STATE OF MINNESOTA

IN SUPREME COURT

C7-00-100

ORDER FOR HEARING TO CONSIDER THE RECOMMENDATIONS OF THE MINNESOTA SUPREME COURT JURY TASK FORCE

IT IS HEREBY ORDERED that a hearing be held before this Court in Courtroom 300 of the Minnesota Supreme Court, Minnesota Judicial Center, on June 26, 2002 at 2:00 p.m., to consider the recommendations of the Supreme Court Jury Task Force. A copy of the task force report that contains the recommendations, which was filed December 28, 2001, is annexed to this order.

IT IS FURTHER ORDERED that:

1. All persons, including members of the Bench and Bar, desiring to present written statements concerning the subject matter of this hearing shall file 12 copies of such statement with Frederick Grittner, Clerk of the Appellate Courts, 305 Judicial Center, 25 Constitution Avenue, St. Paul, Minnesota 55155, on or before May 17, 2002. The Supreme Court Advisory Committees on Civil Procedure, Criminal Procedure and the Rules of General Practice are invited to file such statements.

2. All persons desiring to make an oral presentation at the hearing shall file 12 copies of such a request with the Clerk of the Appellate Courts. These requests shall be filed on or before May 17, 2002.

Dated: February 14, 2002

BY THE COURT:

Kathleen A. Blatz
Chief Justice

MINNESOTA SUPREME COURT
JURY TASK FORCE

FINAL REPORT

DECEMBER 20, 2001

STATE OF MINNESOTA
IN SUPREME COURT
C7-00-100

MINNESOTA SUPREME COURT

MINNESOTA SUPREME COURT
STATE COURT ADMINISTRATION
COURT SERVICES DIVISION
120 MINNESOTA JUDICIAL CENTER
25 CONSTITUTION AVENUE
SAINT PAUL, MN 55155
(651) 297-7587

TABLE OF CONTENTS

JURY TASK FORCE – FINAL REPORT

PART I: INTRODUCTION

A. ACKNOWLEDGMENTS

The members of the Minnesota Supreme Court Jury Task Force wish to thank everyone who assisted in the work of the Task Force. The Task Force wishes to express special gratitude to:

- Those individuals who made presentations to the Task Force, including Judge Ann Alton, Hennepin County District Court; Leonardo Castro, Chief Public Defender, Fourth Judicial District of Minnesota; Tom Munstermann, National Center for State Courts; Frank Broccolina, Maryland State Court Administrator and Jury Consultant; Judge Gary Pagliaccetti, Sixth Judicial District of Minnesota; and Judge Gordon Shumaker, Minnesota Court of Appeals.

- Those Non-Task Force members who attended meetings and contributed greatly to the work of the Task Force, including Mark Wernick, Esq.; Susan McPherson, National Jury Project; Peter Cahill, Esq., Hennepin County Attorney's Office; Kate Flom, Esq., Meshbesher & Spence; Kirsten Hansen, University of Minnesota Law Student; Chris Messerly, Esq., Robins, Kaplan, Miller & Ciresi; and Peter Riley, Esq., Schwebel, Goetz & Sieben.

- The members of the Minnesota State Bar Association (MSBA) Civil Litigation Section, who have worked diligently to improve Minnesota's civil jury trial system since 1993. The MSBA Civil Litigation Section Jury Committee, co-chaired by Peter Riley and Martha Simonett, issued its Civil Juries Report in 1995. The Task Force relied heavily upon their report in adopting many of the recommendations contained in this report. The Task Force is especially grateful to Robert Feigh who presented the MSBA Civil Juries Report findings to the Trial Procedures Subcommittee and to Peter Riley who regularly attended and participated in the meetings of that subcommittee.

B. TASK FORCE MEMBERS

TASK FORCE CHAIR: **Honorable William Walker**, District Court Judge, Seventh Judicial District

SUBCOMMITTEE CHAIRS:

Trial Procedures Subcommittee: **Honorable Daniel Mabley**, District Court Judge, Fourth Judicial District

Juror Treatment Subcommittee: **Honorable Kathleen Gearin**, District Court Judge, Second Judicial District

TASK FORCE MEMBERS:

Terri Bowman, Public Member
Representative Sherry Broecker, Minnesota House of Representatives [1]
Jeffrey Bueche, Public Member
Dave Carlson, Blue Earth County Court Administrator [2]
Honorable Joseph Carter, District Court Judge, First Judicial District
Honorable Frederick Casey, District Court Judge, Ninth Judicial District
Edward Foley, Public Member
Honorable Kathleen Gearin, District Court Judge, Second Judicial District
Don Gerdesmeier, Representative, Minnesota D.R.I.VE.
Judy Gilbert, Division Supervisor and Jury Manager, Dakota County District Court
Mark Haakinson, Jury Manager, Ramsey County District Court
D.J. Hanson, Ninth Judicial District Administrator [3]
Patricia Hayes, Public Member [4]
John Himle, Principal, Himle Horner, Inc.
Hans Holland, Administrative Supervisor, Blue Earth County District Court
Honorable Mike Jesse, District Court Judge, Seventh Judicial District
Sam Juncker, Tenth Judicial District Administrator
Senator Randy Kelly, Minnesota Senate
Amy Klobuchar, Hennepin County Attorney
Pat Kuka, Court Administrator, Kandiyohi County District Court[5]
Sonjia Lien, Assistant District Administrator, Third Judicial District
John Levine, Attorney at Law, Dorsey & Whitney, LLP
William Mauzy, Attorney at Law, Mauzy Law Firm
Honorable Anne McKinsey, District Court Judge, Fourth Judicial District
Vivian Jenkins Nelson, Co-Founder, INTER-RACE Institute
David Olson, Minnesota Chamber of Commerce

[1] Representative Sherry Broeker withdrew from the Task Force in April, 2001.
[2] Dave Carlson withdrew from the Task Force in August, 2000.
[3] D.J. Hanson withdrew from the Task Force in August, 2000.
[4] Patricia Hayes withdrew from the Task Force in May, 2000.
[5] Pat Kuka withdrew from the Task Force in May, 2001.

Honorable John Oswald, District Court Judge, Sixth Judicial District
Professor john powell, University of Minnesota Law School
Honorable Norb Smith, District Court Judge, Fifth Judicial District
Richard Solum, Attorney, Dorsey & Whitney, LLP
John Stanoch, Vice-President for Minnesota, Qwest

STAFF:

Nicole Crawford, Project Specialist, Court Services Division, State Court Administration
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Chris Ruhl, Court Projects Manager, Court Services Division, State Court Administration
Bridget Johnson, Project Specialist, Court Services Division, State Court Administration

SUPPORT STAFF:

Christine Reil, Administrative Secretary, Court Services Division, State Court Administration

PART II: EXECUTIVE SUMMARY

A. BACKGROUND

In recent years there has been increasing concern over the jury system and its responsiveness to the needs of jurors. Specific concerns include issues of preparation for jury service or selection, treatment and compensation of jurors, juror comprehension of complex facts and of the law, and use of technology for jury management and in jury trials.

In response to these concerns and a legislative request, in the summer of 1999, the state Supreme Court contracted with the National Center for State Courts to evaluate the jury system in Minnesota. Later that summer, the Supreme Court appointed a Juror Compensation Workgroup to review the findings and recommendations of the National Center for State Courts. The Juror Compensation Workgroup issued a report in December of 1999, which recommended further study of the issues. In response to that recommendation, the Supreme Court established the Jury Task Force to further study and make recommendations on jury-related issues.

B. OVERVIEW AND PURPOSE OF THE TASK FORCE

The Supreme Court created the Jury Task Force in March 2000 (see Appendix A for a copy of the Order Establishing the Supreme Court Jury Task Force). The Jury Task Force was directed to make recommendations on:

- Voir dire procedures and protocols;
- Usage and need for sequestration in trials;
- Post-verdict debriefing and protocols to address juror stress;
- Juror privacy rules amendments;
- Juror excusal policies;
- In-court techniques such as juror note taking;
- Trial management practices; and,
- Other jury management issues that may impact juror utilization and treatment.

Since its formation in April 2000, the Jury Task Force, under the leadership of Chair Judge William Walker, has identified and prioritized issues, conducted focus group sessions, and formulated recommendations concerning the jury system in Minnesota. The Jury Task Force developed two subcommittees to study proposed changes to this jury system. Judge Kathleen Gearin chaired the subcommittee addressing juror treatment issues and Judge Daniel Mabley chaired the subcommittee addressing issues of trial procedures affecting jurors.

As the Task Force drafted its recommendations, it became clear that some areas were more appropriate for a rule change, while other areas were better suited to a suggestion of best practices for jury management. When rule changes are recommended, this is noted either in the recommendation itself, or in the comment to the recommendation.

III. SUMMARY OF RECOMMENDATIONS

A. Recommendations Relating to Jury Service and Orientation

Recommendation #1: Updating Juror Orientation Video. The juror orientation video should be updated to reflect the diversity of the state of Minnesota. The video should be designed in such a way that local court communities can add information specific to their jurisdiction.

Recommendation #2: Community Education Materials on Jury Service. The public should have access to useful information about jury service in a variety of formats. This may include handbooks, videos, public education programs in schools and libraries, public service announcements, cable TV programs, and interactive court web sites. Information on jury system policies and procedures made available to the public in any of these formats should be current, practical and easily understood.

Recommendation #3: Uniform Jury Summons and Handbook. Uniform and standard jury service communication and education tools should be implemented statewide. The jury summons and juror handbook should be standardized and updated to reflect changes, including the changing needs of jurors. The jury summons and handbook should be designed in such a way that local court communities can add information specific to their jurisdiction.

Recommendation #4: Juror Orientation. Juror orientation should be efficient and effective and provide information that could not be provided earlier. Whenever possible, a judicial officer should welcome prospective jurors. Court staff assigned to jurors must remain available to answer questions and deal with juror concerns. Each local courthouse should have staff trained to communicate effectively with jurors.

Recommendation #5: Term of Service. Counties designated by the Minnesota Supreme Court should implement a pilot project of a "two day/one trial" term of jury service. Counties selected for the pilot projects should have varying population sizes.

a. For counties participating in the pilot project, the period of time a juror may be "on call" to report to the courthouse should be no longer than:
    i. One week in counties with a population of 100,000 or more.
    ii. One month in counties with a population of less than 100,000 but more than 50,000.
    iii. Two months in counties with a population of less than 50,001.
b. Rule 808 (b) (7) of the General Rules of Practice for the District Courts should be amended to reduce the disqualification period from four years to two years.

Recommendation #6: Jury Management. Recognizing that a significant reduction in the terms of jury service also requires a corresponding commitment to efficient and effective jury management, the Task Force recommends that the Jury Best Practices Guide, prepared by a subcommittee of the Rule 803 Committee in 1996, be formally adopted by administrative rule.

Recommendation #7: Requesting Postponement of Jury Service. Jurors should be allowed a minimum of one postponement of their service upon request. All requests for postponement should be received by the court within a reasonable amount of time from the date the summons is received by the juror.

Recommendation #8: Privacy of Qualification Information. Rule 814 of the General Rules of Practice for District Courts should be amended to meet the privacy needs of jurors by granting courts the authority to restrict personal information and destroy qualification information.

Recommendation #9: Jury Facilities. Every judicial district should evaluate its court facilities, using Standard 14 of the American Bar Association Standards Relating to Jury Use and Management. Facilities should meet the ABA Standards and seek to exceed them.

B. Recommendations Relating to the Jury Selection Process

Recommendation #10: The Judicial Role in Voir Dire. Judges should exercise control over the jury selection process to ensure that it is properly conducted and should intervene *sua sponte* when appropriate.

Recommendation #11: Questioning by the Judge. Judges should initially question all prospective jurors about their general background and experience, including their residence, education, employment, family or other close relationships, and prior court or criminal justice system experience.

Recommendation #12: Attorney Questioning. Attorneys should be provided a fair and adequate opportunity to question prospective jurors during the jury selection process.

Recommendation #13: Proper Purposes of Voir Dire. Judges and attorneys should know and understand the proper purpose of voir dire so that judges can exercise appropriate control over the jury selection process.

a. The proper purpose of voir dire is to discover information that could provide the basis for exercising either: (1) a challenge for cause, or (2) an informed peremptory challenge.

b. As a general principle, voir dire should be used to receive information from prospective jurors about their relevant opinions, beliefs, prior experiences, and relationships in order to permit the exercise of an informed challenge. Voir dire should not be used as a means to give information to prospective jurors about a party's view of the facts or law applicable to the case. However, attorneys may

provide basic information about the evidence or law when reasonably necessary to frame a question that has a proper purpose.

c. Judges should generally prohibit voir dire that is conducted for the following improper purposes:
   i. Educating Jurors- Voir dire should not be used primarily to persuade, instruct, educate or indoctrinate jurors as to the law, arguments, facts, strategies, or problems in the case.
   ii. Predisposing Jurors- Voir dire should not be used primarily to predispose jurors to be in favor of or against a party, a witness, or some aspect of the case.
   iii. Speculative Questions- Jurors should not be asked to speculate about how they might decide the case or how they might react to any factual issue in the case.
   iv. Seeking Commitments- Jurors should not be asked to commit themselves to vote in a certain way.
   v. Repetitive Questions- Attorneys should not be permitted to repeat questions already asked by the judge, by another attorney, or by a questionnaire to which complete and clear answers have already been given.
   vi. Establishing Rapport- Attorneys should not ask questions or present information about themselves or their client designed primarily to establish rapport with prospective jurors or to get them to identify with their client or their client's cause.

Recommendation #14: Time Limits. Time limits during voir dire are authorized by law, but should be used carefully so as to be reasonable in light of the total circumstances. If they are used, the following procedures are recommended:

a. Establishing the Need for Time Limits. Time limits should not be imposed from the outset of jury selection but only after the court observes some voir dire and concludes that the questioning is unreasonably time consuming.
b. Prior Warnings. The judge should warn attorneys in advance that time limits may be imposed.
c. Extension of Time Limits. If time limits are set, attorneys should be given the opportunity to request additional time with respect to individual jurors if good cause is shown.
d. Reasonable Time Limits. Time limits must provide attorneys with sufficient time, given the circumstances of the case, to achieve the proper purposes of voir dire and to have a reasonable opportunity to examine each prospective juror.
e. Inappropriate Judicial Commentary. The judge should not make any comments about the timing process in the presence of the jury.

Recommendation #15: Unlawful Exercise of Peremptory Challenges. Judges and attorneys should know and adhere to substantive law and procedure that prohibits race and gender discrimination during jury selection.

Recommendation #16: Designation of Alternate Jurors. To ensure that all jurors give their full attention to the proceedings, alternate jurors should not be specially designated or treated differently than other jurors.

Recommendation #17: Developing Standard Juror Questionnaire. A standard juror questionnaire should be developed. This standard questionnaire should be completed by all jurors before they are sent to a courtroom and should provide basic background information, which is then made available to the judge and the attorneys.

Recommendation #18: Use of Case-Specific Juror Questionnaires. The use of questionnaires during jury selection should be particularly encouraged in cases involving: (1) pre-trial publicity, (2) juror privacy issues (e.g. in child sex abuse cases), or (3) juror security or safety issues; or whenever the use of questionnaires could streamline jury selection.

C. Recommendations Relating to Juror Privacy During Voir Dire

Recommendation #19: Explaining the Purpose of Voir Dire. Judges should explain the purpose of voir dire to prospective jurors and should emphasize that it is not designed to invade their privacy but rather to explore viewpoints and life experiences that might affect their ability to be fair and impartial in a particular kind of case.

Recommendation #20: Protecting Jurors' Privacy During Voir Dire. To the extent possible, judges should accommodate jurors' privacy concerns during voir dire and take appropriate measures to safeguard that privacy, consistent with the historic public interest in open proceedings. Where interrogation focuses on highly sensitive or personal matters, judges should allow prospective jurors to answer specific questions at the bench, in chambers, or in a courtroom closed to observers, but on the record and with counsel present. Rule 26 of the Rules of Criminal Procedure should be amended to specifically provide for these alternatives.

Recommendation #21: Retention of Juror Questionnaires. The rules regarding handling and retention of voir dire questionnaires should be amended to provide that they are not maintained in the public record but are protected from public scrutiny and are destroyed promptly after they are no longer needed for trial or appeal.

Recommendation #22: Use of Anonymous Juries. "Anonymous" juries should be used sparingly by judges presiding in high profile cases where possible jury tampering or safety are legitimate and well-founded concerns. Judges should have the discretion in some cases and circumstances to refer to jurors or prospective

jurors by number in open court, even though the jury is not truly "anonymous" -- *i.e.*, identities unknown to the parties.

D. Recommendations Relating to Efficient Conduct of Jury Trials

Recommendation #23: Eliminating Unnecessary Delays. Trials should be conducted so as to reduce or eliminate unnecessary waiting by jurors and to ensure that there are no unnecessary interruptions or breaks during the presentation.

Recommendation #24: Pretrial Steps. A number of procedural tasks should be completed by the attorneys and the trial judge before voir dire begins so that the trial may proceed without interruption.

Recommendation #25: Minimizing Interruptions of "Jury Time." Judges should discourage the invasion of "jury time." Therefore, unexpected motions or chambers discussions should be held, to the extent possible, before or after court. Similarly, the use of bench conferences should be minimized. Attorneys should be permitted to make a record but not necessarily during "jury time."

Recommendation #26: Keeping the Jury Informed. If it is absolutely necessary to interrupt the trial to hear motions or conduct chambers discussions, the jury should be frequently informed of the status of the proceedings and when they will resume.

E. Recommendations Relating to Enhancing Juror Understanding

Recommendation #27: Juror Note Taking. Judges should facilitate juror note taking by providing jurors who wish to take notes with the materials to do so.

Recommendation #28: Simple Language in Jury Instructions. Jury instructions, whether written or oral, should be simple, understandable and narrowly tailored to the issues in the case.

Recommendation #29: Written Instructions. Jurors should be provided with a written copy of the court's jury instructions to take with them into deliberations. Additionally, the court should give each juror an individual copy of the instructions. In cases where the judge finds that it is appropriate to give substantive instructions before opening statement, jurors should be given a copy of the written instructions to keep and use during the trial.

Recommendation #30: Early Substantive Instructions. Judges should give substantive jury instructions prior to final argument and in appropriate cases, prior to opening statement.

Recommendation #31: Submission of Questions by Jurors. The Rules of Civil and Criminal Procedure and the General Rules of Practice for the District Courts (Part H - Minnesota Civil Trialbook) should be modified to permit the submission of questions to witnesses by jurors in the discretion of the trial judge.

F. Recommendations Relating to Deliberations and Discharge

Recommendation #32: Jury Sequestration. The Minnesota Rules of Criminal Procedure should be amended to delete the provisions allowing the defendant to demand sequestration of the jury during deliberations. The determination of whether or not to sequester the jury during deliberations should be left to the sound discretion of the trial judge.

Recommendation #33: Closing Instructions. At the conclusion of the case, the judge should thank the jury for its service, and should inform the jurors that they are relieved from the court's instruction during trial that they not discuss the case. They should be told that they can discuss the case with anyone they choose, including the judge, attorneys on the case and the media, but they need not discuss the case with anyone. The Minnesota District Judges Association (MDJA) Jury Instruction Guides, both Civil and Criminal, should include a suggested instruction to be given when the jury is discharged.

Recommendation #34: Thanking Jurors and Evaluating Their Experience. Judges and jury managers should ensure that both jurors who deliberated and alternates are given an appropriate debriefing session at the end of their service, including an expression of thanks, an opportunity to ask questions about their jury experience and a formal discharge. Every person called for jury service, whether actually seated on a jury or not, should receive the thanks of the court and be given the opportunity to make suggestions and provide feedback on the process.

G. Recommendations Relating to Juror Stress, District Plans and Implementation

Recommendation #35: Stress Related to Jury Service. Courts should strive during every contact with jurors to recognize the stress associated with jury service and make efforts to reduce it.

Recommendation #36: District Juror Treatment Plans. The District Administrator should assemble a team of key individuals to receive training on juror treatment and sensitivity issues. This team will then prepare, adopt and implement a district-wide plan on improvements for juror service. The plan should identify strategies for raising awareness of juror sensitivity issues and improvements in how the court system treats jurors before, during, and after service.

Recommendation #37: Implementation Committee. The Supreme Court should appoint a standing committee to promote and monitor progress toward consideration and implementation of the Task Force's recommendations. This committee should also regularly review all rules and policies related to jurors and jury management system issues, and report regularly to the Supreme Court.

PART IV: RECOMMENDATIONS AND COMMENTARY

A. Recommendations Relating to Jury Service and Orientation

Recommendation #1: Updating Juror Orientation Video. The juror orientation video should be updated to reflect the diversity of the state of Minnesota. The video should be designed in such a way that local court communities can add information specific to their jurisdiction.

Comment: The Task Force recognizes that videos are expensive to produce, but the state court system should make funding for such a worthy endeavor a high priority. The Task Force has received feedback from past jurors and jury managers that the current version produced by the Minnesota Supreme Court ("Your Share in Justice") is outdated and does not reflect the diverse communities within Minnesota. Other versions used throughout the state are also in need of updating. A new video should be designed by and produced by the State Court Administrator's Office in order to enhance prospective jurors' understanding of the judicial system and prepare them to serve competently as jurors.

Jury service affords a unique opportunity for citizens to observe and participate in the judicial process. It is the state's responsibility to provide information to alleviate concerns that potential jurors may have. The Task Force strongly encourages that the video be presented in a manner that allows for "closed-captioning" or "real time" for hearing impaired jurors. It should be produced in a generic manner to be aired on TV access channels around the state with a disclaimer that it might not be county-specific, and produced to allow for an "add-on" segment that would provide specific local information.

In addition, the Task Force makes the following suggestions regarding the new video:

1. The video should be no longer than 15-20 minutes.
2. Judges should review the video.
3. The video should incorporate the following changes:
    a. The term "jury service" should be used in lieu of "jury duty" whenever possible.
    b. Reference to this service should be "patriotic" as opposed to "civic."
    c. The speaker should use narration whenever possible -- one-on-one -- as opposed to a large group in the courtroom setting.
    d. The role of all court staff should be identified.
    e. Jurors should be encouraged to address questions to local court staff.
    f. Disqualification and excusal reasons should be cited.
    g. Courtroom setting participants should be racially diverse.
    h. The source list and the random selection process under the statewide jury computer program should be explained.
4. Judges should address the following:
    a. The order in which the trial is conducted;
    b. Random drawing from the pool of jurors;
    c. The selection process, including the reasons some jurors are excused;

d. The number of jurors required for each type of case and the responsibility of the alternates;
e. The possibility that jurors may be sequestered;
f. The deliberation process, including the selection of the foreperson;
g. The general role of a judge;
h. Why delays occur during trials.

Recommendation #2: Community Education Materials on Jury Service. The public should have access to useful information about jury service in a variety of formats. This may include handbooks, videos, public education programs in schools and libraries, public service announcements, cable TV programs, and interactive court web sites. Information on jury system policies and procedures made available to the public in any of these formats should be current, practical and easily understood.

Comment: Effective communication between the court and the juror is the key to maintaining public trust and confidence in jury service. The judiciary has an obligation to make its process understandable in a user-friendly manner. Local outreach should be undertaken to acquaint members of the public with the importance of their role as potential jurors and to help alleviate anxieties about jury service. This information should be made available in advance of jurors actually reporting for service.

Access to relevant, timely, accurate information is important: Every high school, junior high school, and middle school should have a copy of the video used by the Minnesota courts for jury orientation purposes. See Recommendation #1 and the Comment thereto. When updated, the video will be relevant, informative, and educational. The Court Information Office should work to implement this recommendation.

Recommendation #3: Uniform Jury Summons and Handbook. Uniform and standard jury service communication and education tools should be implemented statewide. The jury summons and juror handbook should be standardized and updated to reflect changes, including the changing needs of jurors. The jury summons and handbook should be designed in such a way that local court communities can add information specific to their jurisdiction.

Comment: The jury summons and handbook should be reviewed regularly, or at least every three years, by a body appointed by the Supreme Court (see Recommendation #37), which should include representatives of the judiciary, district administration, court administration, former jurors, and practicing members of the bar. The State Court Administrator's Office should create these materials for distribution statewide.

Recommendation #4: Juror Orientation. Juror orientation should be efficient and effective and provide information that could not be provided earlier. Whenever possible, a judicial officer should welcome prospective jurors. Court staff assigned to jurors should remain available to answer questions and deal with juror concerns. Each local courthouse should have staff trained to communicate effectively with jurors.

Comment: Jury managers and court staff assigned to jurors have the responsibility of welcoming prospective jurors upon arrival, which conveys common courtesy and appreciation for their commitment and participation. When well delivered, the official "welcome" can be extremely meaningful. In addition, a formal welcome (even if brief) by a judicial officer goes one step further by conveying to the prospective jurors that their time and service is indeed valued and appreciated by the judiciary. It is also beneficial for the judge to see the jurors as they assemble, and in so doing, the judge may become more cognizant of jurors' time and how the court treats them. The Task Force recognizes that judges cannot always do this, as they may have to deal with pretrial issues or other matters.

Recommendation #5: Term of Service. Counties designated by the Minnesota Supreme Court should implement a pilot project of a "two day/one trial" term of jury service. Counties selected for the pilot projects should have varying population sizes.

a. For counties participating in the pilot project, the period of time a juror may be "on call" to report to the courthouse should be no longer than:
   i. One week in counties with a population of 100,000 or more.
   ii. One month in counties with a population of less than 100,000 but more than 50,000.
   iii. Two months in counties with a population of less than 50,001.

b. Rule 808 (b) (7) of the General Rules of Practice for the District Courts should be amended to reduce the disqualification period from four years to two years.

Comment: Jury expert Frank Broccolina stated that nothing would be of greater significance in the effort for jury improvement than the adoption of reduced terms of service. Advantages of reduced terms of service include: (1) increased citizen participation; (2) improved jury representativeness and inclusiveness; (3) virtual elimination of service excusals; (4) increased service certainty for the prospective juror; and (5) reduced personal cost to the prospective juror, as well as productivity costs related to the juror's employer. Frank Broccolina, "Memorandum Report to the Minnesota Supreme Court Jury Task Force: Issues to Consider in Planning for Reduced Terms of Juror Service" (2001) (unpublished). (See Appendix C for a copy of this report.) According to the Criminal Courts Technical Assistance Project, 40% of U.S. citizens live in jurisdictions that have a one day/one trial term of service. (See Appendix C – Page 7 for a chart showing the jurisdictions with one day/one trial term of service.) The Task Force is suggesting a two day/one trial term of service so that jurors experience more than just one day of orientation before the end of their service. This reduced term of service should be tested in Minnesota to determine if we see benefits similar to those experienced around the country.

The Task Force recognizes that there will be increased costs, including additional jury staff and development of jury management automation, associated with this recommendation.

This concept is new to Minnesota. For this reason and because the extent of the increased costs is unknown at this time, the Task Force is recommending a pilot project, which would include counties with varying populations so more could be learned about the impact of reduced terms of service on both large and small counties. Counties involved in the pilot project will need to be provided sufficient resources to conduct the pilot project.

Rule 811 of the General Rules of Practice for District Court provides that:

(a) In counties with a population of 100,000 or more, a term of service must not exceed two weeks or the completion of one trial, whichever is longer.
(b) In counties with a population of less than 100,00 but more than 50,000, a term of service must not exceed two months. However, no person is required to continue to serve after the person has reported to the courthouse for ten days or after the completion of the trial on which the juror is sitting, whichever is longer.
(c) In counties with a population of less than 50,001 a term of service must not exceed four months. However, no person is required to continue to serve after the person has reported to the courthouse for ten days or after the completion of the trial on which the juror is sitting, whichever is longer.
(d) Chief judges and judicial district administrators shall review the frequency of juror use in each county in determining the shortest period of jury service that will enable the greatest number of citizens to have the opportunity to report to the courthouse and participate in the jury system. All courts shall adopt the shortest period of jury service that is practical.

