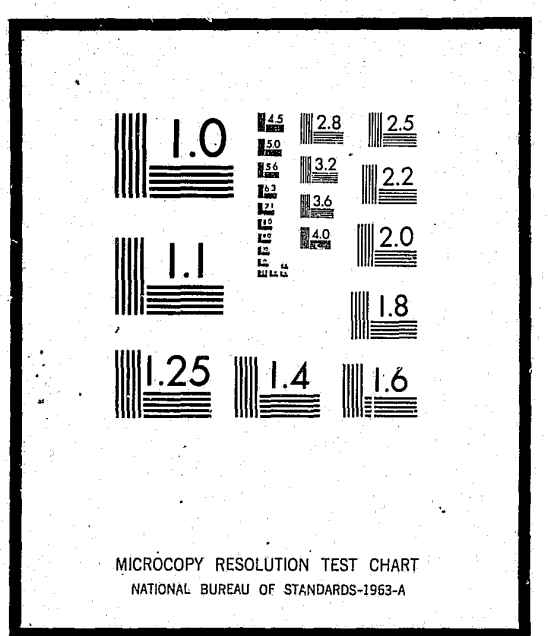


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SUGGESTIONS FOR IMPROVING JUROR UTILIZATION
IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

August 31, 1971

The Institute of Judicial Administration
40 Washington Square South
New York, New York 10012

Prepared under a Contract with
The Federal Judicial Center
Washington, D.C.

PREFACE

This report suggesting improvements in the utilization of jurors in the United States District Court for the Eastern District of New York was prepared under a contract between the Federal Judicial Center and the Institute of Judicial Administration. The report is based on the field studies conducted by the Project Director, Mr. William A. Stoeber, in collaboration with Professor Delmar Karlen and Professor Robert J. Martineau of the Institute. Many helpful comments were made by Mr. Joseph L. Ebersole of the Federal Judicial Center.

The Institute, and especially the Project Director, acknowledge the assistance and cooperation of the staff members of the Jury Office in preparing this report. Particular thanks should go to the Clerk of the Court, Mr. Lewis D. Orgel; the Chief Deputy, Mr. Thomas B. Costello; the Jury and Calendar Commissioner, Mr. John Lupiano; his Assistant, Mr. Bruce Nimms; and the Jury Clerk, Miss Margo Lozano, for their discussion and criticism of certain of the ideas presented here.

Russell D. Niles, Director
Institute of Judicial Administration

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SUMMARY

The total number of jurors called into the court on a given day is almost always larger than the number actually needed for voir dires. Many scheduled jury trials do not take place due to postponements, waivers of juries; or settlements and guilty pleas. Guidelines based on the predictability of these factors have been developed to aid the jury staff in deciding how many jurors to call in to fill the judges' needs. Under the guidelines the number of jurors called in could be reduced by almost 40% without disrupting the supply of jurors for voir dires. The guidelines would make possible savings of 11,000 juror-days and \$250,000 in jurors' fees each year in the Eastern District of New York.

Savings could be vastly increased if judges would agree to cut down the number of days on which jurors would be available for voir dires. If only two days each week were designated as "jury days" and if judges would schedule several voir dires in succession on such jury days, the call-in of jurors could be cut to less than one-half present size. Total annual savings could then be 16,390 juror-days and \$380,000.

GLOSSARY OF TERMS

Certain terms have been given specialized meanings in this report. Most of these are defined in context, but a few usages should be clarified here:..

A "voir dire" is the process in which prospective jurors are questioned to ascertain their suitability for service on a jury. It is conducted by the judge and the lawyers, usually in the courtroom just prior to the start of a trial.

"Juror" refers to any person who has been called in for jury service, whether actually sitting on a case or waiting in the jury lounge to be sent to a voir dire. Occasionally the term "prospective juror" is used to mean the same thing. The proper term might actually be "venireman," but this term is not in common use in the courthouse.

"Juror-day" refers to the presence of one juror in the courthouse for one day. A "juror-day of availability" means that at the start of the day the juror was in the jury lounge available to be sent to a voir dire.

"Called in" means that the prospective jurors have been told to report into the jury lounge in order to be available for voir dires if needed. The noun "call-in" refers to the total number of jurors who have been called in.

"Panel" refers to the group of prospective jurors sent from the jury lounge to attend a voir dire.

A "petit jury" is a group of jurors (customarily 12) who are actually hearing evidence or deliberating in a trial. A "grand jury" (containing up to 23 members) hears evidence from the government prosecutor and decides whether the evidence is sufficient to indict and prosecute a person for an alleged crime.

"Request" refers to a call from a judge on the morning or afternoon of a trial that the judge is then ready to begin a voir dire and wants a panel to be sent to his courtroom.

"Used" has two different meanings, depending on the context. When referring to the appropriate call-in for a given day, it means the number of jurors who have been sent from the jury lounge to attend a voir dire. When referring to the appropriate sizes of panels to send to voir dires, it means the number who have been selected to serve on a jury or excused or challenged during the course of a voir dire.

I. STATEMENT OF THE PROBLEM

In order to be sure to have enough jurors available to fill any possible need of the judges, the practice in the United States District Court for the Eastern District of New York has been to call in many more than the number which usually proves to be needed. There is a general attitude that it is better to pay hundreds of jurors to sit and wait rather than allow even a slight possibility that a judge might call for a panel and not receive it immediately. The result has been a great waste of jurors' time and fees. Facilities must be provided for the prospective jurors to wait in, and additional jury staff must be hired to handle the extra clerical work. There is also an intangible but very real cost in that citizens become dissatisfied with jury duty when they feel their time is being wasted. They become reluctant to serve, and their respect for the courts and the administration of justice decreases.

The Eastern District of New York wastes more money on fees for jurors not used in trials than any other federal court in the United States except one.¹ During the research period there were an average of over 600 juror-days available for service each week. (This does not include jurors returning to sit on trials which lasted more than one day.) This is a very high

1. Preliminary report on Juror Utilization in United States Courts in fiscal 1971, Division of Procedural Studies and Statistics, Administrative Office of U.S. Courts, page A4.

number of man-days to tie up for an average of only 4.3 voir dres per week. At an average cost of \$23.33 per juror for fees and mileage, the cost of keeping the jurors available was over \$14,000 per week, or \$3,250 per trial start.

Table 1, following, shows that the average daily call-in during the research period was 108 jurors, of whom 42, or 39%, were sent to voir dres. This means that an average of 66 people remained sitting in the jury lounge for the entire day. Only one person in eight was actually selected as a jury member or alternate.

