to draft a rule of court for California, some task force members felt that the limited facilities in some parts of the state would make it too difficult to secure jurors in one place so that they could engage in discussions as a group prior to deliberations. Other members of the task force favored the concept and proposed a rule of court requiring judges to consider seeking stipulations to implement the practice in civil cases.

The task force approved a draft rule of court based on the blue ribbon commission's proposed standard of judicial administration, with an added requirement that all jurors be present during any discussions. Because of the modification that all jurors must be present, a requirement that the discussions be scheduled was deleted. Also, because the practice would be implemented by stipulation of the parties, a provision that the rule would apply only to "long" civil trials was also deleted. In addition, the task force felt that stipulations would resolve the potential conflict with section 611 of the Code of Civil Procedure.

Experimentation to permit discussions among jurors prior to deliberations should be promoted. The practice is controversial because it is nontraditional. However, it

[12] P. Hannaford-Agor et al., "Speaking Rights: Evaluating Juror Discussions During Civil Trials" (2002) 85(5) *Judicature* 237–243.

[13] *Id.* at p. 243.

recognizes the unnatural position in which jurors are currently placed, especially in long trials—they are required to hear and store information without considering it for days or weeks at a time. With the proper instructions, jurors are capable of discussing a case as it develops without coming to final conclusions until deliberations.

FUTURE ACTION

The task force approved the following draft rule of court for presentation to the Judicial Council.

Rule *XXX.X.* Predeliberation discussions

In civil trials, the trial court must consider seeking a stipulation from counsel to permit the jury to conduct predeliberation discussions as the trial progresses. All jurors must be present during any such discussions. If counsel stipulates to predeliberation 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.

JURY NULLIFICATION

Summary of recommendation

Blue Ribbon Commission

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.

As the blue ribbon commission stated in its report: "[T]he practical reality that nullification can occur does not mean that the practice should be sanctioned or encouraged. . . . 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 on law, and not on personal whim."[14]

Task force implementation

At the time the commission was preparing its report, legislation had been introduced to allow defense counsel to instruct jurors that they might nullify the instructions on the law given by the judge in criminal trials and decide according to their consciences. (Assem. Bill 3079 [Baldwin], 1996.) Upon reviewing the commission report, the Judicial Council altered Recommendation 5.5 slightly, changing the language to state:

> The Judicial Council recommends that the *Legislature* should oppose legislation that would permit or require trial judges to inform the jury of its power of nullification. (Italics added.)

[14] Judicial Council of California, *Final Report of the Blue Ribbon Commission on Jury System Improvement* (May 6, 1996) p. 92.

Rather than risk having the commission's original recommendation interpreted as merely opposing Assembly Bill 3079 (which did not become law), the council's restatement clarified the view that legislation of this type should be opposed at its source, that is, the legislative branch.

Bench Handbook: Jury Management, first published by CJER in 2001, includes information on jury nullification. The California Supreme Court subsequently ruled on the issue in 2001, reiterating that the ability of a jury to return a verdict for impermissible reasons is antithetical to the obligation of each juror to obey the judge's instructions. (*People v. Williams* (2001) 25 Cal.4th 441, 450–451.) Indeed, if a juror violates this obligation by refusing to follow a judge's instructions, the judge may discharge the juror. (*Id.* at 448–449, 463). CJER updated the bench handbook to reflect the new developments in the law.

The issue of jury nullification continues to be controversial. Activists in other states who have unsuccessfully sought legislative changes have turned to the ballot initiative process to allow juries to be informed of their purported power of nullification. (S.D. Const. Prop. Amend. A [Nov. 2002], *defeated,* 78 percent no, 22 percent yes.) Andrew Liepold, Professor of Law at the University of Illinois, said, in opposition to nullification: "Trials aren't designed to make policy judgments. Folks who don't like a law should work through the political process to change it."[15] In this vein, the task force urges continued monitoring of, and opposition to, attempts at legislative or constitutional change to legitimize jury nullification.