The Task Force recommends that pilot project counties would cut in half the period of time provided in Rule 811 that a juror could be "on call" to report to the courthouse. By piloting shorter "on call" times, together with the "two day/one trial" concept, we could improve the experience for many jurors and move further towards the stated goal of Rule 811 that "the time that persons are called upon to perform jury service and be available for jury service is the shortest period consistent with the needs of justice."

In addition, the Task Force recommends that Rule 808(b)(7) of the General Rules of Practice for District Courts be amended to provide that "A person who has not served as a state or federal grand or petit juror in the past <u>two</u> years." This change will allow counties with a reduced term of service to have an appropriately large pool of eligible jurors on which to draw.

Recommendation #6: Jury Management. Recognizing that a significant reduction in the terms of jury service also requires a corresponding commitment to efficient and effective jury management, the Task Force recommends that the Jury Best Practices Guide, prepared by a subcommittee of the Rule 803 Committee in 1996, be formally adopted by administrative rule.

Comment: The Jury Best Practices Guide reflects jury management standards that were developed years ago by the National Center for State Courts and since then have been implemented in many states, including Minnesota. But adherence to the standards varies considerably across counties, and many counties do not actively or effectively manage the qualification, summoning, and jury selection process. The court has responsibility to see that jurors are utilized effectively and efficiently, that the cost of operating the jury system is minimized, and that jury service is viewed as a worthwhile and positive experience. Therefore, the Task Force recommends that the Jury Best Practices Guide be formally adopted by administrative rule. Specifically, the guidelines set forth in "Sections I: Anticipating Requirements for the Pool" and "Section II: Panel Usage" should be followed for successful implementation of reduced terms of service. Sections I and II of the Best Practices Guide are attached as Appendix D for reference.

Recommendation #7: Requesting Postponement of Jury Service. Jurors should be allowed a minimum of one postponement of their service upon request. All requests for postponement should be received by the court within a reasonable amount of time from the date the summons is received by the juror.

Comment: The Task Force recognizes that jury service will always involve some hardships. Judges have the ultimate responsibility of deciding when this service would cause a hardship so severe that justice requires that an individual be excused. It is important that the courts take a common sense approach when deciding postponement requests. Judges and jury managers need to recognize the special needs of individuals such as those in advanced pregnancy, nursing mothers, parents with newly born or adopted children, students attending schools outside of the state, etc. In addition, once a juror is seated, the judge has discretion to accommodate important events in the juror's lives when setting the trial schedule.

Recommendation #8: Privacy of Qualification Information. Rule 814 of the General Rules of Practice for District Courts should be amended to meet the privacy needs of jurors by granting courts the authority to restrict personal information and destroy qualification information.

Comment: Rule 814 of the General Rules of Practice for the District Courts should be amended to recognize and balance the competing interests of the First and Sixth Amendments with the privacy interests of jurors. *See* Paula L. Hannaford, "Making the Case for Juror Privacy: A New Framework for Courts Policies and Procedures," National Center for State Courts (2001) at 8. Some juror information merely serves administrative functions and does not further the trial process by identifying potential juror bias or prejudice. Severing

the link between a juror's identity and his or her role during the trial can protect juror privacy and prevent retaliatory threats of defendants or post-trial intrusions from the media.

Specifically, The Task Force recommends that Rule 814 (b) and (c) should be amended as follows (proposed new text underlined):

> (b) The contents of juror qualification questionnaires must be made available to lawyers upon request in advance of voir dire. The court may restrict access to addresses and telephone numbers of the prospective jurors.
> (c) The jury commissioner shall make sure that all records and lists are preserved for the length of time ordered by the court. The contents of any records or lists, including juror qualification questionnaires, shall be destroyed promptly after they are no longer needed for trial or appeal, unless otherwise ordered by the court.

Rule 814 currently recognizes and protects juror privacy interests by permitting the court to restrict access to the addresses of prospective jurors. Juror telephone numbers, by analogy, are similarly administrative and do not further the impartiality of jurors. In recognition of this reality, modification of section (b) to include the language "and telephone numbers" is intended to afford juror telephone numbers similar privacy protection by the court.

The purpose of making juror information available to the public is to ensure that those selected for jury service are capable of serving in a fair and impartial manner. Once a verdict has been accepted, however, the continued usefulness of such information is limited. The modification of section (c) by adding "including juror qualification questionnaires, shall be destroyed promptly after they are no longer needed for trial or appeal unless otherwise ordered by the court" is intended to protect juror privacy. The destruction of such information, in both electronic and paper forms, will operate to ensure against unnecessary intrusions into the personal matters of jurors by members of the public. The rules on retention of documents should also be amended in keeping with this recommendation.

Recommendation #9: Jury Facilities. Every judicial district should evaluate its court facilities, using Standard 14 of the American Bar Association Standards Relating to Jury Use and Management. Facilities should meet the ABA Standards and seek to exceed them.

Comment: The American Bar Association Standards Relating to Juror Use and Management, Standard 14: Jury Facilities (1993), provides:

> a. The entrance and registration area should be clearly identified and appropriately designed to accommodate the daily flow of prospective jurors to the courthouse.
> b. Jurors should be accommodated in pleasant waiting facilities furnished with suitable amenities.

c. Jury deliberation rooms should include space, furnishings and facilities conducive to reaching a fair verdict. The safety and security of the deliberation rooms should be ensured.

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

An evaluation team should be formed by the district administrator and should include citizens with recent jury experience. This evaluation team should try to ensure that jurors have separate entrance and exit areas, clear parking and transportation information, and a designated specific juror waiting area apart from the parties. Any juror contact with victims, attorneys, witnesses or parties to a court action should be minimal and eliminated if possible.

In addition, jurors should be afforded the privacy necessary for specific or unique personal needs, such as nursing mothers or individuals with unique medical needs. Courts should make all facilities accommodating to all jurors, including those with disabilities.

For many citizens, jury service is their first exposure to the court system and, for some, the actual court facility. Concise instructions prior to reporting for jury service, in addition to clear signage in court facilities, helps to relieve anxiety and increase juror comfort. Typically, it is necessary for prospective jurors to spend a fair amount of time in the juror waiting room. This area should provide jurors with enough space, comfortable seating, adequate lighting, temperature control, refreshments, workstations and other appropriate jury room services. In addition, jury deliberation rooms should have appropriate amenities and should be comfortable and adequately lighted.

B. Recommendations Relating to the Jury Selection Process

Introduction: The Jury Task Force heard numerous anecdotal accounts about the increasing time it takes to conduct voir dire in criminal cases, especially in urban courts. In Hennepin County, for example, some commentators estimated that in most felony cases, jury selection takes about as long to complete as the trial itself. Moreover, the Task Force heard comments that jury selection is becoming increasingly time consuming and less about discovering a basis for exercising challenges and more about predisposing jurors to favorably view the particular litigant's case. Put a different way, for some lawyers, jury selection has evolved into a process designed primarily to give information to jurors in hopes of persuading them. It is less and less frequently used to achieve its proper purpose: to receive information from jurors in order to exercise an informed challenge.

It should be acknowledged that law schools and continuing legal education courses regularly encourage trial lawyers to "win" their case in jury selection. Attorneys may also prolong the jury selection process in order to gain additional time in which to prepare or to establish better rapport between the jury and their clients.

Unfortunately, there are no scientific studies available to determine the extent to which these anecdotes reflect a widespread practice or simply isolated instances.

From a court system point of view, longer jury selection increases the costs of litigation, not only for the litigants, but also for the court system that must bear the ever-rising costs of providing juries. More importantly, longer trials decrease the court system's capacity to conduct trials. Simply stated, the court system's ability to conduct trials is a finite resource that is exhausted by unnecessarily long trials. The reduction of the capacity to try cases means that litigants wanting to resolve their dispute by means of a jury trial will encounter significant and unnecessary delay in order to do so.

The Task Force heard reports from judges and former jurors from all over Minnesota that jury selection is: (1) tedious and boring because for the most part, jurors do not participate but rather sit for hours listening to the answers of strangers until it is finally their turn to answer questions; (2) repetitive because most attorneys ask the same questions of each juror, frequently repeating questions previously asked by the judge, opposing counsel, or written questionnaires; (3) manipulative because lawyers attempt to persuade jurors and seek commitments on various legal and factual propositions; (4) embarrassing because jurors invariably are unable to correctly answer questions about the law and legal process, (5) invasive of their privacy by requiring jurors to provide personal information about themselves, their families, and their friends that many jurors feel jeopardizes their safety; and (6) most importantly, wastes their time.

A 1995 survey of former jurors conducted by the Minnesota State Bar Association (MSBA) revealed some of these same concerns. However, those jurors also said that they understood why a probing voir dire is an essential safeguard for litigants. They also affirmed that the right to elicit the information required for an informed exercise of challenges should be preserved. In their minds, the fact that the process may be time consuming and tedious was outweighed by the importance of identifying and eliminating potential sources of bias and prejudice. They said that they would want the same procedure to be followed if a case of theirs was to be submitted to a jury. The data from the 1995 MSBA survey demonstrates that public confidence in the fairness of the justice system is maintained by allowing for a thorough, probing voir dire.

The Jury Task Force is mindful of the important role that voir dire plays in assuring that a fair and impartial jury hears the case, whether civil or criminal. The Task Force is also aware that some cases, particularly criminal cases involving sexual assault, abuse, murder and other sensitive topics, require the discussion of subjects about which the jurors, judges, and attorneys are uncomfortable. The Task Force recognizes that searching inquiry of jurors is often necessary to uncover latent attitudes and biases that may affect a juror's impartiality.

The purpose of the following recommended guidelines is to ensure that voir dire is conducted as efficiently and effectively as possible, consistent with its important role in assuring that justice is done in every civil and criminal case.

<u>Recommendation #10: The Judicial Role in Voir Dire.</u> Judges should exercise control over the jury selection process to ensure that it is properly conducted and should intervene *sua sponte* when appropriate.

Comment: The Task Force found that there is often a significant discrepancy between the law relating to appropriate voir dire and actual practice. Task Force members felt that many of the problems associated with jury selection could be alleviated if judges exercised appropriate supervision over it. In many instances and for a variety of strategic reasons, attorneys are not always motivated to object to improper voir dire. Judges should intervene, even without an objection, if it is appropriate to do so. The Supreme Court has observed:

> The trial judge is not a passive moderator at a free-for-all. The trial judge is the administrator of justice and has an affirmative obligation to keep counsel within bounds. . . .
>
> "The adversary nature of the proceedings does not relieve the trial judge of the obligation of raising on his or her initiative, at all appropriate times and in an appropriate manner, matters which may significantly promote a just determination of the trial."

State v. Salitros, 499 N.W.2d 815, 817 (Minn. 1993) (*quoting* I ABA Standards for Criminal Justice, Special Functions of the Trial Judge 6-1.1 (2d ed. 1979)).

Recommendation #11: Questioning by the Judge. Judges should initially question all prospective jurors about their general background and experience, including their residence, education, employment, family or other close relationships, and prior court or criminal justice system experience.

Comment: The Task Force felt that basic background and "biographical" questioning is best handled by the trial judge rather than the litigants, primarily because judges can accomplish this task more quickly and with less unnecessary intrusion into the privacy of prospective jurors.

Recommendation #12: Attorney Questioning. Attorneys should be provided a fair and adequate opportunity to question prospective jurors during the jury selection process.

Comment: The Task Force supports questioning by attorneys during voir dire. No effort to adopt a "federal" model of judge-only questioning was proposed or considered by the Task Force. Although there have been abuses, the Task Force recognizes that attorney questioning during voir dire is an essential ingredient to a fair trial. Moreover, Minnesota law strongly endorses the critical role of attorney questioning during voir dire. *See* Heydman v. Red Wing Brick Co., 112 Minn.158, 127 N.W.561 (1910).

Recommendation #13: Proper Purposes of Voir Dire. Judges and attorneys should know and understand the proper purpose of voir dire so that judges can exercise appropriate control over the jury selection process.

a. The proper purpose of voir dire is to discover information that could provide the basis for exercising either: (1) a challenge for cause, or (2) an informed peremptory challenge.

Comment: This brief statement of the proper purposes of voir dire comes directly from Rule 26.02 of the Minnesota Rules of Criminal Procedure, and is equally applicable to civil cases. As noted above however, the Task Force observed that, particularly in criminal cases and in metropolitan area jurisdictions, voir dire is frequently conducted for many other improper purposes. The Task Force thus felt that it was appropriate to restate and reaffirm the rule.

b. As a general principle, voir dire should be used to receive information from prospective jurors about their relevant opinions, beliefs, prior experiences, and relationships in order to permit the exercise of an informed challenge. Voir dire should not be used as a means to give information to prospective jurors about a party's view of the facts or law applicable to the case. However, attorneys may provide basic information about the evidence or law when reasonably necessary to frame a question that has a proper purpose.

Comment: The only legitimate way to achieve the proper purposes of voir dire is by questioning which seeks information from the juror. Because many jurors are reluctant to discuss their beliefs and experiences in open court, there is a need for lawyers to encourage disclosure with open-ended questions. A proper purpose of voir dire cannot be achieved by a question primarily designed to give information to the juror.

The preface to an appropriate question may incorporate a brief reference to relevant and undisputed facts or legal principles. Providing a juror with some context is an effective and efficient means of helping the juror determine whether he or she has any relevant opinions, beliefs, or life experiences that should be disclosed during voir dire. The purpose of making a reference to undisputed facts or legal principles must be to frame a question that seeks relevant information from a juror. The purpose cannot be to make an argument.

c. Judges should generally prohibit voir dire that is conducted for the following improper purposes:

- **i. Educating Jurors- Voir dire should not be used primarily to persuade, instruct, educate or indoctrinate jurors as to the law, arguments, facts, strategies, or problems in the case.**
- **ii. Predisposing Jurors- Voir dire should not be used primarily to predispose jurors to be in favor of or against a party, a witness, or some aspect of the case.**
- **iii. Speculative Questions- Jurors should not be asked to speculate about how they might decide the case or how they might react to any factual issue in the case.**
- **iv. Seeking Commitments- Jurors should not be asked to commit themselves to vote in a certain way.**
- **v. Repetitive Questions- Attorneys should not be permitted to repeat questions already asked by the judge, by another attorney, or by a questionnaire to which complete and clear answers have already been given.**
- **vi. Establishing Rapport- Attorneys should not ask questions or present information about themselves or their client designed primarily to**

establish rapport with prospective jurors or to get them to identify with their client or their client's cause.

Comment: Current law already provides trial judges with full discretion to prohibit or limit voir dire in all of the above areas. *See* Gordon W. Shumaker, Voir Dire: A Trial Judge's View, (1997), (unpublished). (See Appendix E for a copy of this paper.) For example, the Minnesota Supreme Court stated, "[J]urors are not to undergo a course of instructions on the law at the hands of the attorneys, or to pass an examination therein, or to disclose in advance of the evidence how they will decide the case." State v. Bauer, 249 N.W. 40, 41 (Minn. 1933).

However, under current practice, it is quite common for such improper questioning to nevertheless occur. Because of this gap between law and practice, judges may be hesitant to set appropriate limits during jury selection. The fact that attorneys rarely object to improper voir dire may contribute further to the hesitancy of judges to set limits. By specifying areas of proper and improper voir dire in this report, the Task Force intends to provide judges and attorneys with some guidance in determining where limits should be drawn. Of course, as in most matters involving judicial discretion, these limits should not be inflexibly applied.

Recommendation #14: Time Limits. Time limits during voir dire are authorized by law, but should be used carefully so as to be reasonable in light of the total circumstances. If they are used, the following procedures are recommended:

a. Establishing the Need for Time Limits. Time limits should not be imposed from the outset of jury selection but only after the court observes some voir dire and concludes that the questioning is unreasonably time consuming.

b. Prior Warnings. The judge should warn attorneys in advance that time limits may be imposed.

c. Extension of Time Limits. If time limits are set, attorneys should be given the opportunity to request additional time with respect to individual jurors if good cause is shown.

d. Reasonable Time Limits. Time limits must provide attorneys with sufficient time, given the circumstances of the case, to achieve the proper purposes of voir dire and to have a reasonable opportunity to examine each prospective juror.

e. Inappropriate Judicial Commentary. The judge should not make any comments about the timing process in the presence of the jury.

Comment: Minnesota law clearly authorizes the use of time limits during jury selection as long as those limits are "reasonable in light of the total circumstances of the case." State v. Evans, 352 N.W.2d 824, 827 (Minn. App. 1984). Many judges are reluctant to use time limits because they have been appropriately struck down on appeal in the few cases that have been reviewed. The Task Force believes that time limits should only be imposed when there has been voir dire abuse. Time limits are arguably unnecessary if voir dire is being conducted for proper purposes. However, if a judge does decide to use time limits, the Task Force recommends the above procedures to ensure fairness to the litigants.

Recommendation #15: Unlawful Exercise of Peremptory Challenges. Judges and attorneys should know and adhere to substantive law and procedure that prohibits race and gender discrimination during jury selection.

Comment: The holdings in Batson v. Kentucky, 476 U.S. 79 (1986), and its progeny have been incorporated into Rule 26.02, subd. 6a of the Minnesota Rules of Criminal Procedure. These holdings also apply to civil cases. *See* Edmonson v. Leesville Concrete Co., 500 U.S. 614 (1991). Rule 26.02, subd. 6a applies only to race and gender discrimination. The United States Supreme Court holdings in this area have also been limited to race and gender discrimination. Some state and lower federal court decisions have extended the Supreme Court holdings to other cognizable groups that are subject to heightened equal protection scrutiny. As noted in the Advisory Committee Comments to Rule 26.02, subd. 6a, judges and lawyers should be familiar with the evolving case law in this area. *See* State v. Davis, 504 N.W.2d 767 (Minn. 1993), *cert. denied*, Davis v. Minnesota, 511 U.S. 1115 (1994) (Batson protections do not apply to religious affiliation). Similarly, judges and lawyers should be familiar with case law that has defined the terms "prima facie showing," "race-neutral explanation," "pretextual reasons," and "purposeful discrimination."

The unlawful exercise of peremptory challenges can best be avoided when voir dire questions and procedures encourage prospective jurors to disclose relevant experiences, attitudes and beliefs. In the absence of such information, attorneys are more likely to base peremptory challenges on race, gender or other factors that may be unlawful.

Recommendation #16: Designation of Alternate Jurors. To ensure that all jurors give their full attention to the proceedings, alternate jurors should not be specially designated or treated differently than other jurors.

Comment: The purpose of employing alternate jurors in criminal trials is undermined if alternates are explicitly identified prior to jury deliberations. (There are no alternate jurors in civil cases pursuant to Rule 48 of the Minnesota Rules of Civil Procedure.) Although it can be disappointing or frustrating for alternate jurors to discover at the end of the case that they will not be taking part in the jury's deliberation process and verdict, this consideration is outweighed by the need to ensure that alternates pay full attention to all phases and details of the trial should it be necessary for them to actually deliberate. For that reason, judges should refrain from specifically designating or identifying alternates before the jury begins its deliberation.

To help mitigate the potential frustration this may cause for alternate jurors, at a minimum judges should explain very clearly to all jurors at the outset of the trial the role of the alternates, and that not all of the jurors who will be hearing the case will take part in the process of deliberating and reaching a verdict.

Recommendation #17: Developing Standard Juror Questionnaire. A standard juror questionnaire should be developed. This standard questionnaire should be completed by all jurors before they are sent to a courtroom and should provide basic background information, which is then made available to the judge and the attorneys.

Comment: Besides its obvious advantages in reducing the amount of time needed to conduct voir dire, the use of standard questionnaires to be completed by all jurors upon their arrival for jury service would have the additional benefit of addressing many of the criticisms that judges and jurors have raised concerning jury selection. In particular, it would ameliorate the tedium of having to listen to the same questions asked over and over of other jurors, as well as the potential embarrassment and invasion of privacy from being asked for personal information in the presence of attorneys, parties and other jurors and observers. The confidentiality of these questionnaires should be protected pursuant to Recommendation #21.

Recommendation #18: Use of Case-Specific Juror Questionnaires. The use of questionnaires during jury selection should be particularly encouraged in cases involving: (1) pre-trial publicity, (2) juror privacy issues (e.g. in child sex abuse cases), or (3) juror security or safety issues; or whenever the use of questionnaires could streamline jury selection.

Comment: The same considerations that generally militate in favor of using standard juror questionnaires operate particularly strongly in cases involving heightened concern for juror safety and privacy, or pretrial publicity. Similarly, in these types of cases particular care must be taken to maintain the confidentiality of such questionnaires (see Recommendation #21).

C. Recommendations Relating to Juror Privacy During Voir Dire

Introduction: The issue of how to protect jurors' privacy, while also preserving the important right of litigants to a fair and impartial jury, was the focus of considerable discussion by the Task Force, mirroring national attention to the issue in recent years by courts and commentators. *See, e.g.*, Paula L. Hannaford, "Safeguarding Juror Privacy: A New Framework for Court Policies and Procedures," 85 Judicature 18 (July-August 2001); Mary R. Rose, "Expectations of Privacy? Jurors View of Voir Dire Questions," 85 Judicature 10 (July-August 2001); G. Thomas Munsterman, Paula L. Hannaford & G. Marc Whitehead, Jury Trial Innovations, National Center for State Courts (1997) at 65-67; ABA Standards Relating to Juror Use and Management, Standard 20: Juror Privacy (adopted by ABA House of Delegates, August 1998). The issue was raised repeatedly at the juror focus groups conducted by the Task Force. Letters to the Minnesota Attorney General from jurors expressing concern about privacy issues were shared with the Task Force. Jurors raised two fundamental concerns: invasion of their privacy during voir dire and revelation of their identities and other personal facts to criminal defendants. The following recommendations seek to address some of the expressed concerns, while also

attempting to preserve the purpose and intent of the voir dire process from the standpoint of litigants.

Recommendation #19: Explaining the Purpose of Voir Dire. Judges should explain the purpose of voir dire to prospective jurors and should emphasize that it is not designed to invade their privacy but rather to explore viewpoints and life experiences that might affect their ability to be fair and impartial in a particular kind of case.

Comment: Many jurors in the focus groups and whose experiences were otherwise reported to the Task Force indicated that they did not understand why it was necessary for attorneys to ask them personal questions in order to ascertain their ability to serve as fair and impartial jurors. It is appropriate, especially in major criminal cases where the questioning may be lengthy, detailed and probing, for judges to inform prospective jurors before questioning begins why they may be asked personal questions, and the importance of thorough and candid answers. CRIMJIG 1.01 of the Jury Instruction Guides--Criminal, West Group Minnesota Practice Series, vol. 10 (1999) contains no explanation of the purpose and scope of voir dire. The Jury Instruction Guides--Civil, West Group Minnesota Practices Series, vol. 4 (2000), contains no suggested instruction preceding voir dire. It may be appropriate to augment the criminal jury instruction and include a new instruction among the civil jury instructions designed to mitigate the concerns of prospective jurors, and also to explain the process and its importance in order to alleviate defensiveness and resentment among them. It also may be appropriate for judges to tailor their introductions to forewarn jurors of specific areas of inquiry that may be pertinent to particular cases. The introductory remarks may also explain the processes that will be employed to protect the jurors' privacy regarding personal issues, as set forth in the following recommendations.

Recommendation #20: Protecting Jurors' Privacy During Voir Dire. To the extent possible, judges should accommodate jurors' privacy concerns during voir dire and take appropriate measures to safeguard that privacy, consistent with the historic public interest in open proceedings. Where interrogation focuses on highly sensitive or personal matters, judges should allow prospective jurors to answer specific questions at the bench, in chambers, or in a courtroom closed to observers, but on the record and with counsel present. Rule 26 of the Rules of Criminal Procedure should be amended to specifically provide for these alternatives.

Comment: In Press-Enterprise Co. v. Superior Court, 464 U.S. 501 (1984), the Supreme Court established authority for the closing of proceedings or other appropriate measures to safeguard the privacy of potential jurors, and provided guidelines and suggestions for balancing the historic public interest in open proceedings with the legitimate and compelling privacy interests of the potential jurors. The Court commented:

> The jury selection process may, in some circumstances, give rise to a compelling interest of a prospective juror when interrogation touches on deeply personal matters that person has legitimate reasons for keeping out of the public domain. The trial involved testimony concerning an alleged rape of a teenage girl. Some questions may have been appropriate to prospective jurors that would give rise to legitimate privacy interests of those persons. For example a prospective juror might privately inform the judge that she, or a member of her family, had been raped but had declined to seek prosecution because of the embarrassment and emotional trauma from the very disclosure of the episode. The privacy interests of such a prospective juror must be balanced against the historic values we have discussed and the need for openness of the process.
>
> To preserve fairness and at the same time protect legitimate privacy, a trial judge must at all times maintain control of the process of jury selection and should inform the array of prospective jurors, once the general nature of sensitive questions is made known to them, that those individuals believing public questioning will prove damaging because of embarrassment, may properly request an opportunity to present the problem to the judge in camera but with counsel present and on the record.
>
> By requiring the prospective juror to make an affirmative request, the trial judge can ensure that there is in fact a valid basis for a belief that disclosure infringes a significant interest in privacy. This process will minimize the risk of unnecessary closure. The exercise of sound discretion by the court may lead to excusing such a person from jury service. When limited closure is ordered, the constitutional values sought to be protected by holding open proceedings may be satisfied later by making a transcript of the closed

> proceedings available within a reasonable time, if the judge determines that disclosure can be accomplished while safeguarding the juror's valid privacy interests. Even then a valid privacy right may rise to a level that part of the transcript should be sealed, or the name of a juror withheld, to protect the person from embarrassment.

Id. at 511-12.

Prospective jurors may have legitimate and compelling reasons for preferring not to disclose a variety of personal facts, from prior involvement with the courts or the criminal justice system to matters involving their health and their families. By virtue of the Supreme Court's pronouncement in Press-Enterprise, the trial court has authority to weigh the jurors' privacy interests against the public policy of open proceedings, and to permit voir dire proceedings to be held in private, on the record and with counsel present. Rule 26.02 subd. 4(2) of the Minnesota Rules of Criminal Procedure provides that a juror may be questioned outside the presence of "other chosen and prospective jurors." However, it does not specifically provide that the questioning may take place outside the presence of other observers. The Supreme Court's comments in Press-Enterprise endorsing in camera proceedings would seem to contemplate questioning not only outside the presence of other jurors, but also outside the presence of courtroom observers. One judge commended to the Task Force her practice of allowing prospective jurors to answer a standard question in criminal cases about prior experiences with the criminal justice system at the bench, with counsel present, if any prospective juror requested privacy to answer the question. In the judge's experience, most prospective jurors, having been so advised, did not request privacy to answer the question, but those who did nearly always had legitimate reasons for doing so. The practice would be specifically endorsed by a rule change authorizing judges to take appropriate measures to ensure juror privacy.

The Task Force recommends that Rule 26.02 subd. 4(2)(a) of the Rules of Criminal Procedure be amended as follows:

> (a) Court's Discretion. In the discretion of the court the examination of each juror may take place outside of the presence of other chosen and prospective jurors and observers. The court may also take answers to individual voir dire questions touching on sensitive or private issues at the bench or otherwise outside the presence of the venire and observers. When the court or counsel ask voir dire

questions touching on sensitive or private issues, the court should inform prospective jurors that they may elect to answer the questions in private.

Recommendation #21: Retention of Juror Questionnaires. The rules regarding handling and retention of voir dire questionnaires should be amended to provide that they are not maintained in the public record but are protected from public scrutiny and are destroyed promptly after they are no longer needed for trial or appeal.