TABLE 1. DEGREE OF JUROR UTILIZATION

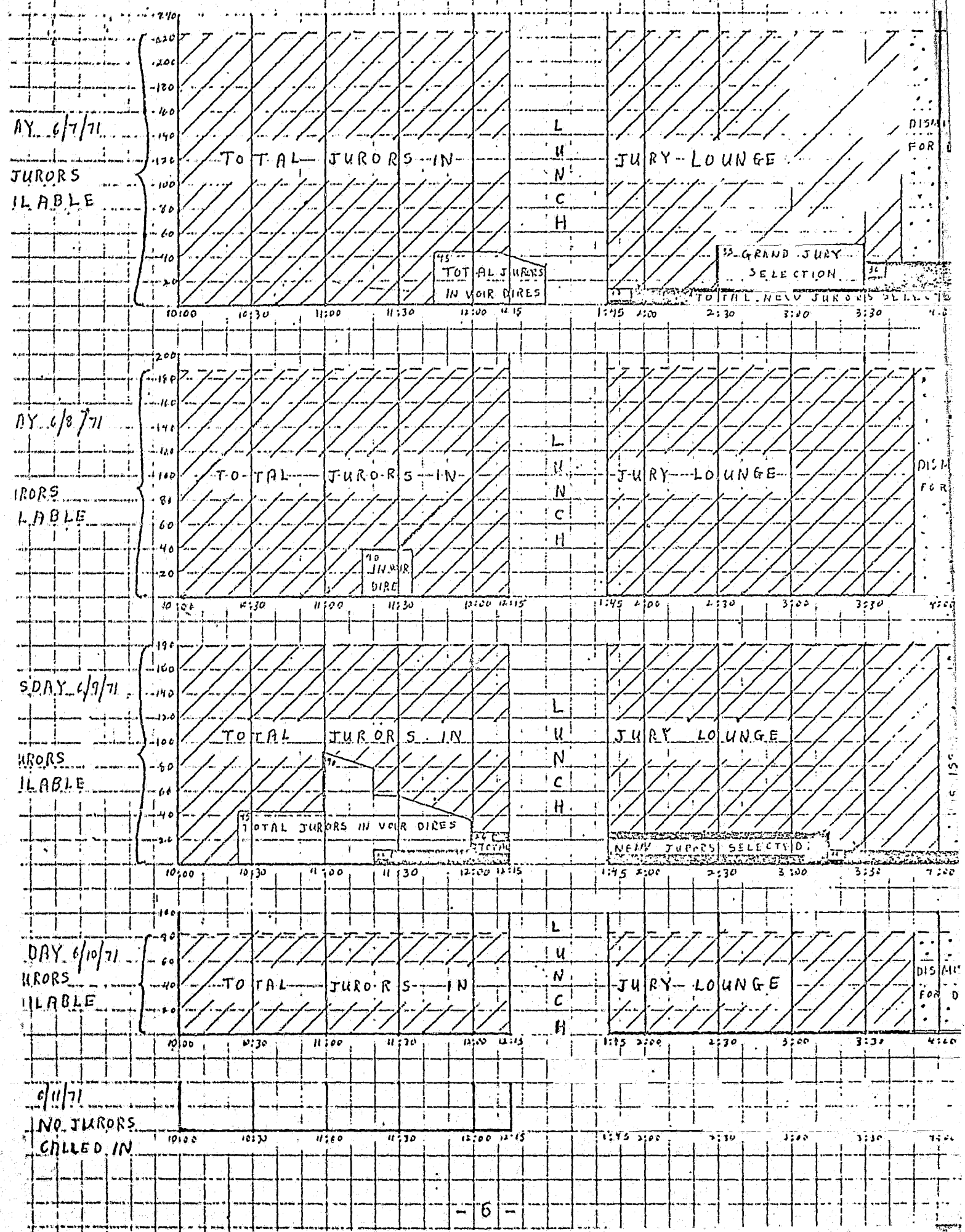
Day	Average Number Available	Average Sent to a Voir Dire		Average Selected as Juror or Alternate	
		No.	%	No.	%
Return Monday ²	195	110	56%	38 ³	20%
Non-Return Monday	143	94	66%	28	20%
Tuesday	126	41	33%	11	9%
Wednesday ⁴	107	31	29%	8	8%
Thursday	104	24	23%	7	7%
Friday	32	10	31%	3	10%
Avg. Monday thru Friday	108	42	39%	13	12%

²Return Day is the first day of each jury term, when all the new jurors are called into the courthouse.

³Includes selection of grand juries.

⁴Excludes two Return Wednesdays, because Return-Day call-ins are disproportionate to other days.

During the research period data was kept on the sizes and times of panels sent to voir dres. An illustration of the hour-by-hour use actually made of jurors in a typical week is shown in Chart 1, "Juror Utilization in the Week of June 7-11, 1971" on the next page. On the page following that there is a full explanation of the chart. The chart shows that most jurors are not dismissed until mid-afternoon, after the next day's calendar has been prepared and the possible jury needs for the next day are known. In the week illustrated, jurors spent a total of 2,630 man-hours waiting in the jury lounge. Less than a third of the available jurors even attended a voir dire, and less than 10% served on juries.



EXPLANATION OF CHART 1.

On the chart there is a separate graph for each day of the week. On each graph the vertical axis represents the number of jurors (20 jurors per space), and the horizontal axis represents the time of day (10 minutes per space). The area shaded diagonally represents the number of jurors available and waiting in the jury lounge. The number of jurors called in falls off towards the end of the week. The clear area represents the number of jurors attending voir dires. The gray-shaded area at the bottom of certain graphs represents the total number of jury members and alternates selected those days.

On Monday there were 225 jurors available to serve. A panel of 45 was sent to a voir dire at 11:45. At 12:10 the jurors who were excused for cause or peremptorily challenged started returning to the jury lounge. At 12:30 selection of the jury was completed, and the leftovers returned to the jury lounge (and were sent to lunch). At 2:30 a panel of 35 was sent for selection of a grand jury.⁵ The 23 grand jury members were selected by 3:30, and the leftovers returned to the jury lounge. During the entire day there were never more than 48 jurors attending voir dires or selected on juries, and there were never fewer than 177 jurors available and waiting in the jury lounge.

On Tuesday 40 jurors were sent out of the lounge at 11:15, but the voir dire was cancelled and all 40 returned to the lounge 20 minutes later. On Wednesday the first voir dire began at 10:25. Excused and challenged jurors started returning to the jury lounge at 11:00, just as the second voir dire was beginning. On Thursday there were no voir dires. On Friday no jury trials were scheduled, and no jurors were called in. For the entire week there were 674 juror-days available for service (not counting the jurors who were actually sitting on cases at the start of each day). 210 prospective jurors attended voir dires, and 62 were selected to sit on cases.