PREINSTRUCTION AND MINI-OPENING STATEMENTS

Summary of recommendation

The blue ribbon commission concluded that jurors did not benefit when the trial judge reserved nearly all substantive instructions until after a trial had concluded. The commission was concerned that waiting until after the presentation of evidence to give substantive instructions and then giving instructions that were not readily understandable resulted in a seriously flawed trial process. The commission believed that jury instructions could be made more useful to the jury if the following recommendations were followed: (1) jurors should be given basic substantive instructions *before* the trial begins and (2) jury instructions should be redrafted in more understandable language (see BRC Recommendation 5.8).

Blue Ribbon Commission

RECOMMENDATION 5.6

The Judicial Council should adopt a standard of judicial administration recommending that trial judges, in their discretion, preinstruct the jury on the substantive law of issues involved in the case.

[15] "Is a Law Unjust? One State May Allow Juries to Decide," *Los Angeles Times* (Oct. 30, 2002).

Task force implementation

A standard of judicial administration encouraging preinstruction on substantive law was first proposed in 1996 as part of the blue ribbon commission's report. A draft standard was circulated for comment that also encouraged trial judges to permit juror questioning (see BRC Recommendation 5.3) and the creation of glossaries in complex cases (see BRC Recommendation 5.7).

The comments included a recommendation that preinstruction not be encouraged in criminal cases because of concerns about judges' discussing with jurors the possible defenses to criminal charges before the beginning of a trial—defenses that defense counsel may not end up raising during the actual trial. The standard was modified but was still written to apply to both civil and criminal cases. The Judicial Council, following its Rules and Projects Committee's recommendation, did not approve the draft standard and referred the proposals it contained to the CJER and AOC staffs to develop educational programs and possible policy statements.

In a 1999 pilot study, task force member Judge Jacqueline A. Connor and 10 other judges of the Superior Court of Los Angeles County tested and tracked the provision of preliminary instructions on substantive issues of law—sometimes only verbally, sometimes only in writing, and sometimes in both ways. More than 200 juror questionnaires were received, and the experiences of both judges and counsel were documented.

- Ninety-eight percent of responding jurors reacted *very* positively to the practice.
- Jurors remarked that the preliminary instructions improved their comprehension and allowed them to focus on the issues. A substantial number of jurors noted that preinstruction was of particular assistance to first-time jurors, regardless of the complexity of the issues, and many felt the preinstruction had given them a better understanding of both their roles as jurors and of the lawyers' efforts to represent their clients.
- Certain jurors specifically credited this jury innovation with helping to keep them balanced, fair, and "nonjudgmental"—a reaction typically of interest to defense counsel.
- Jurors appeared to favor the written format as being more helpful than verbal-only instructions, especially when the written instructions were handed to them personally.

The use of "mini-opening statements" to the entire jury panel was another of the innovations implemented in the Los Angeles pilot study. Early on, the task force became interested in the practice as a variation on preinstruction. Through a mini-opening statement, each party provides the entire jury panel with a context for the questions to be posed to them during jury selection, by outlining his or her case prior to the commencement of voir dire.

In the Los Angeles pilot study, the response was favorable. Indeed, when the statements were given *before* hardship determinations were discussed, the number of jurors seeking excuses for hardship was diminished drastically. One court reported

that, in every trial in which the statements were made before hardship determinations, there were no requests to be excused. Another judge reported that, in a trial estimated to last 10 or more days, not only did the jurors not seek hardship excuses after hearing the attorneys' statements, but several asked to be allowed to contact their employers to extend their service.

The 2000 task force survey of the state's trial court presiding judges inquired about the practice of mini-openings to gather more information on this pretrial jury innovation. The survey revealed that:

- A large majority of presiding judges (84 percent) reported that none of the judges on their bench had attorneys make mini-opening statements before voir dire.
- In the courts that indicated any use of this practice, only one-quarter to one-half of the judges reported that this practice had occurred.
- Even in the state's largest courts, this practice was uncommon.