Comment: Rule 26.02, subd. 2(2) of the Minnesota Rules of Criminal Procedure provides for the use of questionnaires as a part of the voir dire process. Since voir dire is presumptively a public proceeding, the comment to the rule states explicitly that "the questionnaire is a part of the jury selection process and part of the record for appeal" and that, "[a]s such, the questionnaires should be preserved as a part of the court record of the case." Moreover, Form 50, appended to the Rules of Criminal Procedure as a sample jury questionnaire, includes language instructing prospective jurors that "Your answers to the questions contained in the Questionnaire, like your answers to questions in open court during jury selection proceedings, are part of the public record in this case."

The Task Force's informal survey of judicial practices makes it clear that there is no consistency in the handling of juror questionnaires, and that it appears that many judges disregard the rule and comment and destroy questionnaires after jury selection or at the conclusion of a trial. Moreover, many former jurors expressed to the Task Force their dismay at learning that the current rules presently provide that voir dire questionnaires are a part of the public record. Whatever provisions are made to safeguard juror privacy with regard to questionnaires, they too must conform to the Supreme Court's dictates in Press-Enterprise. (See the Comment to Recommendation #20 above.) The Supreme Court commented that in an appropriate case, a judge may order sealing of a transcript or withholding the name of a juror "to protect the person from embarrassment." It is not unreasonable to assume that findings could be made as to the importance of candor in juror questionnaires, which could be undermined if jurors are advised that the questionnaires are part of the public record.

Specifically, the Task Force recommends the following amendment to Rule 26.02 subd. 2(2) of the Rules of Criminal Procedure (proposed new text underlined):

(2) *Jury Questionnaire.* As a supplement to oral voir dire, a sworn jury questionnaire designed for use in criminal cases may be used to obtain information helpful to the parties and the court in jury selection before the jurors are called into court for examination. Court personnel may hand out the questionnaire to the prospective jurors and collect them when completed. The court shall make the completed questionnaires available to counsel. If copies of the questionnaires are made for counsel, the copies shall be returned to the court at the conclusion of jury selection and destroyed. The originals and copies of questionnaires completed by jurors not selected for service on the panel for a particular case shall be destroyed immediately following jury selection, unless either party requests that the questionnaire of a particular juror be preserved because of possible appellate issues. Questionnaires completed by jurors who are selected to serve as jurors in a particular case shall be preserved under seal as a part of the court record and shall not be disclosed except by order of the court based upon good cause shown for such disclosure. Upon return of a "not guilty" verdict, or at the conclusion of all appellate proceedings or the expiration of time for appeal in cases in which a verdict of "guilty" is returned, the original questionnaires retained under seal shall be destroyed.

The Task Force further recommends that the second sentence of the preamble to "Form 50. Juror Questionnaire" be stricken and that the following sentence be substituted:

The completed Questionnaire is confidential and will be shared only with counsel and the parties solely for the purpose of jury selection. At the conclusion of jury selection, all copies of the Questionnaire will be destroyed, and your original Questionnaire will be retained by the court "under seal" -- that is, no one will be permitted to have access to it without a court order based upon a showing of good cause. The Questionnaire will be destroyed at the conclusion of all proceedings in the case.

If the foregoing changes to the rule and form are ultimately adopted, the Comment to Rule 26, which states that "prospective jurors cannot be told that the questionnaire is confidential or will be destroyed at the conclusion of the

case," and that "the public and the press have a right of access to [the questionnaires]" must be revised accordingly.

The Task Force further recommends that the Rules of Civil Procedure be amended similarly to provide both for the use of questionnaires in appropriate cases and also for their confidentiality, consistent with the recommendations made regarding the criminal rules.

Note that the rule changes proposed here refer only to procedures in criminal cases. Rule 47.01 of the Minnesota Rules of Civil Procedure, and Section 6 of the Civil Trialbook, General Rules of Practice, refer to voir dire procedure, but there is no mention of the use of questionnaires in civil cases. However, the report of the Minnesota State Bar Association Committee on Civil Juries, issued in 1995, recommended the use of juror questionnaires in appropriate civil cases "to reduce the time taken up by juror questioning and to increase juror privacy."

The Committee reported that their investigation (including juror focus groups) "indicated that jurors are more willing to be forthcoming in answers if they can do so in written question form, and if jurors are assured that their answers are confidential." Comment to Recommendation 4 (emphasis added). Accordingly, the Task Force recommends that provisions paralleling those for use and retention of questionnaires in criminal cases be adopted for civil cases as well.

Recommendation #22: Use of Anonymous Juries. "Anonymous" juries should be used sparingly by judges presiding in high profile cases where possible jury tampering or safety are legitimate and well-founded concerns. Judges should have the discretion in some cases and circumstances to refer to jurors or prospective jurors by number in open court, even though the jury is not truly "anonymous" -- *i.e.*, identities unknown to the parties.

Comment: While the use of anonymous juries may help alleviate the privacy and safety concerns of jurors, and was strongly advocated by some former jurors whose views were reported to the Task Force, their general use would contravene historical and constitutional concepts of open, public and fair trials. The Minnesota Supreme Court has endorsed the use of anonymous juries in the discretion of the trial judge in limited circumstances, when the court "(a) determines there is strong reason to believe that the jury needs protection from external threats to its members' safety or impartiality; and (b) takes reasonable precautions to minimize any possible prejudicial effect the jurors' anonymity might have on the defendant."

State v. Bowles, 530 N.W.2d 521, 530-531 (Minn. 1995). The Supreme Court also noted that, although written findings are not required, the court must state on the record "clear and detailed facts underlying its determination" that an anonymous jury is appropriate. Id. at 531. The Task Force, while recognizing the concerns voiced by jurors, and while noting that the practice is more widespread in other states, does not recommend expansion of the use of anonymous juries.

However, in some cases or circumstances during trial, it may be appropriate to refer to jurors by number even though the panel is not truly "anonymous." For example, two jurors in a high profile murder case in a rural county wrote letters to the Attorney General, which were shared with the Task Force, expressing their concern about the free use of their names in the courtroom during voir dire, and their dismay that when they were polled after returning a jury verdict, their full names were used. In such circumstances, a judge should have the discretion to consider referring to the jurors by number in order to alleviate their anxiety and discomfort, as long as reasonable precautions are taken (including appropriate instructions) to protect a defendant's right to a fair trial by an impartial jury. In addition, if cameras or sketch artists are allowed in the courtroom, no one should be allowed to take a picture or make a sketch that would permit the identification of an individual juror.

D. Recommendations Relating to Efficient Conduct of Jury Trials

Introduction: The amount of time jurors spend waiting was a frequent complaint from the focus group jurors. Jurors felt that such unproductive time was wasteful and commented that they were not adequately informed of the anticipated length and reason for delay. The recommendations in this section are designed to deal with these concerns.

Recommendation #23: Eliminating Unnecessary Delays. Trials should be conducted so as to reduce or eliminate unnecessary waiting by jurors and to ensure that there are no unnecessary interruptions or breaks during the presentation.

Comment: Judges and jury managers can be creative when designing strategies to reduce delays for jurors. Examples include, but are not limited to: (1) breaking the jury panel into smaller groups so jurors do not spend a long time in the jury box while waiting their turn to be questioned; (2) allowing for a flexible witness order to avoid delays and (3) giving the jurors individual copies of an exhibit that they can examine in the jury room rather than taking a lot of court time to review an exhibit.

Recommendation #24: Pretrial Steps. A number of procedural tasks should be completed by the attorneys and the trial judge before voir dire begins so that the trial may proceed without interruption.

Comment: The tasks that should be accomplished before jury selection may include the following:

- Exhibits should be pre-marked.
- Jury instructions and verdict forms should be finalized to the extent possible.
- All potential omnibus hearing issues and motions in limine should be decided.
- Documentary evidence or transcripts to be submitted to the jury should be edited or redacted.
- In cases that involve numerous potential witnesses or exhibits, the court should consider reviewing the evidence in advance of trial for the purpose of setting appropriate limits to avoid repetition, delay or confusion.
- Litigants should be encouraged to stipulate to evidence that is uncontested.
- In civil cases, the use of deposition summaries may be recommended.
- Litigants should be directed to have sufficient witnesses available to ensure that the trial continues uninterrupted.

Recommendation #25: Minimizing Interruptions of "Jury Time." Judges should discourage the invasion of "jury time." Therefore, unexpected motions or chambers discussions should be held, to the extent possible, before or after court. Similarly, the use of bench conferences should be minimized. Attorneys should be permitted to make a record but not necessarily during "jury time."

Comment: Generally speaking, attorneys must be given a fair opportunity to place relevant matters on the record. However, making a record frequently interrupts the presentation of

the case to the jury and thus adversely affects the quality of the juror experience. In some cases, such interruptions and the resultant waiting is necessary and unavoidable. In other cases, however, the making of the record can be limited with respect to both timing and content such that the interruption and waiting are reduced or eliminated.

As to timing, there is nothing that prohibits a trial judge from requiring that such entries be made before or after the trial is in session and the jury present. Similarly, a record can be made during recesses or by written rather than oral submission. In all of these situations, the quality of the juror's experience would undoubtedly be enhanced without diminishing the quality of the record.

As to content, the law requires only the party be permitted to preserve their objection, the basis for it (if not already apparent from the context), the court's ruling and, if evidence is excluded, an offer of proof as to the substance of the content. More importantly, it is unnecessary to preserve an attorney's argument on the issue. *See* Rule 103 (a) and (b), Minnesota Rules of Evidence.

Finally, the decision to permit attorneys to approach the bench to argue the ruling of the court is discretionary with the judge and should not be granted as a routine matter.

Recommendation #26: Keeping the Jury Informed. If it is absolutely necessary to interrupt the trial to hear motions or conduct chambers discussions, the jury should be frequently informed of the status of the proceedings and when they will resume.

Comment: As a matter of common courtesy, judges and their staffs should make a concerted effort to improve the quality and the quantity of communication with jurors. Jurors repeatedly report that they feel forgotten and ignored as the attorneys and the judge debate over some issue of law in chambers. Meanwhile, jurors are expected to wait for indeterminate lengths of time with no explanation of what is happening and when they might be expected to return to their duties. The issue of improving communication with jurors is by far the easiest and least expensive of the Task Force recommendations to achieve. Yet for reasons unknown, this issue has plagued the courts and jurors for years.

E. Recommendations Relating to Enhancing Juror Understanding

Introduction: Many jury reforms over the past decade have focused on how to improve juror understanding. *See* Robert D. Myers and Gordon M. Griller, "Educating Jurors Means Better Trials: Jury Reforms in Arizona," The Judge's Journal 13 (Fall 1997). The Task Force recognizes that there are many steps courts can take to assist jurors in their role of fact-finder. For example, judges should be receptive to the reasonable use of any audio-visual or technological technique that helps jurors to understand the case, as well as to the use of highlighted or indexed exhibits so that jurors can locate relevant portions. The following recommendations attempt to address larger issues of juror understanding and are in keeping with jury reforms around the country.

Recommendation #27: Juror Note Taking. Judges should facilitate juror note taking by providing jurors who wish to take notes with the materials to do so.

Comment: Providing jurors with the means to take notes has been studied in trials around the country. *See* Larry Heuer and Steven Penrod, "Increasing Juror Participation in Trials through Note Taking and Question Asking," 79 Judicature 256 (March-April 1996). While the study could not prove that juror note taking serves as a memory aid or increases juror satisfaction with the verdict, it did show that the problems expected by some critics of juror note taking did not materialize. Jurors do not produce a distorted record of the case, note taking does not distract jurors, note takers do not gain an undue influence over non-note takers, and juror notes are an accurate record of the trial. Id. at 258-259. Because jurors are in favor of the opportunity to take notes and experiments in this area have found no harmful consequences, juror note taking should be encouraged.

Recommendation #28: Simple Language in Jury Instructions. Jury instructions, whether written or oral, should be simple, understandable and narrowly tailored to the issues in the case.

Comment: The Minnesota District Judges Association (MDJA) issued a comprehensive revision of the Jury Instruction Guides – Civil in 1999, premised on rewriting the instructions in "plain English." The Task Force recommends that the MDJA undertake a similar revision of the Jury Instruction Guides – Criminal so that instructions are in simple language. Technical language such as "lesser included," "elements," "Spreigl," and "aid and abet," should be avoided.

Recommendation #29: Written Instructions. Jurors should be provided with a written copy of the court's jury instructions to take with them into deliberations. Additionally, the court should give each juror an individual copy of the instructions. In cases where the judge finds that it is appropriate to give substantive instructions before opening statement, jurors should be given a copy of the written instructions to keep and use during the trial.

Comment: Written instructions increase the likelihood that jurors will understand and correctly apply the law. It is unreasonable to expect jurors to be able to commit important principles of law to memory or to be able to accurately take notes in this area. In most jury instructions, every word and every phrase has importance. The Task Force feels that juror comprehension and understanding would be well served by routinely making written instructions available to the jury. For all the reasons stated below (see Recommendation #14) in support of early substantive jury instructions, written copies of the instructions should also be made available to jurors as early as possible. Individual copies for each juror are recommended so that each juror has equal access to this important information.

Recommendation #30: Early Substantive Instructions. Judges should give substantive jury instructions prior to final argument and, in appropriate cases, prior to opening statement.

Comment: In the traditional trial model, the judge instructs the jury just before they begin their deliberations. Legal scholars and practitioners have long criticized this model and persuasively argued that substantive jury instructions should be given earlier in the trial. Those who argue that the judge should instruct prior to the presentation of final arguments claim these benefits: (1) The jury can more easily follow and analyze the lawyer's legal arguments if they have already been provided with instruction on the law; (2) the jury perceives the judge as the source of the law rather than the lawyers and (3) lawyers are not placed in the awkward position of trying to predict how the judge will instruct the jury.

Similarly, those who argue that substantive instructions on the law should be given before opening statements claim these additional benefits:

- The jury is better able to follow and analyze the testimony of witnesses if they know what to listen for as a result of jury instructions.
- Attorneys do not have to wait until the end of the trial to learn how the judge will instruct the jury. At this point, it is often too late to change a party's theory of the case or to reopen the case for additional testimony. Attorneys can present a more understandable and convincing case if they know in advance the substantive rules that will be applied.
- It is easier for judges to rule on evidentiary objections after a decision has been made on instructions.
- One of the main interruptions in the trial -- the instruction conference at the close of evidence -- can be shortened or eliminated, resulting in a more efficient trial and significantly less waiting for jurors.

However, one problem associated with early instructions in criminal cases must be acknowledged: in some circumstances, the instructions at the end of the trial may not be the same as those given at the outset. This is likely to occur in three particular situations: (1) counts or claims are dismissed or amended during the trial; (2) there is a decision to submit lesser-included offenses to the jury based upon evidence presented during the trial; and (3) evidence involving affirmative defenses is submitted. In each of theses situations, the need to give either additional or different instructions at the end of the case creates at least the potential for jury confusion. In actual practice, however, jurors seem to have little difficulty in dealing with this issue as long as the trial judge clearly and directly explains the changes. The use of written instructions also greatly assists jurors in dealing with these changes. With respect to affirmative defenses, some judges are willing to give substantive instructions on affirmative defenses at the outset of the trial, provided the proponent makes an adequate offer of proof on the record to support the giving of such an instruction. This practice eliminates the possibility of confusing the jury with a new or different instruction at the end of the trial.

Recommendation #31: Submission of Questions by Jurors. The Rules of Civil and Criminal Procedure and the General Rules of Practice for the District Courts (Part H - Minnesota Civil Trialbook) should be modified to permit the submission of questions to witnesses by jurors in the discretion of the trial judge.

Comment: The Task Force reviewed the issue of jurors submitting questions to witnesses with respect to both civil and criminal trials. During the Task Force deliberations, the Minnesota Court of Appeals and the Minnesota Supreme Court both heard the appeal of a criminal case where the trial judge allowed the jurors to submit written questions to witnesses. State v. Costello, 620 N.W.2d 924 (Minn. Ct. App. 2001), *review granted* April 17, 2001, *argued* October 4, 2001 (Minn. C7-00-436). The defendant appealed his conviction, arguing that this practice violated his right to a fair trial by an impartial jury. The Court of Appeals affirmed the conviction, holding that the process of allowing jurors to ask questions is within the sound discretion of the district court exercising its trial-management authority, and the exercise of this discretion should be reviewed on a case-by-case basis. Id. at 928. The Minnesota Supreme Court granted review and has heard oral argument in the Costello case, but had not issued a decision as of the submission date of this report.

The Task Force recommends that judges have the discretion to allow jurors to submit questions to witnesses and that the following procedures be followed:

- Prior to the commencement of trial, the judge should discuss with counsel the issue of whether jurors will be permitted to submit questions for the witnesses during the course of trial. Counsel should be given the opportunity to address the issue on the record and the judge should state on the record prior to the commencement of trial that the jurors either will or will not be permitted to submit questions for the witnesses.
- At the beginning of trials in which jurors will be permitted to submit questions to the witnesses, the judge should instruct jurors that they will be permitted to submit questions to the witnesses who testify. The jurors should be told that this practice does not apply to all trials, so as to avoid an expectation of entitlement to a similar opportunity should they be called upon to serve as jurors in other trials. Jurors should be told further that they are not advocates and that their questions should focus on clarifying the testimony of the witness and helping the juror to better understand that testimony.
- The judge's instruction should neither encourage nor discourage questions by jurors.
- The judge should inform the jurors that: (a) a question that violates the rules of evidence will not be submitted to a witness; (b) the jurors are not expected to know the rules of evidence and, therefore, the judge's decision not to submit a particular question should not be taken personally by the juror who asked the question; (c) the jurors are not to draw any inferences or attach any significance to the judge's decision not to submit a particular question to a witness; and (d) the jurors should not place special emphasis on the answers to their own questions or those asked by other jurors.
- At the conclusion of questioning by counsel, and before the witness leaves the stand, the judge should ask whether any juror has a question for the witness.
    - The question should be submitted to the judge in writing.
    - The question should be read on the record but out of the hearing of the jury.
    - Counsel should be given the opportunity to object to the question on the record but out of the hearing of the jury.

- Where possible, the judge should rephrase or modify the form of the question to cure an objection by counsel.
- The judge should rule on any objection on the record but out of the hearing of the jury.
- The question, if allowed, should be read to the witness by the judge.
- Counsel should be permitted to ask follow-up questions that are limited to the facts or issues raised by the juror question.

- If a question asked by a juror is not submitted to the witness, the judge should advise the jury that the rules of evidence do not permit the question to be asked and remind the jury to attach no significance to the fact that some of their questions will be submitted to the witnesses while others will not.

Allowing jurors to ask questions of witnesses has been studied in trials around the country. *See* Larry Heuer and Steven Penrod, "Increasing Juror Participation in Trials through Note Taking and Question Asking," 79 Judicature 256 (March-April 1996). This study found that juror questions to witnesses promote juror understanding of the facts and issues. In addition, counsel in this study were not reluctant to object to inappropriate juror questions, and if the lawyers did object, the jurors were not embarrassed or angry. Overall, the experiments found no harmful consequences and the study authors concluded that this procedure deserves serious consideration as a way to assist jurors with their difficult task. Id. at 260-261.

F. Recommendations Relating to Deliberations and Discharge

Recommendation #32: Jury Sequestration. The Minnesota Rules of Criminal Procedure should be amended to delete the provisions allowing the defendant to demand sequestration during deliberations. The determination of whether or not to sequester the jury during deliberations should be left to the sound discretion of the trial judge.

Comment: Under Rule 26.03, subd. 5 of the Rules of Criminal Procedure, a trial judge may permit a deliberating jury to separate over night during the deliberations only if the defendant consents. Consequently, the decision to sequester the jury during deliberations is one that belongs to the defendant. From a policy perspective, the factors that should enter into the decision to sequester are: (1) the seriousness of the alleged offense; (2) the length and complexity of the trial; and (3) the likelihood that the jurors may be exposed to improper outside influences or information. The consideration and resolution of these factors are particularly well suited to a determination by the trial judge, after input from opposing lawyers. Accordingly, the Task Force recommends that "With the consent of the defendant" be stricken from the second sentence of Rule 23, subd. 5(1) of the Rules of Criminal Procedure.

It should be noted that a decade ago, jury sequestration during deliberations was employed in almost every felony jury trial. In recent years, because of the increased costs and management necessitated by sequestration, the practice is used considerably less frequently. This decreased use of sequestration partially stems from the view that sequestration may

compound juror stress or foster juror retaliation against one of the parties out of frustration. *See* James P. Levine, "The Impact of Sequestration on Juries," 79 Judicature 266, 269 (March-April 1996). Moreover, many court administrators believe that the possibility of sequestration contributes significantly to the failure of many citizens to respond to their jury summons. Because of the hardships created for sequestered jurors and the factors that go into the decision to sequester during deliberations, that decision should be the trial judge's alone.

Recommendation #33: Closing Instructions. At the conclusion of the case, the judge should thank the jury for its service, and should inform the jurors that they are relieved from the court's instruction during trial that they not discuss the case. They should be told that they can discuss the case with anyone they choose, including the judge, attorneys on the case and the media, but they need not discuss the case with anyone. The Minnesota District Judges Association (MDJA) Jury Instruction Guides, both Civil and Criminal, should include a suggested instruction to be given when the jury is discharged.

Comment: Jurors are routinely told as part of the opening instructions, and often during the course of the trial, that they must not discuss the case with anyone outside the courtroom or with each other until they retire to consider their verdict. The Task Force learned from jurors, and the literature reflects, that in the absence of instruction by the judge, they do not always know what they are permitted to do with respect to discussion of the case after the trial is over. Moreover, they may be resentful if contacted by attorneys or representatives of the media, and they may be confused about whether they should make any statements. Although the General Rules of Practice for District Courts, Minnesota Civil Trialbook § 18, provides that, "In discharging the jury, the court shall: (1) [t]hank the jury for its service; . . . [and] (3) [a]dvise the jurors that they may, but need not, speak with anyone about the case," neither the Civil nor the Criminal Jury Instruction Guides ("JIGs") include a suggested instruction to be given when the jury is discharged. Although many judges have fashioned their own final remarks to jurors, the Task Force recommends that the MDJA consider adding such an instruction to both the Criminal and Civil JIGs. A report on jury procedures prepared under the auspices of the National Center for State Courts suggested the following closing instruction to jurors:

> Now that you have concluded your service on this case, I thank you for your patience and conscientious attention to your duty as jurors. You have not only fulfilled your civic duty, but you have also made a personal contribution to the ideal of equal justice for all people.
>
> You may have questions about the confidentiality of the proceedings. Because the case is over, you are free to discuss the case with any person you choose. However, you do not have to talk to anyone about the case if you do not want to. If you tell someone you do not wish to talk about it and they continue to bother you, let the Court know, for we can protect your privacy. If you do decide to discuss the case with anyone, I would suggest you treat it with a degree of solemnity, so that whatever you say, you would be willing to

> say in the presence of your fellow jurors. Your fellow jurors fully and freely stated their opinions in deliberations with the understanding they were being expressed in confidence.
>
> Again, I thank you for your willingness to give of your time away from your accustomed pursuits and faithfully discharge your duty as jurors. You are now excused.

Jury Committee of the Ninth Circuit, A Manual on Jury Trial Procedures 154 (1993), *quoted in* G. Munsterman, P. Hannaford and G. Whitehead, Jury Trial Innovations, National Center for State Courts (1997).

While the Task Force does not specifically endorse the language of the Ninth Circuit instruction, it is recommended that any closing remarks by the judge incorporate the concepts of releasing the jurors from the admonition of silence, informing them that they may but need not discuss the case with anyone, and suggesting that any comments they make should respect the privacy of other jurors and the confidentiality of their deliberations. While the notion that the court can "protect the privacy" of the jurors, as the Ninth Circuit instruction suggests, may be overbroad, especially with regard to media inquiries, the court does have some persuasive ability and even authority to control attorney contacts. Therefore, the Task Force also recommends that the closing comments to the jurors be made in open court with the attorneys present, so that the attorneys understand that the court expects them to respect the privacy of the jurors and any expressed reluctance on their part to discuss the case.

Recommendation #34: Thanking Jurors and Evaluating Their Experience. Judges and jury managers should ensure that both jurors who deliberated and alternates are given an appropriate debriefing session at the end of their service, including an expression of thanks, an opportunity to ask questions about their jury experience and a formal discharge.

Every person called for jury service, whether actually seated on a jury or not, should receive the thanks of the court and be given the opportunity to make suggestions and provide feedback on the process.

Comment: Debriefing is critical for all jurors, including alternates. Since alternate jurors are deprived of the opportunity to deliberate and determine the final verdict, they can have high levels of frustration and anxiety. When judges take the time to meet with the alternates at the end of the trial, answer questions, and thank them for their service, this can alleviate some of their concern.

Judges and court administrators throughout Minnesota currently use a combination of methods to thank jurors for their service. Methods include sending out juror thank you letters and exit questionnaires, thanking the jurors in person, thanking the jurors on the hotline message and providing certificates to jurors who have completed service. Any of these methods are appropriate ways to thank jurors, as long as both prospective and seated

jurors receive an expression of thanks and an opportunity to provide feedback on their experience. A sample letter and questionnaire are attached in Appendix F for reference.

G. Recommendations Relating to Juror Stress, District Plans and Implementation

Recommendation #35: Stress Related to Jury Service. Courts should strive during every contact with jurors to recognize the stress associated with jury service and make efforts to reduce it.

Comment: The Task Force recommends that judges and court personnel have the following:

- Training on the importance of communication with the jurors at every stage of jury service. It is especially important for them to explain as much as possible the reasons for delays and waiting periods (see Recommendation #26). The training should also include techniques for juror debriefing (see Recommendation #34). Trainings should include bailiffs employed by the county sheriff's departments.
- Resource materials to assist with juror stress issues during and after the trial, particularly high profile or traumatic trials. Districts may want to develop a brochure for jurors who are showing signs of stress (see Appendix G for an example of the juror stress brochure distributed in Maricopa County, Arizona).
- Training to recognize when specific jurors are experiencing unusually high levels of stress.
- Information and access to local mental health professionals to consult or to refer when necessary. Uninsured costs of mental health care services should be paid by the State.
- A written plan addressing juror stress issues for high profile or especially violent cases.

The Continuing Education Department should be responsible for creating this training and making it available to court personnel and judges. The National Center for State Courts has collected materials on juror stress in a publication entitled "Through the Eyes of a Juror: A Manual for Addressing Juror Stress," NSCS Publication No. R-209 (1998).

Recommendation #36: District Juror Treatment Plans. The District Administrator should assemble a team of key individuals to receive training on juror treatment and sensitivity issues. This team will then prepare, adopt and implement a district-wide plan on improvements for juror service. The plan should identify strategies for raising awareness of juror sensitivity issues and improvements in how the court system treats jurors before, during, and after service.

Comment: The Task Force concluded that a practical way to ensure heightened awareness of juror treatment and improvements in how the court system treats jurors is through education and training of a group of individuals in each judicial district who will be responsible for preparation and implementation of a Juror Treatment Plan. In addition:

- Each judicial district should annually review and consider updates to the juror sensitivity portion of the district-wide jury plan.

- Judicial district administrators should create a district-wide group of jury managers that meets regularly to review critical issues concerning juror treatment and develop action plans to address those concerns.
- All judges should continually monitor jury treatment and sensitivity issues.

Recommendation #37: Implementation Committee. The Supreme Court should appoint a standing committee to promote and monitor progress toward consideration and implementation of the Task Force's recommendations. This committee should also regularly review all rules and policies related to jurors and jury management system issues, and report regularly to the Supreme Court.