5. In the Eastern District of New York, grand jurors are selected from the same pool as petit jurors. Grand jury selection normally takes place on the first Return Day of each month, although special grand juries are occasionally selected on other days.

One of the primary reasons for the excess call-in of jurors is that the jury staff does not have adequate information about the judges' needs for jurors. The staff relies primarily on the court calendar to determine the number of trials scheduled for the next day. But the calendar does not tell if a jury has been waived, so the jury staff has to assume that every scheduled trial will require a panel. The calendar does not tell the anticipated length of a trial, so the jury staff cannot estimate the need for jurors more than one day in advance. The scheduled starting times are not stated. Sometimes the judges forget to inform the jury staff about settlements and guilty pleas, and so jurors are called in needlessly. Often a judge is not sure whether his current trial will wind up that day, so he will set down another trial on the calendar for the next day. Jurors are usually called in for the new trial even though the chance they will be used is very small.

In economic terms, a balancing of costs (or of "priorities") must be employed in deciding how many jurors to call in. There is a cost to society if a judge, a courtroom, and all of the parties, lawyers, witnesses and courtroom personnel have been assembled for a trial and then are required to delay for some minutes until enough jurors can be supplied for a panel. But there is also a very significant cost in the attempt to avoid all risk of delay at the moment the voir dire is to begin. The means of avoiding the risk of delay has been to call in the maximum number of jurors which might be needed, rather than limiting the call-in to the number which probably will be needed.

This report proposes a system which shifts the balance away from excess juror costs and wasted time while adding very little to the risk of delay in supplying panels.

II. OUTLINE OF THE RECOMMENDED SYSTEM

A. RECOMMENDED CALL-INS

On Return Days when a grand jury is to be selected, the jury commissioner should aim to have about 225 jurors available for service. On Return Days with no grand jury selection the recommended figure is approximately 200 jurors. These numbers are large enough to provide a reserve in case the needs of the court are unusually great.

On days following the Return Day the jury commissioner should gear the call-in to the needs of the court. In order to obtain an accurate projection of the court's anticipated needs, the commissioner must have the most current and accurate information possible about each judge's plans for jury trials. Judges' courtroom deputies should assume responsibility for communicating this information to the jury staff, and panels should be called in only in response to specific orders from judges.

A table recommending the specific number of jurors to call in to supply any number of scheduled jury trials is set out in Section IV, "Guidelines for the Jury Staff." The basic idea of the recommended system is for the jury commissioner to call in fewer than the number of jurors theoretically required for the scheduled jury trials for any given day. The suggested guideline is to call in enough jurors to supply approximately half of the scheduled jury trials simultaneously, since the

study demonstrated that it is rare for more than half of the scheduled jury panels to be used. Since all the jurors are kept in a "pool" in a common room, they can be sent to those judges who actually need them. The recommended call-in is appropriately modified for days on which only one, two or three jury panels are ordered.

Under this system it is possible that on some particular day an unexpectedly large percentage of the panels ordered would actually be requested for voir dices. Because of the spread of starting times throughout the day, the required jurors for later voir dices could almost always be supplied from those who had returned from earlier voir dices. If sufficient jurors had not yet returned from earlier voir dices, the requested panel would be delayed until enough jurors were available, later that same day. The study indicates that such delays would probably occur once a month or less and would be a matter of minutes, probably never as long as an hour. Thus in a 12-judge court the average delay per judge would be less than an hour a year. In return for the risk of occasional delays, the proposed system could cut down considerably on the excess call-in of jurors and the concomitant wastage of juror fees and juror time.

Judges should be more conscious of the jurors' complaints and the jury staff's problems, because the waste of jurors can be cut down only with judicial approval. The judges' main contacts are with jurors who are actually serving on

cases, and many judges are not aware of the dissatisfaction of the large numbers of jurors who have to sit and wait in the jury lounge.

The jury staff is aware of the needs of the jurors, and they are to be commended for their courtesy towards the jurors and for their efforts to make jury service as pleasant as possible. However, the staff is reluctant to tell the jurors anything about the progress of a trial, for fear that a lawyer might claim the jury had been prejudiced. The consequence is a sort of "conspiracy of silence" in which the jurors are told very little about their function in the courthouse.

Jurors have complained that they are treated like children or army recruits and are told in effect to "Sit there and be quiet until we tell you what to do." These complaints could be alleviated if judges would stop by the jury lounge and give brief explanations if they know that panels were called in for them and then were not used. (In the Central District of California, judges frequently drop into the jury lounge or call the jurors to their courtrooms to make such an explanation.) As another possibility, a committee of judges could provide guidelines for answers to questions such as these: "Why did we have to sit here all day?", "What happened to those cases I saw on the calendar posted in the hall?", "How come they sent us up to the courtroom and then back down without picking a jury?", "Why do you call in so many of us when you don't need us?".

The tone of instructions given to the jury commissioner

should be changed. This suggestion sounds innocuous, but it is quite important. The jury staff has become cautious as a result of occasional severe criticism when they have not been able to supply a panel to a judge immediately upon his request for one. Consequently the tendency is to call in an excess of jurors as a way of obviating the risk of criticism. The jury commissioner could cut the daily call-in of jurors closer to the number actually needed if the judges would change the commissioner's instructions from "Never be caught short" to "Don't call in an unnecessarily large number of jurors" and if the judges would show understanding on the rare occasions they might be required to wait short periods for panels.

Judges should agree to accept panels in the order they are actually requested and not to pressure the jury clerk into preferring one judge over another. They should not invoke seniority or the question of who ordered a panel first as a means of appropriating panels which had already been allocated to other judges. A judge would not be able to "pre-empt" a panel by ^{requesting} it before it was needed, because that would tie up his courtroom and he could no longer hear argument on motions or conduct other pre-trial business. Judges should agree to observe a "good faith" requirement in not tying up jurors longer than necessary, out of consideration to their fellow judges.

Emergencies have arisen where the jury staff has had to telephone jurors and ask them to come in the next day even

though they had been dismissed. For example, a mistrial may be declared, and it may be imperative to start the trial over immediately. The jury staff has demonstrated the ability to handle such emergencies, although they are a distinct burden. Judges should be aware that it is not always possible to produce a large number of jurors on short notice.