Bench Handbook: Jury Management contains guidance for trial court judges on preinstructing the jury, including a review of the types of instructions that can be given and a sample instruction. It also notes the practice of providing mini-opening statements to the jury panel prior to determining excuses for handship. Both mini-opening statements and preinstructing the jury were included in the May 2001 satellite broadcast demonstrating in-court jury innovations—*Juries: Strategies for Better Trials.*

The task force decided to put forward a rule of court to mandate the practices of mini-opening statements and preinstruction statewide because of the benefits demonstrated in the pilot project and in other states (most notably Arizona). These benefits include the following:

- Mini-opening statements are an important technique for providing context for the jury panel, with the potential to reduce requests for hardship and to elicit greater interest in fulfilling jury service.
- Mini-opening statements bring issues and relevant factors into focus for potential jurors and the parties, eliciting better informed and more candid responses to questions during voir dire and hence helping to uncover biases.
- Preinstruction on substantive issues of law provides impaneled jurors with a necessary framework. Jurors become more effective listeners and better judges if the issues are framed for them at the outset and they know what to listen for thereafter.
- Preinstruction helps clarify the charges, the claims presented, and the legal requirements that the parties must meet to prevail.

FUTURE ACTION

The task force approved the following draft rule of court for presentation to the Judicial Council. The portion of the draft rule pertaining to mini-opening statements was based on Arizona rule of court 47(b). (16 A.R.S. Rules of Civil Procedure, rule 47(b).) Some task force members believed that requiring counsel to give mini-opening statements before the beginning of trial could be a violation of section 1093(b) of the California Penal Code and section 607 of the Code of Civil Procedure. It was argued that both statutes (which allow counsel to defer opening statements in criminal and civil cases) could possibly preempt the ability of the court to require counsel to give a statement.

The task force also approved a revised draft preinstruction rule, based on Arizona rule of court 18.6(c) (17 A.R.S. Rules Crim. Proc., Rule 18.6(c)), because the draft text based on the commission's proposed standard had become too cumbersome.

Rule *XXX.X.* Mini-opening statements before voir dire; Preinstruction before trial

(a) **[Mini-openings]** Prior to the examination of prospective jurors during voir dire, the parties may, with the court's consent, present brief, nonargumentative opening statements to the panel. On its own motion the court may require counsel to do so. Following such statements, if any, the court must conduct a thorough examination of prospective jurors in the manner prescribed by rule.

(b) **[Preinstruction]** Immediately after the jury is sworn, the court must instruct the jury concerning its duties, its conduct, the order of proceedings, the procedure for submitting written questions for witnesses or to the court as set forth in rule 863, and the elementary legal principles that will govern the proceeding.

JUROR NOTEBOOKS

Summary of recommendation

The commission believed that a written glossary would not be required in every case, but in a trial involving complex scientific testimony, a set of definitions would significantly aid the jury in understanding the testimony.

Blue Ribbon Commission

RECOMMENDATION 5.7

The Judicial Council should adopt a standard of judicial administration that encourages counsel in cases involving highly complex subject matter jointly to develop a glossary of common terms that can be distributed to each juror at the beginning of trial.

Task force implementation

A standard of judicial administration encouraging glossaries was first proposed in 1996 as part of the blue ribbon commission's report. A draft standard was circulated for comment that also encouraged trial judges to permit juror questions (see BRC Recommendation 5.3) and preinstruction on substantive law (see BRC Recommendation 5.6). The Judicial Council, following its Rules and Projects Committee's recommendation, did not approve the draft standard and referred the proposals contained in the standard to the CJER and AOC staffs to develop educational programs and possible policy statements.

During its tenure, the task force expanded on the idea of providing glossaries in certain cases, raising the possibility of providing jurors with notebooks in which to organize materials such as glossaries, juror notes, witness lists, exhibit lists, written

copies of preinstructions, written copies of final instructions, and other materials as appropriate. In civil trials the counsel for both parties can prepare a notebook that can then be approved by the judge. In criminal trials the court can prepare a standard, basic notebook to which counsel can add specific materials with the approval of the judge.

In a 1999 pilot study, task force member Judge Jacqueline A. Connor and 10 other judges of the Superior Court of Los Angeles County tested and tracked the practice of providing jurors with notebooks. More than 200 juror questionnaires were received, and the experiences of both judges and counsel were documented.

- The availability of notebooks encouraged some jurors to take notes. One juror felt that the ability to organize her materials allowed her to keep note-taking to a minimum. Others commented that the notebook format made it easier to find the necessary information during deliberations. There were also several comments expressing appreciation for the tone of professionalism set by the notebooks.
- In terms of contents of the notebooks, the jurors were particularly and uniformly pleased with the inclusion of blank exhibit pages. Courts and counsel noted that virtually every juror made a point of marking exhibits on the blank pages provided in his or her notebook.
- Observing the number of jurors who preferred steno pads for note-taking, some of the courts offered jurors the options of (1) blank paper in notebooks and (2) steno pads. Many jurors used both, keeping the notebooks for collecting and storing inserts and using the steno pads exclusively for note-taking.
- On a practical level, in criminal courts the maintenance of the notebooks tended to fall to the bailiffs and required some advance thought and organization.

