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EXECUTIVE SUMMARY

The right to trial by jury is one of the most valued liberties in the American democratic system. It is copied around the world by countries emerging from tyranny.

However, in recent years, growing numbers of American citizens have become increasingly dissatisfied with the jury system and with jury service. Segments of the public criticize the verdicts reached in a few high profile cases and, therefore, question the quality of jury decision-making. Further, individuals who are summoned for jury service feel that the jury system cares little for the jurors themselves. Jurors have a number of legitimate complaints. For instance, some people are summoned for jury duty regularly while others are never summoned; jurors are sometimes subjected to long delays before and during the trial; some lawyers and judges use complex legal language and do not communicate clearly with the jury; and jurors are not permitted to pose questions to witnesses or talk about the case among themselves until formal deliberations. In short, the process is not always responsive to the jurors' needs.

A number of states have undertaken reviews of their jury trial procedures and have made recommendations for change. Colorado is among them. On January 5, 1996, Chief Justice Anthony Volland created the Colorado Supreme Court Committee on the Effective and Efficient Use of Juries in Colorado. The Chief Justice's Order directed the committee to study and recommend improvements to the jury system designed to enhance the effectiveness of communication with jurors as well as to assure the efficient and courteous treatment of jurors.

The committee consisted of 27 members broadly representative of the many groups interested in and affected by Colorado's civil and criminal jury trial system. Specifically, it included former jurors, jury commissioners, academicians, civil and criminal attorneys, a newspaper editor, legislators, and trial and appellate judges.

Over the course of a year, the committee met and considered a broad range of reforms. The committee proposed reforms designed to improve the quality of jury decision-making, the respect and courtesy afforded to jurors, and the efficiency of the system in general.

The jury system permits citizens to seek the judgment of a jury of their peers. Lawyers and judges have a duty to facilitate, not impede, that process. This committee believes that individuals reporting for jury service should be treated with respect and courtesy; should be informed in clear language

of the general trial process and of the law applicable to the particular case; should not be subjected to long or unnecessary delays; should be entitled to have their questions answered; and should be able to voice concerns, complaints and recommendations to court personnel at the conclusion of their service.

The committee recognizes that jury duty is the last mandatory civic service in our country, and that we all depend upon the willingness of our citizens to serve on juries. Our society entrusts very important decisions to jurors; we owe them a system that is designed to make appropriate use of their time, value their service, and enhance the quality of information provided to them.

The Report was adopted in principle by the Colorado Supreme Court in February of 1997, reserving to the Court the discretion to review specific Rule or administrative changes following receipt of further input.

SUMMARY OF RECOMMENDATIONS

A. ENHANCE PUBLIC APPRECIATION FOR THE ROLE OF THE JURY

1. Improve Education Efforts

Judges, lawyers, schools, media, and others should better educate people of all ages about jury service.

B. RESPECT THE ROLE OF JURORS AND THE USE OF THEIR TIME

2. Use Jurors' Time Efficiently

Judges, lawyers, and court personnel should respect jurors' time and minimize delays.

3. Improve and Standardize the Jury Examination Process

The chief judges, in cooperation with jury commissioners across the state, should adopt procedures that would permit jury commissioners to excuse persons who do not satisfy statutory requirements for jury service. Additionally, pre-selection questioning of jury panelists by the trial judge and by counsel needs to be more effective and efficient.

4. Limit Public Access to "Juror-Supplied Locating" Information

Jurors should not be required to disclose personal locating information, such as address or place of business in open court and such locating information should not be retained in files open to the public.

5. Encourage Standardization of Procedures for Exercising Peremptory Challenges

Trial judges should standardize the procedures for exercising peremptory challenges so as to make the process more efficient, fair, and uniform.

6. Jurors Should Not be Sequestered Except in Extraordinary Cases

Juror sequestration should be limited to extraordinary cases.

7. Encourage Trial Judges to Provide a Process for Debriefing Jurors After Their Service is Completed

Trial judges or some other court representative should conduct some form of jury debriefing, particularly in long, difficult, or emotional trials.

C. EXPAND THE COMPOSITION OF THE JURY POOL

8. Expand Sources of Names for Master Juror List

The State Court Administrator's Office should update current lists and also develop additional sources of juror names.

9. Develop Procedure to Insure Exemption From Jury Pool After Service

To make jury service less burdensome, a person who appears for jury service in two consecutive years should be exempted from service in the next calendar year.

10. Establish Effective Procedures for Dealing With People Who Fail to Appear for Jury Service

Too many people fail to appear when summoned for jury duty. Individuals who fail to appear after having been summoned should be appropriately penalized.

11. Eliminate Occupation as a Lawyer as a Ground for Challenge for Cause in a Criminal Trial

Occupation as a lawyer should be deleted from the Rules as grounds for a challenge for cause.

D. IMPROVE COMMUNICATION WITH THE JURY

12. Use Plain and Clear Language

From the very first contact, judges, lawyers, and court personnel should communicate clearly with jurors and prospective jurors.

13. Update and Improve Initial Courthouse Orientation

The clerks or jury commissioners should provide an effective means for initial written orientation of prospective jurors once they reach the courthouse.

14. Update and Improve In-court Orientation

The trial judge should give jurors an improved case-specific orientation before juror examination begins and instructions on the law once the jury is impaneled.

15. Permit Jurors to Submit Written Questions Which the Court May Pose to Witnesses in Civil Cases and, Upon Agreement, or in Pilot Projects, in Criminal Cases

In civil cases, trial judges should permit jurors to submit written questions that the trial judge may pose to witnesses. In criminal cases, trial judges are encouraged to permit such questioning upon stipulation or in controlled pilot projects.

16. Encourage Use of Juror Notebooks

In both civil and criminal cases, the courts should provide juror notebooks which contain information on trial proceedings, copies of the judge's instructions, copies of important exhibits, lists of witnesses and other information appropriate for the case.

17. Instruct Jurors that Note-Taking is Permitted

The trial judge should instruct jurors in all cases that jurors are entitled to take notes during the trial if they wish.

18. Consider Interim Summaries During Trial

The parties and their counsel should consider the use of interim summaries for the jury after discrete segments of especially long trials or trials in unusually complex cases. The parties shall confirm that they have considered the use of interim summaries.

19. Encourage Use of Technology

Although not required, courts should encourage the use of technology to help simplify the case and make it more understandable.

20. Experiment with Allowing Juror Pre-Deliberation Discussions

Although not required, upon stipulation of counsel, courts should experiment in civil trials with permitting juror pre-deliberation discussions, particularly in lengthy or complex cases.

21. Allow Use of Deposition Summaries

The court should adopt procedures that would encourage parties to use concise written summaries of deposition testimony instead of reading depositions to the jury.

22. Allow Portions of Exhibits to be Highlighted

The court should adopt procedures that would allow important exhibits to be highlighted or otherwise marked to direct jurors' attention to significant parts of an exhibit.

23. Allow Portions of Exhibits to be Used

The court should adopt procedures that would allow excerpts from exhibits to be used in lieu of or in addition to the full exhibit.

24. A Standardized Instruction Should be Developed and Used to Inform the Jury About Asking Questions During Deliberations

The trial judge should instruct jurors about what they should do if they have a question during deliberations and how the judge will deal with it. Additionally, judges should be directed by the Chief Justice to attempt to answer the jurors' questions. If the question cannot be answered, the judge should explain why that is so in a courteous and complete manner.

25. Add Lay Members to Civil and Criminal Pattern Jury Instruction Committees

Lay members should be appointed to the Civil and Criminal Jury Instruction Committees to assist in making jury instructions more responsive to jurors' needs and more understandable.

E. MONITOR AND REFINE THESE GOALS

26. A Permanent Standing Committee Should be Designated to Monitor, Refine, and Continue Improvements to the System

The Supreme Court should ultimately designate a permanent standing committee to monitor jury reform efforts and should make use of the expertise of the Effective Use of Juries Committee until the standing committee is designated.

Members of the Colorado Supreme Court Committee on the Effective and Efficient Use of Juries:

Judge George Boyle

Judge, Arvada Municipal Court

Judge Robert A. Brown

Chief Judge, Seventh Judicial District (Montrose, Delta and Gunnison Counties)

Rodolfo Calvillo

Secretary, Denver Drug Court Coordinators Office,
Former Bailiff Denver District Court, former juror

Vivian Cardenas

Jury Commissioner, Denver District Court

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Chief Appellate Deputy District Attorney, Denver

Miles C. Cortez

President, Colorado Bar Association
Civil litigator, primarily defense

Zelda DeBoyes

Clerk of Court, Aurora Municipal Court

Judge William P. DeMoulin

Judge, First Judicial District Court (Jefferson and Gilpin Counties)

Cathlin Donnell

Attorney, Academician

Robert Ewegen

Assistant Editor, The Denver Post
Former juror

J. Anthony Gavaldon

Former Colorado State Deputy Public Defender, now criminal defense lawyer

Robert S. Grant

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William Haines

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Dr. Dorothy Horrell
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Maureen R. Witt
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INTRODUCTION

Recently, a number of states have undertaken reviews of their jury trial procedures and have made recommendations for change. Arizona was an early leader in this area. In 1993, Chief Justice Stanley G. Feldman appointed the Arizona Supreme Court Committee on More Effective Use of Juries. The committee made fifty-five specific recommendations, including a proposed Juror's Bill of Rights. The Arizona Supreme Court adopted a number of those proposed reforms, effective December 1, 1995, such as permitting jurors to propose written questions for

witnesses and permitting jurors to discuss the case among themselves before formal deliberations.

The New York courts, under the direction of Chief Judge Judith Kay of the New York Court of Appeals, adopted reforms designed to improve jury facilities; expand the jury pool; reduce the number of automatic exemptions and the number of peremptory challenges; and increase judicial participation in and control of voir dire.

In December 1995, the Judicial Council of California created a Blue Ribbon Commission on Jury System Improvement. The commission issued its final report in May 1996, which included over 50 recommendations concerning jury pool composition, jury treatment and management, and jury selection.

I. Colorado:

In Colorado, Chief Justice Anthony F. Volland of the Colorado Supreme Court issued an order on January 5, 1996, creating this committee on the Effective and Efficient Use of Juries. The committee was directed to:

- * Compile and study procedures for the more effective and efficient use of juries, such as:
 - mini-opening statements given before voir dire
 - pre-instruction by the judge
 - note-taking by jurors
 - permitting juror questioning through submissions to the judge

- reasonable court-imposed time limits on trial proceedings or parts thereof
- document and deposition procedures designed to facilitate juror understanding and use;
- * Focus on in-court procedures;
- * Examine jurors' roles in the fact-finding and decision-making processes, and explore how those processes might be improved and made less onerous and more rewarding for jurors.

A. Committee Membership:

The Co-chairpersons, Rebecca Love Kourlis of the Colorado Supreme Court and Claus J. Hume of the Colorado Court of Appeals, appointed the following members to the committee:

B. Process:

At its initial meeting on January 19, 1996, the committee adopted quorum requirements and other procedural rules. The committee separated into subcommittees to consider and recommend proposals for improving jury processes in Colorado courts.

Each subcommittee concentrated on a different phase of the process: pre-evidentiary, evidentiary, or post-evidentiary. A fourth subcommittee, whose members also served on one of the other subcommittees, assembled and collated resource materials for use by the other three subcommittees and prepared the committee's final report for review and adoption by the full committee. Subcommittee assignments corresponded to the

interests of committee members, with a view toward maintaining diversity in the composition of each subcommittee.

The committee scheduled monthly meeting dates for the ensuing year, with the March, April, June, and July meetings devoted to subcommittee work. The committee directed the subcommittees to file interim reports for review by all committee members on a regular basis, and to submit final recommendations to the full committee beginning at the August 1996 meeting.