Even under the individual assignment system it may be difficult for a judge to control his calendar because of delaying tactics and lack of cooperation by lawyers. While practices which have developed over a long time cannot be changed overnight, greater cooperation could be obtained if lawyers were told to notify the court about their intention to waive juries or settle or plead cases. A deadline should be set a week or more before a trial is scheduled for all pre-trial motions to be cleared up. As discussed below, courtroom deputies could contact the lawyers to find out about the prospects for jury waivers, settlements, guilty pleas, and pre-trial motions. Judges might also consider the possibility of using their discretionary power to assess jury costs as a sanction against parties to civil litigation who cause jury panels to be called into court unnecessarily.

B. REDUCTION OF PANEL SIZES

The size of panels sent to "ordinary" civil voir dres should be reduced from 35 prospective jurors to 30.⁶ A panel of 30 would allow for selection of 12 jury members with three peremptory challenges on each side, plus two alternates with one additional challenge on each side and eight excuses for cause by the court. The study indicated that panels of 30 would be sufficient to complete 90% of all civil voir dres. Civil trials requiring larger panels generally involve multiple parties or unpopular defendants such as railroads or utilities. If a judge had scheduled such a trial, he should notify the jury staff in advance that he would need a larger panel.

Civil panels could be reduced to 20 if the court adopts six-man juries as standard practice in civil cases.

Panels for most single-defendant criminal cases should be reduced from 45 to 40. A panel of 40 would allow the defendant ten peremptory challenges and the prosecution six, plus two alternates with an additional challenge for each side and eight excuses for cause by the court. In practice all 16 peremptory challenges are seldom exercised, so a panel of 40 would usually allow additional excuses for cause by the court. The study showed that panels of 40 would be sufficient to complete 90% of all criminal voir dres and

⁶ In our report on jury utilization in the Southern District of New York we recommended civil panels of 25 and criminal panels of 35. We are suggesting larger panels for the Eastern District because of the more frequent use of challenges

that voir dres requiring more jurors usually involved multiple defendants, a notorious defendant, or a lengthy trial.

The percentage of excuses for cause by the court is unusually high in the Eastern District of New York. Many federal courts in other parts of the country start criminal voir dres with panels of 30 or fewer and civil voir dres with panels of 20 to 25. The larger panels and the added excuses in E.D.N.Y. cause the voir dres to take more time and require the payment of many prospective jurors who never sit on cases. The reasons for the large number of excuses are not clear. Pre-screening of prospective jurors would be contrary to the intent of the Jury Selection and Service Act of 1968, but perhaps procedures could be derived to cut out some of the unsuitable jurors. One possibility is for the jury staff to be more lenient in granting excuses requested by prospective jurors on the qualification questionnaires. The judge hearing requests for excuses and postponements on the Return Day could also be more lenient. When the jury clerk makes her welcoming speech on Return Day, she could ask if any jurors are hard of hearing or unable to understand English. Possibly fewer jurors would request excuses in voir dres if other reforms suggested in this paper were instituted and less juror time was wasted sitting in the lounge. If the jury commissioner finds that fewer jurors are excused for cause (or if the number of peremptory challenges is reduced) in the future, he could reduce the

size of panels sent to voir dres and could reduce the call-in correspondingly.

Voir dres requiring extra-large panels should be held on Return Days. The jury staff could circulate a calendar of Return Days so judges and their court-room deputies would know when to schedule difficult cases. Holding such voir dres early in the term would make selection of the jury easier because as the term wears on jurors become disgruntled and unwilling to serve, especially on long or difficult cases.

If by any chance two voir dres requiring extra-large panels are scheduled the same day, the jury commissioner should inform the chief judge, and arrangements should be made to postpone one of the trials for a day or two. Then it would not be necessary to call in enough jurors for more than one extra-large panel on the same day. This system is presently in use in the U.S. District Court for the District of Columbia.

The practice of starting difficult voir dres with extra-large panels should be held to a minimum because it is quite wasteful of jurors. During the period January-June 1971 more than 20 such panels were called into the courthouse, but only nine voir dres required more than 40 jurors, and only three required more than 50. Occasionally a panel of 100 or more jurors has been called in and has been kept waiting for several days while a motion was argued. Some extra-large panels have not been used at all due to a last-minute guilty plea or adjournment. In order to cut down this wastage, judges should

begin almost all voir dires with ordinary-sized panels, and in no case should they start with more than 50 or 60. They should still notify the jury commissioner of difficult cases several weeks in advance, so the commissioner would be certain to have enough jurors in the courthouse to satisfy the possible needs. This system would allow some jurors to attend other voir dires before they were required for the difficult case, and it would enable several difficult voir dires to be scheduled the same day. The disadvantage of starting with smaller panels is that a judge might occasionally have to repeat some of the voir dire questions to a second set of jurors. However, the extra time added to the voir dire would be less than half an hour, and balanced against this would be a savings of hundreds of days of jurors' time and thousands of dollars in fees.

C. LENGTH AND TIMING OF JURY TERMS

At present the year is divided into 24 jury terms, or two per month. Twenty of the terms are two weeks, but the remaining four are 2-1/2 weeks. In two of these terms jurors who have completed two weeks of service are required to come back on Monday and Tuesday of the third week. Selection of a jury from these jurors is difficult because most of them don't want to be held beyond the expiration of the term on Tuesday. On Wednesday a new set of prospective jurors is called in to serve for the remainder of that week and the next two full weeks. Relatively few of the new jurors are sent to voir dires during their first partial week in the courthouse. For both the old set of jurors finishing their service and the new jurors beginning their service in mid-week, the extra days of service are often difficult to fit into their employment routine. The mid-week change of jurors creates extra paperwork for the jury staff, as well as added difficulty in ensuring an adequate supply of jurors for judges' panels. There is no advantage to the present system to offset these disadvantages. Therefore a change to consistent two-week terms is ^{strongly} recommended. There would then be 26 terms per year, all beginning on Mondays.

Additional savings of time and money and effort could be obtained if judges were able to schedule only non-jury trials in the second half of the summer months of July and August and also the second half of December. The call-in of jurors is already reduced considerably in these periods because an average of less than two jury

trials per week are actually held. However, the jury staff has to go through the entire process of assembling jurors if even one trial is scheduled (regardless whether a voir dire is actually held). The expense and effort of assembling the jurors is disproportionately great for the use made of them, since many jurors are reluctant to serve during vacation periods. Jury trials could still be scheduled in the first half of these three months since jurors must be assembled for the selection of a grand jury at the start of each month.