The 2000 task force survey of the state's trial court presiding judges asked about the practice of providing juror notebooks. The survey showed that:

- The practice of providing jurors with notebooks varied across the state.
- About one-third of presiding judges indicated that all the judges in their courts engaged in this practice. Almost all the courts where the practice was uniform among all judges were smaller courts.
- About 25 percent of courts indicated that none of their judges engaged in this practice.

The May 2001 satellite broadcast about in-court jury innovations—*Juries: Strategies for Better Trials*—demonstrated the use of juror notebooks and sample materials to be included. Guidance for trial court judges on the contents and use of juror notebooks also was added to the 2002 revision of *Bench Handbook: Jury Management* (first published by CJER in 2001).

The task force proposed a rule of court to mandate the practice of encouraging counsel to use juror notebooks in certain cases. Notebooks encourage jurors' involvement by assisting them in the organization of materials and basic courtroom

information. Because notebooks help the jurors with comprehension and recall, the process of deliberation is less confusing and juror frustration is reduced.

FUTURE ACTION

The task force approved the following draft rule of court for presentation to the Judicial Council. Because ***Bench Handbook: Jury Management*** contains suggested contents and guidelines, the task force streamlined the first draft of the rule, reducing the level of detail and leaving the specific notebook contents to the discretion of the litigants.

Rule 864. Juror notebooks

[Notebook] Trial judges must encourage counsel in criminal and civil cases to include documents, exhibits, and other appropriate materials in notebooks for use by jurors during trial, to assist them in performing their duties.

JURY INSTRUCTIONS

Summary of recommendation

The blue ribbon commission believed that jury instructions could be made more useful to the jury if these recommendations were followed: (1) Jurors should be given basic substantive instructions *before* the trial begins (see BRC Recommendation 5.6), and (2) jury instructions should be redrafted in more understandable language. The latter recommendation derived from the commission's conclusion that "jury instructions as presently given in California and elsewhere are, on occasion, simply impenetrable to the ordinary juror."[16]

Blue Ribbon Commission

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 nonlawyers.

Task Force on Jury Instructions implementation

In light of the commission's view that jurors could be accurately instructed on the law in language that was more easily absorbed and understood than the language then in use, the Judicial Council acted on Recommendation 5.8, creating the Task Force on Jury Instructions. The Chief Justice identified the two principal goals underlying the creation of more intelligible instructions: "(1) making jurors' experiences more meaningful and rewarding and (2) providing clear instructions that will improve the quality of justice by ensuring that jurors understand and apply the law correctly in their deliberations."[17]

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[16] Judicial Council of California, *Final Report of the Blue Ribbon Commission on Jury System Improvement* (May 6, 1996) p. 93.

[17] Judicial Council of California, *Address of Chief Justice Ronald George to Task Force on Jury Instructions* (February 18, 1997), videotape.

The Chief Justice encouraged the Task Force on Jury Instructions to solicit broad input from people representing a wide range of views and experience. The task force is interested in reactions to style, format, legal accuracy, clarity, and the usefulness of accompanying bench notes and commentary. The Task Force on Jury Instructions is not a law revision commission. Its goal is to produce instructions that accurately explain the existing law in a manner the average juror can readily understand and that the trial bench and bar will find helpful.

In May 2000 the task force's Subcommittee on Civil Instructions and Subcommittee on Criminal Instructions released their first sets of draft jury instructions. These releases stimulated public critique and enabled the drafters to refine the particular instructions as well as make global choices about format and approach. A second set of civil instructions was released in April 2001; a third set was released in April 2002; and a fourth and final set of civil instructions was released for public comment in January 2003. A second set of criminal instructions was released for comment in June 2002.

FUTURE ACTION

Final approval and publication of the civil instructions is anticipated in the fall of 2003. Releases of additional sets of criminal instructions are anticipated in June 2003 and April 2004, with final approval and publication of the criminal instructions slated for fall 2005.

