



Assessment of Juror Utilization in the Superior Courts of California

Final Report

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Hon. William Gallagher, County of Shasta

Hon. Dallas Holmes (Ret.), County of Riverside

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Executive Summary

Juror utilization is one of two key performance measures in jury operations. Specifically, juror utilization measures how effectively courts use the citizens who are summoned and report for jury service. It reflects both customer service and organizational efficiency aspects of jury service. In the fall of 2009, the Judicial Council of California, Administrative Office of Courts, contracted the National Center for State Courts to assist in an “Assessment of Juror Utilization in the Superior Courts of California.” The project focused on all aspects of juror utilization—panel size, trial date certainty, and summoning practices—as well as other topics related to respectful treatment of jurors. The project was conducted in conjunction with an independent study of panel size reduction efforts initiated by the Trial Court Presiding Judges Advisory Committee (TCPJAC)/Court Executive Advisory Committee (CEAC) Joint Working Group on Jury Administration (JWGJA). That study focused specifically on efforts to develop, implement, and evaluate the impact of panel size guidelines by eight pilot courts. This report describes key findings from the panel size reduction study including common problems encountered by the participating pilot courts and lessons that should be imparted to other superior courts seeking to improve panel utilization.

Panel size is traditionally the starting point for assessing juror utilization insofar that it sets the foundation for all subsequent estimates concerning the number of jurors needed by a court (e.g., the number of jurors to have report for jury service on any given day, the number of jurors to summon for jury service). Based on a 2004 study of voir dire practices in the California superior courts, the NCSC calculated that on a statewide basis, jury panels consisting on average of 73 jurors or fewer would be sufficient to impanel juries for trials involving serious felonies (that is, trials in which 20 peremptory challenges are allocated to each side). Misdemeanor/non-serious felony (trials in which 10 peremptory challenges are allocated to each side) and civil trials would require jury panels of 48 jurors and 42 jurors, respectively, to impanel juries. Statewide statistics collected by the Administrative Office of the Courts in 2007 and 2008 found that the number of jurors sent to courtrooms for jury selected exceeded these sizes by up to 60%, indicating that substantial numbers of jurors who are assigned to jury panels are not really needed to impanel jurors. Poor panel utilization results in considerable dissatisfaction for those jurors who find themselves observing jury selection for hours or even days, but do not have the opportunity to participate in this exercise. Due to the administrative expense involved in summoning and qualifying jurors as well as the costs incurred by jurors and their employers, poor panel utilization also results in substantial costs for wasted jurors – an estimated \$7 to \$9 million incurred by the superior courts and an additional \$145 to \$180 million incurred by jurors and their employers for lost income/lost wages paid and lost productivity in 2008 just for jurors who were unused during jury selection.¹

¹ See Table 2 (Court and Community Costs for Unused Jurors (2007-2008), *infra*, at 8.

The impetus for the Panel Size Reduction Study was to identify strategies to reduce the waste from unused jurors on jury panels, both as a courtesy to prospective jurors and to conserve valuable court resources. A total of eight superior courts participated in the pilot study: Fresno, Los Angeles, Napa, Riverside, San Joaquin, Santa Clara, Shasta and Siskiyou. Collectively, these eight superior courts reflect the geographic, operational, and cultural diversity of superior courts in California. In recognition of this diversity, the Joint Working Group on Jury Administration rejected a “cookie cutter” approach and did not seek to establish a single optimal panel size for all superior courts. Rather, the intent was for each of the participating pilot courts to develop, implement, and adhere to their own panel size guidelines based on actual historical needs. The objective was to reduce the number of unused jurors and increase judicial confidence in their ability to impanel juries from smaller panels. Panel size guidelines are best determined from juror usage over time. As a starting point to develop guidelines, as was done in this study, individual courts can generate reports in their jury management system to obtain information about the number of jurors used from each jury panel sent to courtroom for jury selection. For more detailed information on developing panel size guidelines, see Appendix B (Panel Size Worksheet and Instructions). Additional resources will be made available on the Jury web pages of the AOC website.

The duration of the Panel Size Reduction Study was October 1, 2009 through April 30, 2010. Each of the participating courts recruited several trial court judges for the study, asking them to adhere as closely as possible to their respective panel size guidelines from October 1, 2009 through April 30, 2010, to provide supplemental information about the trials they conducted during the study period, and to participate in a mid-term focus group to discuss interim study findings.