The committee reviewed introductory materials and then conducted a "brainstorming" session at the February meeting. In that session, the committee identified a variety of problem areas and elicited suggestions for improvements to the Colorado jury system. The session gave rise to an open-ended list of approximately forty topics that were then referred to the respective subcommittees for research, discussion, and possible recommendation to the full committee at or before the August meeting.

Pre-evidentiary topics included: (1) expansion of master lists of prospective jurors to broaden the jury pool; (2) exploration of means for better educating the public about the jury system, both before and after people are summoned for service; (3) improvement of the treatment of persons called upon to render jury service; and (4) exploration of partial anonymity of jurors in appropriate circumstances.

Evidentiary topics included: (1) juror trial notebooks; (2) juror note-taking; (3) whether and how jurors should be permitted

to pose questions to witnesses; (4) whether and how jurors should be permitted to engage in pre-deliberation discussions during the course of trial proceedings; and (5) how courts, lawyers, and court personnel can communicate more effectively to assist jurors in the decision-making process.

Post-evidentiary topics included: (1) how juror questions during deliberation should be handled; (2) whether and under what circumstances jurors should be sequestered; (3) whether deadlocked or "hung" juries pose a significant problem; and (4) whether non-unanimous verdicts should be considered.

The committee gathered a number of resources, including reports from other states' jury reform committees, social science research on the impact of in-court trial procedures on juror comprehension and decision-making, reports from the American Bar Association, the Brookings Institution, the American Judicature Society, and a number of books, law review articles and essays by commentators on the workings of the jury trial system. The committee also made presentations, answered questions and gathered information at the 1996 judicial conference, the 1996 bar convention and the fall 1996 bench/bar retreat.

In May 1996, a member of the committee attended a three-day conference in Phoenix, Arizona on "Jury Reform: The Jury Trial as an Educational Process." The conference brought together 27 representatives from 13 states, including nationally known leaders in the field of jury reform. The conference focused on the jury trial process as one of communication and education.

The committee members also had access to these materials.

Beginning at the August meeting, the full committee considered each recommendation tendered by the subcommittees and determined whether the recommendation (with or without modification) should be referred to the Colorado Supreme Court. At least sixty percent of the committee members present (or voting by proxy) support each recommendation contained in this report. The debate was lively on a number of topics and, where the vote was close, the reasons for and against the proposal are set out in some detail.

The Supreme Court reviewed the Report and adopted it in principle with some modification, reserving the discretion to review specific Rule or administrative changes following receipt of further input.

COMMITTEE REPORT¹

A. ENHANCE PUBLIC APPRECIATION FOR THE ROLE OF THE JURY

1. Improve Education Efforts

Judges, lawyers, schools, media, and others should better educate people of all ages about jury service.

Studies reflect that at the time they receive a jury summons, many jurors' attitudes toward jury service are negative.

Because of this reaction, many jurors summoned do not report, and of those who do appear, many bring their negative attitudes with them.² Studies have also shown, however, that after jurors serve on a jury and reach a verdict, their cynicism is usually replaced by appreciation for the justice system and the juror's role in it.³

We need new and innovative public education programs to better acquaint both adults and school-aged children with the importance of juries to the judicial system and the rights and responsibilities of citizens in their performance of jury

¹ The committee acknowledges with gratitude the contributions of Cathlin Donnell, Esq., who collected and digested the research materials used in our jury reform efforts. The committee also thanks Judges Peter H. Ney and Robert J. Kapelke of the Colorado Court of Appeals for the cartoon vignettes that illustrate some sections of the Report; and Wendy Carlson and Matthew Topham, law clerks to Justice Kourlis, for assisting in the compilation of the Report.

² See Shari Seidman Diamond, What Jurors Think: Expectations and Reactions of Citizens Who Serve as Jurors, in Verdict: Assessing the Civil Jury System 282, 282-305 (Robert E. Litan ed., 1993).

³ William R. Pabst, Jr. et al., The Myth of the Unwilling Juror, 60 Judicature 164 (1976).

service. We need to replace prospective jurors' initial cynicism with some measure of the commitment felt by those who have actually served.

The committee recommends that the court encourage the development of a broad array of programs designed to improve public awareness and create more positive attitudes toward the public benefits and individual responsibilities of jury service.

Not only should the judicial branch and legal profession develop and sponsor these educational programs, but also school districts, private corporations, and individuals [former jurors] should participate. Such educational efforts may include: (1) educational courses in public and private schools and universities; and (2) articles in print and broadcast media programs sponsored by or presented to service clubs, state and local bar associations, and the Office of the State Court Administrator.

Educational information can be distributed in a variety of ways: speaker's bureaus; audio and video tapes; brochures; booklets; mock trials; promotion of programs using teen juries; and encouragement of court tours and observation of trials. Bilingual or multilingual materials should be developed and made available to broaden the reach of those programs.

Some specific kinds of programs could include:

Education of the Public:

(a) An annual "Jury Appreciation Week";

(b) Media articles and programs;

(c) Outreach programs by lawyers and judges for adult groups and community centers, especially for employee groups, new citizens, and those working toward citizenship.

(d) Court observation programs designed to encourage the public (of all ages) to tour the courts and to observe jury trials.

(e) State and local boards of education should be encouraged to ensure that a portion of social studies instruction be devoted to the jury system and jury service.

(f) Bench-bar committees assisted by professional educators should develop teaching materials, including videos, for use at different levels.

(g) Bench-bar programs should be expanded to include visits to classrooms by attorneys and judges.

(h) The bench and bar should expand their efforts in assisting school officials in establishing "Teen Court Programs" where students participate as jurors.

B. RESPECT THE ROLE OF JURORS AND THE USE OF THEIR TIME

2. Use Jurors' Time Efficiently

Judges, lawyers, and court personnel should respect jurors' time and minimize delays.

The jury system is frequently criticized based upon a common perception that jurors' time is neither valued nor effectively

used.⁴ Judges, lawyers, and court personnel should implement policies and procedures that efficiently use jurors' time, including not only the time jurors spend in selection, trial, and deliberation, but also the time involved for them to arrange their schedules to attend the proceedings.⁵ Delays must be minimized to the extent possible.

The committee recommends:

(a) The court should make use of case management and trial management orders in both civil and criminal cases to structure preparation and procedures for trial. Judges should enforce sanctions when appropriate to redress a lawyer's or litigant's failure to comply with the orders.

(b) The judge should set and enforce time limits and make every reasonable effort to defer consideration of matters not requiring the jury's participation to times when the jury will not be affected.

(c) All courts, especially in counties or districts where jury panels are called only for specific trials, judges, lawyers, and litigants should develop case management procedures which promote early settlement so as to minimize disruptive last-minute cancellations of trials.

⁴ See Stephen J. Adler, The Jury: Trial and Error in the American Courtroom (1994); B. Michael Dann, "Learning Lessons" and "Speaking Rights": Creating Educated and Democratic Juries, 68 Ind. L.J. 1229 (1993).

⁵ See ABA Standards for Criminal Justice § 15-4.1(d) (3d ed. 1996) (court should take all reasonable steps to avoid wasting jurors' time).

(d) Judges and attorneys should receive specific training in efficient management of trials, including juror examination.

(e) Language should be added to the Civil and Criminal Rules to mandate effective and efficient use of jurors' time.

3. Improve and Standardize the Jury Examination Process

The chief judges, in cooperation with jury commissioners across the state, should adopt procedures that would permit jury commissioners to excuse persons who do not satisfy statutory requirements for jury service.

Additionally, pre-selection questioning of jury panelists by the trial judge and by counsel needs to be more effective and efficient.

While provisions of the existing rules⁶ are generally adequate regarding how and by whom juror examination is to be conducted, jurors would benefit from some refinements of the process.

One such refinement is the expanded role of the jury commissioner in screening prospective jurors to determine whether they meet the qualification requirements set forth in section 13-71-105, 6A C.R.S. (1996 Supp.). To be qualified, one must: (1) be a U. S. citizen; (2) be a resident of the county; (3) be at least 18 years-of-age; (4) be able to speak, read, and understand English; (5) have no physical or mental disability which precludes rendering of satisfactory service; (6) not be solely responsible for the daily care of a permanently-disabled

⁶ C.R.C.P. 47(a); Crim. P. 24(a).

person living in the same household; and (7) not have engaged in prior juror service within the last year. Such a procedure would permit unqualified persons to be excused at an early stage in the proceedings, thus saving their time and that of the court. It is very frustrating for jurors to waste two or three hours before being told they are ineligible for service.

Another refinement is the standardization of the juror examination process following appropriate orientation and pre-examination instruction by the court. Ideally, the roles of the participants in the trial need to be clarified in order to make the jury examination process more efficient.

Role of the Judge:

Since the court has a neutral role in the case, the trial judge should conduct the initial juror examination by asking standard questions, including those which may be of a sensitive nature relating to the specific case to be tried. To assure that all important information is covered and time is saved, sample language through a pattern outline should be developed. Colorado judges would have such orientation/examination materials available to them for both civil and criminal cases.

Role of Counsel/Pro Se Litigants:

Colorado currently recognizes the right of counsel and parties who are not represented by counsel to conduct juror examination by asking prospective jurors questions not covered by the trial judge. The judge, however, has the authority to limit such examination to avoid repetition, irrelevant or improper

inquiries and waste of time. Judges can also impose time limits on juror examination.

Posterboards and Questionnaires:

Posterboards and questionnaires should be used to acquire information from prospective jurors.⁷ The trial judge, however, should have discretion as to when and how such aids are used.

The committee recommends:

(a) The chief judges should authorize jury commissioners to screen prospective jurors on statutory jury qualification requirements and to excuse those who do not qualify.

(b) A standardized outline should be used in juror examination as part of the in-court juror orientation, instruction, examination, and selection. An example of such an outline has been forwarded to the Civil and Criminal Pattern Jury Instruction committees.

(c) Posterboard questions should be used to obtain information from the jury panel in a fast, neutral, and flexible way.

(d) Jury questionnaires may be helpful and should be used at the very least in cases involving high publicity, sensitive issues and/or complex litigation matters. If used, questionnaires should seek not only autobiographical information, but also case-specific information to identify potential prejudice on sensitive issues.

⁷ See ABA Standards for Criminal Justice § 15-2.2 (3d ed. 1996) (juror questionnaires).

(e) Judges and lawyers should receive training in juror examination.

4. Limit Public Access to "Juror-Supplied Locating Information"

Jurors should not be required to disclose personal locating information, such as address or place of business in open court and such information should not be maintained in files open to the public.

This is a controversial subject. The former jurors who served on the committee voiced deep-seated concerns about providing information that could endanger their safety or intrude upon their privacy.

The committee almost unanimously agreed that some additional protection is warranted. However, the extent of that protection was hotly contested. What the committee did agree upon was: (a) jurors ought not be required to disclose locating information orally in open court; (b) juror addresses should not be available to the public in the court file; and (c) trial courts and counsel should address whether additional protections are warranted on a case-by-case basis at a pretrial conference.⁸

⁸ The committee was unable to reach a voting majority on either side of the issue of whether juror-locating information should be protected from access by litigants and their counsel. The committee believed that litigants probably do not have need for the information except in extraordinary circumstances; however, the committee split as to whether attorneys should be entitled automatically to the information or whether they, too, should be required to show need. The Court has adopted a preliminary step, designed to protect the information from disclosure to the public and to require trial judges and counsel to address circumstances of

The committee recommends:

(a) Jurors should not be required to disclose specific juror-locating information in open court.

(b) The trial judge should determine the appropriate balance between a given juror's privacy with respect to the specific residence and business/employment information and the parties' and counsels' need to know such information in order to exercise peremptory challenges or challenges for cause intelligently.

(c) Trial judges should review such confidentiality issues with counsel prior to trial (preferably at a pretrial conference) and determine the degree of specificity with which a prospective juror should be expected to provide locating information. Such information would include the residences of potential jurors and their immediate family, their places of employment or businesses, and schools presently being attended. The degree of specificity could range from simply giving zip codes to identifying a major intersection or other landmark near where the juror lives or works.