Comment: In recommending appointment of a standing committee to monitor jury-related issues and concerns, the Task Force recognizes the importance of these issues to the public at large, and especially to the many citizens who have been and will be called to serve as jurors. It also recognizes the potential to improve upon the trust and confidence that our citizens have in the criminal and civil justice system. To that end, the Task Force recommends that:

- A prime focus of this committee should be to increase public trust and confidence in our civil and criminal justice system.
- The committee should have broad representation. For example, it may include representatives of the judiciary, district administration, court administration, former jurors and practicing members of the bar.
- The focus of this committee should be to address issues related to: 1) full implementation of the Task Force recommendations; 2) jury service generally, with particular emphasis on issues mentioned in juror exit questionnaires concerning the specific needs of jurors; and 3) efforts to make it easier for citizens to serve as jurors to discover ways to make jury service less of a hardship and more "user-friendly."

PART V: CONCLUSION

As the Order establishing this Task Force states, the effective functioning of the American jury is fundamental to the judicial process and to the public's confidence in the justice system. In order to ensure that Minnesota continues to have an effective jury system, the Task Force has brought together judges, attorneys, court administrators, national experts and members of the public to examine the current system and recommend improvements.

The Task Force recommendations focus on improved juror treatment and trial procedures affecting jurors. By working to make jury service more efficient, to protect juror privacy, and to increase juror understanding of the process, the Task Force presents achievable goals to keep Minnesota a national leader in jury management.

PART VI: REFERENCES

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APPENDIX A

Order Establishing the Minnesota Supreme Court Jury Task Force

STATE OF MINNESOTA
IN SUPREME COURT

C7-00-100

ORDER ESTABLISHING THE MINNESOTA
SUPREME COURT JURY TASK FORCE

WHEREAS, the effective functioning of the American jury is fundamental to the judicial process and to the public's confidence in the justice system;

WHEREAS, in recent years juries and jury trials have come under increasing scrutiny, study, and criticism relating to issues of representativeness, preparation for jury service or selection, treatment and compensation, juror comprehension of complex facts and of the law, use of technology for jury management and in jury trials, and in general, the justice system's responsiveness to the needs of jurors and juries;

WHEREAS, the Minnesota Judicial System recognizes the need to review periodically the state's jury system in order to strengthen the institution of the jury in Minnesota and increase public satisfaction with the jury system and jury service;

WHEREAS, in the summer of 1999, the Supreme Court contracted with the National Center for State Courts to evaluate the current state of the jury system in Minnesota;

WHEREAS, in August 1999, the Supreme Court appointed a Juror Compensation Workgroup to review the National Center for State Court's findings and recommendations;

WHEREAS, the Juror Compensation Workgroup issued a report in December 1999 and made recommendations for improvement and for further study.

NOW, THEREFORE, IT IS HEREBY ORDERED THAT the Minnesota Supreme Court Jury Task Force is established to study and make recommendations on:

1. Voir dire procedures and protocols;
2. Usage and need for sequestration in trials;
3. Post-verdict debriefing and protocols to address juror stress;
4. Juror privacy rules amendments;
5. Juror excusal policies;
6. In-court techniques such as juror note taking;
7. Trial management practices; and,
8. Other jury management issues that may impact juror utilization and treatment.

The Jury Task Force shall submit its recommendations to the Supreme Court by September of 2001.

IT IS FURTHER ORDERED THAT the Honorable William Walker is appointed as Chair of the Jury Task Force, and that the following persons are appointed as members:

Terri Bowman, Public Member
Representative Sherry Broecker
Jeffrey Bueche, Public Member
Dave Carlson, Blue Earth County Court Administrator
Joseph Carter, First District Public Defender
Honorable Frederick Casey, Ninth Judicial District
Edward Foley, Public Member
Honorable Kathleen Gearin, Second Judicial District
Don Gerdesmeier, D.R.I.V.E.
Judy Gilbert, Dakota County Jury Manager
Mark Haakinson, Ramsey County Jury Manager
D. J. Hanson, Ninth Judicial District Administrator
Patricia Hayes, Public Member
John Himle, Public Member
Mike Jesse, Benton County Attorney
Sam Juncker, Tenth Judicial District Administrator
Senator Randy Kelly
Amy Klobuchar, Hennepin County Attorney
Pat Kuka, Kandiyohi County Court Administrator
John Levine, Public Member
Honorable Dan Mabley, Fourth Judicial District
William Mauzy, Attorney
Honorable Anne McKinsey, Fourth Judicial District
Vivian Jenkins Nelson, Intl. Institute for Interracial Interaction
Dave Olson, Minnesota Chamber of Commerce
Honorable John Oswald, Sixth Judicial District
Professor john powell, University of Minnesota Law School
Honorable Norbert Smith, Fifth Judicial District
Richard Solum, Attorney
John Stanoch, Attorney General's Office
Honorable William Walker, Seventh Judicial District

DATED: March 17, 2000

BY THE COURT:

/S/
Kathleen Blatz
Chief Justice

APPENDIX B

Terms of Jury Service in Minnesota.

District	County	Term of Jury Service
First District	Carver	2 months*
	Dakota	2 weeks or 1 trial
	Goodhue	3 months*
	LeSueur	4 months*
	McLeod	4 months*
	Scott	3 weeks*
	Sibley	4 months*
Second District	Ramsey	1 week
Third District	Dodge	3 months
	Fillmore	2 months
	Freeborn	2 months
	Houston	2 months
	Mower	2 months
	Olmsted	2 weeks
	Rice	2 weeks
	Steele	3 months
	Wabasha	3 months
	Waseca	3 months
	Winona	3 months
Fourth District	Hennepin	2 weeks
Fifth District	Blue Earth	2 months
	Brown	4 months
	Cottonwood	4 months
	Faribault	4 months
	Jackson	4 months
	Lincoln	4 months
	Lyon	4 months
	Martin	4 months
	Murray	4 months
	Nicollet	4 months
	Nobles	3 months
	Pipestone	4 months
	Redwood	4 months
	Rock	4 months
	Watonwan	4 months
Sixth District	Carlton	2 months

District	County	Term of Jury Service
	Cook	3 months
	Lake	4 months
	St. Louis – Duluth	2 weeks
	St. Louis – Virginia & Hibbing	1 month
Seventh District	Becker	3 months
	Benton	3 months
	Clay	2 months
	Douglas	3 months
	Mille Lacs	2 months
	Morrison	3 months
	Otter Tail	2 months
	Stearns	2 weeks
	Todd	3 months
	Wadena	4 months
Eighth	Big Stone	4 months
	Chippewa	4 months
	Grant	4 months
	Kandiyohi	1 month
	LacQuiParle	4 months
	Meeker	4 months
	Pope	4 months
	Renville	4 months
	Stevens	4 months
	Swift	4 months
	Traverse	4 months
	Wilkin	4 months
	Yellow Medicine	4 months
Ninth	Aitkin	4 months or 10 days served
	Beltrami	4 months or 10 days served
	Cass	4 months or 10 days served
	Clearwater	4 months or 10 days served
	Crow Wing	4 months or 10 days served
	Hubbard	4 months or 10 days served
	Itasca	4 months or 10 days served
	Kittson	4 months or 10 days served
	Koochiching	4 months or 10 days served
	Lake of the Woods	4 months or 10 days served
	Mahnomen	4 months or 10 days served
	Marshall	4 months or 10 days served
	Norman	4 months or 10 days served
	Pennington	4 months or 10 days served
	Polk	1 month or 10 days or 1 trial
	Red Lake	4 months or 10 days served

District	County	Term of Jury Service
	Roseau	4 months or 10 days served
Tenth	Anoka	2 weeks or 1 trial
	Chisago	1 month*
	Isanti	2 months*
	Kanabec	4 months*
	Pine	3 months*
	Sherburne	2 months*
	Washington	2 weeks*
	Wright	2 months*

* = However, no person shall be required to continue to serve after the person has reported to the courthouse for 10 days, or after the completion of 1 trial, whichever is longer.

APPENDIX C

Memorandum Report to the Minnesota Supreme Court Jury Task Force: Issues to Consider in Planning for Reduced Terms of Juror Service

Criminal Courts Technical Assistance Project Report 98-048

On-Site Work
January 17 – 18, 2001

Consultant:

Frank Broccolina

BJA-American University
Criminal Courts Technical Assistance Project

Assignment Data Sheet

Technical Assistance No.:	CCTAP 98-048
Requesting Jurisdiction:	St. Paul, Minnesota
Requesting Agency:	Minnesota Supreme Court Jury Task Force
Requesting Official:	Ms. Lynae K.E. Olson Court Specialist
Local Coordinator:	Ms. Lynae K.E. Olson Court Specialist
Date of On-Site Study:	January 17 – 18, 2001
Consultant Assigned:	Frank Broccolina
CCTAP Staff Coordinator:	Joseph A. Trotter, Jr. Project Director
Central Focus of Study:	Issues to Consider in Planning for Reduced Terms of Juror Service

This project was supported by Grant No. 97-DD-BX-0074, awarded to American University by the Bureau of Justice Assistance of the United States Department of Justice. The Bureau of Justice Assistance is a component of the Office of Justice Programs, which also includes the Bureau of Justice Statistics, the National Institute of Justice, the Office of Juvenile Justice and Delinquency Prevention, and the Office of Victims of Crime. Points of view or opinions in this document are those of the author and do not represent the official position of policies of the United States Department of Justice.

Reduction in the Term of Juror Service
Memorandum Report

The Minnesota Judiciary has undertaken a comprehensive statewide study of the structural and procedural components of its jury system. Part of that examination has focused on the term of juror service. While it seems well established that the length of service is the principal concern of prospective jurors, it should also be anticipated it will have the most significant bearing on jury system management. As such, the Judiciary has directed particular attention to this critical aspect of its jury renovation initiative.

Because of its precipitous effect on virtually all other aspects of jury operation, reduction in the term of juror service raises concerns that need to be addressed. As part of its continuing dialogue relating to this issue, the Judiciary sought consultant assistance to provide a framework for its further deliberations. Through the Bureau of Justice Assistance-sponsored Criminal Courts Technical Assistance Project of American University, Frank Broccolina, the State Court Administrator for Maryland and the former Administrator for the Circuit Court for Baltimore County, was retained as a consultant on this issue. The consultant activities included a two-day site visit in January for discussions with project staff, a roundtable meeting with jury staff representatives, a site visit to Hennepin County, a brief presentation of preliminary reactions to the Jury Committee, and the report and recommendations that follow.

Findings

As the Judiciary proceeds, it should be aware of the advantages and costs associated with any proposal to reduce the juror term significantly. Advantages include: (1) increased citizen participation; (2) improved jury representativeness and inclusiveness; (3) virtual elimination of service excusals; (4) increased service certainty for the prospective juror; and (5) reduced personal cost to the prospective juror, as well as productivity costs related to the juror's employer. Associated costs and concerns include: (1) increased processing (more telephone calls, more paper, and more frequent juror orientation); (2) increased system costs (additional jury staff and development of jury management automation; (3) reduces jury pool flexibility; (4) increased exposure of weaknesses in current case and jury management systems); and (5) increased stress of jury staff.

As it moved to a decision on this issue, it becomes increasingly important that the Judiciary determines what value it places on increased citizen participation in the judicial process and the convenience of service to prospective jurors and their respective employers. If these two factors are of central importance to its efforts then the Judiciary needs to direct its attention on how best to implement significantly reduced terms of service in each trial court.

Assuming that Minnesota has strong interest in such a reduction, the Judiciary needs to concentrate on three pivotal factors: (1) the development of automation tools; (2) increased staff assistance and support; and (3) adequate case and jury management. Each of these areas are interdependent and crucial for a successful reduction in term.

The increased processing required in term reduction will be dependent upon a firm automation infrastructure to accommodate the geometric increases to qualification, summoning, deferrals, jury payment and other administrative matters. Realistically however, despite even the very best management programming available, it is inconceivable that a significant reduction in juror service will not require some level of increase in jury staff size. Effective technology cannot eliminate this most important ingredient to program implementation.

Relatedly, the Judiciary needs to be sensitive to the stresses associated with such fundamental change. It is essential that the jury managers become and remain engaged fully in this project. Practically speaking, after all the high level policy making and planning is completed, implementation will be dependent principally on these managers. From the roundtable discussion with jury staff representatives it was clear that there was group concerns related to: (1) being help accountable for program implementation but not having sufficient resources; (2) the lack of cooperation of trial court leadership to control postponement of cases and the size of individual jury panels; and (3) perceived threats to professional competence, job security and personal self-worth.

Finally, but perhaps most importantly, the significant reduction in juror term of service will expose current weaknesses in both case and jury management. If trial courts have not adopted effective case management practices, reduction in juror service will uncover system inadequacies. Courts must ensure that early and meaningful dispositive pretrial events are established, caseflow if differentiated to maximize expeditious

disposition, trial dates are set only after the conclusion of pretrial disposition attempts, and case postponements are limited. Current systems of jury management equally must be efficient with its jury pool and jury panel utilization especially as it relates to qualification and summoning the size of voir dire panels.

The Way Forward

The Minnesota Judiciary is to be commended for its efforts in jury improvement. Nothing will be of greater significance to this initiative than the adoption of reduced terms of service. The Judiciary should consider the following implementation strategies as it advances its agenda:

1. Ensure that juror source lists are of sufficient number to accommodate the increased number of prospective jurors.
2. Examine current case and jury management systems to determine each is operating effectively.
3. Develop effective jury management automation and expand jury staffs.
4. Establish a permanent institutional body to oversee jury operations and serve as an on-going educational and informational center.
5. Create a means of providing on-going technical assistance to the jury management system.

ATTACHMENT A

ROUNDTABLE DISCUSSION
January 17, 2001

Room Configuration (Room 230):

A large semi circle with Frank at the front
Tape recorder, chalk board and/or easel.

Show 7 minute video (shown to Jury Task Force first meeting)

Discussion Points/Issues:

- Impetus for Change in Maryland:
    - Why was it considered and eventually adopted?
    - Opposition? If so by whom?
    - Strategy developed to address the concerns and issues?

- Major Concern: More people are required to be summoned under a severely limited term of service, which may result in a significant increase in administrative costs:

    - ✓ personnel and space, including phone lines, desks, etc
    - ✓ paper and postage
    - ✓ automated call-in systems/information system support
    - ✓ budget increase justification and acquisition
    - ✓ expenses related to juror fees and mileage: pressure to reduce to "make up" for increase in admin costs?
    - ✓ other "hidden" costs?

- Other Transition Issues and Costs: What are They?

- Frequent Juror Orientation: Reduce Length? How?

- Reduced Term of Service Relationship to Efficient Trial Scheduling and Continuance Practices

- Seasoned Jurors v. "Fresh" Jurors

- Reduced Chance of Participating in Voir Dire or Trial ?
- Jury Service Perception: Cheapens Jury Service?

- Small Court v. Mid-Size Court v. Large Court: Differences in cost? Challenges? Implementation Issues?

Benefits:

- Reduced Burden on Juror and Employer
- Greater Citizen Participation-improved representation and inclusiveness of the community
- Increased Opportunities for public education and experience with the court system
- Lower personal loss to citizens leads to "improved juror attitudes"
- Fewer Excusals
- Greater Certainty for the Juror
- Byproduct is more efficient use of juror time
- "Fresh" jurors assigned to cases

Did Baltimore experience many, some or none of the benefits above?

Background: Forty percent of U.S. Citizens live in jurisdictions that have a reduced term of service that require one day of service, or service on one jury trial. The following states/jurisdictions have this type of reduced term of service (mandatory or voluntary):

Mandated	**Voluntary**
California	Arizona
Colorado	Michigan
Connecticut	New York
Florida	North Dakota
Massachusetts	Pennsylvania
	Baltimore
	Houston
	Dallas
	Chicago
	Atlanta
	Wash., D.C.
	Salt Lake City

Attachment B

Participants in Focus Group on Jury System Management Issues
January 17, 2001
Facilitator: Frank Broccolina, State Court Administrator, Maryland

Name	Title	Court/Office
Bruce Alghren	Court Administrator	Carlton County
Joanne Bennett	Court Administrator	Anoka County
Van Brostrom	Court Administrator	Dakota County
Barb Emslander	TCIS Coordinator	7th Judicial District
Judy Gilbert	Supervisor of Jury Management	Dakota County
Mark Haakinson	Jury Office Manager	2nd Judicial District
Sherilyn Hubert	Court Administrator	Yellow Medicine County
Sheila Johnson	Court Administrator	Anoka County
Sam Junker	District Administrator	Anoka County
Peggy Kuisle	Supervisor	3rd Judicial District
Lynn Lahd	Jury Manager	Hennepin County
David Marchetti	Jury	2nd Judicial District
Lois McBride	Senior Systems Analyst	Minnesota Supreme Court
Nancy McCabe	Deputy District Administrator	Anoka County
Wayne Mitzke	Court Manager	Hennepin County
Lynae Olson	Court Specialist	Minnesota Supreme Court
Darrel Paske	Court Administrator	Crow Wing County
Nancy Winger	Asst. District Administrator	Beltrami County
Barb Worrell	Asst. District Administrator	Blue Earth County
Cindy Stratioti	Chief Deputy Court Administrator	St. Louis County

APPENDIX D

Jury Best Practices Guide,
Sections I and II

RECOMMENDATION No. 97/01-01
Rule 803 Committee

TITLE: Jury Best Practices Guide

RECOMMENDATION: The Rule 803 Committee recommends that Minnesota Jury Commissioners review the *Jury Best Practices Guide* and consider using it as a resource, as deemed relevant to their jurisdictions.

Attachments:

A. *Jury Best Practices Guide* (1996)

APPROVAL:

Rule 803 Committee	Sam Juncker, Chair	01/30/97
Group	Representative	date
District Administrators	Tim Ostby, Chair	02/20/97
Group	Representative	date

Notes: The Committee determined that this recommendation pertains to internal operations rather than policy and therefore does not require approval from the Conference of Chief Judges.

DISTRIBUTION:

District Administrators	Sam Juncker, Chair	02/20/97	group/individual
via	date		
		District Administrators/	
Sue Dosal, SCA	803 Committee Chair	03/26/97	group/individual
via	date		
Court Administrators	Dist. Administrators	03/26/97	group/individual
via	date		

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JURY BEST PRACTICES GUIDE

Prepared by a Subcommittee of the Rule 803 Committee
State of Minnesota - 1996

FORWARD

This document is not a formal recommendation and has never been adopted as state-wide policy. It is merely an informational resource that may be of interest to some jurisdictions, but not necessarily to all. While this document has been recognized by the 803 Committee as a potentially useful resource, its contents do not necessarily reflect the views of the individual members of the 803 Committee.

INTRODUCTION

The Court has the responsibility to see that jurors are utilized effectively and efficiently, that the cost of operating the jury system is minimized, and that jury service is viewed as a worthwhile and positive experience. The purpose of the Jury Best Practices Guide is to provide recommendations on juror utilization to see that these goals are implemented on a statewide basis.

Best practices have been developed in four areas: anticipating requirements for the pool, panel usage, conducting voir dire and sequestering jurors. These practices should be implemented through administrative policies and should be re-evaluated periodically to ensure that the goals governing juror utilization are met.

I. ANTICIPATING REQUIREMENTS FOR THE POOL

A jury pool is the collection of jurors reporting for jury duty in a given term and not yet assigned to a panel for voir dire or selected to sit on a trial jury. In smaller courts, the pool and the panel are essentially the same. In larger courts, all judges share the same pool. Recommended best practices include:

A. Daily and weekly patterns of usage:

- Develop and enforce judicial policies that will eliminate jury cases settling on the doorsteps. Such policies should include imposition of financial sanctions.

- Develop a scheduler position as liaison between courts and parties so that efficient use of calendar time is maximized. Maintain continuous communication between scheduler and jury management staff.

B. Number and types of scheduled trials:
   - Determine settlement rate based on criteria such as case types, attorney patterns; schedule backup cases to maximum; experiment to reach desired number.

   - Develop a strictly enforced continuance policy for all case types.

   - Do not set trials until later in the process when reasonable settlement possibilities or plea negotiations have been exhausted.

   - Do not negotiate pleas on the day of trial.

C. Number of available judges:
   - If possible, have other judge available to take backup case if first case goes.

   - Have agreement among judges to have flexible calendars so if last minute removal occurs, another judge can step in to hear case without necessity of continuance.

D. Available facilities:
   - Use jury assembly room if space is available.

   - Determine in advance most cost efficient meal and lodging accommodations.

   - Provide comfortable, functional waiting area for pool jurors with work areas, telephone access, reading materials, courtesy items.

E. Use of standby and call-in:
   - For cases that will require individual voir dire, have mass orientation for questionnaires, group questions, etc; then stagger in at different time.

   - Use a juror call-in line and keep message updated.

   - Set guidelines for number of jurors needed for specific case types.

   - Scrutinize qualification questionnaires to eliminate those to be excused/deferred prior to appearance.

F. When to dismiss jurors:
   - In counties where there is an assembly room, return unselected jurors back to pool for other cases same day.

- In smaller counties, select juries for more than one case on same day.

- Standardize jury debriefing by judges.

II. PANEL USAGE

A. Panel Size

Panel sizes must be large enough to provide for adequate voir dire, that is, big enough to allow for all peremptory and challenges for cause as well as for sworn jurors and necessary alternates.

If the panel is too large, some jurors will not be reached and an excessive and "artificial" demand will be placed on the pool. Inflation of panel sizes puts a heavy burden on juror requirements because of peak demands and blowing up short time juror needs far beyond trial requirements.

BEST PRACTICES: Establish adequate panel sizes for each type of case based on the following factors:

1. The size of the jury that is to hear the case
2. The type of case
3. The number of parties
4. The number of challenges most often exercised in the past in this type of case
5. The procedures used to exercise challenges

Suggested panel sizes for each case type

First Degree Murder	50
Felony	25
Gross Misdemeanor	18
Misdemeanor	18
Civil	14 *

*For each party involved add two more jurors to the panel size.

These standard panel sizes should be adopted as court rule. Any changes needed in a particular case due to publicity, multiple defendants, etc. should be stipulated by the judge and attorneys and become part of a pretrial order so there is coordination with the jury office.

B. Arrangements for Unusual or High Publicity Cases

Most courts will need large panels for highly publicized or multiple defendant cases - whether or not the court pools its jurors. This is to avoid

disruption to the court's operations, delay of other trials and so as not to give the false impression left with judges that not enough jurors are being called.

BEST PRACTICES INCLUDE:

1. Call additional jurors for the scheduled trial day and release those not used
2. Call more jurors for the week and schedule other trials that require large panels for different days of that week
3. Schedule other judges' trial starts at different times
4. Schedule the large panel start during an off-peak day or hour
5. Call half of a large panel for the first day, another fraction for the second day, etc. If successive portions of the panel are not required, they may be notified.

C. Stagger Trial Starts

If the court's work flow is reasonably continuous and trials are started uniformly throughout the day or week, the demand for jurors should likewise be smooth. Sharp and large peak demands caused by many simultaneous voir dire on certain days of the week should be avoided.

BEST PRACTICES:

1. Encourage trial starts during off-peak hours
2. Encourage piggy backing. Start a new trial while the jury in the previous trial is deliberating.
3. Set up juries in advance of trial. The two most commonly used practices to separate the voir dire from the actual trial are multiple voir dire and single day impanelment.

    a. Multiple voir dire. A judge selects successive panels and conducts the voir dire to establish trial juries for future days. This obviates the need for a large daily pool of jurors waiting to be selected for each days' trials

    b. Single day impanelment. All judges use the same day of the week to select jurors for all jury trials scheduled by the court for that week. Its effectiveness depends on the length of trials: it works fairly well if the judges average about one jury trial per week. If judges hear several trials per week, so many jurors would be required on impanelment day that the practice could overburden available facilities

c. In variation of the single day impanelment, courts which do not call jurors in on Friday select the jury in advance for a Friday trial.

D. ADDITIONAL BEST PRACTICES FOR PANEL USAGE INCLUDE:

1. Continuous Operation
   - Maintain high juror usage throughout a week or a court term by starting a second jury trial almost as soon as the first trial is finished.

2. Dismiss and Excuse Jurors Whenever Possible:
   - Establish a policy to dismiss and excuse jurors early when the number summoned is found to be excessive or when the case or cases is canceled. The best system is prior day notification, for which many courts use recorded telephone messages. An explanation should be given to jurors after they have reported of what happened to the case and they should be thanked for their time.

3. Use of Standby Panels
   - Because many courts do not need the same number of prospective jurors every day, the use of standby panels provides a variable supply of prospective jurors corresponding to the varying court needs.

   - Prospective jurors are randomly selected as standbys when they are selected to receive their summons. Part or all of the persons summoned may be designated as standbys with instructions on the summons to call the court the evening before their reporting date to find out whether or not they will be needed. A variation would be to have all prospective jurors come in for orientation then put them on standby thus obviating the need to do multiple orientations. This variation, however, is not cost effective.

The following Jury Panel Utilization Data Forms should be used to measure effectiveness.

Number_____

JURY PANEL UTILIZATION DATA FORM

CASE NUMBER_____

JUDGE_____

☐ 1st Degree Murder
☐ Felony
☐ Gross Misdemeanor
☐ Misdemeanor
☐ Civil

EVENTS	DATE	TIME	INTERVAL (MINUTES)
PANEL REQUESTED		am pm	
VOIR DIRE STARTED		am pm	
VOIR DIRE ENDED		am pm	
TRIAL STARTED		am pm	
TRIAL ENDED		am pm	
PANEL RETURNED UNUSED		am pm	
OTHER_____		am pm	

PANEL USE:

_____ =	_____ =	_____ =	_____ =	_____
Total size of panel furnished	Size of Jury & alternates	Challenges for cause allowed	Peremptory challenges exercised	Jurors not sworn or challenged

CASE DISPOSITION DATA:

CRIMNAL_____ CIVIL_____

PREPARED BY_____ RETURN TO_____

UNUSED JURY PANEL

(Please fill out this questionnaire for any case in which jurors arrive at courthouse, but do not begin voir dire. Questions 1-7 should be answered by Court Administrator or responsible jury administrator. Questions 8-11 should be answered by assigned judge.)

1. Date of scheduled trial:_____

2. County: _____

3. Case Name/Number/Type:_____/_____/_____

4. Attorneys:_____

5. Judge:_____

6. Number of jurors appearing/estimated cost:_____/$_____

7. Were jurors sent home _____yes _____no
   If no, were jurors used in another case? _____yes _____no

8. What was disposition of case i.e. plea bargain, straight guilty plea, settlement, dismissal, continuance, warrant for failure to appear?_____

9. Why do you feel the resolution of this case was so late we needed jurors present?

_____
_____
_____
_____

10. What could the court system have done to avoid having jurors appear for this case?

_____
_____
_____
_____

11. Additional comments (Feel free to add sheet)

_____
_____
_____
_____

APPENDIX E

"Voir Dire: A Trial Judge's View,"
Hon. Gordon W. Shumaker (1997)

VOIR DIRE

A TRIAL JUDGE'S VIEW

Hon. Gordon W. Shumaker

VOIR DIRE
A Trial Judge's View
Hon. Gordon W. Shumaker

General Observations

A. Purposes of Voir Dire ,

1. **The law**: Voir dire examinations can be conducted:

   a. for the purpose of discovering a basis for a. challenge for cause, or

   b. to gain information that will help the lawyer to intelligently exercise a peremptory challenge.

(See Rule 26.02, subds. 4(1) and 5, Minn. R. Crim. P.; Minn. Stat. § 546.10; Rules 808 and 809, Gen. R. Pract.; and State v. Mulroy, 152 Minn. 423, 189 N.W. 441 (1922).

2. The Lawyers' View: Many lawyers believe, and in fact are taught, that the purposes of voir dire are to:

   a. educate the prospective jurors

   b. introduce trial themes

   c. begin to persuade prospective jurors to the examiner's point of view

   d. establish rapport with the jurors

   e. extract certain commitments from jurors

   f. obtain jurors who will decide in the examiner's favor

   Typical of the lawyer's view is the advice given by the author of an article in Trial, October 1996, entitled, "Selecting a Jury for a Complex Trial." He said:

> Voir dire in a business case is your chance to educate jurors about the facts, establish rapport with them, and set the tone for a trial that may last for months.