To evaluate the impact of these efforts, the NCSC examined the participating courts’ abilities to comply with their self-imposed panel size guidelines when possible and the potential reduction in unused jurors as a result. Comparable statistics for each participating court were calculated based on panel utilization in 2008. The percentage of unused jurors during this baseline period ranged from 24% to 41%. Had the panel size guidelines for each of the pilot courts been in place in 2008, the compliance rates would have ranged from 6% to 61%. Overall, the participating courts increased their compliance rates by an average of 24 percentage points, decreasing felony panels by an average of 18 jurors, misdemeanor panels by an average of 9 jurors, and civil panels by an average of 15 jurors. As a result, the percentage of unused jurors declined by 10 percentage points on average. If these results could be replicated by the entire trial bench in the participating courts, they would collectively reduce the number of jurors sent to courtrooms by 79,450 jurors per year, potentially saving the courts nearly \$2 million, and jurors and their employers an estimated \$57 million, annually.

In the process of conducting the study, the participating courts identified a number of common problems that tended to undermine their ability to adhere to panel size guidelines. These problems, in turn, suggested potential lessons for other superior courts to improve the likelihood of successfully developing and implementing panel size guidelines.

Juror utilization in high volume versus low-volume courts

Reduced panel sizes are somewhat easier to implement in high-volume courts compared to low-volume courts due to the increased availability of supplemental panels as necessary. Low-volume courts generally only summon enough jurors to accommodate a single trial, so if the panel runs short for any reason, it may be a full day or even longer before the court can secure more jurors to complete the jury selection. One solution to this dilemma in low-volume courts is simply to attempt to mimic the summoning dynamics in high-volume courts by concentrating trial activity into a limited period of time. This has been done in multi-judge courts by agreement among the judges to schedule the start of all jury trials for defined periods each month (e.g, first week of the month, first and third Mondays) or in single-judge courts by scheduling jury selection only for all upcoming trials for a single day of the month.

Effective pretrial communication

The more information that can be shared among the judicial officers, the master calendar judges and the jury manager, the better prepared the jury manager can be to provide appropriately sized jury panels at the time they are needed. At a minimum, the pretrial judge – that is, the judge that oversaw pretrial case management – should provide a recommendation concerning the appropriate panel size if standard panel guidelines are not sufficient, the basis for that recommendation, and a brief description of any pretrial issues that remain to be resolved before jury selection can commence. The pretrial judge should also provide sufficient notice to the jury manager and master calendar judge if an exceptionally large panel will be required for jury selection.

Judicial and court staff training

One issue recognized during the study was the need for ongoing judicial and court staff training, both about the existence and details concerning panel size guidelines and the rationale for these guidelines. It is important to explain to judges and jury staff that surplus jurors should not be routinely assigned to panels just to avoid having them left in the jury assembly room.

Techniques for handling supplemental panels

Although none of the judges that participated in the pilot program ran short of jurors, there is always some risk that judges may do so due to unanticipated circumstances. When asked about previous experience, however, the judges uniformly explained that running short on jurors is inconvenient, but not a catastrophic event by any means. Faced with dwindling panelists, attorneys often will agree to forego peremptory challenges rather than continue voir dire with a new panel. In addition, smaller panels foster a different psychological approach to jury selection in which judges and attorneys become less inclined to excuse or remove jurors without substantial cause. When a supplemental panel is needed, the only additional time needed for jury selection is that required for orientation of the new prospective jurors. Judges related several techniques to integrate the new panel with as little additional time or disruption as possible.

Effective judicial feedback

One lesson learned from the pilot program is the importance of effective feedback to judges about their panel size usage. Judges often have very little basis on which to compare their own performance. To gain any traction with the bench, courts must begin to measure and report both aggregate and individual compliance with panel reduction efforts in their respective courts.