(d) Trial judges should inform panel members of the extent to which they need to disclose personal locating information in open court, and the trial judge should inform the jurors of his or her decision regarding and limitation on the distribution of written locating information to the parties or counsel if applicable.

the case that could occasion additional protections at the time of a pretrial conference.

(e) Modifications should be made to poster boards to eliminate routine eliciting of "juror-locating information" in open court; however, jurors will continue to fill out juror questionnaires when requested to do so by the jury commissioner or the judge. Those questionnaires will be provided to the judge for distribution in his or her discretion.

(f) C.R.C.P. 47(a)(5) and Crim. P. 24(a)(5)⁹ should be amended. An example is set forth in Appendix III.

(g) Section 13-71-136, 6A C.R.S. (1996 Supp.), should be amended to delete provisions requiring juror addresses to be maintained in files open to the public.

5. Encourage Standardization of Procedures for Exercising Peremptory Challenges

Trial judges should standardize the procedures for exercising peremptory challenges so as to make the process more efficient, fair, and uniform.

While present formal procedures for exercising peremptory challenges are adequate, the process should be standardized to promote uniformity and efficiency.

The committee recommends:

(a) Trial judges and litigants should be encouraged to use an outline of in-court orientation, pre-selection instruction, and selection process. An example has been developed by the committee which is available for use by the civil and criminal jury instruction committees.

⁹ Corresponding changes will need to be made in County Court Rules of Civil Procedure and in Municipal Court Rules of Procedure.

(b) Due to complexities in handling objections concerning the exercise of peremptory challenges,¹⁰ both judges and attorneys should undergo specific training to develop appropriate methods to address such objections without wasting juror time.

(c) The trial judge should retain discretion to determine whether peremptory challenges are to be exercised as presently provided by Crim. P. 24(d)(4), or as presently provided in C.R.C.P. 47(g). Such discretion will be more efficient in selecting jurors; will assure the litigants and counsel sufficient flexibility to make rational decisions in the jury selection process; and will assure appropriate use of the jurors' time.

6. Jurors Should Not be Sequestered Except in Extraordinary Cases

Juror sequestration should be limited to extraordinary cases only.

Sequestration is an extreme measure. It separates jurors from their families and disrupts their lives. Jurors on our committee commented that sequestration was very much like being incarcerated and that it created an unnatural atmosphere in which the jurors were not thinking clearly.

In addition to sequestration's harmful effects on members of

¹⁰ Trial judges and attorneys must continue to be aware of the holding in Batson v. Kentucky, 476 U.S. 79 (1986), which precludes counsel from exercising impermissible discriminatory peremptory challenges. Colorado approved the Batson principle in Cerrone v. People, 900 P.2d 45 (Colo. 1995), and by statute in § 13-71-104, 6A C.R.S. (1996 Supp.).

the jury, it is expensive. Hence, sequestration should be limited to extreme cases.

The committee recommends:

(a) C.R.C.P. 47 and Crim. P. 24 should be amended to implement this recommendation.

7. Encourage Trial Judges to Provide a Process for Debriefing Jurors After Their Service is Completed

Trial judges or some other court representative should conduct some form of jury debriefing, particularly in long, difficult, or emotional trials.

Jurors devote extensive time and energy to the process. Some cases can be quite stressful and/or emotional. When jurors are discharged, they often feel a let-down and desire to talk about what happened.¹¹ In traumatic cases, jurors may need access to psychological assistance. Therefore, there is a definite need for the opportunity for debriefing following the trial.¹²

The committee recommends:

(a) Trial judges should be encouraged to provide a process

¹¹ See Leigh B. Bienen, Helping Jurors Out: Post-Verdict Debriefing for Jurors in Emotionally Disturbing Trials, 68 Ind. L.J. 1333 (1993); Report of the Arizona Supreme Court Comm. on More Effective Use of Juries, Jurors: The Power of 12, at 125 (1994).

¹² See ABA Standards for Criminal Justice § 15-4.3(b-d) (3d ed. 1996) (judicial communication with jurors).

for debriefing of jurors after their service is completed without the attorneys being present. As part of that process, trial courts should be sensitive not only to meeting jurors' needs for information, but also to jurors' psychological needs.

C. EXPAND THE JURY POOL

8. Expand Sources of Names for Master Juror List

The State Court Administrator's Office should update current lists and also develop additional sources of juror names.

Certain individuals seem to be called for jury duty all of the time. Others are never called. Lists are out-dated and duplicative. Even persons who do receive a summons may not appear due to work demands, financial concerns or distrust of the system. In Colorado's ten most populous counties, from 40 to 65 percent of jurors summoned do not appear.¹³ This situation creates a wasteful and inefficient use of resources. If too few prospective jurors appear, trials sometimes have to be continued.

Jury commissioners confronted with low yields from summonses issued often issue more summonses than would otherwise be necessary. This practice increases both the expense of calling jurors and the volume of jury information that must be processed.

Section 13-71-107, 6A C.R.S. (1996 Supp.), which addresses the preparation of the Master Juror List, identifies several specific lists and includes a "catch-all" provision for "other lists of persons living in the county." While no statutory

¹³ Ed Zimny, Colorado State Judicial Department records based upon reports of jury commissioners in 1996.

change is necessary, efforts should be made to identify and use "other lists" that will be more accurate and will make the pool more representative.¹⁴

The committee recommends:

(a) With the help of the State Court Administrator's Office, each jury commissioner needs to develop additional lists to identify segments of the citizenry that are not included in the present source lists (e.g., those who do not vote or drive).

(b) In addition, driver's license and voter registration lists are often out of date because driver's licenses are renewed every five years, and voter registration often is not changed when a person moves. Further, lists are needed that are updated more often, such as: (1) names and addresses from income tax returns; (2) names and addresses from property tax rolls; (3) names and addresses from welfare records; and (4) address changes through the U.S. Post Office.

(c) To avoid duplication of names which additional lists may engender, the State Judicial Department should access any information that could eliminate duplication and adjust master jury lists to be more complete.

9. Develop Procedure to Ensure Exemption From Jury Pool After Service

To make jury service less burdensome, a person who

¹⁴ Some committee members advocated the use of District-wide, rather than County-wide juror pools, particularly in highly impacted counties such as Gilpin County. Other committee members raised concerns about travel and lodging in geographically large Districts.

appears for jury service in two consecutive calendar years should be exempted from service in the next calendar year.

Although certain significant improvements have recently been made to make jury service less burdensome, some jurors continue to be called repeatedly, while other citizens never seem to be summoned.¹⁵ Further, there is confusion about the intent of the General Assembly concerning the length of time a juror must serve before being exempted from further service. Section 13-71-105(2)(f), 6A C.R.S. (1996 Supp.), which pertains to juror qualifications, excuses jurors after five days of jury service, while section 13-71-120, 6A C.R.S. (1996 Supp.), ("one-day/one-trial") requires a juror to serve a one-day term.

The committee recommends:

(a) The "five-day" provision in section 13-71-105(2)(f) should be eliminated and replaced with a provision that a juror is exempt from jury service for the balance of the calendar year if he or she has satisfied the "one-day/one-trial" requirement earlier in the calendar year. (See example in Appendix I)

We note one caveat, however. Exempting a juror after two consecutive years of service may impact counties with smaller populations and may also create some logistical complications in accounting for and tracking these jurors. We believe, however, that with proper coding, clerks can identify those who should be exempted.

¹⁵ Experience reported by jury commissioner members of the committee.

10. Establish Effective Procedures for Dealing With People Who Fail to Appear for Jury Service

Too many people fail to appear when summoned for jury duty. Individuals who fail to appear for jury service after having been summoned should be appropriately penalized.

The courts need a practical method of dealing with persons who, after being properly summoned, fail to appear for jury service. Many times, all the prospective jurors need is a simple reminder. Other times, however, a mere reminder is not enough. It is detrimental to the integrity of the Colorado system under the Uniform Jury Selection and Service Act to permit jurors to fail repeatedly to appear for jury service with impunity. Thus, the jury commissioner should have wide discretion to deal with those persons who fail to appear for jury service.

The committee recommends:

(a) Procedures should be adopted to provide well-defined and enforceable sanctions to deal with persons who fail to respond to a delinquency notice, or who have twice failed to appear for jury service after being properly summoned.

(b) Section 13-71-122, 6A C.R.S. (1996 Supp.), presently requires mailing by certified or first class mail. In the interests of fiscal economy, the reference to "certified" mail should be deleted so that commissioners do not interpret the statute to require certified mail (see recommended language at

Appendix III).

(c) Section 13-71-122, 6A C.R.S. (1996 Supp.), should be repealed and reenacted with amendments as set forth in the example in Appendix II.

11. Eliminate Occupation as a Lawyer as a Ground for Challenge For Cause in Criminal Trials

The Rules should be amended to delete occupation as a lawyer as a ground for a challenge for cause in criminal trials.

Crim. P. 24(b) allows persons who are "lawyers" to be excused for cause. This rule is in conflict with section 13-71-104, 6A C.R.S. (1996 Supp.), which provides that no person is to be excluded from jury service because of occupation.

The committee recommends:

(a) Crim. P. 24(b)(XI) should be amended to eliminate the right to challenge a prospective juror for cause on the ground that he/she is a lawyer.

(b) Crim. P. 24(b)(1)(XII), which pertains to challenges for cause of public law enforcement or public defender office employees, should be retained and section 13-71-104, which provides for no exclusion based on occupation, should be amended to allow challenge for public law enforcement or public defender employment.

(c) Section 16-10-103(1)(k), 8A C.R.S. (1986) should be amended to delete the reference to lawyers.

D. IMPROVE COMMUNICATIONS WITH THE JURY

12. Use Plain and Clear Language

From the very first contact, judges, lawyers, and court personnel should communicate clearly with jurors and prospective jurors.

"THIS IS A SIMPLE RES IPSA LOQUITUR CASE INVOLVING RESPONDEAT SUPERIOR LIABILITY FOR THE ACTS OF AN AMANUENSIS."

From the time the jurors arrive at the courthouse, court personnel, the judge, and counsel should make every effort to improve the likelihood that jurors will understand what is happening, what is expected of them, their role in the proceedings, what the case is about, what issues they are to decide, the procedures to be followed and the court schedule. Jurors can then more quickly fit into the process and manage other considerations in their lives.

Jurors are generally not law-trained, but they bring to their service a diverse background of experience, education, culture, and lay understanding that deserves respect and

courtesy. It is essential that all judges, court personnel and lawyers use language commonly understood by lay persons. To accomplish these objectives, the judge and lawyers must keep legalese and technical terms to an absolute minimum, and phrase instructions and explanations in clear and understandable language. For example, the term "voir dire" should be replaced with the phrase "juror examination".

The committee recommends:

(a) Judges, court personnel, and lawyers should intensify their efforts to communicate with prospective and empaneled jurors in clear and understandable language.

13. Update and Improve Initial Courthouse Orientation

The clerks or jury commissioners should provide an effective means for initial written orientation of prospective jurors once they reach the courthouse.

An effective initial orientation of summoned jurors after they arrive at the courthouse should be established and implemented. While an initial orientation is now given, it could be improved and standardized significantly.

"GO INTO THAT BIG ROOM EVERY MORNING AT EIGHT.

IF WE NEED YOU, WE'LL LET YOU KNOW. OR NOT."

The committee recommends:

(a) The jury summons itself should be informative and clear as to when and where jurors are to report and what is expected of them at the time they report.

(b) There should be an improved initial orientation of jurors through use of standardized videos, juror handbooks and live presentations by the jury commissioner or other staff trained in public speaking. The present 15-minute video featuring recognizable local TV personalities is effective and only needs to be updated. That information should be supplemented with a question/answer brochure regarding jury service to be handed to each panel member upon arrival.