SUGGESTIONS FOR CONDUCTING DELIBERATIONS

Summary of recommendation

Because jurors were given only a final instruction to select a foreperson (or presiding juror) and no other suggestions on how to deliberate, the commission believed an instruction suggesting a process for deliberations would be beneficial.

Blue Ribbon Commission

RECOMMENDATION 5.9

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

Task force implementation

The 2000 task force survey of the state's trial court presiding judges inquired about the practice of providing suggestions for deliberations. The survey showed the following:

- Giving jurors advice or suggestions on "how to deliberate" was a fairly uncommon judicial practice.
- Three-quarters of the responding presiding judges indicated that a quarter or fewer of the judges in their courts engaged in this practice. These courts included all three of the state's largest courts. Five courts, all of them small, indicated that all of their judges engaged in this practice.

Bench Handbook: Jury Management has a suggested procedure for judges to use in instructing jurors about deliberations and includes a reference to the American Judicature Society pamphlet "Behind Closed Doors: A Guide for Jury Deliberations."

The bench handbook notes the particular importance of providing each juror with a written copy of the final instructions on the law, to aid the jurors in understanding their obligations and to prevent confusion during the evaluation of evidence. Suggestions for conducting deliberations and providing individual copies of final instructions were included in the May 2001 educational satellite broadcast—*Juries: Strategies for Better Trials.*

When jurors are asked post-trial what the court could have done better to assist them, the most common answer is: "Help us get off to a productive start with deliberations." The task force endorses the wide use of the "Behind Closed Doors" pamphlet as a readymade tool for jurors. Many courts use it already—such as the Superior Court of Riverside County, which uses it courtwide.

The pamphlet is also seen in the hands of jurors as they begin deliberating in the statewide orientation videotape *Ideals Made Real,* produced by the task force and approved by the Judicial Council (see BRC Recommendation 5.1). In addition, the task force has consulted the American Judicature Society, trial courts that use the pamphlet, and CJER regarding the impact on the use of the pamphlet of a 2002 California Supreme Court decision concerning when jurors may properly report fellow jurors for misconduct. (*People v. Engleman* (2002) 28 Cal.4th 436.)

FUTURE ACTION

The task force urges the AOC, in collaboration with the American Judicature Society, to produce a statewide master version of the "Behind Closed Doors" pamphlet, updated to reflect current California law, and urges that the council endorse its use as a benefit to jurors when they begin deliberations.

PERMITTING ALTERNATES TO OBSERVE DELIBERATIONS

Summary of recommendation

Because of dissatisfaction among alternates who were required to attend trials and then were denied the opportunity even to observe deliberations, members of the blue ribbon commission recommended legislation to permit alternates in civil trials to observe deliberations. However, 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. The recommendation passed on a 12-to-6 vote of the commission.

Blue Ribbon Commission

RECOMMENDATION 5.10

The Legislature should amend Code of Civil Procedure section 234 to give the trial judge discretion in civil cases to permit alternate jurors to observe but not participate in jury deliberations.

Task force implementation

In 1996 Judicial Council–sponsored legislation was introduced to implement several of the commission's legislative recommendations (Sen. Bill 14 [Calderon], 1996), including Recommendation 5.10. However, in the bill's progression through committee, various provisions attracted opposition (including giving judges discretion to permit alternates to observe jury deliberations in civil trials) and were stricken from the bill. Eventually the entire bill died.

The 2000 task force survey of the state's trial court presiding judges asked about the prevalence of allowing alternates to observe civil trial deliberations by stipulation. The responses showed that:

- Allowing alternate jurors to observe civil trial jury deliberations was an uncommon judicial practice.
- The great majority of presiding judges (88 percent) reported that none of the judges in their courts allowed alternate jurors to observe civil trial deliberations. Only one small court reported that all of its judges allowed such observation.

The practice of permitting alternates to observe deliberations is discussed (with a cautionary note about the possibility of alternates influencing deliberations while observing) in *Bench Handbook: Jury Management*. The *Bench Handbook* also refers to the experience of a commission member who experimented with the practice by stipulation for several years without the difficulties often cited, and who received very appreciative responses from the alternates.