Hardship screening and excusal versus postponement policies

Long cause trials often require exceptionally large panels just to accommodate the number of jurors who will be excused for hardship. Some courts, such as Los Angeles and Orange Counties, have implemented procedures upon request from the trial judge and attorney to prescreen jurors in the jury assembly room for time and financial hardship in long cause trials. The resulting jury panels for those cases are smaller insofar that they consist only of jurors who would be able to serve on a lengthy trial. Jurors who are not able to serve on lengthy trials are available for consideration in routine trials. In trials of average length, the NCSC and AOC staff concluded that excusal for substantial financial hardship is preferable to postponing jurors to a future date should be postponed to a more convenient date.

Introduction

Juror complaints that jury service is a waste of valuable time may be the oldest and single most frequent criticism about trial by jury. Viewed from the perspective of the average citizen in many American courts today, it is not difficult to understand the basis for the complaint. Jurors typically are told to report to the courthouse for jury service early in the morning. In most jurisdictions, jurors receive final confirmation about jury service by calling a telephone call-in message the evening before the reporting date. If told to report, the juror is expected to make arrangements for employment, child care, and other daily responsibilities as well as transportation to courthouse, which may not be geographically convenient or even located in a familiar area of town. Upon arrival, they may complete various forms (demographic information, mileage or other travel reimbursement forms) and watch a live or videotaped juror orientation program. Then, all too often, they wait. They wait for the jury staff to finish processing forms. And they wait for judges to begin calling panels for jury selection. Some panels proceed to the courtroom fairly quickly; others may not begin until much later in the day, if at all. Jurors who are randomly assigned to the top of the venire list enjoy the unique experience of being questioned by the trial judge and attorneys about their ability to judge fairly and impartially in the context of a particular case. But those jurors whose position on the venire list falls much farther down may wait hours or even days watching others be questioned before their turn arrives.

While those who actually serve on a trial almost always leave with positive impressions of the justice system, even those who are ultimately sent to a courtroom and are only questioned during voir dire in a reasonably expedient manner generally experience jury service as a positive event. Judges and court staff are generally courteous and solicitous of juror comfort and try to make the jury experience an educational and informative event. Those who are actually sworn as trial jurors or alternates frequently report that the experience of deciding a verdict with their peers leaves an indelible mark not only on their perceptions of the justice system, but also on their understanding of self-governance in a democracy.² In too many instances, however, jurors wait for hours or even days before having this positive experience, if at all. It is little wonder that these jurors resent the intrusion on their daily lives and view jury service as an unwelcome waste of their time.

Juror utilization is one of two key performance measures in jury operations.³ Specifically, juror utilization measures how effectively courts use the citizens who are summoned and report for jury service. It reflects both customer service and organizational efficiency aspects of jury service. The customer service aspects of effective juror utilization have been well known for decades. Most jurors recognize the importance of jury service to a well-functioning justice system, but view the seemingly endless waiting as a waste of their time and talents. Effective juror utilization focuses on minimizing the number of jurors who are made to wait during jury service and the length of time they spend waiting.

² JOHN GASTIL, et al., *THE JURY AND DEMOCRACY* (2010).

³ Jury yield is the other key performance measure. Jury yield measures the amount of effort involved in summoning and qualifying prospective jurors.

As a result, jurors are more satisfied with their jury service experience and are more likely to leave the court with increased trust and confidence in the justice system.

Recognition of the organizational efficiency aspects of juror utilization is a more recent development. Most judges and court administrators only consider juror fees and mileage reimbursements in their estimates of jury system costs; very few take into account the extent of court resources expended in summoning, qualifying, and managing the reporting jurors. In addition, jury operations are the most heavily subsidized area of court operations insofar that most costs associated with jury service are incurred by the jurors themselves and by their employers. In fact, court expenditures for jury operations typically range between 2% and 20% of total jury system costs; the remaining costs are incurred by jurors and their employers. Effective juror utilization focuses on maximizing the court's use of jurors, thus reducing both internal and external costs. Moreover, achieving optimal juror utilization often involves improved pretrial case processing, resulting in even greater system efficiencies overall.

Court expenditures for jury operations typically range between 2% and 20% of total jury system costs; the remaining costs are incurred by jurors and their employers.