(c) Information conveyed in the initial orientation should include: (1) the importance of jurors to the process; (2) answers to commonly-asked questions about procedures to be followed and the court's expectations of jurors in terms of conduct and time; (3) the overall demands of jury duty ("one-day/one-trial"); (4) how special needs of jurors will be

met; and (5) guidelines regarding jury pay, mileage, parking and reimbursement for child care.

14. Update and Improve In-court Orientation

The trial judge should give jurors an improved case-specific orientation before juror examination begins and instructions on the law once the jury is impaneled.

In addition to the initial orientation, jurors need better and more specific in-court orientation for the particular case to which they are assigned. Such in-court orientation sometimes occurs, but it is not standardized and it is sometimes inadequate. The jurors would benefit from that orientation before juror examination begins.

Further, once the jury is impaneled it would benefit from some preliminary jury instructions in providing a framework for the evidence.¹⁶ Giving instructions such as those explaining burden of proof, credibility of witnesses, and trial procedures, performs the following functions: (1) assists potential jurors in understanding their roles in the case; (2) focuses their attention on relevant issues; (3) reduces the possibility of a juror applying the wrong rule or standard to the evidence; (4) reduces the number of questions by jurors during deliberations; (5) enhances decision-making; (6) increases juror satisfaction; and (7) accommodates jurors' natural tendencies to process evidence as they receive it.

¹⁶ See William W. Schwarzer, Reforming Jury Trials, 132 F.R.D. 575 (1991).

The committee therefore recommends:

(a) Trial judges and litigants should be encouraged to use a standardized outline of in-court orientation, pre-selection instruction, juror examination, and juror selection. The subcommittee assembled examples of such an outline for civil and criminal trials, which will be available to the Criminal and Civil Jury Instruction Committees and the Judge's Bench Book Committee at the discretion of the Court.

(b) Prior to commencement of juror examination, the trial judge should tell prospective jurors what the case is about. This advisement can be prepared from suggestions of counsel. If counsel cannot agree about the content of such an advisement, the trial judge may develop such a preliminary statement. Alternatively, at the request of counsel, and in the discretion of the trial judge, such factual information may be presented through brief, non-argumentative statements by counsel.

(c) C.R.C.P. 47(a)(3)(IV) and Crim. P. 24(a)(3)(IV) should be amended as set forth in the example in Appendix III.

(d) Once the jury is impaneled, the trial judge should give instructions such as those relating to burden of proof, credibility of witnesses, and trial procedures. Trial procedures may include objections by counsel, bench conferences, and juror note-taking and questioning. In complex or technical cases, definitions of terms and other information that would help orient the jury to the case should also be given.

(e) Instructions should be given orally by the trial judge rather than in written form because of the potential for distraction. Copies of the instructions can be included in the trial notebooks.

15. Permit Jurors to Submit Written Questions Which the Court May Pose to Witnesses in Civil Cases and, Upon Agreement or in Pilot Courtrooms, in Criminal Cases

In civil cases, trial judges should permit jurors to submit written questions that the court may pose to witnesses. In criminal cases, trial judges should permit such questioning upon stipulation or in controlled pilot projects.

Although attorneys and litigants under our adversary system have the primary responsibility for presenting evidence in the case and asking questions of witnesses, a number of jurisdictions have explicitly permitted jurors to submit questions to be asked by the judge of witnesses.¹⁷ Historically, there has been resistance to permitting juror questions based on the following concerns: (1) juror questions might disrupt courtroom proceedings and delay trials;

¹⁷ Juror questions are now explicitly permitted in Arizona and experiments have been conducted in state and federal court trials in 33 different states. See Larry Heuer & Steven Penrod, Increasing Juror Participation in Trials Through Note Taking and Question Asking, 79 *Judicature* 256 (1996).

"THE JURY WOULD LIKE TO KNOW WHO PICKS OUT YOUR TIES, DOCTOR."

(2) jurors would ask inappropriate and prejudicial questions; and (3) lawyers would be faced with the dilemma of objecting and possibly alienating a juror or waiving objections to avoid possible inappropriate juror inferences; and (4) juror questioning might lead to juror over-involvement at the expense of objectivity.

Research has not supported any of these concerns.¹⁸ In actual practice, relatively few questions are asked by jurors and they are not disruptive of the process. Although jurors do not know the rules of evidence, it has been found that they ask appropriate questions. Research does not support the concern that jurors who are allowed to ask questions become advocates rather than neutral decision makers, nor is there evidence that suggests that lawyers are inhibited from raising objections to juror questions. When lawyers do object to a juror-posed question, the research has found that jurors are neither embarrassed nor angry and seem to understand the basis for the

¹⁸ See id.

objection.

In response to a questionnaire distributed at the 1996 Colorado Judicial Conference, a number of trial court judges in Colorado reported that they have allowed jurors to submit questions in a variety of kinds of cases. Of those with experience with this practice, none reported significant delays or disruption in the trial and a number expressed strong enthusiasm for the practice.

Having reviewed the social science research and the experience of those judges who have permitted juror questions, the committee concluded that the possible risks involved were strongly outweighed by the benefits. These benefits include (1) improving the accuracy of the decision-making process; (2) eliminating jurors' doubts and uncertainties about the testimony; (3) increasing jurors' active involvement in the trial process and therefore their satisfaction; and (4) enhancing public confidence in jury decisions.

The committee concluded that carefully controlled juror questioning should be permitted in civil cases and encouraged in criminal cases with the agreement of counsel or in pilot districts.

The committee recommends:

(a) CJI-Civ.3d 9:15 should be amended to inform the jury that they may submit written questions to the court in a civil trial, and to provide an explanation of the procedures that will

be followed if there is a question. A proposed instruction developed by the committee is included in Appendix IV.

(b) Present C.R.E. 611 appears sufficiently broad to accommodate the recommended approach. No changes are necessary.

(c) Trial courts in criminal cases should be encouraged to allow written questions by jurors on a stipulation-of-counsel basis.

(d) The Supreme Court should establish one or two pilot programs in criminal courtrooms. In those courtrooms, the trial judge should permit questioning whether or not counsel stipulate to the procedure. The State Court Administrator's Office should generate questionnaires or interview processes to attempt to measure juror comprehension and effective decision-making in jury trials conducted in the pilot courtrooms.

16. Encourage Use of Juror Notebooks

The courts should provide juror notebooks in both civil and criminal cases, which contain information on trial proceedings, copies of the judge's instructions, copies of important exhibits, lists of witnesses, and other information appropriate for the case.

Jurors need to understand the trial process as well as the particular trial proceeding. Use of juror notebooks as an aid provides hands-on assistance; answers many questions jurors may have; and gives jurors a reference-point throughout the trial to enable them to understand and recall witnesses, evidence, law, and procedures.¹⁹

¹⁹ See ABA Standards for Criminal Justice § 15-4.2(c) (3d ed. 1996) (development of innovative mechanisms to improve juror

The committee recommends:

(a) Rules should be adopted regarding use of juror notebooks in both civil and criminal cases to provide jurors with certain ready-reference information. Notebooks should be used in all cases of any complexity or length.

(b) The court should supply three-ring binders. The court and counsel should provide materials to be placed in the notebooks. Juror notebooks would not be taken from the courtroom or jury room. They would be returned to the court at the end of the trial so that notes could be destroyed and other materials could be replaced, recycled, and/or reused. Sections would be tabbed in the trial notebook, with sections deleted or left empty as appropriate.

(c) The contents of juror notebooks should be as follows:

(1) Orientation: This section would include a copy of the charges; an explanation of the nature of the case being tried; trial procedure; housekeeping matters; and a diagram of the courtroom with the positions and names of all the participants labeled.

(2) Preliminary Jury Instructions: This would include those instructions given prior to trial.

(3) Witness List: This section would be a list of actual witnesses.

comprehension of issues of the case and evidence presented should be encouraged).

(4) Exhibits: This section would include an index or list of actual exhibits; admitted exhibits or exhibits the court allows the jury to have; and excerpts from important exhibits which in the discretion of the court are allowed to be included.

(5) Glossary of Technical/Scientific Terms: This section would be a glossary of technical and scientific terms.

(6) Glossary of Legal Terms: This section would be a glossary of legal terms.

(7) Limiting Instructions: This section would include limiting instructions given during the trial, such as evidence offered for a limited purpose.

(8) Final Instructions: This section would include a copy of the final instructions given by the court.

(9) Additional: This section would include items agreed upon by court and counsel.

(10) Juror Notes: This section would include blank paper for juror notes with an instruction as to how they are to be utilized.

(d) A new C.R.C.P. 47(t) should be added. An example is set forth in Appendix III.

(e) A new Crim. P. 24(g) should be added. An example is set forth in Appendix III.

(f) A new C.R.C.P. 16(c)(1)(VI) should be added. An example is set forth in Appendix V.

17. Instruct Jurors that Note-Taking is Permitted

The trial judge should instruct jurors in all cases that jurors are entitled to take notes during the trial if they wish.

The trial court currently has discretion in civil cases to allow jurors to take notes and to instruct the jury accordingly.²⁰ CJI-Civ.3d 1:7 provides an instruction to the jury on note-taking. Because it is discretionary, the practice varies throughout the state.

There is strong support among researchers and commentators for allowing jurors to take notes during trial. Concerns raised have proven to be unfounded. Specifically, note-taking does not distract jurors from the evidence being presented; note-takers do not appear to exert undue influence during deliberations over non-note-takers; juror notes have been found to be accurate recordings of the trial; and note taking has not been shown to be prejudicial to one side or the other.

In response to a questionnaire circulated at the 1996 Colorado Judicial Conference, many trial judges reported that they presently allow note taking by jurors and none report significant problems.

The committee believes that there are numerous advantages to juror note-taking, including (1) increased attention of jurors; (2) enhanced ability of jurors to refresh their memories from

²⁰ See CJI-Civ.3d 1:7; see also ABA Standards for Criminal Justice § 15-3.5 (3d ed. 1996) (courts should permit note-taking by jurors).

their notes; (3) reduction in number of requests from jurors during deliberations for court reporter readings of testimony; and (4) improved juror morale and satisfaction.

"MEMBERS OF THE JURY,

I'M SURE YOU ALL RECALL
THE TESTIMONY OF
MS. MCSORLEY, WHO
TESTIFIED FIVE OR SIX
WEEKS AGO."

The committee recommends:

(a) An instruction should be adopted in civil and criminal trials informing jurors that they may, but need not, take notes, and providing certain safeguards in the process.

(b) An example of such an instruction for both civil and criminal cases as developed by the committee is set forth in Appendix VI.

18. Consider Use of Interim Summaries

The parties and their counsel should consider the use of interim summaries for the jury after discrete segments of especially long trials or trials in unusually complex cases. The parties shall confirm that they have considered the use of interim summaries.

The committee believes that interim summaries may enhance jury comprehension, aid juror recall of the evidence and help

jurors avoid making premature judgments in the case.²¹ The consensus was, however, that interim summaries should be used only on the agreement of the parties.

(a) C.R.C.P. 16(c)(1) should be amended to include a new section addressing interim summaries, with a Note on Use clarifying that interim summaries are not to be argument and are akin to an abbreviated opening statement. An interim summary is a factual statement of previous evidence and its relationship to evidence which will be presented. An interim summary puts forthcoming evidence into context, given previous evidence. The statement could be written and read by the trial court or counsel and/or supplied to the jurors, if agreed upon by the court and counsel. If the presentation is given orally by counsel, the trial court should set time limits.

(b) The Pattern Civil Jury Instruction Committee should provide an amended instruction to inform the jury that interim summaries are not evidence.

19. Encourage Use of Technology

Although not required, courts should encourage use of technology to help simplify the case and make it more understandable.

Use of technology is often helpful in both civil and criminal trials. Types of technology that are quite effective are: video camera projectors; color photocopies; real time reporter transcripts; and exhibit enlargement capabilities.