D. DECREASING THE NUMBER OF "JURY DAYS"

The court could consider reducing the number of days on which jurors are available for voir dices. Much better juror utilization has been achieved in the Northern and Central Districts of California through this method without reducing the number of jury trials per judge. In the Eastern District of New York a pool of jurors is kept available in the jury lounge almost every day of the week, although on many days prospective jurors do not attend even a single voir dire, let alone multiple voir dices.

The following table shows the percent of jury trial starts each day of the week during the period January through June 1971 in the Eastern District of New York.

TABLE 2. PERCENT OF JURY TRIAL STARTS EACH DAY

Monday	45%
Tuesday	15%
Wednesday	17%
Thursday	13%
Friday	10%

Since only 10% of all jury trials begin on Friday, voir dices should not be scheduled and jurors should not be called in that day. Judges could discuss among themselves other days on which voir dices could be eliminated. Eventually jurors should be held available for voir dices only two "jury days" per week. Certainly Monday should be one, and either Wednesday or Thursday could be the other. Then if a judge had a jury trial scheduled to begin on a non-jury day, he could

call in the lawyers and conduct the voir dire on the preceding jury day. This would result in higher usage of jurors on jury days and would eliminate the need for jurors to sit around the jury lounge so many days each week. (See Appendix A for a description of how this system works in the Central District of California.)

E. NOTIFYING THE JURY STAFF OF THE JUDGES' NEEDS

Many deputies showed a lack of understanding as to the type of information required by the jury staff. In order to improve understanding between the jury staff and the courtroom deputies, one or more meetings should be arranged to work out a regular procedure under which the deputies would assume responsibility for notifying the jury staff as to the date, starting time and panel size for each judge's jury trials.⁷ Jurors should not be called in except in response to specific orders from judges or deputies. A daily phone call from the deputy to the jury office would usually be sufficient. It is more difficult for the jury staff to call the deputies because the latter are often tied up in trials or performing other functions which make them inaccessible for phone calls. However, the jury staff should have authority to call the deputies in the courtrooms if the deputies fail to reach the staff.

Judges may find it necessary to establish procedures within their own chambers for keeping their deputies apprised of their current plans. They should stress to their deputies the importance of keeping the jury staff informed.

7. The deputies seem to be the logical persons to take this responsibility since it is an administrative task similar to their other duties and since they frequently work for the same judge for many years. However, some judges may prefer to have their law clerks assume the responsibility.

Once communications are improved so the jury commissioner has a better picture of the jury needs, he should be able to dismiss most jurors at noon on most days. If it was possible to dismiss some but not all of the jurors at noon on some particular day, the jury clerk could first send to lunch those who had to be back in the afternoon. After they had left the lounge, the clerk could dismiss the others until the next day. Thus the jurors who were required to come back that afternoon would at least get an earlier lunch break and would not be present at the time the others were dismissed for the day.

III. SAMPLE APPLICATION OF THE RECOMMENDED SYSTEM

A table showing the recommended number of jurors to call in for any given set of orders appears in Section IV, "Guidelines for the Jury Clerk." In this section Table 3, following, shows how the recommended call-ins could have been applied to the actual supply of jurors during the three months of April-June 1971.⁸

The jurors called in during the three-month period provided a total of 7,850 juror-days of availability. At an average cost of \$23.33⁹ for fees and mileage, the total cost of having these jurors available was \$183,140. Table 3 shows that a total of 3,127 juror-days costing \$72,955 could have been saved in the three months by following the table of recommended call-ins. Projected savings for the entire year would be over 11,000 juror-days and \$250,000.¹⁰

-
- 8. Prior to April 1971 the average call-in of jurors was lower. At that time a policy decision was made to increase the call-in in order to be sure never to run short of jurors. The call-in during April-June 1971 is considered to be more representative of future call-ins because of the policy decision and because the number of judges in the E.D.N.Y. has been increased in summer 1971.
 - 9. Preliminary report on Juror Utilization in United State Courts in fiscal 1971, Division of Procedural Studies and Statistics Administrative Office of the United States Courts, page D-4.
 - 10. These figures for projected annual savings are found by dividing the April-June savings by 3 to obtain average savings per month. Rather than multiplying the per-month savings by 12 to obtain the annual savings, the per-month figures are multiplied only by 11 in order to allow for the reduced call-ins in the summer months.

TABLE 3 (CONTINUED)

TABLE 3. HOW THE TABLE OF RECOMMENDED CALL-INS (TABLE 5)

COULD HAVE BEEN APPLIED, APRIL - JUNE 1971

Day/Date	Number of Scheduled Trials	Total Jurors Called In	Recommended Call-In	Possible Saving (Jurors)	Possible Saving (\$)	Total Possible Delay
Mon 4/5 Return Day	8+GJ	207	185	22	\$ 513	0
Tues 4/6	2	142	55	87	2030	0
Wed 4/7	5	104	90	14	327	0
Thur 4/8	5	117	90	27	630	0
Fri 4/9	Holiday					
Mon 4/12	7	103	103	0	0	0
Tues 4/13	3	88	70	18	420	0
Wed 4/14	3	100	70	30	700	0
Thur 4/15	4	85	70	15	350	0
Fri 4/16	0	0				
Mon 4/19 Return Day	7	218	160	58	1353	0
Tues 4/20	5	202	90	112	2613	possibl delay of one tri
Wed 4/2	6	185	105	80	1867	0
Thur 4/22	4	180	70	110	2566	0
Fri 4/23	2	70	55	15	350	0
Mon 4/26	9	195	160	35	817	0
Tues 4/27	2	154	55	99	2310	0
Wed 4/28	4	154	70	84	1960	0
Thur 4/29	3	174	70	104	2426	0
Fri 4/30	1	110	40	70	1633	0
Mon 5/3 Return Day	8+GJ	195	185	10	233	0
Tues 5/4	4	194	70	124	2893	0
Wed 5/5	5	156	90	66	1540	0
Thur 5/6	3	164	70	94	2193	0
Fri 5/7	2	122	55	67	1563	0
Mon 5/10	6	160	105	55	1283	0
Tues 5/11	3	115	70	45	1050	0
Wed 5/12	5	101	90	11	257	0
Thurs 5/13	1	85	35	50	1167	0
Fri 5/14	1	62	35	27	630	0

(cont'd)

The recommended call-in for Return Days with a grand jury selection was 185 during April-June 1971, because there were fewer judges trying cases. This is raised to 225 in fall 1971, because of the increased number of judges. The recommended call-in for Return Days without a grand jury selection was 160 during April-June 1971 and will be 200 in fall 1971.

On some days the records do not reveal whether the scheduled trials were civil or criminal, and so the convention was adopted that all panels required 35 jurors.