The "Assessment of Juror Utilization in the Superior Courts of California" was undertaken by the National Center for State Courts (NCSC) Center for Jury Studies on behalf of the Judicial Council of California, Administrative Office of the Courts, to explore current juror utilization rates in the superior courts and to identify effective strategies to improve utilization. The scope of the project was comprehensive insofar that it focused on all aspects of juror utilization—panel size, trial date certainty, and summoning practices—as well as other topics related to respectful treatment of jurors. The project was conducted in conjunction with an independent study of panel size reduction efforts initiated by the Trial Court Presiding Judges Advisory Committee (TCPJAC)TCJAC/Court Executive Advisory Committee (CEAC) Joint Working Group on Jury Administration (JWGJA). That study focused specifically on efforts to identify optimal panel size guidelines that incorporate sufficient flexibility to accommodate differing caseload composition, case management practices, and trial court culture of the various superior courts in California. This report focuses primarily on the JWGJA study; other components of the project will be made available on the Administrative Office of the Courts' Jury web pages. The report describes the three components of juror utilization and the practical and fiscal implications of effective juror utilization for the superior courts of California. It then describes the data and methods employed to evaluate the JWGJA panel size reduction project. Finally, it summarizes findings from the JWGJA study and describes the "lessons learned" for the superior courts of California.

Components of Juror Utilization

As a performance measure, juror utilization actually consists of three separate components that build on each other: optimal panel size, trial date certainty, and optimal summoning practices. Chronologically, these three components take place in the opposite order. Jurors are first summonsed for jury service, then report to a courthouse for consideration in trials that have been scheduled for that day, then

randomly assigned to a venire panel to be questioned as to their suitability to serve as trial jurors in a particular trial. As a practical matter, accurate estimates as to the optimal number of jurors to summon and qualify depend on the number of trials anticipated to begin on a given date. Accurate estimates as to the number of jurors to report to the courthouse depend on the number of jurors needed to select juries for the scheduled trials. Thus, many courts find it easier to work backward from panel size, to trial date certainty, to summoning practices when calculating estimates.

Panel Size Considerations

The optimal size of the jury panel sent to a courtroom from voir dire is defined as the number of jurors who are actually “used” or “reached” – that is, questioned during voir dire and either sworn as a trial juror or alternate, removed for cause or by peremptory challenge, or excused due to hardship – plus a very small number of jurors who are “not reached,” but included on the panel to accommodate the unanticipated demand for jurors in any given case. Ideally, 90% or more of the jurors sent to the courtroom for jury selection should be questioned and either sworn as a trial juror or alternate, removed for cause or by peremptory challenge, or excused for hardship. Only 10% or less of the panel

Ninety percent (90%) or more of the jurors sent to the courtroom for jury selection should be questioned and either sworn as a trial juror or alternate, removed for cause or by peremptory challenge, or excused for hardship.

jurors should remain “unused” at the conclusion of jury selection. A common characteristic of courts with good juror utilization rates is an established and enforced policy setting standard panel sizes for case types based on current information about the number of jurors needed to impanel juries in various types of cases. Under those policies, judges who want a larger panel submit a request explaining the need for a larger panel to a supervising judge or presiding judge.

A number of factors can affect the optimal jury size including the type of case, the estimated trial length, the degree of pretrial publicity, community characteristics, and individual judge and attorney practices. In California, for example, jury selection for a non-capital felony typically requires 12 jurors, 1 to 2 alternates depending on the anticipated trial length, up to 20 peremptory challenges (10 per side), and on average 6 jurors removed for cause and 6 jurors removed for hardship.⁴ With a small number of “extra” jurors who would not ordinarily be reached, but are included “just in case,” the typical jury panel for non-capital felony cases would consist of 50 people or fewer in most California trial courts. Table 1 illustrates the statewide average panel sizes for different case types (serious or capital felony, non-capital felony or misdemeanor, and civil) in California. The number of jurors excused for cause or hardship is based on statewide averages reported in the 2004 study of voir dire practices in California

⁴ Although case characteristics and trial length are the primary determinants of the number of jurors removed for cause or hardship, local legal culture also plays a role. On a statewide basis, the average number of jurors removed for cause or hardship was 6 each, but these averages varied from court to court. Paula L. Hannaford & Nicole L. Waters, *Examining Voir Dire in California* 11-13 (NCSC 2004).

conducted by the NCSC on behalf of the California Judicial Council.⁵ The number of jurors removed by peremptory challenge reflects both the statutorily permitted maximum allotted to both parties and (parenthetically) the average number of peremptory challenges actually exercised for each case type.⁶ Because California attorneys rarely exercise all of the peremptory challenges to which they are entitled, the unused peremptory challenges would convert in practice to extra “extras” or unreached jurors unless the total panel size is reduced accordingly.