²¹ See ABA Standards for Criminal Justice § 15-4.2 (3d ed. 1996).

However, technology can be expensive, and some litigants, for personal preference or strategy reasons, may not wish to use it.

While use of technology cannot be mandated, it can be encouraged. The committee recommends:

(a) A new C.R.C.P. 16(c)(1)(VII) and C.R.Crim.P. 16 should be added. An example is set forth in Appendix V.

20. Experiment With Allowing Juror Pre-Deliberation Discussion

Upon stipulation of counsel, or in pilot courtrooms, courts should experiment in civil trials with permitting juror pre-deliberation discussions, particularly in lengthy or complex cases.

Jurors are presently prohibited from talking among themselves about the case until the judge directs them to deliberate.²² Prohibiting jurors from talking about the case as the trial progresses may be contrary to basic human psychological needs and the adult learning process.²³

Some commentators have urged that, because pre-deliberation discussions will occur regardless of whether they are permitted, the interests of justice are better served by giving jurors guidance on when and how such discussions should take place.²⁴

The contrary view²⁵ recognizes that all trials are a piece-by-piece presentation of evidence, with one of the parties

²² CJI-Civ.3d 1:4.

²³ See Dann, supra note 4.

²⁴ Id.

²⁵ Comments by some members of the committee.

going first and the other(s) waiting to present their evidence at a later time. The fear is that if the jury discusses the matter prior to hearing all of the evidence, the arguments of counsel, and the instructions on the law of the particular case, the jury could reach a decision and become intractable, or certain jurors could dominate the process.

The committee recommends:

(a) Although not required, trial judges in civil cases should be encouraged, upon stipulation of counsel and with appropriate admonitions to the jury, to experiment with allowing jury pre-deliberation discussion, particularly in lengthy or complex cases.

(b) The Supreme Court should establish one or two pilot programs in civil courtrooms. In those courtrooms, the trial judge should permit pre-deliberation discussions by jurors whether or not counsel stipulate to the procedure. The State Court Administrator's Office should generate questionnaires or interview processes to attempt to measure juror comprehension and effective decision-making in the jury trials in the pilot courtrooms.

(c) Alternative CJI-Civ.3d instructions numbered 1:1, 1:4, 1:6, and 1:8 should be provided as suggested in Appendix VII.

21. Allow Use of Deposition Summaries

The court should adopt procedures that would encourage parties to use concise written summaries of deposition testimony instead of reading depositions to the jury and to present such testimony in a logical order.

The reading of long and technical passages from deposition testimony does not enhance juror understanding. Appropriate use of summaries could serve both juror comprehension and trial efficiencies.²⁶ Such change could also discourage strategic misuse of the rules for tactical advantage. There are, however, instances where the actual language used in the deposition is important. Deposition summaries are not sufficient in all instances.

The committee recommends:

(a) Procedures should be adopted that encourage parties to use concise written summaries of deposition testimony instead of reading depositions to the jury.

(b) A new C.R.C.P. 32(a)(5) should be adopted. An example is set forth in Appendix IX.

22. Allow Portions of Exhibits to be Highlighted

The court should adopt procedures that would allow important exhibits to be highlighted or otherwise marked to direct jurors' attention to significant parts of an exhibit.

Often, only parts of particular exhibits have significance to the issues in a case. Trial courts sometimes allow highlighting to help jurors locate and understand particular portions of exhibits.²⁷ However, requests for highlighting are

²⁶ Special Comm. on Jury Comprehension, Jury Comprehension in Complex Cases, 1989 ABA Sec. Litig. Rep.

²⁷ See ABA Standards for Criminal Justice § 15-4.2(c) (3d ed. 1996).

not dealt with uniformly. Despite the advantages of this time-saving method, it is frequently disallowed.

The committee recommends:

(a) Rules of procedure should be amended to allow important exhibits to be highlighted or otherwise marked to direct jurors' attention to significant language.

(b) The comment to C.R.E. 611 should be amended. An example is set forth in Appendix IX.

23. Allow Portions of Exhibits to be Used

The court should adopt procedures that would allow excerpts from exhibits to be used in lieu of or in addition to the full exhibit.

As with highlighting of exhibits, use of exhibit excerpts instead of an entire exhibit can be a time-saver and an aid to

comprehension. Some trial courts allow excerpts; some do not. We recommend a rule change permitting use of excerpts.

The committee recommends:

(a) Rules of procedure should be amended to allow excerpts of exhibits to be used in lieu of the entire exhibit.

(b) The comment to C.R.E. 611 should be amended.

24. A Standardized Instruction Should be Developed and Used to Inform the Jury About Asking Questions During Deliberation

The trial judge should instruct jurors about what they should do if they have a question during deliberations and how the judge will deal with it. Additionally, judges should be directed by the Chief Justice to attempt to answer the jurors' questions. If the question cannot be answered, the judge should explain why that is so in a courteous and complete manner.

The jury will often send out questions and requests during its deliberations.²⁸ Although the trial judge must avoid influencing a jury on the merits or pressuring the jury to reach a verdict, fears of reversal are overblown and almost all questions posed by the jury deserve the courtesy of a responsive answer. The jury's function is to reach an accurate and fair result based on the evidence and instructions of law. If the jury asks questions, the questions should be answered to the extent reasonably possible.²⁹ We must remember that the jury is

²⁸ See id. at 52-53; Bernard S. Meyer & Maurice Rosenberg, Questions Juries Ask: Untapped Springs of Insight, 55 *Judicature* 105 (1971).

²⁹ See Leonardo v. People, 728 P.2d 1252 (Colo. 1986) (adopting ABA Standards for Criminal Justice § 15-4.3(a)(i) (1980)).

being asked to make the decision, and the jury deserves answers to any legitimate questions it may have.

The committee recommends:

(a) The jury should be instructed about asking questions during deliberation. The committee developed an instruction and included a note on its use (see Appendix X).

(b) Judges should be directed by the Chief Justice to answer questions from the jury as fully as possible.

25. Add Lay Members to Civil and Criminal Pattern Jury Instruction Committees

Lay members should be appointed to the Civil and Criminal Jury Instruction Committees to assist in making jury instructions more responsive to jurors' needs and more understandable.

Instructions must communicate with and instruct lay persons serving as jurors. Therefore, they must be understandable to such persons. Both civil and criminal pattern jury instruction committees have worked hard to develop appropriate pattern jury instructions. However, all of the instructions have been developed by lawyers and judges without input from people representative of the intended audience.

Having former jurors as members of the Effective Use of Juries Committee has been extremely valuable. Appointing lay members to both the Civil and Criminal Pattern Jury Instruction Committees would provide similar valuable experience and input to those committees.

The committee recommends:

(a) Lay members should be added to Civil and Criminal Pattern Jury Instruction Committees.

E. MONITOR AND REFINE THESE GOALS

26. A Permanent Standing Committee Should be Designated to Monitor, Refine, and Continue Improvements to the System

The Supreme Court should ultimately appoint a permanent standing committee to monitor jury reform efforts and should make use of the expertise of the Effective Use of Juries Committee until the standing committee is designated.

Due to both the importance of the issue and the breadth of reform proposals, a permanent standing committee should be given responsibility for monitoring the recommendations made in this Report and updating or refining them as appropriate. Because of the number of recommendations being made, and because some of them contemplate experimentation on a pilot program basis, the Effective Use of Juries Committee may be of service to the Court pending the designation of a permanent committee. The knowledge and experience of the committee could be useful to the Court and/or the standing committee in implementing, evaluating, and possibly refining the present reform measures.

The committee recommends:

(a) Designate a permanent standing committee as a successor to the Effective Use of Juries Committee to monitor, refine, and continue improvements to the jury system.

CONCLUSION

The committee offers this Report as a series of first steps toward making the court system more responsive to jurors' legitimate needs and concerns. The lay members of our committee, particularly those who had served as jurors, repeatedly pointed out in our committee meetings the ways in which the system is sometimes foreign to and disrespectful of jurors.

Jurors are every bit as important to our system of justice as judges and lawyers. We who have inadvertently made the system complex and inflexible must be among the first to simplify it, to improve the quality of information being considered by juries, and to assure that jurors are treated with the respect they deserve.

APPENDICES

I.

EXEMPTION FOR PRIOR SERVICE

PROPOSED AMENDMENT

AMEND C.R.S. § 13-71-105(2)(F) AS FOLLOWS:

13-71-105. QUALIFICATIONS FOR JUROR SERVICE

(1) through (2)(e) * * * * [NO CHANGE]

(f) A JUROR WHO APPEARS FOR JURY SERVICE IN TWO CONSECUTIVE CALENDAR YEARS SHALL BE EXEMPT FROM SERVING IN THE NEXT CALENDAR YEAR.

II.

SANCTIONS FOR FAILURE TO APPEAR

Repeal and reenact C.R.S. § 13-71-122 as follows:

13-71-122. Failure to appear--delinquency notice.

(1) IN ADDITION TO THE COURT'S INHERENT POWER TO ENFORCE A CITIZEN'S DUTY TO PERFORM JURY SERVICE, THE FOLLOWING PROCEDURES MAY BE UTILIZED:

(a) IF A PERSON FAILS TO APPEAR IN RESPONSE TO A JUROR SUMMONS, THE JURY COMMISSIONER MAY SEND A DELINQUENCY NOTICE TO SAID PERSON BY FIRST-CLASS MAIL, OR THE JURY COMMISSIONER MAY REQUEST THE STATE COURT ADMINISTRATOR'S OFFICE TO SEND A FAILURE TO APPEAR NOTICE TO SAID PERSON BY FIRST-CLASS MAIL. THE NOTICE SHALL DIRECT THE PERSON TO TELEPHONE OR CONTACT THE LOCAL JURY COMMISSIONER IMMEDIATELY TO EXPLAIN WHY THE PERSON FAILED TO APPEAR. UPON RECEIPT OF SUCH A CALL OR CONTACT, THE JURY COMMISSIONER SHALL HAVE DISCRETION TO RESOLVE DELINQUENT JUROR PROBLEMS. IF THE PERSON WHO FAILED TO APPEAR IS QUALIFIED TO SERVE ON A JURY, THEN THE JURY COMMISSIONER MAY ASSIGN THE PERSON TO APPEAR FOR A SCHEDULED JURY TRIAL OR MAY RESUBMIT THE PERSON'S NAME TO THE STATE COURT ADMINISTRATOR FOR INCLUSION IN A FUTURE JURY CALL.

(b) IF THE PERSON WHO FAILED TO APPEAR ALSO FAILS TO CALL THE JURY COMMISSIONER WITHIN TEN DAYS AFTER THE NOTICE IS SENT, OR IF A PERSON TWICE FAILS TO APPEAR FOR JURY SERVICE, THEN THE JURY COMMISSIONER MAY REQUEST THAT A CITATION BE ISSUED BY THE COURT ORDERING THE PERSON TO APPEAR AND SHOW CAUSE WHY THE PERSON SHOULD NOT BE FOUND IN CONTEMPT OF COURT FOR SAID FAILURE TO COMPLY WITH THE PERSON'S DUTY TO PROPERLY PERFORM JURY SERVICE. IN THE ALTERNATIVE, THE JURY COMMISSIONER MAY REFER THE MATTER TO THE LOCAL DISTRICT ATTORNEY FOR PROSECUTION UNDER SECTION 18-8-612.

(2) AS SANCTIONS TO ADDRESS THE WILLFUL FAILURE OF A CITIZEN TO PERFORM JURY SERVICE, THE COURT MAY ORDER:

(a) REMEDIAL RELIEF BY REQUIRING THE CITIZEN TO APPEAR FOR JURY SERVICE OR TO OTHERWISE SATISFY THE CITIZEN'S CIVIC DUTY BY PERFORMING A REASONABLE AMOUNT OF COMMUNITY SERVICE OR BY PAYING COST, IF ANY, INCURRED BY THE COURT OR THE LITIGANTS AS A RESULT OF THE JUROR'S FAILURE TO APPEAR, OR

(b) PUNITIVE SANCTIONS BY IMPRISONMENT IN THE COUNTY JAIL FOR UP TO SIX MONTHS OR PAYMENT OF A FINE UP TO \$750 OR BOTH SUCH

FINE AND IMPRISONMENT.