The task force recognizes that the role of the alternate juror is perhaps the most thankless in the entire jury trial system. Alternate jurors are asked to sacrifice their time and to be as engaged and work as hard as a juror, and then often are not even present when a verdict is read. To the degree that observing deliberations will provide closure for the alternate jurors, then the practice is a good one. Another benefit occurs when an original juror cannot continue after deliberations have begun and an alternate must be substituted. In these cases, deliberations do not have to begin all over again and a potential mistrial can be averted.

FUTURE ACTION

The task force urges the AOC to develop a model stipulation and guidelines for use by trial judges and counsel who wish to permit alternate jurors in civil cases to observe but not participate in deliberations, and to include this material in the next revision of *Bench Handbook: Jury Management*.

TRIAL MANAGEMENT

Summary of recommendation

In addition to advocating for active trial management to help keep the jury engaged and energized for deliberations, the commission also felt proper trial management could allow more representative panels to serve on longer trials. This could be accomplished by not only shortening the overall number of trial days but also scheduling trial time creatively to give jurors time for personal and business matters (for example, requiring the jury only from 8 a.m. to 1 p.m. or from 1 p.m. to 6 p.m.).

Blue Ribbon Commission

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.

Task force implementation

A standard of judicial administration encouraging trial judges to manage trial proceedings with an emphasis on juror needs was first proposed in the blue ribbon commission's report. The Judicial Council subsequently circulated a modified draft standard for comment. No commentators objected to the proposal, and at its May 1997 meeting the council adopted section 8.9 of the California Standards of Judicial Administration, effective July 1, 1997.

The trial management techniques listed in section 8.9 are described in *Bench Handbook: Jury Management* and were also recommended in the May 2001 satellite broadcast demonstrating in-court jury innovations—*Juries: Strategies for Better Trials.*

In 2002 the task force moved to propose section 8.9 as a rule of court. While it reviewed the standard as a draft rule, discussion centered on subdivision (b)(2), setting reasonable time limits for trial after consultation with counsel. Some task force members felt that giving force and effect to trial time limits through rulemaking could result in interrupted or arbitrarily truncated arguments, and that the language in the proposed rule did not adequately allow for unexpected occurrences during trial. To alleviate these concerns, the language in subdivision (b)(2) was altered to allow for modification of time limits for good cause shown.

Respecting the time jurors contribute to our system of justice is of paramount importance for maintaining jury involvement in the proceedings and building public confidence in the trial system. Techniques such as setting reasonable time limits prior to the trial's start at the trial management conference, having a consistent daily schedule, and hearing motions and arguments not requiring the jury's presence at the beginning and end of the day demonstrate an appreciation of the sacrifices jurors make. Maximizing the time that jurors are present for business requiring a jury is a basic management practice that too often is forgotten when trials commence. Therefore, the task force urges that the successful practices contained in section 8.9 of the California Standards of Judicial Administration be converted to a rule of court, with a modification regarding time limits, and that CJER emphasize these techniques in judicial education programs.

FUTURE ACTION

The task force approved the following draft rule of court for presentation to the Judicial Council.

~~**Standard of Judicial Administration**~~
~~**Sec. 8.9.**~~ **Rule *XXX.X.* Trial management standards**

(a) **[General principles]** The trial judge has the responsibility to manage the trial proceedings. The judge ~~should~~ must 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, t~~ The trial judge ~~should~~ must manage proceedings with particular emphasis upon the needs of the ~~jury.~~ jurors.

(b) **[Techniques of trial management]** The trial judge ~~should~~ must employ the following trial management techniques:

(1) Participate with trial counsel in a trial management conference before trial.

(2) After consultation with counsel, set reasonable time limits subject to modification for good cause shown.

(3) Arrange the court's docket to start trial as scheduled and inform parties of the number of hours set each day for the trial.

(4) Ensure that once trial has begun, momentum is maintained.

(5) Be receptive to using technology in managing the trial and the presentation of evidence.

(6) Attempt to maintain continuity in days of trial and hours of trial.

(7) Schedule arguments on legal issues at the beginning or end of the day so as not to interrupt the presentation of evidence.

(8) Permit sidebar conferences only when necessary, and keep sidebar conferences as short as possible.

(9) In longer trials, consider scheduling trial days to permit jurors' time for personal business.