Table 1: Statwide Average Panel Size based on 2004 California Voir Dire Study

Jurors ...	Civil	Misdemeanor / Felony*	Serious Felony**
Sworn Juror or Alternate	14	14	14
Average Excused for Cause	6	6	6
Average Excused for Hardship	6	4	6
Peremptory Challenges Allocated (Average Exercised)	12 (8)	20 (12)	40 (24)
Extras	4	4	7
Total Panel (based on average peremptory challenges exercised)	42 (38)	48 (40)	73 (57)

* Misdemeanor/Felony trials are defined as those involving 10 peremptory challenges per side;
 ** Serious felony trials are defined as those involving 20 peremptory challenges per side., excluding capital trials

The total panel size can and should be adjusted to accommodate case-specific factors. A greater number of people are likely to be excused for hardship in longer trials (e.g., more than 2 weeks). Economic and industrial conditions in some communities may also contribute to increased rates of hardship excusals. For example, communities with larger proportion of public employees in the workforce, who typically are compensated by their employers during jury service, would normally have lower rates of hardship excusals. Communities with proportionately larger numbers of hourly wage-earners who do not generally receive compensation from employers during jury service, would expect higher excusal rates for hardship, especially in lengthy trials. With respect to challenges for cause, a greater number of people would likely be removed in cases that had received a considerable amount of pretrial publicity. The subject matter inherent in certain types of cases, especially sex offenses, crimes involving children, crimes involving alcohol or substance abuse, etc., often require the removal of greater numbers of jurors for cause due to bias. Panel usage history provides the best basis for calculating the optimal panel size for different types of cases in different superior courts. Court administrators and jury managers can use the “Panel Size Worksheet” for determining optimal panel

⁵ *Id.*.

⁶ *Id.* at 19-21.

size for their own courts.. This resource will be made available on the Jury web pages on the AOC website.

Once the court has determined the appropriate panel size for different case types, it is then possible to calculate the number of jurors needed to report to the courthouse each day based on the number of trials scheduled. For example, if three felony trials requiring panels of 48 jurors each and one civil trial requiring a panel of 42 jurors is scheduled for a given day, the court will need to have 200 to 210 jurors report for service that day (186 jurors for panels plus a few extra, just in case). Courts in California typically summon jurors 4 to 6 weeks before the reporting date – well before the court has finalized its trial calendar for the day. Consequently, they typically summon more jurors than needed to report, even after accounting for the expected jury yield.⁷ To secure optimal juror utilization, it is necessary for the court to have a mechanism such as a telephone call-in system to cancel or “waive off” summoned jurors or to place them on standby. This prevents the court from having more jurors than is necessary report to the courthouse to fill jury panels, leaving excess numbers of jurors sitting in the Jury Assembly Room for the day. The NCSC recommends that 90% or more of jurors who report to the courthouse be sent to a courtroom for jury selection. The remaining 10% or less of jurors left in the jury assembly room can be used for supplemental panels as necessary.

As with panel size, historical information about the number of jurors sent to voir dire provides the best basis for calculating the optimal number of jurors to summon for any given reporting day. The NCSC recommendation is that 90% or more of jurors who are summoned and qualified for jury service should eventually be told to report to the courthouse for jury service. Only 10% or fewer of qualified jurors should be placed on telephone standby or “waived off” due to cancelled trials.

Fiscal Implications of Juror Utilization

One of the reasons that juror utilization has traditionally received less attention than other court performance measures is the pervasive belief that the costs of poor juror utilization are relatively inexpensive, particularly compared to the costs of keeping busy judges, lawyers, and other trial participants waiting in the event of a shortage of jurors. To the extent that costs of poor juror utilization include only the juror fees and mileage reimbursements paid to jurors, regardless of whether they are used or not, the pervasiveness of this belief is understandable. In California, jurors receive no fee on the first day of service and only \$15 (14% of daily per capita income for Californians) plus mileage reimbursement on the second and subsequent days of service. Juror fees and mileage are only the tip of the iceberg in terms of operational costs, however. Courts rarely take into account the staff and physical resources expended to summon, qualify, and bring those jurors to the courthouse in the first place. On a statewide basis for the 2007-2008 fiscal years, California expended \$39,875,652 for administrative costs and \$20,965,345 in juror fees and mileage reimbursements to summon and qualify approximately 10 million prospective jurors during that period. Thus, the administrative cost per juror