III.

**JUROR ORIENTATION AND TRIAL PROCEDURES
(CIVIL AND CRIMINAL)**

PROPOSED AMENDMENT

C.R.C.P. 47(a) Repealed and Readopted with Amendments as follows:

Rule 47. TRIAL JURORS

(a) ORIENTATION AND EXAMINATION OF JURORS.

(1) AN ORIENTATION AND EXAMINATION SHALL BE CONDUCTED TO INFORM PROSPECTIVE JURORS ABOUT THEIR DUTIES AND SERVICE AND TO OBTAIN INFORMATION ABOUT PROSPECTIVE JURORS TO FACILITATE AN INTELLIGENT EXERCISE OF CHALLENGES FOR CAUSE AND PEREMPTORY CHALLENGES.

(2) PRIOR TO THE COMMENCEMENT OF JUROR ORIENTATION AND EXAMINATION BY THE COURT, THE JURY COMMISSIONER IS AUTHORIZED TO EXAMINE AND, WHEN APPROPRIATE, EXCUSE PROSPECTIVE JURORS WHO DO NOT SATISFY THE QUALIFICATIONS FOR JURY SERVICE PRESCRIBED BY STATUTE, OR WHO ARE ENTITLED TO A POSTPONEMENT UNDER THE STATUTE.

(3) THE JUDGE SHALL INITIATE THE ORIENTATION BY EXPLAINING TO THE PROSPECTIVE JURORS, IN PLAIN AND CLEAR LANGUAGE:

(I) THE GROUNDS FOR CHALLENGE FOR CAUSE;

(II) EACH JUROR'S DUTY TO INFORM THE COURT OF ANYTHING WHICH WOULD CONSTITUTE A DISQUALIFICATION OR BE A GROUND FOR CHALLENGE FOR CAUSE EVEN THOUGH A JUROR MAY NOT BE SPECIFICALLY ASKED ABOUT THE DISQUALIFICATION OR THE GROUND FOR CHALLENGE FOR CAUSE;

(III) THE IDENTITIES OF THE PARTIES AND THEIR RESPECTIVE COUNSEL;

(IV) THE NATURE OF THE CASE BASED UPON THE PARTIES' JOINT STATEMENT OF FACTUAL INFORMATION INTENDED TO PROVIDE A RELEVANT CONTEXT FOR THE PROSPECTIVE JURORS TO RESPOND TO QUESTIONS ASKED OF THEM. IF THE PARTIES DO NOT AGREE ABOUT THE CONTENT OF SUCH A STATEMENT, THE JUDGE MAY DEVELOP SUCH A STATEMENT. ALTERNATIVELY, THE JUDGE MAY PERMIT SAID FACTUAL INFORMATION TO BE PRESENTED THROUGH BRIEF NON-ARGUMENTATIVE STATEMENTS PRESENTED BY COUNSEL; AND

(V) THE GENERAL PRINCIPLES OF LAW APPLICABLE TO CIVIL CASES, THE PROCEDURAL GUIDELINES REGARDING CONDUCT BY JURORS DURING THE TRIAL, CASE SPECIFIC LEGAL PRINCIPLES AND DEFINITIONS OF TECHNICAL OR SPECIAL TERMS EXPECTED TO BE USED DURING THE PRESENTATION OF THE CASE.

(4) AFTER THE ORIENTATION, THE JUDGE SHALL INITIATE EXAMINATION OF THE JURY PANEL BY ASKING THE PROSPECTIVE JURORS ANY QUESTIONS WHICH THE JUDGE BELIEVES ARE PERTINENT TO THEIR QUALIFICATIONS TO SERVE AS JURORS IN THE CASE ON TRIAL. THE PARTIES OR THEIR COUNSEL SHALL BE PERMITTED TO ASK THE PROSPECTIVE JURORS ADDITIONAL QUESTIONS. IN THE DISCRETION OF THE JUDGE, JUROR QUESTIONNAIRES, POSTERBOARDS AND OTHER METHODS AND MEANS MAY BE USED TO FACILITATE THE EFFICIENT ACQUISITION OF INFORMATION FROM PROSPECTIVE JURORS. IN ORDER TO ELIMINATE UNDUE DELAY, THE JUDGE MAY REASONABLY LIMIT THE TIME AVAILABLE TO THE PARTIES OR THEIR COUNSEL FOR JUROR EXAMINATION. IF, IN THE OPINION OF THE COURT, THE EXAMINATION BY THE PARTIES OR COUNSEL IS UNDULY REPETITIOUS, IRRELEVANT, UNREASONABLY LENGTHY, ABUSIVE, OR OTHERWISE IMPROPER, THE COURT MAY LIMIT OR TERMINATE SUCH EXAMINATION.

(5) IN THE INTERESTS OF JUROR PRIVACY, A JURY PANEL MEMBER NEED NOT PROVIDE SPECIFIC LOCATING INFORMATION IN OPEN COURT EXCEPT TO THE EXTENT TO WHICH THE TRIAL JUDGE DETERMINES SUCH INFORMATION IS NECESSARY. JURORS SHALL CONTINUE TO FILL OUT JUROR QUESTIONNAIRES IF REQUESTED TO DO SO BY THE JUDGE OR JURY COMMISSIONER. THE QUESTIONNAIRES SHALL BE GIVEN TO THE JUDGE FOR DISTRIBUTION IN HIS OR HER DISCRETION. JUROR ADDRESSES WILL NOT BE PLACED IN THE COURT FILES.

(b) through (l) * * * * (NO CHANGE)

(m) Papers Taken by Jury. Upon retiring for deliberation, the jury may take all papers, except pleadings, depositions, accounts, or account books, which have been received in the case, or copies of such papers as ought not, in the opinion of the court, to be taken from the person having them in possession, and jurors may take with THEM THEIR JUROR NOTEBOOKS AND any notes of testimony, or other proceedings. which he has made but none made by any other person.

(n) through (s) * * * * [NO CHANGE]

(t) JUROR NOTEBOOKS. JUROR NOTEBOOKS SHOULD BE UTILIZED IN TRIAL TO AID JURORS IN THE PERFORMANCE OF THEIR DUTIES.

COMMENT

The amendments to this rule add language to require orientation of the prospective jurors. This case-specific orientation would be in addition to any general orientation the prospective jurors may have received. As set forth in the standardized outline that has been developed for use in the orientation, examination and selection processes, the imparted information and instructions should be clear and as neutral as possible.

The contents of any factual orientation information should be reviewed by the judge with counsel at a pre-trial conference to enable consensus concerning the information to be provided.

It is recommended that the judge read a stipulated statement of what the case is about. If counsel cannot agree about the content of such a statement, the judge may develop a preliminary statement of the case in his or her own discretion. Alternatively, if both counsel desire to make brief, non-argumentative statements to the prospective jurors on what the case is about, the court should have discretion to permit such statements.

As part of the case-specific orientation, certain preliminary instructions should be used to help prospective jurors to understand the claims and defenses of the parties in the civil case. At a minimum, these instructions should address burden of proof, credibility, objections by counsel, bench conferences and whether jurors will be permitted to take notes and ask questions. In complex or technical cases, definitions of terms and other information that would help orient the jury to the case should be given. The trial judge, rather than counsel, should give these instructions as part of the before-examination orientation.

Provisions of the rules pertaining to examination of prospective jurors have been reorganized and clarified to emphasize certain objectives. Specific authority is conferred on the Jury Commissioner to allow service "postponements" as contemplated by C.R.S. § 13-71-116 and to examine and excuse prospective jurors who do not satisfy statutory qualification requirements of C.R.S. § 13-71-105.

The court's role has been better defined. Because of the court's neutral role in the case, the trial judge should conduct the initial juror examination by asking standard questions and also those which relate to the specific case, but may be of a sensitive nature. A uniform outline of orientation, juror examination and juror selection procedures has been developed by the Committee for both civil and

criminal cases. Use of such outline would assure that all important information is covered, time is saved and that cases are handled uniformly throughout the state.

Counsel and pro se litigants would continue to have a part in the juror examination process by being allowed to question prospective jurors on relevant matters not covered by the trial judge. The judge, however, would continue to have authority to limit such examinations to avoid repetition, irrelevant or improper inquiries and wasting of time.

In addition to the standardized outline of orientation, jury examination and jury selection, posterboards and questionnaires have been developed to enhance the process of acquiring information from prospective jurors. When and how posterboards and questionnaires are used is discretionary with the trial judge. Posterboard questions provide a method to obtain information from prospective jurors in a fast, neutral and flexible way. Such method gives counsel time to observe panelists and make notes, which is not always possible when the attorney is engrossed in asking questions directly. Questionnaires, while not normally used in routine cases, can be valuable in those cases involving high publicity and/or complex issues. Where used, questionnaires not only can obtain autobiographical information, but can also seek case-specific information to identify potential prejudice on sensitive issues.

PROPOSED AMENDMENT

C.R.CRIM.P. 24(a) Repealed and Readopted with Amendments as follows:

Rule 24. TRIAL JURORS

(a) ORIENTATION AND EXAMINATION OF JURORS.

(1) AN ORIENTATION AND EXAMINATION SHALL BE CONDUCTED TO INFORM PROSPECTIVE JURORS ABOUT THEIR DUTIES AND SERVICE AND TO OBTAIN INFORMATION ABOUT PROSPECTIVE JURORS TO FACILITATE AN INTELLIGENT EXERCISE OF CHALLENGES FOR CAUSE AND PEREMPTORY CHALLENGES.

(2) PRIOR TO THE COMMENCEMENT OF JUROR ORIENTATION AND EXAMINATION BY THE COURT, THE JURY COMMISSIONER IS AUTHORIZED TO EXAMINE AND, WHEN APPROPRIATE, EXCUSE PROSPECTIVE JURORS WHO DO NOT SATISFY THE QUALIFICATIONS FOR JURY SERVICE PRESCRIBED BY STATUTE, OR WHO ARE ENTITLED TO A POSTPONEMENT UNDER THE STATUTE.

(3) THE JUDGE SHALL INITIATE THE ORIENTATION BY EXPLAINING TO THE PROSPECTIVE JURORS, IN PLAIN AND CLEAR LANGUAGE:

(I) THE GROUNDS FOR CHALLENGE FOR CAUSE;

(II) EACH JUROR'S DUTY TO INFORM THE COURT OF ANYTHING WHICH WOULD CONSTITUTE A DISQUALIFICATION OR BE A GROUND FOR CHALLENGE FOR CAUSE EVEN THOUGH A JUROR MAY NOT BE SPECIFICALLY ASKED ABOUT THE DISQUALIFICATION OR THE GROUND FOR CHALLENGE FOR CAUSE;

(III) THE IDENTITIES OF THE PARTIES AND THEIR RESPECTIVE COUNSEL;

(IV) THE NATURE OF THE CASE BASED UPON THE PARTIES' JOINT STATEMENT OF FACTUAL INFORMATION INTENDED TO PROVIDE A RELEVANT CONTEXT FOR THE PROSPECTIVE JURORS TO RESPOND TO QUESTIONS ASKED OF THEM. IF THE PARTIES DO NOT AGREE ABOUT THE CONTENT OF SUCH A STATEMENT, THE JUDGE MAY DEVELOP A SUCH A STATEMENT. ALTERNATIVELY, THE JUDGE MAY PERMIT SAID FACTUAL INFORMATION TO BE PRESENTED THROUGH BRIEF NON-ARGUMENTATIVE STATEMENTS PRESENTED BY COUNSEL; AND

(V) THE GENERAL PRINCIPLES OF LAW APPLICABLE TO CRIMINAL CASES, THE PROCEDURAL GUIDELINES REGARDING CONDUCT BY JURORS DURING THE TRIAL, CASE SPECIFIC LEGAL PRINCIPLES AND DEFINITIONS OF TECHNICAL OR SPECIAL TERMS EXPECTED TO BE USED DURING THE PRESENTATION OF THE CASE.