Day/Date	Number of Scheduled Trials	Total Jurors Called In	Recommended Call-In	Possible Saving (Jurors)	Possible Saving (\$)	Total Possible Delay
Mon 5/17	7	168	125	43	\$1003	0
Tues 5/18	5	172	90	82	1913	0
Wed 5/19 (Ret. Day)	4	202	160	42	980	0
Thur 5/20	4	165	70	95	2216	0
Fri 5/21	2	85	55	30	700	0
Mon 5/24	8	150	140	10	233	0
Tues 5/25	4	115	70	45	1050	0
Wed 5/26	5	115	90	25	583	0
Thur 5/27	2	129	55	74	1726	0
Fri 5/28	0	0				
Tues 6/1	6	160	105	55	1283	0
Wed 6/2	4	133	70	63	1470	0
Thur 6/3	4	132	70	62	1446	0
Fri 6/4	0	0				
Mon 6/7 Ret. Day	8+GJ	225	185	40	933	0
Tues 6/8	4	187	70	117	2730	0
Wed 6/9	4	180	70	110	2566	0
Thur 6/10	2	82	55	27	630	0
Fri 6/11	0	0				
Mon 6/14	6	203	105	98	2286	0
Tues 6/15	4	178	70	108	2520	0
Wed 6/16	3	95	70	25	583	0
Thur 6/17	3	101	70	31	723	0
Fri 6/18	0	0				
Mon 6/21 Ret. Day	5	223	160	63	1470	0
Tues 6/22	4	119	70	49	1143	0
Wed 6/23	3	106	70	36	840	0
Thur 6/24	3	123	70	53	1236	0
Fri 6/25	0	0				
Mon 6/28	6	200	105	95	2216	0
Tues 6/29	1	80	40	40	933	0
Wed 6/30	0	80	0	80	1866	0
Thur 7/1	0	0				
Fri 7/2	0	0				
TOTALS:		7,850 jurors available	4,723 recommen- ed call-in of jurors	3,127 possible saving of jurors	\$72,955 possible saving of fees	possible delay of one trial in three months

The right-hand column of Table 3 shows "total possible delay" in supplying the panels needed by judges if the recommended system had been followed every day. In the entire three-month period covered by the table, the only possible delay might have occurred on April 20th. Even that day no delay would have occurred if the three voir dires were sufficiently separated in time, although no timing data is available. In any case, the delay would not have been more than an hour. This does not guarantee that the system recommended in this report will never result in more than one delay every three months, but it does indicate that the system is well adapted to filling the needs of the court for jurors while causing very few delays in supplying panels.

If judges agreed to restrict all voir dires to two "jury days" as proposed in Section II.D, 4470 juror-days costing \$104,285 could have been saved over the three-month study period. (See Table 4 on the following page.) A total annual savings of 16,390 juror-days and \$380,000 is projected for the Eastern District of New York. Thus over 50% of the annual cost of having jurors available could be saved.

TABLE 4. PROJECTED SAVINGS BY HAVING TWO JURY DAYS PER WEEK (April-June 1971)

Possible savings were calculated under a system where Mondays and Wednesdays were jury days. (Where Monday was a holiday, Tuesdays and Thursdays were taken as the jury days) All Tuesday voir dires were assumed to be scheduled the previous Monday, and all Thursday and Friday voir dires were assumed to be scheduled the previous Wednesday. For example, if a judge had different civil jury trials scheduled on Monday and Tuesday, the recommended call-in would be 44 jurors on Monday, enough for selection of a first jury of 14 with 30 remaining for the second voir dire. Where it was known that a trial was re-scheduled on more than one day, it was treated as if scheduled only on the first day. On any day when more than four judges had scheduled trials, it was assumed that one judge would be willing to wait until he could use leftover jurors from earlier voir dires. (In certain cases, approximations were necessary due to the incompleteness of the records concerning scheduled voir dires.)

(continuation of table)

Date	No. of Sched. Trials	Recommended Call-In	Date	No. of Sched. Trials	Recommended Call-In
Mon. 4/5	Return Day with G.J.	185	Mon. 5/24	10	160
Wed. 4/7	8	140	Wed. 5/26	6	105
Mon. 4/12	8	140	Tues. 6/1	8	140
Wed. 4/14	6	105	Thurs. 6/3	3	70
Mon. 4/19	Return Day; no G.J.	160	Mon. 6/7	Return Day with G.J.	185
Wed. 4/21	9	160	Wed. 6/9	5	90
Mon. 4/26	9	160	Mon. 6/14	8	140
Wed. 4/28	6	105	Wed. 6/16	5	90
Mon. 5/3	Return Day with G.J.	185	Mon. 6/21	Return Day; no G.J.	160
Wed. 5/5	8	140	Wed. 6/23	5	90
Mon. 5/10	8	140	Mon. 6/28	6	105
Wed. 5/12	6	105	Wed. 6/30	0	0
Mon. 5/17	10	160	Total recommended call-in: 3380 This represents a savings of 4470 jurors from the actual call-in of 7850.		
Wed. 5/19	Return Day; no				

Jurors' fees are a direct cost which must ultimately be borne by the taxpayers. In addition to this direct cost, there are the indirect costs to the economy resulting from lost wages and lost man-days of production. Some employees are paid full or part wages by their employers while they are serving on jury duty. Other employees must forego their wages. In either case somebody must bear the cost of the lost working day. In a survey of 500 jurors during the research period, 62% were found to be wage-earners, 12% were "executives" or "professional," and 26% were housewives, retired, or unemployed. If we assume that the average daily wage of persons in the first category is \$27¹¹ and the average earning of the second category is double this¹², the cost to the economy of 16,390 lost man-days of production would be over \$500,000.¹³ A rule of thumb might be that for every \$1.00 of jurors' fees and mileage paid by the courts, there was \$1.50 worth of production lost to the economy. Thus every time a criminal panel of 45 is called into the courthouse it costs \$1,000 per day to the court system and another

11. source: Bureau of Labor Statistics, preliminary figure for March 1971 for New York metropolitan area.

12. a rough estimate based on figures of the Bureau of Labor Statistics for assorted supervisory positions.

13. No figure is included for the value of a housewife's lost time because of the difficulty of calculation, but this cost should not be ignored.

\$1,500 of lost production to the economy, whether or not the panel is used for a voir dire. The total cost to the economy of an annual overcall of 16,390 jurors would be \$380,000 in jurors' fees and mileage plus \$500,000 in lost production, or \$880,000.