Another example of advice reflecting this view comes again from Trial, August 1985. In an article entitled, "Voir Dire - It's Just a Whiplash," the author suggests that the lawyer address the panel as follows:

> Ladies and gentlemen, I believe the entire defense in this case will consist of Mr. Defense Lawyer calling my client's injury a "whiplash." Now is there anyone here who cannot put aside the negative thoughts this sort of name-calling creates and fairly evaluate my client's injuries?

3. **The Jurors' View:** Most jurors find voir dire to be:

   a. embarrassing

   b. unnecessarily personal

   c. extremely repetitious

   d. boring

   e. time-wasting

   f. insulting

   Some jurors find it to be an opportunity to educate everyone else as to their attitudes, opinions and gripes about the law, the legal system, lawsuits and lawyers.

4. **The Judges' View:** Judges' attitudes toward voir dire vary widely, but, to the extent one can generalize, most judges probably would agree that:

   a. voir dire is often needlessly long.

   b. lawyers frequently attempt to try their cases at this stage.

   c. the jurors' privacy needs to be protected by the judge.

   d. questions are often unfair.

   e. lawyers expect "perfect," not human, jurors.

   It is useful to know the purposes of voir dire as prescribed by the law and as viewed by the lawyers, jurors and judges so that you can be more fully informed as you prepare to approach this phase of the trial.

B. The Right Juror

1. Each lawyer wants to select the "right" jurors, that is, jurors who will decide in the client's favor. Or if that is too much to hope for at the outset, the "right" jurors are those who are not predisposed to find against the lawyer's client.

2. From the standpoint of the law, the "right" juror is an impartial juror. In my view that is a juror who is both willing and able to be neutral, open-minded, and fair. These terms mean:

   a. **Neutral** - does not start out favoring or disfavoring any party or claim or issue or witness or lawyer or other matter in the case.

   b. Open-minded - will not make up his or her mind until all the evidence has been presented, the judge has instructed on the law, the lawyers have given their final arguments, and there has been an ample opportunity for each juror to participate in deliberations.

   c. Fair - will base the verdict only on the evidence actually presented, the fair inferences to be drawn from that evidence, and the law, and will not use an anything else to arrive at a decision.

3. On the issue of the "right" juror, three cases should be noted

   a. State v. Andrews, 165 N.W.2d 528, 534 (Minn. 1969):

      > The test of an impartial juror is not that he shall be completely ignorant of the facts and the issue, but that he can lay aside his impression or opinion and render a verdict based on the evidence presented in court.

   b. State v. Howard, 324 N.W.2d 216, 220 (Minn. App. 1982):

      > A juror must simply try to undertake the case fairly, and the trial judge, being in the best position to observe the demeanor of the prospective juror, is to be given deference in determining whether the juror should be removed for cause.

   c. State v. Larson, 447 N.W.2d 593, 599-600 (Minn. App. 1989). In this criminal sexual conduct case, a panel member said that her feelings regarding sex abuse cases could possibly affect her approach to the case. She survived a challenge for cause. The appellate court affirmed the denial of the challenge saying:

      > Upon voir dire, the juror indicated that she 'Would try" to be unbiased, that she had success doing so in the past and that she did not have "any difficulty with the concept that the purpose of a juror is to determine whether or not there was abuse." However, she subsequently stated that her sympathy for abuse victims "may" get in the way of impartially determining whether abuse had occurred, but she would "try to set it aside."

Thus, the "right" juror can be one who knows something about the issues involved and who has some "leanings" but who also understands the nature and importance of the requirement of impartiality and is willing to try to be impartial.

C. Group Chemistry

I believe that jury selection is a "weak art" and not a science. It is light years from being a science. It is an art, but a weak one.

Jury selection is a weak art because the lawyer cannot, in the selection format and with the restrictions imposed by law, ever discover all the ingredients that will provide a solid basis upon which to draw conclusions about how a particular juror is likely to decide the case. Even trained psychologists, after conducting tests and expert interviews, cannot accurately predict behavior.

But let's assume that if we ask enough of the right questions of a prospective juror we will get a good feel for that juror's predilections. We might conclude after a searching and open voir dire that this juror is methodical and is a "show me" kind of person and that she is fiscally quite conservative. She won't buy limp proof and won't award big damages. And then the *jury* returns a multi-million dollar verdict.

Note that the emphasis has shifted from juror to jury. The verdict is a product of the group. The group often seems to be larger than its individual members. The mix of individuals in the context of an instruction by the judge that the individuals are to try to become, a unanimous jury creates a group chemistry. The group chemistry is unknowable until the jury begins deliberating.

It is fine to work hard to select the right individuals, but you cannot ever be sure that you have the right group. Since it is the group that returns the verdict, I call voir dire a weak art.

The Judge's Role

1. **Procedural Manager:** The trial judge is the procedural manager of the trial. He or she! is responsible for ensuring that rules are enforced and the dignity of the proceedings is preserved.

   In voir dire, judges interpret this role in various ways. The extremes are: `

   a. Don't involve me - the passive judge who asks no questions and allows virtually everything.

   b. Federal mind - the judge who reluctantly agrees that a few perfunctory questions would make things look good and who begrudgingly allows the lawyers to ask a few questions.

Most trial judges fall in between these extremes.

2. **Examiner:** The judge in Minnesota civil and criminal trials shares with the lawyers the process of voir dire.

   The civil rule is 47.01, Minn. R. Civ. P., which says:

   > The court may permit the parties or their attorneys to conduct the examination of prospective jurors or may itself conduct the examination. In the latter event, the court shall permit the parties or their attorneys to supplement the examination by such further inquiry as it deems proper.

   Although one could read this rule as giving the judge the right to conduct the voir dire in its entirety, it is the better practice at least to allow the lawyers to "supplement" by asking their own proper questions.

   A good reason for this is that lawyers often get more candid answers because some jurors are less intimidated by the lawyers than they are by the judge.

   The criminal rule is 26.02, subd. 4(1). It says:

   > The judge shall initiate the voir dire examination . . . . The judge shall then put to the prospective juror or jurors any questions which the judge thinks necessary touching upon their qualifications to serve as jurors in the case on trial . . . . Before exercising challenges, either party may make a reasonable inquiry of a prospective juror or jurors in reference to their qualifications to sit as jurors in the case.

   The Comment to this rule is worth noting: 'The court has the right and duty to assure that the inquiries by the parties during the voir dire examination are 'reasonable.' The court may therefore restrict or prohibit questions that are repetitious, irrelevant, or otherwise improper."

3. **Protector:** Prospective jurors should not be fair game for the testosterone spewing lawyer bent on exposing the juror's very soul.

   The trial judge should protect the jury against that unnecessarily invasive legal psychosurgery that some jurisdictions tolerate as proper voir dire.

   Although a juror gives up some privacy, he or she is not required to relive painful experiences; to defend deeply-held political, religious or philosophical beliefs; or to take a social studies quiz on the law.

   Cases sometimes use lofty language when condemning arbitrary restrictions of voir dire by trial judges. The 8th Circuit Court of Appeals in United States v. Bear Runner, 502 F.2d 908,

911 (8th Circuit 1974) said that a "searching voir dire is a necessary incident to the right to an impartial jury." True, but "searching" is not tantamount to "eviscerating." Virtually everything in a democracy involves tradeoffs. Thus, the searching voir dire must be balanced against a juror's basic right to retain dignity and reasonable privacy.

The trial judge must protect that right.

4. **Helper:** Assume that the trial judge is interested in affording a fair trial and in obtaining a fair jury. In fact, the judge is professionally committed to both ideals.

   With that assumption, lawyers should enlist the judge's help in asking delicate and sensitive questions. Maybe the judge will ask the questions; or maybe the judge will permit certain answers to be given at the bench.

   The judge can also help in two other significant ways:

   a. By reviewing the scope of voir dire before beginning the process. The lawyers should inquire about the propriety of questions they are not sure about.

   b. By permitting the use of a written questionnaire. This is an excellent tool that has many benefits. Most significantly, it saves voir dire time (although there can be follow-up questions); it allows inquiry into more sensitive areas; it fosters more candid responses (because the panel member does not have to discuss them in detail in front of the others); and it better protects juror privacy.

5. **Limitations:** Although the judge can impose reasonable restrictions on voir dire, he or she cannot arbitrarily limit proper voir dire. The imposition of artificial time limits is an example of judicial abuse. As the appellate court noted in State v. Evans, 352 N.W.2d 824, 826-827 (Minn. App. 1984), a robbery and assault case in which the judge gave each lawyer one hour to conduct voir dire:

   > Although the trial court has broad discretion to determine the scope of voir dire, it cannot unreasonably and arbitrarily impose limitations without regard to the time and information reasonably necessary to accomplish the purposes of voir dire. Limitations in terms of time or content must be reasonable in light of the total circumstances of the case.

   Note also State v. Petersen, 368 N.W.2d 320, 322 (Minn. App. 1985) in which it was held to be reversible error for the trial judge in a DWI case to limit the voir dire to five minutes per juror.

   Arbitrary limitations on the form or content of questions are prohibited. This issue sometimes arises when parties to the case are racial or ethnic minorities. United States v. Bear Runner, supra, was one of the highly publicized "Wounded Knee" trials. The trial judge refused to ask questions that would probe the issue of the prospective jurors' racial bias,

favoring instead a broad question of whether the panel members could be fair and unbiased toward the defendant, an American Indian. The conviction was reversed because the content of that question did not sufficiently allow the exploration of the prospective jurors' racial attitudes:

Other examples of "content" restrictions that were found to be unreasonable are:

- Mickelson v. Kernkamo, 42 N.W.2d 18, 22 (Minn. 1950): The plaintiff was employed by a railroad and was injured while on duty. The judge refused to let defense counsel inquire of prospective jurors as to any interest any had in the railroad.

- Hunt v. Regents of Univ. of Minn., 460 N.W.2d 28, 33 (Minn. 1990): In a medical malpractice case the judge refused to permit plaintiffs counsel to inquire about the panel members' connection with the defendant's malpractice insurers. NOTE: In this regard be aware of Minn. Gen. R. Prac. 123 regarding voir dire inquiry about insurance companies that are not parties to the case. See also, Rosenthal v. Kolars, 231 N.W.2d 285, 287 (Minn. 1975) on medical malpractice voir dire; and Leonard v. Parrish, 420 N.W.2d 629, 634 (Minn. App. 1988) in which it was held not to be an abuse of discretion for the trial judge to refuse to permit counsel to ask panel members their attitudes about the "insurance crisis."

- Barrett v. Peterson, 868 P.2d 96 (Utah Ct. App. 1993): In the wake of pervasive "tort reform" information, it was error for the court to refuse to ask questions about that subject.

- State v. Evans, 352 N.W.2d 824, 826-827 (Minn. App. 1984): The trial judge criticized the lawyers for asking questions beyond the ultimate issue in the case. The appellate court noted that lawyers may go beyond the ultimate issue in an effort to ascertain jurors' competency.

Occasionally a judge abuses his or her voir dire discretion in a procedural way apart from the actual questioning process. In State v. Jurek, 376 N.W.2d 233, 235 (Minn. App. 1985) the defendant requested that the voir dire be recorded by a court reporter. The trial judge agreed but only if the defendant agreed to pay for the making of such a record. Holding that the judge's action was an abuse of discretion, the appellate court said that a party to a case has an absolute right to have the voir dire recorded.

Scope of Voir-Dire

1. The scope of voir dire is almost entirely within the discretion of the trial judge:

> The scope of inquiry is best governed by a wise and liberal discretion of the court. Reasonable latitude should be given parties in the examination of jurors to gain knowledge as to their mental attitude toward the issues to be tried, for the purpose of aiding them in striking jurors, if they are not

> successful in challenging them for cause. However, as a general rule, the examination of jurors on voir dire should be restricted to questions which are pertinent and proper for testing the capacity and competency of jurors.

31 Am. **Jur. 121,** Jury **Sec. 139.**

2. Any question that fairly relates to the grounds for challenge for cause in Minn. Stat. Sec. 546.10; Rule 26.02, subd. 5(1), Minn. R. Crim P.; and Rule 808(b) Minn. Gen. R. Prac. should be allowed by the trial judge.

3. Lawyers may ask only questions that directly and clearly relate to the purposes of voir dire. Thus, they may not ask questions that:

   a. are designed primarily to educate or indoctrinate jurors as to theories, facts, strategies or problems in the case;

   b. are intended or designed to predispose jurors to be in favor of or against a party, a witness or some aspect of the case, or which are likely to have that effect;

   c. are merely arguments of the case;

   d. are hypothetical in nature;

   e. ask the jurors to commit themselves to vote in a certain way or to take any position whatsoever (other than a neutral one) before they hear the evidence;

   f. instruct the jurors as to the law of the case;

   g. seek explanations from the jurors as to their understanding of the law, legal concepts, the nature of the legal system, or the scope of their duties;

   h. merely repeat questions already asked by the judge or opposing counsel and to which clear and complete answers have been given;

   i. ask jurors to speculate as to what their reactions might be to hearing or seeing certain evidence;

   j. invite jurors to identify with a party (or lawyer or witness) in the case;

   k. ask jurors how certain evidence is likely to influence their verdict.

4. A good rule of thumb for voir dire is this: lawyers are entitled to receive information through questions designed to achieve the proper purposes of voir dire. They are not, however, entitled to give information about the facts or the issues or the parties or the witnesses or the law in the case.

Conducting Voir Dire

1. **General Suggestions**

   a. Know the proper purposes of voir dire and stay within the bounds of those purposes. .

   b. Understand that jury selection is a highly subjective process. It is a weak art rather than a science. It is basically a matter of "educated guesses."

   c. Discard stereotypes based on race, gender and ethnicity. Many jury studies, have shown such stereotypes to be highly unreliable.

   d. Don't assume that the case is won or lost on voir dire.

   e. Remember that you don't really get to "select" a jury; rather you get to "eliminate" the least acceptable panel members.

   f. Listen to panel members' answers. They will provide valuable clues for selection. Simply to exhaust a list of a certain number of questions is not sufficient. "Reading" the answers through careful listening and observing is critical.

2. **Some Specifics**

   a. Your guiding principle should be: "A fox should not be one of the jurors at the goose's trial." (Thomas Fuller)

   b. With that guiding principle seek to detect the foxes and to eliminate them through challenges for cause or peremptory challenges.

   c. Either of two general approaches to jury selection can be used:

      (1) "Clean slate" approach

         (a) The idea is to try to eliminate any panel member who has anything in common with the case. For example, in a personal injury case involving a neck injury, the clean slate approach would try to eliminate prospective jurors who have had neck injuries or whose family members have had such injuries.

         (b) The rationale is twofold:

            [1] You cannot tell whether that background will favorably or unfavorably dispose the panel member to your case. Therefore, you do not take the risk.

[2] You can educate the clean slate juror to your position without first having to overcome the obstacle of information and attitudes gained from his or her prior similar experience.

(2) "Predisposed Jury" approach

(a) The idea is to try to eliminate panel members who seem to be predisposed to find against your client, and, conversely, retain members who might be disposed favorably toward your case.

(b) the jurors retained are not necessarily "clean slate" jurors but are persons who share some commonality with the client, the case or the issues.

d. Focus on tangible factors:

(1) Demeanor (but remember that body language can be ambiguous)

(2) Dress and appearance

(3) Tone of voice

(4) Manner of answering questions

(5) Apparent intelligence

(6) Apparent attitudes

e. Look for "red flags," that is, things that give you a "gut feeling" that this person should not serve on your jury. For example:

(1) Demeanor: Watch out for the fidgety, impatient, easily distracted or bored panel member.

(2) Dress and appearance: All jurors have had reasonable prior notice of jury duty. Thus, watch out for the slob. If he or she doesn't care about how he or she looks in court, why should that juror care about your case?

(3) Tone of voice: Watch out for the defensive or sarcastic member or the know-it-all.

(4) Manner of answering questions: Watch out for the evasive member or the member who is unwilling to give a clear answer unless cross-examined. Also watch out for the individual who wants to make a speech or to get something off his or her chest. This person has an agenda and is likely to impose it on the case.

(5) Intelligence. Avoid persons who simply don't seem to comprehend what's going on. Caveat: Educational level is not determinative! There are many wise and astute elementary school dropouts and an equal number of dense and intellectually constipated Ph.D.'s.

(6) Attitude. Avoid the juror who resents being here or who is not sure that he or she-likes the system. Be skeptical of the juror who is overly eager to serve. The concern with the latter is that he or she might have a personal agenda of sorts and might not follow the law.

(7) Prior recent jury experience. When jurors are summoned for a one-week or two-week period, they could be called to serve on two or three short cases. Sometimes they get "sophisticated" and feel that they "know how it should be done."

Keep in mind that the foregoing tips are generalizations and should never be taken as absolutes. As to each panel member the lawyer should think and look and feel before deciding to retain or eliminate.

f. Watch your language.

(1) Avoid legalese.

(2) Avoid technical language pertaining to the subject matter of the case. For example, don't ask: "Has anyone ever suffered a For example, don't ask: "Has anyone ever suffered a compound 'Comminuted fracture of the distal portion of the femur?"

(3) Avoid asking about "prejudice." Most people don't want to believe that they are prejudiced. Use instead words and phrases such as "opposed to," "disagree with," "have problems with;" "uncomfortable about," "have bad experiences with."

(4) Don't try to ingratiate yourself with the jury by being chatty or by trying to be just one of the boys or one of the girls. This leads to the illusion of rapport and it is a lawyer's delusion. Be candid and professional.

(5) Be courteous. Don't lecture or make speeches or scold.

(6) Be careful about putting jurors on the spot. Scrupulously avoid questions that make jurors feel that their ignorance will be exposed or that you are trying to show that they are not as smart as you. The following question is of that nature. Not only is it improper (to be explained later) but as a practical matter it is inadvisable:

> "Mrs. Smith, the judge will tell you that the plaintiff must prove his case by the greater weight of the evidence. What does that mean to you?"

Improper Voir Dire

1. In General

a. Improper voir dire can deprive a party of a fair trial:

> Since jurors are to decide the case solely on the facts presented at trial, precommitting or influencing the jury on voir dire denies the non-questioning party his right to an impartial jury. .
>
> Note, 50 Minn. L. Rev. 10881092 (1966)

b. Improper voir dire invariably protracts litigation unnecessarily:

> The larger interest of the trial bar as a whole, and of equally earnest litigants who await a forum for their own trials, is frustrated by such dissipation of court time. We cannot expect the legislature to provide, or the people to pay for . . . overlong voir dire exercises.

Sweet v. Stutch, 240

It is amazing that such a statement comes from a California court since it appears that the courts of that state, at least in high profile trials, set the record for unconscionably protracted voir dire.

In contemporary litigation, we simply do not have the luxury of needlessly long voir dire. There are too many cases waiting to- be called for trial. Jurors are too busy to interrupt their lives for extended periods of time.

2. Particular problems

a. Questions about the law

Questions or instructions about the law are improper on voir dire. In State v. Bauer, 189 Minn. 280, 249 N.W. 40, 41 (1-933) the supreme court said:

> A juror cannot be a law to himself, but is bound to follow the instructions of the court in that respect, and hence his knowledge or ignorance concerning questions of law is not a proper subject of inquiry.

> The examination of jurors would be interminable if parties were allowed -to take up the whole law of the case, item by item, and inquire as to the belief of the jurors and their willingness to apply it.

More recently, the court of appeals in State v. Evans, 352 N.W.2d 824, 826-827 (Minn. App. 1984) said:

> Attorneys do not have the right to examine prospective jurors as to their understanding of the law to be applied in the case. It is the duty of each juror to follow the instructions of the court, and hence their knowledge or ignorance concerning questions of law is not a proper subject for voir dire.

There are two other problems with voir dire inquiries about the law. First, questions about certain rules are necessarily out of context since it is the instructions as a whole which must be followed.

Second, the law has true meaning only when it becomes operative in a factual context. That context does not exist until the end of the case. Voir dire questions about the law are thus inquiries into abstractions.

The following questions would be improper:

Q. Do you understand that the plaintiff has to prove her case only by the fair preponderance of the evidence?

Q. Do you realize that if you. have any reasonable doubt you must find my client not guilty?

Q. Even if the evidence shows that my client is equally at fault with the defendant, do you understand that the law entitles him to an award?

Q. The judge will instruct you that every driver is entitled to presume that all other drivers will exercise reasonable care. Do you have any disagreement with that presumption?

The jurors may, however, be asked if they would accept and apply the law given by the judge even if they felt the law should be otherwise. See Commonwealth v. Calhoun, 238 Pa. 474, 86A 472, 475 (1913).

b. Questions which Identify a Juror with a Party

In State v. Backus, 358 N.W.2d 93,' 96 (Minn. App. 1984) a lawyer asked on voir dire: "If you were the defendant would you want yourself on the jury?" The trial court ruled that such a question was improper. The appellate court agreed, saying:

The trial court properly excluded this question as improperly requiring the juror to identify with one side.

Another way this question is framed is as follows in a case brought on behalf of a minor:

Q. Are you in such a frame of mind that if Melinda was your daughter you could be fair to her?

Sometimes the invitation to identify is not so blatant but is buried in the factual proposition. In a case involving a car collision with a deer, the plaintiff's lawyer invited identification with the legal standard of the careful person with this question:

Q. Is there anyone on the panel who, if you saw a deer while you were driving, would continue at the same rate of speed?

This question probably also subtly commits the jurors to a legal position as to what the careful and prudent driver would be required to do.

c. Questions About Settlement Efforts

Q. Now you understand that the plaintiff tried to settle this case with the defendant but was not able to do so. The fact that the plaintiff had to start a lawsuit will not influence your verdict, will it?

See Tellefsen v. Key System Transit Lines, 322 P. 2d 469, (Cal. App. 1958).

d. Questions that Suggest that the Jury Should Return a Large Verdict

Q. Would you feel that we can't compensate this lady fully because if we do we will come out with a great big verdict?

See Goldstein v. Fendelman, 336 S.W.2d 661(Mo. 1960).

It is permissible, however, to ask whether any juror has a philosophical problem with awarding compensation, even if that results in a large verdict. See Temperley v. Sarrinoton's Admr., 293 S.W. 836, (Ky. 1956).

e. Hypothetical Questions that Precommit or Improperly Influence the Verdict

Q. How would you decide if the evidence were equally balanced?

See Chicago & A.R. Co. v. Fisher, 14 III. 614, 31 N. E. 406 (1892).

Q. If the motorman, seeing the child's danger, did all he could to stop the car, would you find for the defendant if the court instructed the jury that if the motorman did all he could to stop he would have no legal liability?

See Tampa Electric Co. v. Bazemore, 85 Fla. 164, 96 So. 297 (1923).

Q. In a case where the plaintiff, who is a young man and a lawyer, took a promissory note from the defendant, who is an old man and a farmer, and the defendant thought he was signing an agency agreement, would you find in favor of the plaintiff or the defendant?

See Woolen v. Wire, 110 Ind. 251, 11 N.W. 230, (1887).

Q. If it were shown that the decedent, as he walked along, had a cap pulled down over his face, would that prejudice you in any way?

See Sherman v. William M. Ryan 8 Sons, 126 Conn. 574, 13 A.2d 134 (1940).

f. Irrelevant Questions

Some questions appear to be proper but in fact are irrelevant.

Q. [In a rape case] Can you tell me the feelings you have about the crime of rape?

The issue is not what feelings the juror has but rather, whatever the feelings, can the juror be fair?

Any "what are your feelings?", "What is your attitude?," "What do you think about ?" are not only irrelevant but also invite potentially panel-tainting answers.

It is, of course, proper to ask more general questions to explore whether or not a panel member has any attitudes, feelings or opinions about a subject and then to find out whether the member could be fair. But since the rule is that a juror must set personal opinions aside, an inquiry directly into the content of any such opinion is irrelevant.

Q. Has anyone heard or read any comments or opinions or criticisms of the legal system?

This is all right. But the follow-up is improper.

Q. What have you read or heard?

The content of the information received is not relevant. What is relevant is whether the information prevents the jurors from being fair.

g. Questions that Distort the Jury's Role

Q. Are you the kind of person who, if you saw the plaintiff on the street after the trial, could look her in the eye and say, "We made a fair decision?"

Jurors do not have to defend their verdicts or explain them or answer questions about them or make any comment whatsoever about them. This question seems to suggest otherwise.

Q. Do you understand that at the end of the trial you will have to decide either that he's guilty or that he's innocent?

First of all, there is the third option of unable to reach a verdict. Secondly, the issue is guilty or not guilty; jurors do not decide "innocence." The question distorts the jury's role.

Q. Do you think you are the type of person who if you heard two versions could decide who's lying and who's telling the truth'?

The problem with the question is that credibility is not solely the product of lying or truth-telling. In fact, it is more the product of mistake or faulty or incomplete perception or recall in litigation situations. Thus, the question distorts the jury's function.

h. Questions that are Prefaced with Speeches or Explanations

Q. Now you realize that the law cannot bring little Billy back to life and the only thing we can do is give monetary compensation for the grief of this loss. Would anyone hesitate to award such compensation?

Q. The reason I am asking you this question is that I expect the evidence to . . . .

The jury does not need to know why a question is being asked.

It is not proper to preface questions on voir dire with:

- statements

- explanations

- descriptions of anticipated evidence

- arguments

- summaries of theories in the case

- comments on the opponent's evidence

- discussions of the law

- speeches of any sort

One more example, which would seem to be improper:

Q. The evidence in this case will show that the defendant used a .45 caliber Glock. Has anyone on the panel had any experience with such a weapon?

Why is the preface necessary? Why not just ask the question? Only the question is proper voir dire.

The following questions are from the voir dire in a second degree murder case:

[Defense counsel]

Q. Do you agree that the verdict should be unanimous?

Objection: Irrelevant - Sustained

The jurors swear to follow the law whether they agree with it or not. Thus, it is irrelevant as to whether or not they agree that the verdict should be unanimous.

[Prosecutor]

Q. Have you ever seen someone so intoxicated that he or she was not responsible for his or her own actions?

This question calls for an impermissible conclusion and tends to indoctrinate the jury. It should be disallowed.

[Defense counsel]

Q. In your questionnaire you said there is racism in the legal system. What did you mean?

A. Well, there has been a study . . .

[Judge interrupts and disallows the answer.]

Attorneys can ask about jurors' attitudes and opinions but to allow too much detail is dangerous. There is a risk of tainting the panel. Here the "study" might well have done that.

[Defense counsel]

Q. As a member of the NRA, tell us some of the general principles you agree with.

[Judge interrupts and disallows the answer.]

It is not necessary to hear the principles. The focus is on whether or not any such principles, whatever they are, might have created attitudes and opinions that will render the juror less than neutral.

Conclusion

I will conclude with a quote from a jury consultant who does not share many of my views as to voir dire.

> Many attorneys would argue that it is a legitimate purpose of voir dire to "educate" jurors as to the respective case theories. We would maintain that a properly conducted voir dire would require informing jurors of the opposing case theories in order for both the jurors and the attorneys to be able to evaluate the jurors' attitudes and predispositions towards both sides. However, the possibility of persuading jurors during the conduct of the voir dire is a pipe dream. This is not to say that jurors do not form impressions during the voir dire, but merely to point out that the voir dire lends itself best to obtaining information, not disseminating it.

From, "The Voir Dire as Interview," by Diane Wiley, National Jury Project - printed in "Taking the Magic Out of Jury Selection," Minnesota C.L.E., March 1984.

VOIR DIRE GUIDELINES

PURPOSES

Voir dire examinations of prospective jurors may be conducted

1. for the purpose of discovering bases for challenge for cause, and

2. for the purpose of gaining knowledge to facilitate an informed exercise of peremptory challenges.

(See Minn. R. Crim. P. 26.02, subd. 4(1), and Minn. Stat. § 546.10.)