(4) AFTER THE ORIENTATION, THE JUDGE SHALL INITIATE EXAMINATION OF THE JURY PANEL BY ASKING THE PROSPECTIVE JURORS ANY QUESTIONS WHICH THE JUDGE BELIEVES ARE PERTINENT TO THEIR QUALIFICATIONS TO SERVE AS JURORS IN THE CASE ON TRIAL. THE PARTIES OR THEIR COUNSEL SHALL BE PERMITTED TO ASK THE PROSPECTIVE JURORS ADDITIONAL QUESTIONS. IN THE DISCRETION OF THE JUDGE, JUROR QUESTIONNAIRES, POSTERBOARDS AND OTHER METHODS AND MEANS MAY BE USED TO FACILITATE THE EFFICIENT ACQUISITION OF INFORMATION FROM PROSPECTIVE JURORS. IN ORDER TO ELIMINATE UNDUE DELAY, THE JUDGE MAY REASONABLY LIMIT THE TIME AVAILABLE TO THE PARTIES OR THEIR COUNSEL FOR JUROR EXAMINATION. IF, IN THE OPINION OF THE COURT, THE EXAMINATION BY THE PARTIES OR COUNSEL IS UNDULY REPETITIOUS, IRRELEVANT, UNREASONABLY LENGTHY, ABUSIVE, OR OTHERWISE IMPROPER, THE COURT MAY LIMIT OR TERMINATE SUCH EXAMINATION.

(5) IN THE INTERESTS OF JUROR PRIVACY, A JURY PANEL MEMBER NEED NOT PROVIDE SPECIFIC LOCATING INFORMATION IN OPEN COURT EXCEPT TO THE EXTENT TO WHICH THE TRIAL JUDGE DETERMINES SUCH INFORMATION IS NECESSARY. JURORS SHALL CONTINUE TO FILL OUT JUROR QUESTIONNAIRES IF REQUESTED TO DO SO BY THE JUDGE OR JURY COMMISSIONER. THE QUESTIONNAIRES SHALL BE GIVEN TO THE JUDGE FOR DISTRIBUTION IN HIS OR HER DISCRETION. JUROR ADDRESSES WILL NOT BE PLACED IN THE COURT FILES.

(b) Challenges for Cause.

(1) The court shall sustain a challenge for cause on one or more of the following grounds:

(I) through (X) * * * * (NO CHANGE]

Repeal: (XI) The juror is a lawyer;

(XII) * * * * [NO CHANGE]

(c) through (f) * * * * (NO CHANGE]

(g) JUROR NOTEBOOKS. JUROR NOTEBOOKS SHOULD BE USED IN ALL TRIALS OF ANY COMPLEXITY OR LENGTH.

COMMENT

The amendments to this rule add language to require orientation of the prospective jurors. This case-specific orientation would be in addition to any general orientation the prospective jurors may have received. As set forth in the standardized outline that has been developed for use in the orientation, examination and selection processes, the imparted information and instructions should be clear and as neutral as possible.

The contents of any factual orientation information should be reviewed by the judge with counsel at a pre-trial conference to enable consensus concerning the information to be provided. It is recommended that the judge read a stipulated statement of what the case is about. If counsel cannot agree about the content of such a statement, the judge may develop a preliminary statement of the case in his or her own discretion. Alternatively, if both counsel desire to make brief, non-argumentative statements to the prospective jurors on what the case is about, the court should have discretion to permit such statements.

As part of the case-specific orientation, certain preliminary instructions should be used to help prospective jurors to understand the charges in the criminal case. At a minimum, these instructions should address burden of proof, credibility, objections by counsel, bench conferences and whether jurors will be permitted to take notes and ask questions. In complex or technical cases, definitions of terms and other information that would help orient the jury to the case should be given. The trial judge, rather than counsel, should give these instructions as part of the before-examination orientation.

Provisions of the rules pertaining to examination of prospective jurors have been reorganized and clarified to emphasize certain objectives. Specific authority is conferred on the Jury Commissioner to allow service "postponements" as contemplated by C.R.S. § 13-71-116 and to examine and excuse prospective jurors who do not satisfy statutory qualification requirements of C.R.S. § 13-71-105.

The court's role has been better defined. Because of the court's neutral role in the case, the trial judge should conduct the initial juror examination by asking standard questions and also those which relate to the specific case, but may be of a sensitive nature. A uniform outline of orientation, juror examination and juror selection procedures has been developed by the Committee for both civil and criminal cases. Use of such outline would assure

that all important information is covered, time is saved and that cases are handled uniformly throughout the state.

Counsel and pro se litigants would continue to have a part in the juror examination process by being allowed to question prospective jurors on relevant matters not covered by the trial judge. The judge, however, would continue to have authority to limit such examinations to avoid repetition, irrelevant or improper inquiries and wasting of time.

In addition to the standardized outline of orientation, jury examination and jury selection, posterboards and questionnaires have been developed to enhance the process of acquiring information from prospective jurors. When and how posterboards and questionnaires are used is discretionary with the trial judge. Posterboard questions provide a method to obtain information from prospective jurors in a fast, neutral and flexible way. Such method gives counsel time to observe panelists and make notes, which is not always possible when the attorney is engrossed in asking questions directly. Questionnaires, while not normally used in routine cases, can be valuable in those cases involving high publicity and/or complex issues. Where used, questionnaires not only can obtain autobiographical information, but can also seek case-specific information to identify potential prejudice on sensitive issues.

IV.

QUESTIONING BY JURORS

PROPOSED NEW INSTRUCTION

1:15 QUESTIONS BY JURORS OF WITNESSES

RULES GOVERNING JURY TRIALS PROHIBIT JURORS FROM DIRECTLY ASKING QUESTIONS OF A WITNESS OR OF THE LAWYERS. HOWEVER, YOU MAY REQUEST TO SUBMIT A WRITTEN QUESTION OF A WITNESS ACCORDING TO THE PROCEDURES EXPLAINED IN THIS INSTRUCTION.

YOU ARE UNDER NO OBLIGATION TO ASK QUESTIONS AND YOU ARE NOT ENCOURAGED TO ASK A GREAT NUMBER OF QUESTIONS. THE COURT WILL NOT PERMIT ORAL QUESTIONS. AFTER A WITNESS HAS BEEN EXAMINED BY BOTH COUNSEL YOU MAY ASK PERMISSION OF THE COURT TO SUBMIT A WRITTEN QUESTION. IF YOU HAVE A QUESTION FOR A WITNESS PLEASE WRITE IT ON A PAD OF PAPER AND NOTIFY THE BAILIFF. DO NOT PUT YOUR NAME OR JUROR NUMBER ON THE QUESTION. DO NOT DISCUSS THE QUESTION WITH OTHER JURORS. THE BAILIFF WILL COLLECT THE QUESTION AND GIVE IT TO ME. THE ATTORNEYS AND I WILL THEN CONSIDER THE QUESTION OUTSIDE OF YOUR PRESENCE.

IF I DETERMINE THAT THE QUESTION IS A PROPER ONE, THEN I WILL ASK THE QUESTION OF THE WITNESS IN OPEN COURT WHEN ALL PARTIES AND JURORS ARE PRESENT. I WILL APPLY THE SAME LEGAL STANDARDS TO YOUR QUESTIONS AS I DO TO QUESTIONS ASKED BY THE ATTORNEYS. YOU MUST KEEP IN MIND THAT THE RULES OF EVIDENCE OR OTHER RULES OF LAW MAY PROHIBIT THE ASKING OF SOME QUESTIONS. YOU MUST UNDERSTAND THAT THE COURT'S DECISION CONCERNING A QUESTION DOES NOT REFLECT UPON A JUROR. YOU MUST NOT SPECULATE ABOUT A QUESTION THAT IS NOT ASKED NOR ABOUT WHAT THE ANSWER MIGHT HAVE BEEN.

V.

TRIAL PROCEDURES

PROPOSED AMENDMENT

C.R.C.P. 16. Case Management

(a) through (c)(V) * * * * [NO CHANGE]

VI. IDENTIFICATION OF WITNESSES AND EXHIBITS--JUROR NOTEBOOKS. Each party shall provide the following information:

Lay Witnesses. From this disclosure and identification of persons pursuant to section (b) of this Rule, each party shall attach to the proposed Trial Management Order a list containing the name, address, and telephone number of any person whom the party will call and of any person whom the party may call as a witness at trial.

Exhibits. From the disclosure and identification of documents and tangible things pursuant to the Case Management Order, each party shall attach to the proposed Trial Management Order a list describing any physical or documentary evidence which the party intends to introduce at trial. Each list shall assign a number or letter designation for each exhibit. If any party wishes to object to the authenticity or admissibility of any exhibit, such objection shall be noted, together with the ground therefor.

IN THE DISCRETION OF THE COURT, IMPORTANT EXHIBITS MAY BE HIGHLIGHTED OR OTHERWISE MARKED TO DIRECT JURORS' ATTENTION TO SIGNIFICANT LANGUAGE. UPON THE COURT'S APPROVAL, EACH PARTY MAY ATTACH TO THE PROPOSED TRIAL MANAGEMENT ORDER EXCERPTED OR HIGHLIGHTED EXHIBITS IT INTENDS TO USE AT TRIAL. EXCERPTS FROM IMPORTANT EXHIBITS MAY, IN THE DISCRETION OF THE COURT, BE INCLUDED IN JUROR NOTEBOOKS.

JUROR NOTEBOOKS. COUNSEL FOR EACH PARTY SHALL CONFER WITH EACH OTHER ABOUT ITEMS TO BE INCLUDED IN THE JUROR NOTEBOOK AS SET FORTH IN C. R. C. P. 47 (t) AND IN NO LESS THAN SEVEN (7) DAYS PRIOR TO TRIAL MAKE A JOINT SUBMISSION TO THE COURT OF ITEMS TO BE INCLUDED IN THE JUROR NOTEBOOK.

VII * * * * (NO CHANGE]

VIII. OTHER MATTERS. The parties shall also include any other matters which are appropriate under the circumstances of the case or directed by the court to be included in the proposed Trial Management Order. THE PARTIES ARE ENCOURAGED TO USE AVAILABLE TECHNOLOGY TO HELP SIMPLIFY THE CASE AND MAKE IT MORE

UNDERSTANDABLE. THE PARTIES SHALL CONFIRM THAT THEY HAVE CONSIDERED THE USE OF SUCH TECHNOLOGY.

Balance of Rule * * * * (NO CHANGE]

PROPOSED AMENDMENT

Crim. P. 16. Discovery And Procedure Before Trial

Part I through Part IV(e)(1)(I) * * * * (NO CHANGE]

(II) Marking for identification various documents and other exhibits of the parties, AS WELL AS THE EXCERPTING, HIGHLIGHTING OR OTHERWISE MARKING OF IMPORTANT EXHIBITS TO DIRECT JURORS' ATTENTION TO SIGNIFICANT LANGUAGE;

Part IV(E)III through V(d)* * * * [NO CHANGE]

PART VI. ENCOURAGEMENT TO USE TECHNOLOGY.

(a) THE PARTIES ARE ENCOURAGED TO USE TECHNOLOGY TO HELP SIMPLIFY THE TRIAL AND MAKE IT MORE UNDERSTANDABLE. THE PARTIES SHALL CONFIRM THAT THEY HAVE CONSIDERED THE USE OF SUCH TECHNOLOGY.

VI.