IV. GUIDELINES FOR THE JURY STAFF

A. RETURN DAYS

In the first six months of 1971 an average of 39% of the people to whom summonses were sent were available to serve. Therefore it is recommended that the jury commissioner send out approximately 580 summonses for Return Days with a grand jury selection, since a 39% availability rate would provide a little over 225 available jurors. 520 summonses are recommended in order to obtain approximately 200 jurors for Return Days with no grand jury selection.

The percentage of jurors available to serve varies somewhat depending on the time of the year and the leniency of the judge in granting excuses and postponements. The availability rate was significantly greater (47%) in 1969, when the juror list taken from the 1968 voter registration was more current and fewer persons had moved, died, borne children, or otherwise become ineligible. The jury commissioner should adjust the number of summonses mailed out depending on the anticipated availability rate. During the summer, when fewer jury trials are scheduled, he should cut down the number of summonses accordingly.

B. TABLE OF RECOMMENDED CALL-INS

Table 5, "Recommended Call-In: Panel Sizes of 40 for Criminal Voir Dires and 30 for Civil Voir Dires," sets out specific guidelines for the number of jurors to be called in to supply any number of scheduled jury trials.

TABLE 5.
RECOMMENDED CALL-IN: PANEL SIZES OF 40 FOR
CRIMINAL VOIR DIRES AND 30 FOR CIVIL VOIR DIRES

Number of Scheduled Trials	Kind(s) of Trials	Recommended Call-In
1	civil	30
1	criminal	40
2	2 civil	45
2	1 civil 1 criminal	55
2	2 criminal	55
3	civil and criminal	two-thirds of theoretical maximum demand
4 or more	civil and criminal	one-half of theoretical maximum demand

The table shows that if only one jury trial is scheduled, enough jurors must be called in to fill the complete panel regardless of the chance of a guilty plea, settlement, waiver or postponement.

The recommended call-in for two scheduled trials is large enough to allow one voir dire to go forward at a time, with some prospective jurors remaining "unused" in the jury room. When the first jury has been selected, the leftover jurors from the first voir dire could be combined with the jurors in the jury room to make up a panel in case the other voir dire also goes forward. It is possible that the judge calling for the second panel would have to wait until enough jurors had returned from the first voir dire, but the study showed that the chance of both voir dire beginning so close together is small. Calling in only enough jurors to supply panels sequentially means that fewer jurors would be paid to sit around waiting on the large majority of days when neither trial, or only one, proceeds with a voir dire.

For example, if panels are ordered for one civil and one criminal trial, a call-in of 55 jurors would allow for a voir dire to be conducted in the civil case with a panel of 30, from which 14 jurors would be selected.

Thereafter there would be 41 jurors remaining to make up

the panel in case the criminal voir dire went forward.¹⁴

The jury commissioner may decide to call in a safety margin of 3 or 4 above the recommended call-in for one or two trials, although the recommended panel sizes are already quite generous.

On days when three jury trials are scheduled, the recommended call-in is two-thirds of the theoretical maximum demand for jurors (i.e., the demand if all the scheduled voir dire were to go forward simultaneously). This number would allow two voir dire to proceed simultaneously, and then a third voir dire could be started after the first two were completed. The study showed that the chance of all three voir dire going forward simultaneously is negligible.

If four or more jury trials are scheduled, the recommended call-in is one-half of the theoretical maximum demand for jurors. This would allow half of the possible voir dire to proceed simultaneously. If panels were needed for more than half the scheduled trials, the later voir dire could be started after the earlier ones were completed and the leftover jurors had returned to the jury lounge. The study demonstrated that it would be extremely rare for more

14. Note that if the criminal voir dire went forward first, a call-in of only 45 would be sufficient to allow for selection of a jury of 14 (including two alternates) and still have 31 jurors remaining to make up a panel if it is needed for the civil case. However, due to poor correlation between the planned and the actual starting times of trials, the larger call-in of 55 is recommended regardless of the order in which the trials are scheduled to begin.

than half the scheduled trials to proceed to voir dres, however.

For example, if there were four criminal and two civil trials scheduled, the theoretical maximum demand for jurors would be 220. [= (4 x 40) + (2 x 30)]. The recommended call-in would be half of 220, or 110. This number would be sufficient for one civil and two criminal voir dres simultaneously. After the first three voir dres were completed and 40 jurors had been selected for the three juries, 70 jurors (= 110 - 40) would remain, enough for one criminal and one civil voir dire simultaneously. When these were finished, the sixth and final voir dire could be held if necessary. However, the study revealed no instances when four or more trials were scheduled and more than 60% of them actually proceeded to voir dres.

Note that the same call-in would frequently be recommended for either three or four scheduled trials. For example, if three criminal trials were scheduled, the theoretical maximum demand is 120 (= 3 x 40), and the recommended call-in is two-thirds of this, or 80. If four criminal trials are scheduled, the theoretical maximum demand is 160 (= 4 x 40), and the recommended call-in is one-half of this, or 80. The recommended call-in for three scheduled trials appears disproportionately large because there is less margin for

error with fewer scheduled trials.

Table 5 is intended to provide the jury commissioner with a guideline, not a rigid rule, for determining call-ins. The commissioner must use his experience and discretion in making the final determination. In particular, he may find that he can cut the call-in lower than the figures recommended in the table if most of the judges notify him that they expect to get settlements or guilty pleas in their scheduled jury trials.

C. JUROR PLANNING SHEET

The present procedure for determining the number of jurors to call in each day after the Return Day is quite informal. Information about possible needs for jurors is collected by three different staff members, who retain the information in their heads. The three often meet in the afternoon to decide on the number to call in the next day. Occasionally pertinent information about a particular judge's plans is not taken into account because the jury staff member with that information is not present at the meeting.

In order to establish a written procedure by which juror needs can be calculated more exactly and to insure that no information as to judges' needs is lost, the jury staff should establish a master sheet where information about each judge's jury needs could be recorded as it is acquired. A suggested form (as it might look on Tuesday) follows. On the form it is assumed that judges have agreed to eliminate all voir dieres on Friday (as recommended in Section II.D.) but have not yet eliminated any other days as "jury days."

CHART 2. SUGGESTED FORM OF JUROR PLANNING SHEET
(as of Tuesday noon)

Judge Name	Mon.	Tues.	Wed.	Thurs.	Fri.
A	crim. panel 10:30 a.m. sent 40 at 2:00 p.m.	On/Trial	O/T	?	X
B	crim. panel? may plea guilty plea	On/Trial	O/T civil panel 2:00 p.m.		
C	no jurors	all week			
D	On Trial (held over from last week)	civil 10:00 a.m.? settled	searching for case		
E	crim. panel (50) 10:00 a.m. in court sent 50	On/Trial	O/T	O/T ?	
F	civil panel 10:00 a.m. not used	?	civil panel?	?	