IMPARTIALITY

The test of an impartial juror is not that he shall be completely ignorant of the facts and issues, but that he can lay aside his impression or opinion and render a verdict based on the evidence presented in court.

(See State v. Andrews, 282 Minn. 386, 165 N.W.2d 528, 534 (1969)).

SCOPE OF VOIR DIRE

Attorneys may ask only questions that directly and clearly relate to the purpose of voir dire, stated above. They **may not** ask any of the following types or categories of questions:

1. Those designed primarily to educate or indoctrinate jurors as to theories, facts, strategies, or problems in the case;

2. Questions intended or designed to predispose jurors to be in favor of or against a party, a witness, or some aspect of the case; e.g.

    a. Are you in favor of strict and strong enforcement of all criminal laws?

    b. Do you agree that society as well as the defendant has rights that must be protected?

3. Questions that are merely arguments of the case;

4. Questions that are hypothetical in nature;

5. Questions which ask the jurors to commit themselves to vote in a certain way or take any position whatsoever, before they heard the evidence;

6. Questions which instruct the jurors as to the law in the case;

7. Questions which attempt to present evidence;

8. Repeat questions already asked by the judge and to which clear and complete answers have been given;

9. Those asking jurors to speculate as to what their reactions might be to certain evidence; or

10. Those asking jurors how certain evidence is likely to influence their verdict.

BASIC APPROACH

Attorneys on voir dire are entitled to receive information through questions designed to achieve the proper purposes of voir dire. They are not, however, entitled to give information about the facts or the law in the case.

ANNOTATIONS

Cannot ask questions as to law: *State v. Bauer,* 189 Minn. 280, 249 N.W. 40 (1933).

Affirmed by *State v. Evans, 352* N.W.2d 824 (Minn. App. 1984).

See also State v. Manley, 54 N.J. 259, 255 A.2d 193 (ICJ., June 27, 1969) - lists many types of questions considered improper.

APPENDIX F

Sample Juror Thank You Letter and Exit Questionnaire

«DATE»

«NAME»
«STREETADDRESS»
«CITYSTATEZIP»

Dear «PROPERNAME»:

Our American system of justice depends on citizens like you. The right to a jury trial is a basic tenant of our justice system and without you that right would be meaningless.

I appreciate your service as a juror in my courtroom for the trial held on «DATEOFTRIAL». I know that service involved personal sacrifice by you. You played an important role by acting as the judge of the facts. I hope your experience in this regard was rewarding.

Please be assured that your contribution to the justice system does not go unnoticed. I personally am grateful that you helped to make our system work; and on behalf of all of the people personally involved, as well as the entire community, I thank you.

Enclosed is a Juror's Evaluation Form. Please take a moment to fill it out and return it in the envelope provided. This information will help the lawyers and myself in our future cases.

Yours truly,

Thomas P. Knapp
Judge of District Court

JUROR'S EVALUATION FORM

Case Name: _____

County: _____

I. THE JUDGE:

	Excellent	Good	Neutral	Poor	Very Poor
Attentiveness	1	2	3	4	5
Competence	1	2	3	4	5
Demeanor	1	2	3	4	5
Fairness	1	2	3	4	5
Patience	1	2	3	4	5

Did the judge appear to favor one side or the other? _____

If so, which side? _____
Comments: _____
_____
_____
_____

II. WAS THE COURTROOM STAFF COURTEOUS AND PLEASANT?

	YES	NO
Court Clerk	1	2
Reporter	1	2
Court Security Officer/if applicable	1	2

Comments: _____
_____
_____
_____

III. THE PHYSICAL FACILITIES AND CONVENIENCE FOR JURORS ARE:

Excellent ( )
Adequate ( )
Inadequate ( )

The following improvements should be made: _____
_____
_____
_____
_____

How did you feel about the jury selection process: _____
_____
_____
_____
_____

Other comments concerning the trial:

What are your thoughts about the criminal justice system since your service as a juror:

IV. THE PROSECUTING/PLAINTIFF'S ATTORNEY

	Excellent	Good	Neutral	Poor	Very Poor
Opening Statement	1	2	3	4	5
Evidence Presentation	1	2	3	4	5
Closing Argument	1	2	3	4	5
Courtroom Demeanor	1	2	3	4	5
Sincerity	1	2	3	4	5
Competence	1	2	3	4	5
Preparedness	1	2	3	4	5

What impressed you the most about this lawyer?

What impressed you the least about this lawyer?

Other comments?_____

V. THE DEFENSE ATTORNEY

	Excellent	Good	Neutral	Poor	Very Poor
Opening Statement	1	2	3	4	5
Evidence Presentation	1	2	3	4	5
Closing Argument	1	2	3	4	5
Courtroom Demeanor	1	2	3	4	5
Sincerity	1	2	3	4	5
Competence	1	2	3	4	5
Preparedness	1	2	3	4	5

What impressed you the most about this lawyer?_____

What impressed you the least about this lawyer?_____

Other comments?_____

APPENDIX G

Tips for Coping After Jury Duty:
From a Maricopa County, Arizona Brochure on Juror Stress

THE JURY DUTY EXPERIENCE

Thank you for serving your community. Being on a jury is a rewarding experience, which in some cases may be quite demanding. You were asked to listen to testimony and to examine facts and evidence. Coming to decisions is often not easy, but your participation is appreciated.

Serving on a jury is not a common experience and may cause some jurors to have temporary symptoms of distress. This booklet reviews ways to cope with symptoms of distress. Not everyone feels anxiety or increased stress after jury duty. However, it may be helpful to be aware of symptoms if they arise.

Some temporary signs of distress following jury duty include: anxiety, sleep or appetite changes, moodiness, physical problems (e.g., headaches, stomach aches, no energy, and the like), second guessing your verdict, feeling guilty, fear, trouble dealing with issues or topics related to the case, a desire to be by yourself, or decreased concentration or memory problems. Symptoms may come and go, but will eventually go away. To help yourself, it is important to admit any symptoms you have and deal with any unpleasant reactions.

COPING TECHNIQUES AFTER SERVING ON A JURY

- Talk to family members and friends. One of the best ways to put your jury experience in perspective is to discuss your feelings and reactions with loved ones and friends. You may also want to talk with your family physician or a member of the clergy.
- Stick to your normal, daily routines. It is important to return to your normal schedule. Don't isolate yourself.
- Before you leave the court, you may wish to get the names and numbers of at least two of your fellow jurors. Sometimes it is helpful to talk to people who went through the experience with you. This can help you to remember that you were part of a group (jury) and not alone.
- Remember that you are having a normal response to an usual experience.
- You can deal with signs of distress by cutting down on alcohol, caffeine, and nicotine. These substances can increase anxiety, fatigue and make sleep problems worse.
- Relax with deep breathing. Breathe in slowly through your nose. Breathe out slowly through your mouth. Slow your thoughts down and think about a relaxing scene. Continue deep breathing until you feel more relaxed.
- Cope with sleep problems. Increase your daily exercise, but do not exercise just before bedtime. Decrease your caffeine consumption, especially in the afternoon or evening. Do "boring" activities before bedtime. Listen to relaxation tapes or relaxing music before bedtime.

FINAL THOUGHTS

- Remember that jury service is the responsibility of good citizens.
- Resist negative thoughts about the verdict.
- No matter what others think about the verdict, your opinion is the only one that matters.
- You don't have to prove yourself to anyone.
- Sometimes it takes a lot of courage to serve on a jury. Some cases are very violent and brutal and hard to deal with. The case is now over and it is important for you to get on with your life.
- If you are fearful of retaliation or if you are threatened after the trial, tell the court and/or law enforcement immediately.

If signs of distress persist for two weeks after jury service has ended, you may wish to contact your primary care physician or a counselor.

APPENDIX H

Issues Considered by the Task Force not Resulting in Recommendations

A number of proposals, innovations and recommendations were presented to the Task Force but after discussion and debate, no action was taken. A partial list of these issues appears below.

Number of Peremptory Challenges. The Task Force decided to recommend no change in the number of available peremptory challenges during jury selection in either criminal or civil cases. Consequently, the following ideas, some of which have been tried in other jurisdiction, were rejected: (1) the elimination of peremptory challenges, (2) the reduction in the number available to each party, and (3) the equalization of the challenges available to prosecution and defense in criminal cases.

Comment: Supporters of the elimination of peremptory challenges argue that doing so would significantly reduce the time needed to conduct voir dire. They also argue that attorneys are protected by the availability of challenges for cause. The Task Force rejected these arguments and took the view that the existence of peremptory challenges actually streamlines the jury selection process because attorneys may remove objectionable jurors without pursuing the specific and detailed type of questioning that is necessary to remove a juror for cause. The Task Force also recognized that some jurors simply would not admit that they are sufficiently biased or predisposed to justify a removal for cause.

As to the number of peremptory challenges, Minnesota appears to be in the mainstream with respect to civil cases (two per side). Minnesota is more liberal than other states in criminal cases. The prosecution usually gets three strikes except for first degree murder cases in which case they get nine. The defense gets five and fifteen strikes respectively. In view of the liberty interests at stake in criminal cases, the Task Force decided not to recommend any change in these numbers.

A Pilot Project on Time Limits. The Task force considered a proposal from the Hennepin County Attorney's Office that would establish a pilot project in Hennepin County under which time limits would be used during jury selection in all but the most serious felony cases. In view of the recommendations that were ultimately adopted concerning subject matter limits and time limits during voir dire questioning, the Task Force decided that such a pilot was unnecessary.

Allowing Alternates to Deliberate in Criminal Cases. The Task Force declined to recommend that alternate jurors in criminal cases be permitted to take part in the jury's deliberations.

Comment: The Task Force viewed with favor the recent changes in the civil rules eliminating alternate jurors and providing that all seated jurors will deliberate. However, the Task Force felt that the idea could not be applied to criminal cases for two reasons. First, rule, statute, and constitutional principles specifically define the number of jurors that may ultimately deliberate or be present

during deliberation in criminal cases. Second, criminal cases require a unanimous verdict and do not contemplate partial or fractional verdicts.

Allowing Jurors to Discuss the Case Prior to Final Deliberations. Although courts in several states have permitted jurors to discuss the testimony and evidence among themselves prior to final deliberations (provided all jurors are present), the Task Force decided not to adopt such a recommendation.

Comment: This proposed innovation stems primarily from a recognition that it defies common sense to believe that jurors actually follow the usual instruction prohibiting jurors from discussing the case until final deliberations. Several commentators argue that jurors should be encouraged to discuss the evidence while it is fresh in their minds.

The Task Force decided not to recommend this idea because it would invariably create other problems for the judge and the attorneys. First, steps would need to be taken to ensure that the jurors were all present (without outsiders) during any such discussions. If, for example, such discussions occurred between small groups of jurors, a splintering of the jury could occur. Second, the judge would also need to ensure that the jurors kept an open mind until all the evidence had been presented. For these two reasons, the Task Force decided that the risk and effort was not worth the reward in adopting this concept.

Allowing the Case to be Reopened to Assist Deadlocked Juries. The Task Force decided not to recommend a civil or criminal rule change that would permit attorneys to reopen the case in order to present further evidence or argument in the event of a jury deadlock.

Comment: This idea was especially problematic among the attorneys on the Task Force. They expressed the belief that such a rule change would change the burden of proof and allow the jury to rescue attorneys who do a bad job. This was seen as particularly objectionable in criminal cases. However, in a recent case the Minnesota Court of Appeals addressed this issue and held that the trial court did not abuse its discretion by refusing to reopen the case after the jury had begun its deliberations. State v. Yang, 627 N.W.2d 666 (Minn. App. 2001).

Judges Eligible to Serve as Jurors. After public comment, the Task Force decided not to recommend eliminating the rule disqualifying judges from jury service. Although the Task Force supports the concept that all citizens should be eligible to participate in jury service, a majority of the Task Force members felt that the practical realities of having judges called for jury service were too daunting at this time. The Task Force was particularly concerned with public comments about problems that would be created in counties with a small number of judges. For these reasons, the Task Force declines to recommend judges be eligible to serve as jurors at this time.

THE SUPREME COURT OF MINNESOTA
LEGAL COUNSEL DIVISION
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May 13, 2002

Mr. Fred Grittner
Clerk of the Appellate Courts
305 Judicial Center
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St. Paul, Minnesota 55155,

RE: Statement Regarding Jury Task Force Proposals

Dear Mr. Grittner:

The Minnesota Supreme Court Advisory Committee on the General Rules of Practice has reviewed and considered the December 20, 2001, Final Report of the Minnesota Supreme Court Jury Task Force, and submits twelve copies of this letter for consideration at the June 26, 2002 hearing. For your convenience an electronic version of this letter is also being forwarded to your attention. The advisory committee does not desire to make an oral presentation at the hearing.

The Jury Task Force report recommends four changes to the general rules of practice:

1. Whether Gen.R.Prac. 808 (b) (7) should be amended to reduce the disqualification period from four years to two years.

2. Whether Gen.R.Prac. 814 should be amended to: (1) allow courts to restrict party access to juror phone numbers (the rule currently allows the court to restrict party access to addresses) and (2) delete the language that makes juror information, including questionnaires, automatically accessible to the public after one year has elapsed since preparation of the information or all jurors on the lists

have been discharged, whichever is later (leaves intact a process for the public to request access to questionnaires by written request to court supported by affidavit, but requires destruction of questionnaires once appeal periods expire).

3. Whether jurors should be allowed to question witnesses.

4. Whether Sections I and II of the Jury Best Practices Guide ("Anticipating Requirements for the Pool" and "Panel Usage") should be incorporated into Gen.R.Prac. 801 et seq.

In regard to item 3, there is a case pending with the court on this issue and the general rules advisory committee feels that it would be premature to comment on the issue until the case has been resolved. Proposed changes in items one and four are purely trial court administrative issues and appear minor and noncontroversial. If these proposed changes have the support of the trial courts (i.e., the Conference of Chief Judges) they are the type of recommendation that the general rules committee would consider as technical or housekeeping in nature, and would be passed on to the court via staff and the reporter without formal committee discussion or deliberation. Similarly, the proposed changes in item 2 are straightforward and would not appear to generate significant controversy, and the data privacy issues are largely administrative in nature. If they have the support of the Conference of Chief Judges, further discussion by the general rules advisory committee may only serve to delay implementation without adding significantly to the efforts of the jury task force.

The general rules advisory committee will examine the third issue again once the pending case has been resolved, and will report the results of its deliberations to the court.

Respectfully submitted,

Michael B. Johnson #142931
Advisory Committee Staff
120 Minnesota Judicial Center
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OFFICE OF THE HENNEPIN COUNTY ATTORNEY

AMY KLOBUCHAR COUNTY ATTORNEY

May 17, 2002

Mr. Frederick Grittner
Clerk of Appellate Courts
305 Minnesota Judicial Center
25 Constitution Avenue
St. Paul, MN 55155-6102

Re: Hearing to Consider the Recommendations of the Minnesota Supreme Court Jury Task Force
Supreme Court No. C7-00-100

Dear Mr. Grittner:

Attached please find the original and 12 copies of the Comments of The Minnesota County Attorney Association concerning the Jury Task Force Report filed with the Court on December 20, 2001.

Please accept this letter as a request by the County Attorneys Association to speak at the public hearing scheduled for June 26, 2002 at 2:00 p.m. in courtroom 300.

Sincerely,

MINNESOTA COUNTY ATTORNEYS ASSOCIATION

PAUL R. SCOGGIN
Assistant Hennepin County Attorney
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Minneapolis, MN 55487
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PRS:ks
Enc.

C7-00-100

STATE OF MINNESOTA

IN SUPREME COURT

IN RE HEARING TO CONSIDER THE RECOMMENDATIONS
OF THE MINNESOTA SUPREME COURT JURY TASK FORCE

WRITTEN COMMENTS BY
THE MINNESOTA COUNTY ATTORNEYS ASSOCIATION
MAY 17, 2002

TO: THE HONORABLE JUSTICES OF THE MINNESOTA SUPREME COURT.

I. Statement of Interest

The Minnesota County Attorneys Association is an independent voluntary association of all eighty-seven Minnesota County Attorney Offices. The Association's mission is to improve the quality of justice in the State of Minnesota. The Association strives to do so by active participation in the legislative process, conducting continuing legal education programs, publication of materials of interest to Association members, and representation in various justice system matters. The Minnesota County Attorneys Association is a not for profit corporation, incorporated over twenty years ago and governed by a board of twenty-five directors.

Association members try hundreds of matters before the district courts of this State every year. As the chief representative of the executive branch of government in the trial courts, the Association has a vital interest in the fair, efficient, and humane administration of justice in that system.

II. Comments of the Minnesota County Attorneys Association

The Minnesota County Attorneys Association wishes to express its thanks to the members of the task force for their hard work and diligent consideration of the difficult and complex issues relating to jury selection and jury management. Likewise, we wish to thank this Court for its willingness to consider jury selection and management issues. We believe the task force recommendations will help eliminate unnecessary delay in the trial process, standardize jury selection procedures, and encourage judges to exercise appropriate control over the jury selection process.

A. Jury Selection Issues Rarely Rise in the Context of the Appellate Process, As Such, the Minnesota County Attorneys Association Believes That it is Appropriate to Review the System in the Context of a Task Force Report.

The Minnesota County Attorneys Association believes that it is appropriate for the Court to review the jury selection and management process in the context of a task force report. As a general rule, the development of a law is best left to the judicial process of building precedent on a case-by-case basis. However, we believe that voir dire and jury management is not particularly susceptible to development in the appellate process. With the exception of *Batson* challenges, a review of Minnesota's case law suggests about a handful of meaningful decisions providing guidance to the trial courts and practitioners. The seminal case in this area – *State v. Bauer*, 249 N.W. 40 (Minn. 1933) – was decided nearly seventy years ago. Given the paucity of cases over so many years, it seems reasonable to suggest that the best way to develop a consistent set of jury selection and management processes is through a task force process. It is the Minnesota County Attorneys Association's hope that the relevant sections of this Task Force Report

will make their way into every litigator's trial notebook as well as the trial court bench books.

B. The Task Force Report as an Important Third Voice to the Jury Selection and Management Process – the Voice of the Jurors Themselves.

It is readily apparent from the Report that the Task Force went to great lengths to reach out and consider the interests of jurors themselves. The Task Force's approach is commendable. This fundamental interest is easy to overlook. The litigants, enmeshed in the concerns of the case at hand, and the rights of the parties, may do an admirable job of representing their own interests. But the litigants (including ourselves) may forget the individual interests of the jurors.

Just ten years ago, and perhaps for the first time, the United States Supreme Court recognized that the interests in play during jury selection were not limited to the litigants or the integrity of the court. The jurors themselves have a protectable interest in a fair selection process. *Georgia v. McCollum*, 505 U.S. 42, 57-58 (1992). We believe that interest extends to non-constitutional jury management issues as well. We urge this Court to keep individual jury concerns squarely in mind while considering this Report. This Report echoes what many trial lawyers already know, jurors want us to keep things moving along, keep them informed, and protect their privacy.

As practitioners, jurors have let us know in no uncertain terms how angry or frustrated they feel about the jury selection process. We believe neither side is well served by jurors whose attention is diverted by irritation at the process. Similarly, jury service is the most contact many citizens will ever have with State or local government.

While jury service is never going to be easy, we believe making jury service efficient, understandable, and safe is a worthy goal.

C. Many of the Recommendations of the Task Force Reflect Settled Law; the Report is an Appropriate Vehicle for Encouraging Standard Practices Consistent With That Settled Law.

Much of the Report is not earthshaking. For example, recommendations 10 through 13 outlining the role of the court in conducting voir dire and the proper purpose of voir dire, express principles outlined by this Court decades ago and reaffirmed by this Court or the Court of Appeals within the last fifteen years. Despite the existence of these cases, our experience suggests a wide variation from court to court in application of these principles. We agree with the Task Force's observation on the growing amount of time used to pick juries. We also agree with the suggestion that jury selection has evolved into a process designed to give information to juries in hopes of persuading rather than receiving information in hopes of making informed jury selection decision. While the Minnesota County Attorneys Association agrees with the Task Force's suggestion that Minnesota not adopt the Federal model for jury selection, the Minnesota County Attorneys Association strongly agrees that the better approach is a more rigorous enforcement of the existing limitations on the jury selection process.

D. Many of the Recommendations of the Task Force Represent "Best Practices"; The Report is an Appropriate Vehicle for Encouraging Standard Practices While Allowing for Local Variations.

The Minnesota County Attorneys Association believes much of the Report reflects a commonsense accommodation between the needs of the parties, existing law, and the needs of the jurors. Thus, the Minnesota County Attorneys Association supports the use of a carefully edited orientation video, a uniform jury handbook, and other

uniform orientation and jury pool management procedures. We support pilot projects for shorter jury terms, but recognize that funding and other local barriers may make shorter terms impractical in some jurisdictions. The Association also supports the invitation to use jury questionnaires in those cases where questionnaires streamline voir dire or where questionnaires will facilitate inquiry into sensitive or controversial topics. We again recognize that this reflects a "best practice" and may not be appropriate in all districts. Finally, the efforts to reduce delay, keep an established schedule, keep the jury informed, and complete non-jury proceedings before or after jury selection sessions reflect common courtesy and respect. The Minnesota County Attorneys Association strongly endorses their adoption.

E. The Minnesota County Attorneys Association Strongly Endorses Protection of Jury Privacy Both as a Matter of Sound Public Policy and in the Interest of Promoting a Fair Trial.

Rigorous protection of jury privacy promotes two important ends. First, many jurors are reluctant to participate in the process. Exposing intensely private information to the public domain is an unfair and involuntary intrusion into the juror's personal life. Second, it follows that jurors who do not believe that at least some effort will be made to protect private information will be unwilling to share that information in the first place – even if it is relevant to the jury selection process. Both the jurors' need for privacy and the parties' need for information should be accommodated by providing the jurors and the parties with a forum for private but on the record voir dire. The Association recognizes that a private forum is only appropriate on a specific finding that a juror's privacy interest is implicated. But once such a finding is made, both the individual interests of the juror and the parties' need for full and complete information justify non-public inquiry.

F. The Minnesota County Attorneys Association Strongly Supports Efforts to Streamline Voir Dire and Restrict It to Its Proper Purpose.

The Minnesota County Attorneys Association supports efforts to streamline the voir dire process and restrict it to its proper purpose. While existing case law provides significant guidance on the proper use of voir dire, we've often seen these guidelines honored more in the breach than in the observance.

Good trial lawyers are inclined to sell both their case and themselves in voir dire. Skillful voir dire is a part of zealous advocacy – but direct comment on the law and the facts should wait until opening statements. Trial courts should rigorously protect jury panels from attempts by the lawyers to sell the case on its facts of the law, solicit commitments to return a favorable verdict, or attempts to establish favorable rapport with the lawyers or client. This protection should also extend to less skillful forms of voir dire. The Report urges trial courts to actively intervene in instances where voir dire has wandered into irrelevant inquiries or has become repetitious. The Minnesota County Attorneys Association strongly supports those efforts and urges this Court to support them as well.

The Association recognizes that one method to enforce proper voir dire guidelines is to impose time limits on voir dire. The Association supports the sparing use of time limits as a remedy for demonstrated abuse of voir dire. The Association recognizes that existing case law recognizes the propriety of reasonable and relevant time limitations. Nevertheless, the cases do so in the context of reversing judgments of conviction where trial judges have placed unreasonable limitations on voir dire. As such, both practitioners and trial courts are understandably reluctant to ask for or impose time limitations. Establishing specific guidelines will allow practitioners and trial courts to understand the

rules of the road for the imposition of time limits and give the parties confidence that time limits can be fairly imposed.

DATED: May 17, 2002

Respectfully submitted,

MINNESOTA COUNTY ATTORNEYS ASSOCIATION

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May 7, 2002

Mr. Frederick Grittner
Clerk of the Appellate Courts
305 Judicial Center
25 Constitution Avenue
St. Paul, Minnesota 55155

Dear Mr. Grittner:

I am writing in my capacity as Chair of the Minnesota Supreme Court Advisory Committee on the Rules of Criminal Procedure. As ordered by the Supreme Court, the members of our committee have reviewed and considered the Supreme Court Jury Task Force and the committee has drafted a written response.

Enclosed you will find the required copies of our report to the Supreme Court. I, as Chair of the committee, and Philip Marron, reporter of the committee, will attend the public hearing on the Supreme Court Jury Task Force. I would like a few minutes to address the Supreme Court, and both Mr. Marron and I will be present to respond to any questions.

Thank you for your consideration in this regard.

Very truly yours,

Robert H. Lynn
Judge of District Court

RHL:po
Enclosures

STATE OF MINNESOTA
IN SUPREME COURT
C7-00-100

In re:

Hearing to Consider the Recommendations of the Minnesota Supreme Court Jury Task Force

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COMMENT OF THE MINNESOTA SUPREME COURT ADVISORY COMMITTEE ON RULES OF CRIMINAL PROCEDURE REGARDING THE FINAL REPORT OF THE MINNESOTA SUPREME COURT JURY TASK FORCE

May 08, 2002

Hon. Robert Lynn, Chair

Leonardo Castro
Martin Costello
Fred Fink
Theodora Gaitas
Susan Gretz
Bill Hennessy
Candice Hojan
C. Paul Jones

Thomas Kelly
William Klumpp
John Lundquist
Arthur Martinez
Candace Rasmussen
Hon. Gary Schurrer
Paul Scoggin
Hon. Jon Stafsholt

Philip Marron
Reporter

Hon. Russell Anderson
Supreme Court Liaison

Kelly Lyn Mitchell
Staff Attorney

I. Introduction and Scope of Comment

The Minnesota Supreme Court Jury Task Force filed its Final Report (Report) with the Supreme Court on December 28, 2001. The Supreme Court issued an order on February 14, 2002 scheduling a public hearing, and requesting comment. The Order also specifically invited several rules advisory committees to submit written statements because the Final Report contained proposed amendments to rules of procedure. The Advisory Committee on the Rules of Criminal Procedure (Committee) hereby respectfully submits its comments to the Report on those recommendations affecting the Rules of Criminal Procedure.

In reviewing the Report, the Committee noted that several recommendations reflect proposals for best practices, and do not require amendments to the Rules of Criminal Procedure or Comments. Rather than discuss every recommendation, the Committee will comment on only those recommendations that affect the Rules, or that present an area of concern. The Committee therefore has no comment regarding Recommendations #5-7, 9, 23-24, 26, 28 and 33-37.

With regard to Recommendations #1-4, the Committee wishes only to comment that some of the content of the items used to orient prospective jurors could be prejudicial. For example, one member of the Committee recalls a case in which the jury determined from information received by viewing the orientation video that, because twelve jurors composed the panel instead of six, the defendant had committed prior offenses resulting in enhancement of the offense for which he was being tried to a more serious charge. The Committee cautions against developing orientation materials without considering whether they may unintentionally affect the jurors' perception and contemplation of the evidence, and suggests that input be solicited from members of the bench and bar when these materials are updated.

The remaining recommendations are addressed as the Jury Task Force presented them in its Report, except Recommendation #8, which is discussed with Recommendation #21 concerning juror privacy during voir dire. For each of the recommendations discussed, the Committee has commented on the recommendation's impact on the Rules of Criminal Procedure and, when appropriate, has suggested alternative approaches for the Court's consideration.

The Committee, having reviewed the Report, therefore submits the following comments.

II. Recommendations Relating to the Juror Selection Process

During jury selection, the trial court must weigh the need for counsel to ask proper questions in order to choose a fair and impartial jury against the need for efficiency, and strike a proper balance between these sometimes competing interests. In this section of the Report, the Committee believes the Jury Task Force's recommendations weigh too heavily in favor of efficiency. Many of the recommendations are appropriate in some circumstances; however, none is appropriate for *all* cases. For example, procedures such as utilizing a standard juror questionnaire might streamline jury selection in the metro area, but might lengthen selection in rural areas. The trial judge is in the best position to determine the appropriateness of counsels' questions, the manner of inquiry, and the proper amount of time to take. Therefore, nearly all of the concerns addressed in the jury selection recommendations should be left to judicial discretion.