NOTE-TAKING

PROPOSED AMENDMENT

1:7 NOTE-TAKING BY JURORS

The Bailiff has handed each of you a manila envelope containing a pencil and tablet and you are requested to write your name on the outside of the envelope. If you would like, you may use this material to take notes during the trial. YOU ARE UNDER NO OBLIGATION TO TAKE NOTES.

If you take notes, you should not allow the note-taking to detract from your close attention to the testimony and demeanor of each witness and all other evidence received during the trial.

TAKE NOTES SPARINGLY. DO NOT TRY TO SUMMARIZE ALL THE TESTIMONY. NOTES ARE PARTICULARLY HELPFUL WHEN DEALING WITH MEASUREMENTS, TIMES, DISTANCES, IDENTITIES AND RELATIONSHIPS.

ANY NOTES YOU TAKE ARE DESIGNED SIMPLY TO REFRESH YOUR MEMORY RATHER THAN BE THE ULTIMATE SOURCE OF FACTS.

Whether you take notes or not, you should rely on your memory as much as possible and not upon notes taken by you or another juror. You are not bound by any notes taken by other jurors or yourself.

If at any time during the trial you leave the courtroom, please leave your sealed envelope with the Bailiff. The envelope will be returned to you by the Bailiff upon your return to the courtroom. When you retire to the jury room for your deliberations you may take with you what notes, if any, you have made during the trial for the purpose of refreshing your memory. Such notes are for your personal use.

When you have been discharged by the Court, you will deliver your envelope containing your notes to the Bailiff who will deliver them to the Court for destruction. No one will read your notes prior to destruction.

VII.

PRE-DELIBERATION DISCUSSION

ALTERNATE INSTRUCTIONS TO BE USED WHEN PRE-DELIBERATION DISCUSSIONS ARE ALLOWED.

INSTRUCTION No. _____

We will now (recess for the day) (have a recess) (and the bailiff will escort you to the jury room). DO NOT TALK WITH PEOPLE ABOUT THE CASE OR ABOUT ANYONE WHO HAS ANYTHING TO DO WITH THE CASE UNTIL THE END OF THE TRIAL WHEN YOU GO TO THE JURY ROOM TO DECIDE YOUR VERDICT. BECAUSE IT IS IMPORTANT TO AVOID EVEN THE APPEARANCE OF IMPROPER CONDUCT, DO NOT TALK WITH ANY OF THE PARTIES, LAWYERS OR WITNESSES ABOUT ANYTHING -- EVEN SOMETHING WHICH HAS NOTHING TO DO WITH THE CASE -- UNTIL THE CASE IS OVER.

DO NOT LET ANYONE ELSE TALK ABOUT ANYTHING RELATED TO THE CASE IN YOUR PRESENCE UNTIL THE CASE IS OVER. IF ANYONE ASKS YOU ABOUT THE CASE, TELL THEM THAT YOU ARE A JUROR, THAT YOU ARE NOT ALLOWED TO DISCUSS THE CASE, AND THAT YOU MAY NOT EVEN LISTEN TO OR READ ANYTHING ABOUT THE CASE UNTIL THE CASE IS OVER.

THERE IS ONLY ONE EXCEPTION TO THIS RULE. WHEN YOU ARE ALL IN THE JURY ROOM TOGETHER, AND THERE IS NO ONE ELSE PRESENT, YOU MAY DISCUSS THE CASE. IF YOU DO THAT, REMEMBER YOUR OATH AS A JUROR TO WITHHOLD JUDGMENT UNTIL THE CONCLUSION OF THE CASE WHEN ALL OF THE EVIDENCE HAS BEEN PRESENTED, YOU HAVE HEARD ARGUMENTS OF COUNSEL AND YOU ARE IN THE JURY ROOM DELIBERATING.

Do not read, view, or listen to any reports about this case in the press, radio, television, or form or express any opinion on the outcome of the case until it is finally given to you for your decision.

PROPOSED NEW INSTRUCTION

1:4A JUROR'S CONDUCT DURING TRIAL--ADMONITIONS

Now that you have been sworn to try this case, I will instruct you as to your conduct during the course of this trial.

DISCUSSIONS OF THIS CASE AMONG YOURSELVES WHILE THE EVIDENCE IS BEING PRESENTED TO YOU MAY OCCUR ONLY IN THE JURY ROOM AND ONLY WHILE ALL JURORS ARE PRESENT.

FORMAL DELIBERATIONS WILL OCCUR after you have heard all of the evidence, the instructions of the court, the arguments of the attorneys, and have gone to the jury room and selected a (Foreman) (or) (Forewoman). Only then should you begin to deliberate this case AND BEGIN TO FORMULATE YOUR VERDICT.

The reason for the rule is that you should not commit yourself one way or the other before you have had an opportunity to hear all of the evidence, instructions, and discussion of the other jury members. DURING YOUR DISCUSSIONS OF THE CASE BEFORE YOU HAVE HEARD ALL THE EVIDENCE, THE ARGUMENT OF COUNSEL AND ALL THE JURY INSTRUCTIONS, YOU MUST KEEP IN MIND YOUR OATH AS A JUROR TO WITHHOLD JUDGMENT UNTIL YOU HAVE HAD THIS OPPORTUNITY.

Do not discuss this case with anyone, EXCEPT AS NOTED ABOVE, until the Court instructs you otherwise. It is illegal for anyone OTHER THAN A JUROR to attempt to communicate with you concerning this case. If any people WHO ARE NOT JURORS are discussing the case in your presence, please inform them that you are a juror on the case and request them to stop the discussion or continue it elsewhere.

Should anyone attempt to discuss this case with you or should anyone continue to discuss the case in your presence after you have asked them to stop, immediately notify the Bailiff, who will contact me. Also, do not read or listen to any accounts or discussions of the case that may be reported by newspapers or other publications or by television or radio.

You are not to visit or view the premises or places described in the testimony, except under direction of the Court.

Do not attempt to obtain or use any information from any source during the course of this trial or during your deliberations, about the facts involved in this case other than what is presented to you during the trial. Do not attempt to obtain or use any information from any source concerning the law applicable to this case other than from the instructions I shall give you during the trial and, if necessary, during your deliberations.

INSTRUCTION No. _____

I will explain the procedure that is usually followed during a trial. The attorneys have the opportunity to present opening statements. The purpose of opening statements is to give you an outline of each party's claims and defenses. You must remember, however, that what is said in opening statements and all other statements made by the attorneys are not evidence. Your verdict must be based upon the evidence in this case and the instructions regarding the law that governs this case. The evidence usually consists of the sworn testimony of witnesses, the exhibits which are received and any facts which are admitted or agreed to or are judicially noticed.

Once the trial begins, the plaintiff's attorney will present evidence. The defendant's attorney is permitted to cross-examine all witnesses presented by the plaintiff. Upon the conclusion of plaintiff's case, the defendant's attorney may offer evidence on behalf of the defendant, but is not required to do so. If the defendant presents witnesses (in response to the plaintiffs evidence or to establish any defense), the plaintiffs attorney may cross-examine them. The plaintiffs attorney may choose to present further evidence in response to any evidence presented by the defendant.

When all the evidence has been received, I will instruct you on the law applicable to this particular case. When you deliberate, you will be given a copy of the instructions for your further study.

INSTRUCTION NO. _____

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After you have received all the instructions on the law governing this case, each attorney may present a final argument to you. Plaintiff's attorney will first present (his)(her) closing argument. Thereafter, the defendant's attorney will make a closing argument. Plaintiff's attorney may respond to any statements made by the defendant's attorney. After arguments are concluded, the case is given to you for decision.

It is the right of an attorney to object when testimony or other evidence is offered which the attorney believes is not admissible.

When the Court sustains an objection to a question, the jurors must disregard the question and must draw no conclusion from the question nor guess what the witness would have said. If any answer has been given, the jurors must disregard it.

When the Court grants an objection to any evidence or strikes any evidence, the jurors must disregard that evidence.

When the Court overrules an objection to any evidence, the jurors must not give that evidence any more weight than if the objection had not been made. You should not be prejudiced against any party because that party's attorney makes an objection.

Legal arguments are occasionally required to be considered outside the presence of the jury. This may cause delay. All rulings I am required to make will be based solely on the law. You must not infer from any ruling or from anything I say during trial that I hold any views either for or against any party to this case.

INSTRUCTION NO. _____

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During recesses and adjournments of court, you will be free to separate, to eat lunch, and to go home at the end of the day.

During these times, you are not to discuss this case with one another or anyone else. THE ONLY EXCEPTION TO THIS RULE IS WHEN ALL OF THE JURORS ARE TOGETHER IN THE JURY ROOM AND NO ONE ELSE IS PRESENT. REMEMBER YOUR OATH AS A JUROR TO WITHHOLD JUDGMENT UNTIL THE CONCLUSION OF THE CASE WHEN ALL OF THE EVIDENCE HAS BEEN PRESENTED, YOU HAVE HEARD ARGUMENTS OF COUNSEL AND YOU ARE IN THE JURY ROOM DELIBERATING. Furthermore, you must not talk with any of the parties to this case, their attorneys, witnesses, or representatives of the media until after you have reached your verdict and have been discharged by the court as jurors in this case.

We have a Bailiff, (name) , and (he) (she) is here to take care of your needs during the course of this trial. Do not discuss this case with the Bailiff. If you have any personal problems or needs, take it up with (name of Bailiff) and (he) (she) will notify me.

VIII.

DEPOSITION SUMMARIES

PROPOSED AMENDMENT

C.R.C.P. 32. Use of Depositions In Court Proceedings

(a) through (a)(4) * * * * (NO CHANGE]

(5) IN LIEU OF READING TEXT FROM A DEPOSITION, PARTIES ARE ENCOURAGED TO USE CONCISE WRITTEN SUMMARIES OF DEPOSITION TESTIMONY AT ANY HEARING OR TRIAL, AND TO PRESENT THE TESTIMONY IN A LOGICAL ORDER.

(b) through (d) * * * * (NO CHANGE]

IX.

HIGHLIGHTING OF EXHIBITS

PROPOSED ADDITION TO COMMITTEE COMMENT

CRE 611. Mode and Order of Interrogation and Presentation

(a) through (c) * * * (NO CHANGE]

COMMITTEE COMMENT

IMPORTANT EXHIBITS SHOULD BE HIGHLIGHTED OR OTHERWISE MARKED TO DIRECT JURORS' ATTENTION TO SIGNIFICANT LANGUAGE. UNDER RULE 611, THE COURT HAS THE POWER TO ORDER THAT EXHIBITS BE HIGHLIGHTED OR OTHERWISE MARKED.

X.

QUESTIONS DURING DELIBERATION

PROPOSED NEW INSTRUCTION

4:2A QUESTIONS DURING DELIBERATION

ONCE YOU BEGIN YOUR DELIBERATIONS, IF YOU FIND THAT YOU HAVE A QUESTION ABOUT THE EVIDENCE OR THE INSTRUCTIONS OF LAW, YOUR FOREPERSON SHOULD WRITE THE QUESTION ON A PIECE OF PAPER, SIGN IT, FOLD IT OVER AND GIVE IT TO THE BAILIFF. THE BAILIFF WILL BRING IT TO ME AND I WILL CONFER WITH THE ATTORNEYS AS TO THE APPROPRIATE WAY TO ANSWER YOUR QUESTION.

THERE MAY BE SOME QUESTIONS THAT I WILL NOT BE ABLE TO ANSWER. PLEASE DO NOT SPECULATE ABOUT WHY I AM UNABLE TO PROVIDE AN ANSWER. I WILL ATTEMPT TO PROVIDE AN ANSWER TO YOUR QUESTION TO THE FULLEST EXTENT POSSIBLE WITHIN THE BOUNDS OF LAW AND OUR RESPECTIVE ROLES IN THIS PROCEEDING.

NOTE ON USE

IF A QUESTION CANNOT BE ANSWERED, THE JUDGE SHOULD STATE WHY THAT IS SO IN A COURTEOUS AND COMPLETE MANNER.