The jury staff could enter information on the sheet as it is received from judges (for example, Judge A's Monday entry "crim. panel 10:30 a.m."), and beneath it they could later enter what happened ("sent 40 at 2:00 p.m."). Studying this sheet at noon Tuesday, the staff could see that as many as three panels might be needed on Wednesday (Judges B, D and F). Judge B had expected his Monday criminal trial to last three days if there was no guilty plea, but following the guilty plea the judge lined up a civil case for Wednesday. The courtroom deputies should notify the jury staff as soon as possible of events like settlements, guilty pleas, waivers and postponements so the staff could dismiss the jurors at noon or in the early afternoon if they were not needed. The staff member who learned about the guilty plea before Judge B would then cross off the "On Trial" or "O/T" entry for Tuesday and Wednesday and enter "Civil Panel 2:00 p.m." when that order was received. Judge D obtained a settlement in his Tuesday case and would possibly need a panel if he found a case to try Wednesday. Judge F might need a civil panel. The staff could see that on Monday Judges A and E started criminal trials which were expected to continue three or four days each, and so on Wednesday they would expect to hear from those judges' deputies as to whether either judge might need a panel on Thursday. Since Judge C had stated "no jurors all week," they would not call in any jurors for him unless they heard from his deputy that he was planning a trial.

Since the sheets would contain a reasonably good picture of the jury utilization for the week, the staff should file them for later statistical use.

APPENDIX A. JURY SELECTION IN THE CENTRAL DISTRICT OF CALIFORNIA: A SINGLE "EMPANELMENT DAY" EACH WEEK

In the Central District of California most voir dires take place on Tuesday, which is called "empanelment day."¹⁵ (Since Monday is "Law and Motion Day", there are no trials that day.) Each judge normally schedules several voir dires on Tuesday. Lawyers and parties for all the scheduled jury trials are told to be in the courtroom that morning, usually at the same hour. If a judge has a single voir dire scheduled, the jury clerk calls in a panel of 35 prospective jurors to report to his courtroom. If he has two or more voir dires scheduled, the clerk calls in a panel of 45. The clerk calls in no more jurors for three scheduled voir dires than for two because she assumes at least one of the three voir dires will not take place. If the judge needs extra jurors they are supplied from the balances left over after other judges have completed their voir dires.

Generally the judge conducts his criminal voir dires first, since they usually have more challenges and since this gives the lawyers for the civil cases a chance to discuss settlements. The first jury (12 to 14 jurors) is selected from the panel of 45, and immediately thereafter the second jury is selected from the balance of the panel (now 31 to 33 prospective jurors). Even a third voir dire may be conducted after the second is finished. Some judges delay

15. The term "voir dire" will be used in this discussion, although the customary term in California is "empanelment".

starting their voir dires until they can use the leftover jurors from voir dires completed by other judges. Thus prospective jurors who are not selected the first round may attend a second and even a third voir dire and may appear before two different judges.

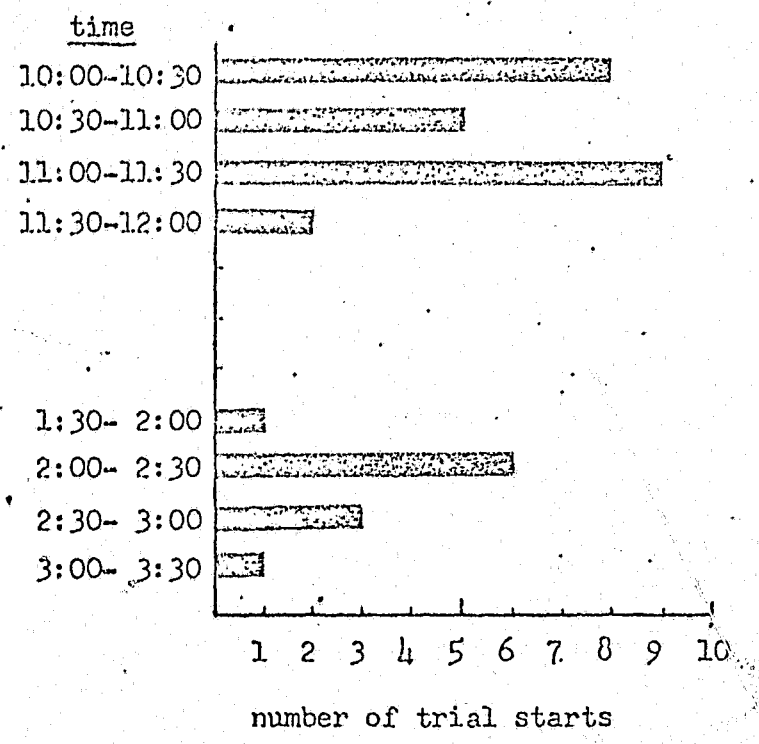
After a judge empanels his first jury, he usually continues that trial either until later in the day (allowing time for the second voir dire) or until a day or two later (allowing time for the second trial to be completed). This requires an estimate of how long one trial will last before the second one can begin, but since each judge controls his own calendar he or his courtroom deputy can usually obtain an estimate of the trial length from the lawyers. Judges have not found scheduling of their jury trials unduly difficult under the system. They schedule non-jury trials or work in their chambers if they happen to finish their jury trials before jurors are available for the next round of voir dires.

APPENDIX B. TIMES OF TRIAL STARTS

During the study period the average length of a civil voir dire was one hour and 15 minutes; for a criminal voir dire it was one hour and 25 minutes.

Chart 3 shows that trial starts are spread fairly evenly throughout the day.

CHART 3. NUMBER OF TRIAL STARTS BY HALF-HOUR INTERVALS, JUNE-AUGUST 1971



Approximately one-third of the trials surveyed started between 10:00 and 11:00, one-third between 11:00 and 12:00, and one-third in the afternoon. If several voir dire were held on a given day, it is quite likely that the earlier ones would be finished before the later ones began. Thus on days of higher-than-average trial activity, leftover jurors from earlier voir dire could be

re-used in a later round. If all the voir dire happened to start at approximately the same time, there might be a delay in supplying jurors for the last one, but the delay would seldom be as long as an hour. The chance of delay is decreased since jurors are returned to the jury lounge as soon as they are dismissed for cause or challenged from a voir dire, and thus they are available for another round fairly quickly.

END