A. Recommendation #10: The Judicial Role in Voir Dire

This recommendation states that "[j]udges should exercise control over the jury selection process to ensure that it is properly conducted and should intervene *sua sponte* when appropriate." In criminal trials, jury selection is governed by Minn. R. Crim. P. 26.02, subd. 4.

The Comment to the Rule states that "[t]he court has the right and the duty to assure that the inquiries by the parties during voir dire examination are 'reasonable.'" In addition, the power of the trial court to place reasonable limitations on voir dire has long been established in this state. See State v. Bauer, 189 Minn. 280, 249 N.W. 40 (1933). The Report does not recommend any rule changes to implement this recommendation, and the Committee does not believe that a change in the Rules of Criminal Procedure is necessary. However, the Committee does believe that an amendment of the Comment to Minn. R. Crim. P. 26 to reference Bauer is appropriate, and will recommend such an amended Comment in its next report to the Supreme Court.

B. Recommendations #11 and 12: Questioning by the Judge / Attorney Questioning

Here, the Jury Task Force recommends: first, that judges perform the initial biographical questioning of prospective jurors in the interests of speed and minimized intrusion; and second, that counsel be given a fair and adequate opportunity to question prospective jurors. In criminal trials, Minn. R. Crim. P. 26.02, subd. 4(1) provides for questioning by the judge as is necessary, as well as for reasonable inquiry by either party. The Committee therefore believes that the current rule is adequate.

C. Recommendation #13: Proper Purposes of Voir Dire

This recommendation states the purpose of voir dire, quoting Minn. R. Crim. P. 26.02, subd. 4(1), and then lists several purposes for which voir dire should not be used. While the Committee agrees that the *proper* purpose of voir dire is appropriately addressed in the Rules of Criminal Procedure, the *improper* use of voir dire should not be similarly treated. The Committee cautions against attempting to categorize all possible bases for objection during voir dire in the Rules or elsewhere. Because of the protean nature of voir dire, the subject of *improper* voir dire would be better addressed through continuing legal education than by amending the Rules.

Therefore, the Committee recommends no change to the Rules of Criminal Procedure, and supports the Jury Task Force's desire to provide instruction in the proper purpose of voir dire through judicial and attorney education.

D. Recommendation #14: Time Limits

Here, the Jury Task Force misstates the law in commenting that time limits are clearly authorized. The case cited in the report provides that the court "cannot unreasonably and arbitrarily impose limitations without regard to the time and information reasonably necessary to accomplish the purposes of voir dire." State v. Evans, 352 N.W.2d 824, 827 (Minn. Ct. App. 1984). However, time limits actually imposed by the trial court have never been upheld on appeal. See, e.g., State v. Peterson, 368 N.W.2d 320, 322 (Minn. Ct. App. 1985); State v. McClellan, 1987 WL 26890 (Minn. Ct. App. 1987) (unpublished). This Committee is not prepared to recommend amendments to the Rules to allow for procedures to follow in establishing time limits. Instead, the Committee believes this is a subject that would be more appropriately addressed through judicial and attorney education.

E. Recommendation #15: Unlawful Exercise of Peremptory Challenges

The unlawful exercise of peremptory challenges is fully and adequately addressed in Minn. R. Crim. P. 26.03, subd. 6a; therefore, the Committee believes no further action is necessary.

F. Recommendation #16: Designation of Alternate Jurors

The Rules of Criminal Procedure provide for selection of alternate jurors, but do not require that the alternates be identified prior to deliberation. See Minn. R. Crim. P. 26.02, subd. 8. However, due to juror orientation, or the physical limitations of many courtrooms, jurors are often easily able to determine which individuals are alternates and which individuals are sitting

members of the jury (e.g., jurors are often told that a case involves a jury of 12, and most jury boxes contain only 12 chairs, requiring alternates to sit in temporary folding chairs). While the Committee agrees that it is important that *all* jurors pay attention to the proceedings (because in some cases alternates do replace members of the panel), the Committee does not agree that all jurors who are told they are alternates will fail to pay attention. In some cases, it may be appropriate to tell the whole panel that there are alternate jurors present, and in others it may be appropriate to identify those alternates. In either situation, the Committee believes the trial judge is in the best position to decide whether to introduce the concept of alternate jurors and, alternatively, how to address the problem of inattentive jurors.

G. Recommendations #17 and 18: Developing Standard Juror Questionnaire / Use of Case-Specific Juror Questionnaires

Here, the Jury Task Force simultaneously recommends utilization of a standard juror questionnaire in all cases and utilization of a case-specific questionnaire in certain case types (e.g., cases involving pre-trial publicity or juror safety issues). With respect to Recommendation #17, the Rules of Criminal Procedure currently contain a standard jury questionnaire. See Minn. R. Crim. P. Form 50. However, use of the form is not mandatory, nor does the Committee believe that it should be. Though juror questionnaires may streamline the jury selection process in some cases, in other cases, use of questionnaires may actually lengthen the time it takes to select a jury, may cause difficulty and frustration for prospective jurors who have difficulty in reading and writing English, or may contain content that is not appropriate or necessary.

With respect to Recommendation #18, the Jury Task Force seems to have identified the categories in which case-specific questionnaires are most likely to be useful. However, the same

considerations that militate against requiring use of standard questionnaires militate against requiring use of case-specific questionnaires.

The Committee supports the availability of juror questionnaires for those cases in which counsel and the court believe they may result in the provision of better information or be more efficient. But the Committee opposes both recommendations to the extent that they would require mandatory use of the questionnaires.

III. Recommendations Relating to Juror Privacy During Voir Dire

With respect to recommendations relating to juror privacy, the Task Force recognizes three competing interests: 1) the defendant's right to a fair and public trial; 2) the First Amendment right of the media and the public to have access to court proceedings; and 3) a juror's right to privacy. Each of these interests is not only important but is also entitled to constitutional protection, and each needs to be weighed against the others in arriving at sound balance with respect to the privacy of the information that jurors provide. The Committee is concerned that the Jury Task Force recommendations weigh too heavily in favor of juror privacy relative to the other interests at stake, and thus raise serious constitutional questions. In particular, the U.S. Supreme Court appears to have mandated a case-specific and information-specific inquiry into the need for confidentiality rather than a blanket restriction on access to juror information. The Committee therefore recommends an alternate approach that better accommodates the competing interests, and that might better withstand a constitutional challenge.

A. Recommendation #19: Explaining the Purpose of Voir Dire

In this recommendation, the Jury Task Force recommends that the judge explain that the purpose of voir dire is not to invade the prospective jurors' privacy, but to explore their viewpoints and life experiences to determine their ability to be fair and impartial. But the truth is, voir dire *does* invade jurors' privacy, and is designed to do so in recognition of the fact that the prospective jurors' viewpoints and life experiences may have an impact on how they view the evidence presented. Thus, the Committee believes it is inappropriate to instruct the prospective jurors as recommended. Rather, jurors should be informed as to the reasons why the questions will be asked and that, in some cases, the questions may make them feel uncomfortable. Currently, the manner in which this message is delivered is left to judicial discretion. The Jury Task Force recommends that a criminal and civil jury instruction should be created addressing the scope and purpose of voir dire, and the Committee supports that recommendation with the reservations it has expressed. Minn. R. Crim. P. 26.02, subd. 4 already contemplates an explanation by the judge; therefore, no amendment to the Rules would be necessary to accommodate use of the instruction.

B. Recommendation #20: Protecting Juror's Privacy During Voir Dire

Here, the Jury Task Force recommends that Minn. R. Crim. P. 26.02, subd. 4(2)(a) be amended to explicitly allow the trial court to take answers to individual voir dire questions outside the presence of the venire and observers. The recommendation would also amend the Rule to instruct courts that they should inform jurors that they may elect to answer some questions in private.

In criminal trials, judges already have the discretion to take questions outside the presence of *other jurors*, as set forth in the current rule, which states that "[i]n the discretion of the court

the examination of each juror may take place outside the presence of other chosen and prospective jurors." Minn. R. Crim. P. 26.02, subd. 4(2)(a). The Rule does not, however, provide for questioning to take place outside the presence of *observers*, and here the Committee disagrees with the recommendation of the Jury Task Force.

To the extent that the recommendation suggests that questioning of the jury may also take place outside the presence of observers (in addition to other jurors), it raises constitutional concerns. The Jury Task Force reads Press-Enterprise Co. v. Superior Court, 464 U.S. 501 (1984) as authorizing the closing of voir dire (and destruction of juror questionnaires) in order to safeguard the privacy of jurors. It quotes the Supreme Court's acknowledgement of possible privacy interests of jurors, but fails to note that the Supreme Court did not authorize a blanket restriction on access to voir dire based on those interests. Instead, consistent with the competing, and perhaps overriding, interest in a public trial, the Supreme Court held that only a compelling governmental interest would justify closing voir dire to the public, and that any restrictions on access must be narrowly tailored to serve that interest. See also United States v. Antar, 38 F.3d 1348 (3d Cir. 1994) (court must establish overriding interest to compel limitation on access to voir dire). Thus, closure of voir dire is subject to the highest form of scrutiny.

The current Rules of Criminal Procedure provide for closing certain portions of a trial from the public provided that the defendant's interest in a public trial and the public right of access are sufficiently accommodated. Minn. R. Crim. P. 26.03, subd. 6 states:

> The following rules shall govern the issuance of any court order excluding the public from any portion of the trial that takes place outside the presence of the jury and restricting access to any transcripts or orders developed from such closed portions of the trial.
>
> (1) *Grounds for Exclusion of Public.* If the jury is not sequestered, the court on its initiative or on motion of the defendant or the prosecuting attorney may order that

> the public be excluded from any portion of the trial that takes place outside the presence of the jury on the ground that dissemination of evidence or argument adduced at the hearing may interfere with an overriding interests including that it is likely to interfere with a fair trial by an impartial jury. The motion shall not be granted unless it is determined that there is a substantial likelihood of such interference. In determining the motion the court shall consider reasonable alternatives to closing such portion of the trial and the closure shall be no broader than is necessary to protect the overriding interest involved.

The Rule proceeds to require notice to adverse counsel and to set forth procedures for a hearing, issuance of findings of fact, records, and appellate review. The corresponding Comment notes that the procedures delineated in the rule are derived from Minneapolis Star and Tribune Co. v. Kammeyer, 341 N.W.2d 550 (Minn. 1983), which established procedures for excluding the public from pretrial hearings. The concern in that case and in the Comment to Rule 26.03, subd. 6, was prejudicial pretrial publicity rather than juror privacy. However, since the rule covers any "overriding interest" that might interfere with a fair trial, it conceivably includes juror privacy.

One of the procedures in Rule 26.03 requires that the trial court make a complete record of any closed proceedings and then make that record available to the public following the completion of the trial. Minn. R. Crim. P. 26.03, subd. 6(4). The Comment to the Rule also notes that when the record of the proceeding from which the public was excluded is made available, the court may order that names be deleted or substitutions therefore made "for the protection of innocent persons." Minn. R. Crim. P. 26.03, subd. 6, cmt.

In the context of juror privacy, these provisions would allow a court to close the proceedings to outside observers when a concern about juror privacy threatens to interfere with a fair trial, but only after following the procedures outlined in the Rule. Upon the close of trial, the court might then order that the juror's name be deleted from the voir dire record "for the

protection of innocent persons." *Id.* The comment to Rule 26.03 could make this application explicit.

Another concern with Recommendation #20 is that it does not signal to the judge that he or she must weigh the juror privacy interest at issue against the defendant's right to a public trial and society's interest in open proceedings. See Press-Enterprise Co. v. Superior Court, 464 U.S. 501 (1984). In Press-Enterprise the Supreme Court stated that "[p]ublic proceedings vindicate the concerns of the victim and the community in knowing that offenders are being brought to account for their criminal conduct by jurors fairly and openly selected." Id. at 509. Though the recommended amendment instructs that courts "may" take answers to individual questions touching on sensitive or private issues at the bench, it does not indicate when such action is appropriate.

Additionally, Recommendation #20 does not expressly provide for the defendant's presence during the private questioning of prospective jurors. The Committee believes this right should be explicit.

For the reasons stated above, the Committee opposes the recommended amendment as written. The Rules of Criminal Procedure arguably contain procedures that allow jurors to respond to voir dire in private; however, the Committee agrees that Minn. R. Crim. P. 26.03, subd. 6 could be amended to state explicitly that it is applicable to voir dire, and that juror privacy is an "overriding interest" as contemplated in subdivision 6(1). Alternatively, a new, less cumbersome, procedure could be developed. The Committee plans to further consider this issue, and to propose an alternate procedure that better comports with constitutional standards.

C. Recommendations #8 and 21: Privacy of Qualification Information and Retention of Juror Questionnaires

In Recommendation #8, the Jury Task Force proposes an amendment to Rule 814 of the General Rules of Practice for District Courts that would grant courts the authority to restrict access to personal information and to destroy qualification information. In Recommendation #21, the Jury Task Force proposes an amendment to Rule 26.02, subd. 2(2) of the Rules of Criminal Procedure that would require counsel to return all copies of juror questionnaires to the trial court at the conclusion of jury selection, provide for destruction of the questionnaires, and provide for retention of certain questionnaires under seal until conclusion of any appellate proceedings. However, these recommendations, like Recommendation #20, raise constitutional issues.

Several courts have held that the public access mandate of Press-Enterprise applies to voir dire questionnaires as well as oral questioning. See Lesher Communications, Inc. v. Superior Court, 224 Cal. App. 3d 774, 274 Cal. Rptr. 154 (1990); Newsday, Inc. v. Goodman, 159 A.D.2d 667, 552 N.Y.S.2d 965 (1990). Therefore, to the extent that Press-Enterprise restricts closure of oral voir dire, at least the courts that have considered this issue have held that it also restricts the extent to which access to juror questionnaires may be denied.

In Press-Enterprise, the Supreme Court held that in light of the competing interests at stake only those parts of the voir dire transcript "reasonably entitled to privacy" should be sealed, and the judge should explain why the material is entitled to privacy. 464 U.S. at 513. Similarly, the Court specifically noted that a prospective juror should be required to make an affirmative request for secrecy to ensure that there is in fact a valid basis for a belief that disclosure infringes on privacy and to minimize the risk of unnecessary closure. Id. at 512.

Recommendations #8 and 21 appear to conflict with Press-Enterprise and potentially infringe on the defendant's right of appeal. First, the destruction of all juror questionnaires as recommended is actually an after-the-fact blanket closure of voir dire. That aspect of the trial dealing with juror selection is no longer public. The problem is that the closure is not based on the individual, juror-specific (much less information-specific) determination that the Court mandated in Press-Enterprise. The closure applies to all jurors regardless of whether the information on the questionnaire is indeed private.

Second, Recommendation #21 requiring the trial court to seal juror questionnaires is likewise a blanket rule that is not based on juror-specific or information-specific privacy concerns. See Bellas v. Superior Court of Alameda County, 85 Cal. App. 4th 636, 102 Cal. Rptr. 2d 380 (2000) (criticizing placement of juror questionnaires under seal "in their entirety on generalized concerns about juror privacy, without making any finding of particularized and individual assessment of juror privacy needs" and stating that "[t]he First Amendment prohibits the indiscriminant sealing of these questionnaires").

Third, the recommended representation to prospective jurors (through amendments to Form 50) that juror questionnaires are confidential and will be shared only with counsel and the parties solely for the purpose of jury selection conflicts with the public right of access to court proceedings recognized in Press Enterprise and Richmond Newspapers, Inc. v. Virginia, 448 U.S. 555 (1980). California courts appear to have explicitly rejected any promise of confidentiality. See, e.g., Bellas, 85 Cal. App. 4th at 652, 102 Cal. Rptr. 2d at 391 (stating, "[n]o comprehensive offer of protection from public disclosure of information communicated on juror questionnaires is legally effectual where public access is mandated by the First Amendment"); Copley Press, Inc. v. Superior Court, 228 Cal. App. 3d 77, 278 Cal. Rptr. 443 (1991) (stating, "[n]o explicit or

implicit promise of confidentiality should be attached to the information contained in the questionnaires; rather, the venire persons should be expressly informed the questionnaires are public records").

Finally, the proposal in Recommendation #21 that juror questionnaires be destroyed "at the conclusion of all appellate proceedings or the expiration of time for appeal" fails to recognize that a defendant may petition for postconviction relief at any time or habeas corpus relief as long as he or she is incarcerated. While issues respecting the makeup of the jury are likely to be known at the time of direct appeal, a rule that would have the effect of foreclosing any challenge to the makeup of the jury after a direct appeal seems overly restrictive. For example, a claim of ineffective assistance of counsel might be made at a later date and, in Bellas, the court recognized the legitimacy of defense counsel's request to retain juror questionnaires to preserve claims of ineffective assistance of counsel. 85 Cal. App. 4th at 646-47, 102 Cal. Rptr. 2d at 387.

To avoid the constitutional problems inherent in the Jury Task Force recommendations on juror privacy, the Minnesota Supreme Court might consider an alternate approach. For example, the California courts are instructed to advise prospective jurors that they have the right to disclose sensitive information in camera rather than writing their answers on questionnaires. If requested, the court can then conduct oral questioning of the juror in chambers with counsel and the defendant present, followed by an order sealing the transcript of that in camera hearing if a legitimate privacy interest warrants protection. Copley, 228 Cal. App. 3d at 87, 278 Cal. Rptr. 443. This approach seems to better implement the information-specific inquiry mandated by Press-Enterprise.

A similar approach may be taken with written questionnaires. Counsel can prepare a public questionnaire not likely to elicit sensitive or private information, which would

presumptively remain public, and a second questionnaire that may elicit sensitive or private information, that might be sealed by the court and subject to disclosure only upon motion of an interested party. In addition, the court could order destruction of juror questionnaires ten years after judgment is entered, when presumptively any appeals relating to the makeup of the jury have been exhausted. This time period is consistent with the timeline for the destruction of trial transcripts, and would therefore minimize the administrative burden of destruction of these records.

The Jury Task Force also recommends changes to the Form 50 Juror Questionnaire that would represent to jurors that all copies of the questionnaire will be destroyed and that no one will have access to the completed questionnaire without a court order. For the reasons stated above, a more tailored approach is necessary to accommodate the interests of the media in access to court proceedings and the interests of the defendant in having a fair and public trial. Accordingly, the Committee recommends that the current language of the preamble to the standard Form 50 Questionnaire (not eliciting private information) be retained: "Your answers to the questions contained in the Questionnaire, like your answers to questions in open court during jury selection proceedings, are part of the public record in this case." However, for a private questionnaire, the preamble could explain that the questionnaire is private, that it will be retained by the court under seal, and that access by individuals other than counsel and the parties will only be allowed under court order after a showing of good cause.

The Task Force further recommends that the Comment to Minn. R. Crim. P. 26 be revised to delete the statement that "prospective jurors cannot be told that the questionnaire is confidential or will be destroyed at the conclusion of the case," and that "the public and press have a right of access to [the questionnaires]." However, the Committee believes that the current

Comment reflects the proper treatment of public questionnaires and should be retained. If the alternate approach of issuing separate questionnaires containing information protected by the Press-Enterprise standard is approved, an additional statement regarding the treatment of private questionnaires can be added to the Comment.

D. Recommendation #22: Use of Anonymous Juries

Minn. R. Crim. P. 26.02, subd. 2(1) provides a procedure for maintaining the anonymity of prospective jurors, but does not address anonymity after jury selection or during trial. It is unclear to what extent the Jury Task Force contemplates the use of anonymous juries. To the extent that the recommendation suggests that the use of anonymous juries could be utilized without the findings and procedures required by State v. Bowles, 530 N.W.2d 521 (Minn. 1995), the Committee is opposed to the recommendation. The Committee acknowledges that the Rule could be improved, and intends to consider the issue further in order to suggest a proposed amendment that clarifies the procedure that may be used to maintain juror anonymity during trial when necessary.

IV. Recommendations Relating to Efficient Conduct of Jury Trials

In this section, Recommendation #25 strikes an improper balance by subordinating the parties' right to a fair trial to the needs of jurors. Jury service should be as pleasant as possible, but constitutional concerns must take precedence.

Recommendation #25: Minimizing Interruptions of "Jury Time"

Here, the Jury Task Force recommends that trial judges should discourage the invasion of "jury time" by motions, bench conferences, and record making. The Committee is concerned that this recommendation will be read too expansively so that counsel will be precluded from

making a contemporaneous record of objections and their underlying basis. This could interfere with the parties' right to a fair trial, as well as with any subsequent appeals. Instead, the Committee believes that attorneys "must be," rather than "should be" (as stated in the last sentence of the recommendation) permitted to make a record. Once the objection or motion has been made, judicial discretion may dictate *when* the record is made, but the making of that record must be permitted.

V. Recommendations Relating to Enhancing Juror Understanding

In this section, the Jury Task Force sets forth several recommendations designed to enhance juror understanding of the evidence. Because each trial is different, the Committee believes many of the recommendations stated here concern matters best left to the discretion of the trial judge.

A. Recommendation # 27: Juror Note Taking

Minn. R. Crim. P. 26.03, subd. 12 currently allows jurors to take notes during criminal trials, and to use those notes in deliberations. Therefore, the Committee believes the Rules of Criminal Procedure are adequate and do not require amendment.

B. Recommendation #29: Written Instructions

Minn. R. Crim. P. 26.03, subd. 19 permits the court to allow the jury to take a copy of the jury instructions with them into the jury room. In contrast, the Report contemplates, not only that a set of instructions *will* be sent in, but also that a set should be provided for *each* juror. The Committee believes the trial judge is in the best situation to determine whether providing even one copy, let alone multiple copies, of the instructions is necessary, and believes the decision is one that is properly left to judicial discretion.

C. Recommendation #30: Early Substantive Instructions

Here, the Jury Task Force makes a strong statement that judges "should" give substantive instructions prior to final argument. Once again, this is properly left to sound judicial discretion. Therefore, the Committee would prefer that the recommendation be permissive (substituting "may" for "should").

D. Recommendation # 31: Submission of Questions by Jurors

Here, the Jury Task Force recommends that the Rules of Criminal Procedure be amended to "permit the submission of questions to witnesses by jurors." The subject of this recommendation is currently pending before the Minnesota Supreme Court in State v. Costello, 620 N.W.2d 924 (Minn. Ct. App. 2001), rev. granted (Minn. 2001), argued October 4, 2001 (C7-00-436); therefore, it would be inappropriate for the Committee to comment at this time.

VI. Recommendations Relating to Deliberations and Discharge

In this section, Recommendation #32 directly impacts the fairness of the trial. Here, the Committee is concerned that the approach taken by the Jury Task Force may not be as balanced as fairness requires.

Recommendation #32: Jury Sequestration

As part of its regular review of the Rules of Criminal Procedure, the Committee recently reviewed Minn. R. Crim. P. 26.03, subd. 5 relating to jury sequestration. Currently, the rule allows either party to request sequestration, and permits the court, in its discretion, to allow the jurors to separate overnight during deliberations if the defendant consents. After a great deal of deliberation, the Committee concluded that the prosecutor should also have the right to object to the court's order for separation during deliberations. This more fair and balanced approach will

treat both parties equally. The Committee will therefore be recommending in its next report to the Supreme Court that Rule 26.03, subd. 5(1) be amended to provide the prosecution the same right of consent that the defendant currently holds.

Dated: 5/8/02

Respectfully Submitted,

Robert D. N. Lynn

Judge Robert Lynn, Chair
Supreme Court Advisory Committee
on Rules of Criminal Procedure

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April 26, 2002

Frederick K. Grittner
Clerk of the Appellate Courts
305 Judicial Center
25 Constitution Avenue
St. Paul, MN 55155

Re: Jury Task Force Final Report Comments

Dear Mr. Grittner:

Please consider this to be a response for your solicitation of written comments made in your notice of March 15, 2002. Consistent with your notice, I enclose twelve copies of this letter and the enclosures.

By way of background I am a District Court Judge serving principally in Lake and Cook Counties and in my eighteenth year of service. I've had the privilege and opportunity to preside in all kinds of matters over that time, including by my best estimate several hundred jury trials, both civil and criminal.

One of the circumstances that occurs by virtue of living in a small community is the ability to get direct feedback informally from persons who have served as jurors as to their perceptions and understanding of how we have treated them. Such also affects my attitude and understanding.

I write to endorse the Task Force's generally supportive attitude towards our citizens who are called to serve as jurors and to address and encourage certain specific proposals.

Task Force Recommendation #5 - Term of Service: At this point we have the technology, particularly when coupled with a commitment to shortening the length of service, to allow jurors to "pick" their time of service. For example in those counties where the term is one week the summons/initial questionnaire could allow them to pick a week that would be most convenient for their service. All of the information available suggests that the number who would opt to pick a week would not be so great as to disrupt the system but would reduce the resentment on the part of those persons whose

schedules are such that some periods are much easier for them than others. Allowing persons to pick would be a specific indication of our expressed appreciation for making juror service easier.

Task Force Recommendation #6 - Jury Management: We too often continue to fail to take advantage of our ability to generate data which would allow comparison of the relative efficiencies of the various jurisdictions. We are able to determine which jurisdictions are doing well in terms of efficiencies and so that we who may not be doing so well can copy their methods/techniques to increase the percentage of jurors summoned who actually get to sit on a case and/or alternatively reduce the numbers or percentages of jurors summoned who do not get to sit. Not only would it increase service, it would at the same time reduce costs.

Recognizing our unwillingness generally to compare how the various jurisdictions are doing and rely instead on anecdotal or subjective evidence to determine efficiencies, and appreciating that there certainly are valid reasons in some cases to avoid comparison, to the extent we are encouraging citizen participation and the efficient use of limited public resources we ought to be able to generate some data which would allow us to see what's working and what's not. Most jurors who get to the Courthouse are let down if they don't get on a case, or at least into the box.

Task Force Recommendations #35, #36 and #37: My concern is that the Task Force does not go far enough in encouraging and supporting the debriefing of jurors and in particular its use in serious felony prosecutions and other cases involving the presentation of graphic evidence.

Having brought jurors back in some such cases and being aware informally of similar practices by others around the State. I am convinced of its value and the desirability of encouraging its use.

However, the same informal anecdotal evidence (talking to my brothers and sisters and having my law clerk ask around) it is clear to me that many Judges do not act because of concerns about the absence of any specific authority to do so and, indeed, the absence of a perceived ability to pay jurors to come back and/or to pay a mental health professional to come in and meet with the jurors when determined desirable and to by some measure reassure jurors that whether or not their feelings are "normal" they are certainly not uncommon, not unusual and will in most cases abate.

In my experience the gratitude shown by jurors invited back, even those who choose not to come in for a debriefing session alone justifies encouraging the practice.

Those that do appear (at least when I have invited them back) have been very genuine in their gratitude for the concerns expressed and indeed thankful for the opportunity to discuss their service and by some measure be reassured by "experts" that it is not unusual that they feel the way that they feel.

The debriefing concept is used in a variety of circumstances today and it is my understanding that without exception it is well received and viewed as helpful. We ought to formally encourage its use in appropriate cases.

The days of the 8x10 autopsy and/or crime scene photos were bad enough. Today the presentation of the same on an 8 ft. by 10 ft. screen and the increasingly skillful use of such graphic images by lawyers can and does magnify the secondary trauma placed on jurors.