⁷Jury yield is a basic measure of efficiency in jury operations that describes the proportion of citizens who are qualified and available for jury service.

qualified was \$9.80 and the average juror fee and reimbursement for jurors reporting for service was \$13.83.⁸ The administrative costs (approximately 40% of total court costs for jury operations) are sometimes overlooked when assessing the fiscal impact of poor juror utilization.

The limited focus on costs incurred directly by the courts, however, ignores the additional and more compelling reality that jury service is heavily subsidized by in-kind contributions of jurors, their employers, their families, and their communities. Because these costs do not appear in court budgets, court policy makers often underestimate their magnitude. But the fiscal impact on individual jurors, their employers, and their communities is very real and often very substantial. For example, the daily per capita income in California is \$113.10.⁹ For jurors, this is the average lost income they incur as a result of jury service or, if they are fortunate enough to work for employers that continue compensation for employees during jury service, the wages/salaries paid by those employers. This figure does not include non-income compensation such as benefits (e.g., pension, health insurance, workman's compensation, disability insurance, vacation/sick day accruals) that are also incurred by employers. In 2004, the NCSC found that 62% of employed jurors in California were compensated by their employers during jury service, or approximately 51% of the jury pool.¹⁰

Typical costs for unused jurors are approximately \$737 in the California superior courts, the vast majority of which are absorbed by jurors, their employers and their communities. On average, the superior courts incur \$24 per unused juror, or 3% of the total costs.

In addition, employers lose the value of their employees' productivity for a day, regardless of whether the employer compensates the employee. According to the US Department of Labor, the value of this productivity was approximately \$1,200 per day in 2009.¹¹ As a practical matter, most employers will not lose the full value of an employee's productivity as other employees will be engaged to compensate for the absent employee or that employee will make up for some or all of the lost productivity on their

⁸ Although precise figures are unknown, anecdotal reports suggest that these "upstream" administrative costs of jury management range from \$20 to \$25 per juror reporting for service in reasonably efficient courts. Administrative costs in excess of \$100 per juror reporting have been found in less efficient courts. Munsterman first estimated that typical administrative costs per juror ranged from \$5 to \$20 in 1975. *A Guide to Jury System Management* 4-12 (1975). The \$20 to \$100 administrative costs discussed above reflect inflation-adjusted values and are consistent with more recent NCSC observations from technical assistance projects with state and local trial courts.

⁹ US Census Bureau, Table B19301, Per Capita Income in the Past 12 Months (In 2008 Inflation-Adjusted Dollars), 2006-2008 American Community Survey 3-Year Estimates.

¹⁰ Paula L. Hannaford-Agor, *Increasing the Jury Pool: Impact of the Employer Tax Credit* (Judicial Council of California, Administrative Office of the Courts, 2004). The proportion of persons who are compensated by their employers may have decreased substantially due to the economic crisis that began in 2008.

¹¹ Based on an 8-hour workday multiplied by "output per hour for all persons" in the US Dept. of Labor, Bureau of Labor Statistics, News Release, Table 1. Business Sector: Productivity, Hourly Compensation, Unit Labor Costs, and Prices, Seasonally Adjusted. See <http://www.bls.gov/news.release/prod2.t01.htm>

return to work. Nonetheless, a conservative estimate is half the Department of Labor estimate – \$600 in lost productivity – for each day that an employee reports for jury service. Adding these costs together, we find that typical costs for unused jurors is approximately \$737 in the California superior courts, the vast majority of which are absorbed by jurors themselves, their employers and their communities. On average, the superior courts incur only \$24 per unused juror, or 3% of the total costs.

These represent only the easily quantifiable costs associated with poor juror utilization. Other costs that cannot be measured in monetary terms are the lost opportunity costs for jurors who are not employed and who would otherwise be engaged in activities other than jury service (childcare, volunteer activities, education, recreation) as well as substantially reduced public trust and confidence in the courts by those individuals who did not enjoy the meaningful participation in the justice system of their peers who were impaneled, challenged or excused. Although not easily quantifiable, courts should not discount or ignore the existence of these costs.