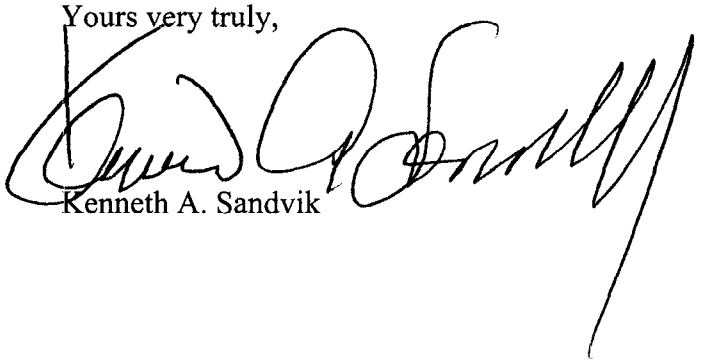
At a minimum I think the Supreme Court should make clear that the trial judge has the authority to bring jurors back and to assure them that their mileage and per diem will be paid for such a session and that there is available money to bring a mental health professional as well when the trial judge deems such appropriate.

I do not think the general language goes sufficiently far to impress upon judges that they may do that when they deem it appropriate.

I enclose in connection therewith portions of the National Center for State Courts Manual for addressing juror stress and a portion of the ABA book on jury trial innovations.

Thank you in advance for the attention given by the Court, and should you or any member of the Court have any questions, do not hesitate to contact me.

Yours very truly,



Kenneth A. Sandvik

KAS
Enc.

Chapter 6

Post-trial Proceedings

Lessons Learned

- ☐ Jurors have questions about procedures and decisions made during the trial that they do not understand.
- ☐ Jurors worry about the accuracy of their verdict.
- ☐ Jurors may fear retribution by the defendant or family and friends of the defendant.
- ☐ Jurors are anxious about meeting the press after the trial.
- ☐ Jurors are concerned about their privacy after the trial and worry that their conversations during deliberations will be discussed publicly.
- ☐ Jurors may not understand stress symptoms they are experiencing or may not be prepared for symptoms that occur following the trial.
- ☐ In addition to providing feedback for improving the jury system process, exit questionnaires allow jurors to release pent-up feelings about their jury experience.

"There needs to be a debriefing process after deliberations! This would help greatly in reducing stress or adverse after effects."
—Juror

The trial is over, the verdict has been given, and the court has officially dismissed the jury from service. This time holds mixed emotions for many jurors. They may feel a sense of relief that their term of service is over and enjoy feelings of accomplishment for completing the job. Jurors also may experience a flood of difficult emotions, particularly following long trials, trials with high levels of stress, and/or complex trials. These emotions stem from several sources, and each emotion is a normal reaction to the unusual experience of serving on a jury. Judges in the survey recognized the importance of this period: They ranked judicial post-trial debriefing of jurors as fourth among 42 strategies for effectively addressing juror stress. The

"Judge . . . debriefed for one hour after trial and that made the whole thing worthwhile; now willing to do again."
—Juror

nature of post-trial communications to alleviate juror stress is the subject of this chapter.

CONSIDER WHAT TYPE OF DEBRIEFING IS NEEDED

Three main techniques are used to address the jury after the trial: discharge instructions, post-trial debriefings by a judge, and post-trial debriefings by a mental health professional.[82] Jurisdictions, as well as judges within jurisdictions, vary with regard to the method or combination of methods they use to address jurors after the trial.[83]

For trials that involve relatively low levels of stress, jurors may need only general discharge instructions from the trial judge prior to being dismissed. Discharge instructions can help jurors in relatively low-stress trials by providing information on what to expect once the trial is finished.[84] This includes instructions regarding what they can say to whom and tips for dealing with and/or avoiding the media. For criminal trials with a separate sentencing date, jurors should also be informed when to return if they wish to hear the sentence. During discharge instructions the judge should thank jurors for their service and reinforce the court's appreciation of their time investment. In general, informal meetings with the trial judge provide a sense of closure for the jurors.[85]

"No one else understands as well as other jurors; helps being able to talk to other jurors after its over."

—Juror

In other cases where moderate or more severe levels of stress occur during the trial, judges may choose to hold a more lengthy discussion with the jurors (a judicial debriefing) or bring in a mental health professional to conduct a debriefing.

A debriefing session is often needed when the trial provokes a great deal of media attention, the testimony is especially gruesome, or the trial is exceptionally long. The

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[82] For some trials, it may be helpful to have the debriefing done by a judge *and* a mental health professional or have a mental health professional easily available, if needed, for consultation with the judge and/or the jury.

[83] This chapter presents options for material that can be presented during debriefing sessions. The various techniques and the kinds of topics covered can be combined to address the individual needs of each case within the procedural and statutory guidelines of each jurisdiction.

[84] *See* ABA JURY STANDARDS, *supra* note 4, at 151–52.

[85] *See generally* the Honorable James E. Kelley, *Addressing Juror Stress: A Trial Judge's Perspective*, 43 DRAKE L. REV. 97, 116 (1994) [hereinafter *Addressing Juror Stress*] (suggesting that "even a brief intervention, such as short conversation with the trial judge" may help avoid a serious stress reaction).

primary advantage of a mental health debriefing is the presence of someone with professional expertise who can immediately address any serious or severe reactions to stress, such as depression, nightmares, and insomnia. A debriefing by a neutral party also avoids any question of the appropriateness of judicial involvement in a debriefing.

Only 15 percent of the 118 judges responding to the second judge survey reported the use of a mental health expert in conducting a post-trial debriefing. In comparison, 74 percent reported conducting judicial debriefings. The infrequent use of mental health experts may be explained, in part, by the relatively few reports of severe stress among jurors. Based on the jurors' reports of stress, a distinct minority of high-stress cases warrant a professional mental health debriefing. Judges, however, should be aware of the alternative and know where to access a qualified professional (i.e., psychologist, psychiatrist, or social worker with expertise in post-traumatic stress disorder) to conduct a jury debriefing when necessary. If the court has a victims' assistance program (or other component of the court that deals with mental health issues, such as a court clinic), the staff may be familiar with local mental health professionals experienced in helping individuals deal with post-traumatic stress. Although these mental health professionals may not have conducted juror debriefings per se, they probably will have a better sense of what a debriefing, should cover.[86] If a jurisdiction does not have a victim assistance program or other in-house or contractual source of mental health services, court officials can seek references from mental health centers, nearby medical schools, university departments of psychology and social work, professional associations with referral services,[87] or other sources of mental health services.

Some judges use the judicial debriefing as an opportunity to "screen" the jury to determine if an additional mental health debriefing is necessary for the full jury or if additional assistance may be necessary for some jury members. Some judges follow up with jurors who seem particularly disturbed by the trial or ask the

[86] The court can increase the effectiveness of the mental health professional by providing information on the jury process, the specific stressors or issues involved in the trial, and the most frequent problems experienced by jurors.

[87] Some professional associations have referral services that can provide the names of mental health professionals with knowledge of the court process and juror stress.

jurors to call the judge or someone else within a set period of time.[88]

In general, good debriefing sessions reduce stress and offer information on mental health services for those who might need it, provide closure, promote confidence in the judicial system, and enhance satisfaction. The next section offers suggestions for optimizing the debriefing process.

Optimize the Debriefing Session

- *Consider the best time to debrief.* Timing the debriefing is important. If the verdict is returned early in the day, remaining for the debriefing can provide jurors an excellent opportunity to decompress before meeting the press. However, if it is late in the day, jurors may be tired or burned out from their deliberations and thus should be directed to return the following day for debriefing. The latter is typically easier to arrange when a professional from outside the court conducts the debriefing, as the exact time a jury will bring the verdict in is uncertain. In addition, some jurors reported being numb and emotionally exhausted immediately after the trial and thus could not take full advantage of what was being said.[89]
- *Make the juror feel comfortable.* The judge should set the stage for the debriefing process. Debriefings may be held in the courtroom, the judge's chambers, or in the deliberation room. There are advantages and disadvantages to each choice—judges can determine the best location considering available space and the individual experiences of each jury.[90] In any location, the judge should take steps to diminish the psychological distance between judge and juror—removing the judicial

[88] Judges may find it helpful to speak with a mental health professional about the likely symptoms of stress that would warrant a referral to a mental health professional.

[89] One juror suggested that the court provide exiting jurors with written information about what they can expect so that they can take this information with them and read it later. She also suggested providing a number they can call for assistance. "All coping skills are not equal, and if the state can ask people to make the sacrifices we must make to serve, then it seems appropriate that they have something in place to assist those who don't carry the burden as well as others."

[90] For more information, see *Appendix 12: Suggested Procedures for Judges Conducting Juror Debriefings, in* JURY TRIAL INNOVATIONS, *supra* note 15, at 297-302.

robe or coming down off the bench to speak to jurors on the same level.

Many judges may feel uncomfortable conducting jury debriefings. Judge James Kelley suggests several strategies judges can use to increase the judge's effectiveness: listen with an empathetic attitude, do not interrupt jurors, occasionally repeat back what was said by a juror to show you are listening, and censor any "put down" statements.[91] While study participants generally agreed that the presiding judge should conduct the debriefing, they did acknowledge that some judges "don't have the personality for it," in which case the debriefing should be conducted by another court official or mental health professional.

The judge or mental health professional should make it clear that participation in a debriefing is voluntary and no one should be singled out or questioned if he or she does not choose to participate actively in the discussion. Some jurors, although quiet, may be relieved to hear their concerns expressed by other jurors. One judge indicated that jurors may "need to understand that this conversation is not on the record and that the trial is over now." To help jurors feel comfortable and encourage conversation, some judges clear the courtroom entirely; others indicated that they allow attorneys to remain for the purpose of education, dismissing them only if the jurors seem nervous or request that the attorneys not be present.

- *Encourage productive communication.* Jurors may need some encouragement to begin the post-trial debriefing. One judge suggested asking a direct question to "prime the pump." Get the conversation started using open-ended questions—ask jurors if they have any questions about the trial process or comments about their experience. The jurors should drive the content of the debriefing, and any appropriate questions should be answered.[92]

  Though the object is to encourage open communication, the judge and/or mental health professional conducting the debriefing needs to maintain control over the discussion. Judges suggested introducing the debriefing process by stating the purpose of the meeting and setting any ground rules for the discussion

[91] *See Addressing Juror Stress, supra* note 85, at 120.

[92] Subject to ground rules, some questions and comments can be put into writing. This approach may increase juror participation in the process, as well as facilitate more open and honest comments.

(e.g., only one person speaks at a time, be sensitive to the confidentiality of others' remarks, talking about the deliberation process is "off-limits"). Do allow jurors to vent some feelings about the process, but do not allow them to start discussing other jurors' behavior or allow the debriefing to degenerate into a conflict between two jurors or a continuation of arguments from the deliberation room. Judges may watch for signs that jurors are uncomfortable – facial expressions or avoiding eye contact with the jurors who are talking. Judges reported that by controlling the process carefully, they rarely hear about possible juror misconduct or information that may lead to a new trial.

Ensure Debriefing Addresses Juror Needs

"Jurors appreciate the concern for their well-being and comfort; jurors like the attention given to questions they have about the process."
—Judge

- *Cover "lingering" questions.* A debriefing session is an excellent time to answer questions that were not appropriate for discussion during the trial. Many jurors in the study described their frustration over delays and frequently felt that their time was wasted waiting for the judge or attorneys. Judges may take this opportunity to explain the reasons for the delays. Jurors also may be curious about conversations conducted outside of their presence or may wonder why certain evidence was not presented. The debriefing is an opportunity to explain trial procedures or rules of evidence that jurors may not have understood.

  Some judges are comfortable discussing their opinions about jurors' specific questions; for example, the reasons why a certain witness did not testify. In criminal trials, jurors often want to know what will happen to the defendant next; some judges use the debriefing to tell jurors about the defendant's prior record or explain how the sentencing process works.[93]

"Whether you agree or not, you can't comment. . . . Their job is tough enough as it is."
—Judge

- *Reassure jurors.* Some jurors have questions about their verdict. Concerns about having made the wrong decision can haunt jurors long after the trial is over. A debriefing enables the judge to assure jurors that they did a good job, without commenting on the verdict.[94] Judges may take this opportunity to empathize with jurors about how hard it is

[93] *See Addressing Juror Stress, supra* note 85, at 118.
[94] *See id.* at 117.

to be a juror and to note that most cases that go to trial are sharply contested and difficult to decide. One judge tells his jurors that "juries make the best decision 99% of the time, and if they didn't it's because they got bad evidence or testimony and that's not their fault, but the fault of the attorneys or the judge." Judges can emphasize that jurors fulfilled their duties to the court and can encourage them to take pride in the process, de-emphasizing the verdict. In the study, several jurors reported that the debriefing process made them feel better about the verdict.

Jurors also may have concerns about retribution, either by the defendant or the defendant's family and friends. These fears are especially prevalent in trials involving violent or gang-related crimes. One juror described "concerns that the attorney was passing names on to the defendant—worried about the defendant coming back and getting me."[95] After the verdict, jurors should be informed of precautions to protect their privacy and any additional security precautions that are being taken. Judges can reassure jurors that incidents of retribution are extremely rare but provide them with information about contacting the court if a threat does occur.

"Stressed from deliberation and verdict, didn't want to have to explain to reporters."
—Juror

- *Help jurors deal with media and attorneys.* After the trial, jurors are sometimes anxious about meeting the parties involved in the trial or with reporters. They worry that their discussions in the deliberation room will not remain private. Some express confusion about whether they are required to speak to the media. ABA Standard 16(d)(i) and (ii) recommend that judges "release the jurors from their duty of confidentiality" and also "explain their rights regarding inquiries from counsel or the press."[96] Several of the judges in the study also take this opportunity to remind jurors to respect the privacy of the other jurors when discussing the case with the media or attorneys.

"I still have nightmares about what I heard. It was after the trial that I was bothered the most—no nightmares during the trial."
—Juror

To protect jurors from harassment, some courts inform jurors of constraints on the parties and their attorneys regarding future contact with jurors and provide instructions on how to invoke the protection of the court, if needed.[97] Some courts also provide alternate exits for jurors who want to avoid the press.

[95] *See* discussion *infra* Chapter 3, "Address Security Issues."
[96] ABA JURY STANDARDS, *supra* note 4, at 141.
[97] For more information, see *§ VII-1 Advice Regarding Post-Verdict Conversations, in* JURY TRIAL INNOVATIONS *supra* note 15, at 197-99.

"The night we stayed in the motel, I dreamed [the defendant] had gotten loose and was there in the room with us while we were deliberating on the verdict. I was terrified."
—Juror

- *Normalize juror stress.* Many jurors experience similar symptoms of juror stress. These may include insomnia, anxiety, guilt, intrusive thoughts, nightmares, or depression. Talking to jurors about these symptoms validates their feelings and helps them understand that what they are experiencing is normal. It is also important to warn jurors that even though they haven't experienced these signs of stress during the trial, they may in the future. People react differently to stressful situations. Some may continue to have symptoms for a while after the trial.[98] Some may have a reoccurrence of symptoms at specific times, such as the anniversary of the trial or sentencing. In a mental health debriefing, the facilitator may go beyond simply discussing stress symptoms to help jurors reflect on and express feelings to relieve them of the efforts needed to suppress them. Reassuring jurors that stress symptoms are a normal reaction to an abnormal experience can in itself bring considerable relief of stress.

SEEK POST-TRIAL JUROR FEEDBACK

A variety of post-verdict procedures allow the court to identify areas in which the court can improve services to jurors. Communicating with jurors through debriefings, individual meetings, or exit questionnaires can reveal areas in which the court can help jurors now and in the future.

Although once the trial is over it may be too late to respond to some juror concerns, juror feedback about the process may be helpful for improving the experience of future jurors. Some courts use exit questionnaires to track jurors' feelings about jury duty and to identify areas of juror dissatisfaction. Although questionnaires are not necessary for every trial, they provide another forum for jurors to release pent-up feelings about their experience of juror duty. *Jury Trial Innovations* suggests that to be useful to the court, questionnaires should be distributed often enough to monitor juror attitudes about jury service during periods of high and low juror usage. Questionnaires should be administered to people at all stages of the juror selection and trial process, including alternate jurors, excused jurors, and individuals who were not selected for jury service.[99]

[98] Judges may find it appropriate to inform jurors of additional mental health resources.

[99] For more information, see *§ VII–5 Juror Exit Questionnaires, in* JURY TRIAL INNOVATIONS, *supra* note 15, at 209–10.

§ VII-3 Debriefing Sessions to Alleviate Juror Stress

Technique

For trials in which jurors are likely to experience severe emotional distress, the court employs a professional psychologist or social worker to "debrief" the jurors following the verdict. This technique is particularly appropriate for trials in which the evidence or testimony is especially gruesome, the trial provokes a great deal of media attention, or the trial is exceptionally lengthy or requires extraordinary measures (e.g., sequestration) to help jurors handle post-verdict stress. For trials that cause less severe stress, trained judges or court staff can conduct jury debriefings.

Issues

- What kinds of cases require professional debriefing?
- Under what authority do courts call for professional assistance?
- What training and expertise should the people who conduct juror debriefings have?
- How do courts locate or train these individuals?
- Who is responsible for the costs of juror debriefings?
- Should a professional psychologist or social worker be available to jurors during deliberations? Should debriefing sessions be offered to alternates?
- Should the jurors be informed that a post-verdict debriefing is available before they retire to deliberate?
- Do post-verdict debriefings affect the validity of the verdict?
- Does the doctor-patient privilege apply to debriefings conducted by professional psychologists, psychiatrists, or social workers?
- Who should attend the debriefing sessions? The judge? Court personnel? Attorneys?

Procedures

The debriefing consists of a short group session in which the jurors have an opportunity to explore and better understand their emotional reaction to the trial and to jury service. The debriefings also include a description of the symptoms commonly associated with juror stress (e.g., nightmares, depression, insomnia) and make recommendations to the jurors about appropriate stress management techniques.

The debriefing session typically is held after the jury returns its verdict and is released from service by the trial judge. At that time, the judge explains that he or she recognizes that the jurors have been under a great deal of stress and invites any jurors that are interested to attend a short debriefing session. Alternates, regardless of whether they participated in the deliberations, may also be invited to participate in debriefings. In some cases, the trial judge participates. If the jury returns its verdict late in the day, the debriefing session may be held the following day.

A professional psychologist, psychiatrist, or social worker with expertise in post-traumatic stress disorder (PTSD) generally conducts the debriefing. The court can inquire at local mental health centers, nearby medical schools, or other community or regional resources for information about qualified professionals. The court is responsible for the costs of debriefing, although many professionals will conduct debriefings on a pro bono basis. With proper training, judges or other court staff may be able to conduct debriefings for routine trials that provoke less severe emotional stress.

Advantages

1. Jury debriefings reduce the post-verdict stress associated with jury service in emotionally trying cases.
2. Jury debriefings provide closure to the experience of jury service.
3. Jury debriefings safeguard the mental health of jurors, thus promoting public confidence in the judicial system.
4. Jury debriefings enhance juror satisfaction with the judicial process.

Disadvantages

1. Informing jurors that a post-verdict debriefing is available may cause or increase juror stress.

2. Informing jurors that a post-verdict debriefing is available may influence the verdict.

References

Leigh B. Bienen, "Helping Jurors Out: Post-Verdict Debriefing for Jurors in Emotionally Disturbing Trials," 68 *Ind. L. J.* 1333 (1993) (describing the trial experience from the juror's perspective and recommending post-verdict counseling for jurors in some trials).

Pamela Casey & Shelley Gable, *Judicial Benchbook on Juror Stress* (National Center for State Courts, forthcoming 1997) (describing sources of juror stress and providing practical guidance on techniques to alleviate stress).

Thomas L. Hafemeister & W. Larry Ventis, "Juror Stress: What Burden Have We Placed on Our Juries?" 56 *Tex. B. J.* 586 (1993) (describing the psychological and physiological effects of jury service in notorious cases).

Timothy R. Murphy, Genevra K. Loveland & G. Thomas Munsterman, *A Manual for Managing Notorious Cases* 79-81 (National Center for State Courts, 1992) (proposing criteria for assessing whether a post-verdict debriefing or counseling would be advisable for jurors in high-profile trials).

Studies

Stanley M. Kaplan & Carolyn Winget, "Occupational Hazards of Jury Duty," 20 *Bull. Am. Acad. Psychiatry & L.* 325 (1992) (describing the sources of juror stress in criminal trials and the incidence of symptomatic expression in jurors).

James E. Kelly, "Addressing Juror Stress: A Trial Judge's Perspective," 43 *Drake L. Rev.* 97 (1994) (reporting that jurors in murder trials exhibited significantly higher symptoms of stress than jurors in other types of trials).

Related Appendices

Appendix 12: Suggested Procedures for Judges Conducting Juror Debriefings

Appendix 13: Letter from a Juror in a High-Profile Case

Appendix 14: "Tips for Coping After Jury Duty," Brochure Distributed by the Maricopa County (Arizona) Superior Court

SCHWEBEL GOETZ & SIEBEN

ATTORNEYS AT LAW

A PROFESSIONAL ASSOCIATION

May 22, 2002

Frederick Giettner, Clerk of the Appellate Court
305 Judicial Center
25 Constitution Avenue
St. Paul, MN 55155

RE: Comments on Jury Task Force

Dear Mr. Giettner:

Enclosed please find my written comments concerning the Jury Task Force Report that is currently scheduled for review by the Court at a hearing on June 26, 2002.

I apologize that my submission is beyond the May 17, 2002, date set forth in the Court's Order of February 14, 2002. Unfortunately, despite the fact that I was on the Task Force mailing list (although not a member of the Task Force), I only today became aware of the existence of the Order and the deadline set forth therein.

I am hopeful that the Court will nonetheless consider the enclosed comments. I am also enclosing herewith 12 copies of my comments as well as a request to make an oral presentation.

Sincerely,

Peter W. Riley

Peter W. Riley
Direct Dial Number – (612) 344-0425

PWR/nh
Enclosure

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STATE OF MINNESOTA

IN SUPREME COURT

C7-00-100

REQUEST TO MAKE ORAL PRESENTATION REGARDING THE SUPREME COURT JURY TASK FORCE

Peter W. Riley does hereby request an opportunity to make oral comments to the Supreme Court at the hearing presently scheduled for June 26, 2002 at 2:00 p.m. pertaining to the report of the Supreme Court Jury Task Force.

I was a member of the Minnesota State Bar Association Jury Project during the period of 1994 – 1996 and studied many of the same issues considered by the Jury Task Force. In addition, I participated in some of the meetings of the Jury Task Force and did submit extensive comments on the report in my capacity as the Vice President of the Minnesota Trial Lawyers Association.

I believe it would be helpful to the Court to hear the comments of a trial lawyer with specific experience in the jury issues currently being considered by the Court in deciding whether to adopt the report and how to implement it.

SCHWEBEL GOETZ & SIEBEN, P.A.

Dated: 5/22, 2002

By Peter W. Riley

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COMMENTS ON JURY TASK FORCE REPORT

Thank you very much for allowing me an opportunity to comment upon the Jury Task Force Report. As the Vice President of the Minnesota Trial Lawyers Association, I am writing both on my own behalf as well as on behalf of the organization to comment on certain aspects of the Jury Task Force Report. After a general introduction, I will offer some specific comments regarding the recommendations of the Jury Task Force.

INTRODUCTION

In 1994, I was appointed co-chairman of the Minnesota State Bar Association Jury Task Force. That group's goal was to examine the civil jury experience in Minnesota and to recommend changes and improvements. Our report made a number of recommendations which are similar to those made by the Jury Task Force.

Unfortunately, your Task Force membership did not incorporate any Minnesota Trial Lawyers Association civil trial members. Members of our organization did attend several of the meetings of the Jury Task Force at the invitation of the committee, and we certainly appreciate that opportunity. The balance of our comments are as follows:

I.

THE MINNESOTA TRIAL LAWYERS ASSOCIATION SUPPORT RECOMMENDATION NOS. 1-6, 8, 9, 10, 12, 13, 16, 17, 18, 19, 20, 21, 22 AND 23.

As strong supporters of the jury system, the members of the Minnesota Trial Lawyers Association welcome the Task Force's efforts to provide updated information to jurors, to make uniform the Jury Summons and Handbook, and to provide efficient juror orientation.

Similarly, reducing juror terms of service may well lead to increased participation in the jury system.

Finally, protection of jurors' privacy is a goal shared by all participants in the jury system.

We would recommend that recommendation Nos. 18 and 19 regarding juror questionnaires be broadened to provide for the use of case specific jury questionnaires also in complex cases. For example, in the recent Holidazzle trial, Judge Gary Larson in Hennepin County District Court used a case specific questionnaire that was very helpful in substantially reducing the amount of time necessary to select the jury in that case.

II.

ALLOWING JUDGES TO SERVE AS JURORS POSSES SUBSTANTIAL PROBLEMS WITH RESPECT TO EQUALITY IN JURY SERVICE.

Recommendation No. 7 urges that judges be eligible to serve as jurors. As written, this rule would provide that a judge who was a colleague of a trial judge sit on the jury. Indeed, under

this rule, it is possible that a member of the Court of Appeals or the Supreme Court would sit on a case which they might ultimately be asked to review on appeal.

In addition to the obvious and inherent difficulty of asking a judge to serve as a juror in a case tried before one of his or her colleagues, there is the difficulty that the judge would undoubtedly be seen as a "authority figure" by other jurors and will have a potential undue influence on the decision process.

III.

RECOMMENDATION NOS. 11, 14 AND 15 ARE UNNECESSARY FOR VOIR DIRE IN CIVIL CASES AND WOULD UNDULY RESTRICT ATTORNEY CONDUCT OF VOIR DIRE.

As an initial matter, we strongly question the need for any additional recommendations as it relates to Voir Dire in civil cases. Having attended a number of the Task Force meetings, it was clear to me that the primary motivating factor for the need for any of the guidelines contained in recommendations 11 – 16 was a perceived difficulty, particularly in Hennepin County, with criminal Voir Dire. I am unaware of any information that there are any difficulties whatsoever with civil Voir Dire and thus the need for any recommendations in civil cases simply does not exist.

With respect to the specific recommendations our observations are as follows:

Recommendation No. 11 - states that judges should intervene "sua sponte" when appropriate. Not only does this guideline give no information as to when the intervention is "appropriate", but given that Voir Dire is an important time for jurors to express themselves, judicial intervention may well frustrate that very purpose.

Recommendation No. 12 – we do agree and support the idea that judges should initially question all respective jurors.

Recommendation No. 13 – we strongly support the recommendation that the attorneys be provided a fair and adequate opportunity to question prospective jurors.

Recommendation No. 14- this recommendation is too broad and also misperceives the proper purpose of Voir Dire. In general, Voir Dire has as its basic purpose the opportunity to assure that jurors can speak about any personal experiences or biases they may have in an open way. In order to do so, jurors have to be comfortable that their observations will be welcomed and not questioned. As such, building rapport with a jurors is an important, and indeed indispensable, purpose of Voir Dire.

Furthermore, Voir Dire is an educational process in that jurors must be educated somewhat about the case in order to express their biases and feelings.

Similarly, experienced trial lawyers seek commitments from jurors, as do judges. We seek their commitments to be fair, to be impartial, to leave aside their personal feelings, yet the

recommendations specifically states that Voir Dire which seeks commitments of jurors is an improper purpose.

Recommendation 15 – deals with time limits in Voir Dire. Given that there is no evidence whatsoever that there is any difficulty with the amount of time consumed in civil Voir Dire a suggestion that any such time limits should apply to civil Voir Dire is unnecessary and raises the potential that these guidelines may be used to unduly restrict proper Voir Dire. Simply put, since there is no problem regarding the amount of time consumed in civil Voir Dire, there is no need for these time limits to apply to civil Voir Dire.

CONCLUSION

On behalf of the MTLA, we certainly wish to commend the Task Force for its work. Many of its recommendations are laudable and deserving of the support of the Bench & Bar. The recommendations noted and discussed above, however, may be counter productive and at the very least are unnecessary in the civil context. Accordingly, we would ask the Task Force to reconsider the recommendations as noted above.