Based on these estimates, it is possible to calculate the fiscal costs associated with under-utilization of jurors in California. Table 2 shows the number of jurors who were not needed for jury selection over and above the NCSC recommended standards (90% of qualified jurors are told to report to the courthouse for jury service, 90% of jurors who report to the courthouse are sent to a courtroom for jury selection, 90% of jurors sent to a courtroom are questioned and either sworn as a trial juror or alternate, removed for cause or by peremptory challenges, or excused for hardship) for the fiscal year ending June 30, 2008. Based on reports submitted by the superior courts, a total of 1,010,192 jurors were sent to courtrooms for jury selection in 2007.¹² However, based on the number of jury trials conducted in fiscal year 2007-08 and the statewide average panel sizes reported in Table 1, the superior courts should have only needed 631,705 to 705,505 jurors to select juries for these trials.¹³ As a result, between 304,687 and 378,487 excess jurors were assigned to panels above and beyond the NCSC estimates of jurors needed. The costs incurred by the courts are estimated at \$8.2 million to \$8.9 million just for excess jurors assigned to jury panels.¹⁴ The corresponding costs incurred by jurors and their employers are estimated at \$145 million to \$180 million.

¹² Based on statewide data collected by the AOC in the Annual Jury Data Report for 2008.

¹³ JUDICIAL COUNCIL OF CALIFORNIA, 2009 COURT STATISTICS REPORT 46 (Superior Courts Table 3: Jury Trials by Type of Proceeding, Fiscal Years 1998-99 Through 2007-2008). Table 2 does not distinguish between serious felony trials requiring 20 peremptory challenges per side and less serious felony trials requiring 10 peremptory challenges per side. For the purposes of the estimates in Table 2, the lower range of jurors needed for panels assumes that half of the felony trials were serious felonies requiring a panel of 73 jurors and half were less serious felonies requiring a panel of 48 jurors. The upper range of jurors assumes that all felony trials required a panel of 73 jurors.

¹⁴ Court costs are based on \$11.13 administrative cost per qualified juror plus \$10.43 per juror reporting for juror fees and mileage reimbursement. Although jurors are not paid fees or mileage for the first day, voir dire in the California superior courts often extends into the second and subsequent days. By definition, “unused jurors” are those who were not reached by the end of the jury selection process.

Table 2: Court and Community Costs Incurred for Unused Jurors (2007-08)

Excessive Panel Size	Jurors Sent to a Courtroom				1,010,192
	NCSC Recommended Standard*	631,705	to		705,505
	Excess Jurors	304,687	to		378,487
	Court cost at \$23.63 per juror qualified and reporting	\$ 7,199,754	to	\$ 8,943,648	
	Community cost at \$713 per employed juror reporting	\$ 144,665,388	to	\$ 179,705,628	
Lack of Trial Certainty	Jurors Completed in Jury Assembly Room				500,729
	NCSC Recommended Standard	70,189	to		78,389
	Excess Jurors	422,340	to		430,540
	Court cost at \$9.80 per juror qualified	\$ 4,138,928	to	\$ 4,219,288	
	Community cost at \$713 per employed juror reporting	\$ 200,526,821	to	\$ 204,420,181	
Over- Summoning	Jurors Summoned and Qualified				4,070,350
	NCSC Recommended Standard	779,882	to		870,993
	Excess Jurors	3,199,357	to		3,290,468
	Court cost at \$9.80 per juror qualified	\$ 35,608,838	to	\$ 36,622,904	
	Total Court Costs Incurred	\$ 46,947,520	to	\$ 49,785,839	
	Total Community Costs Incurred	\$ 345,192,209	to	\$ 384,125,809	

* Based on recommended panel sizes from Table 1 and number of jury trials by case type in 2007-08

In addition to excessive panel sizes, Table 2 illustrates the extent to which under-utilization of jurors occurs upstream from jury selection in the courtrooms. The NCSC recommends that 10 percent or fewer of the jurors reporting to the courthouse be left in the Jury Assembly Room, but approximately 30 percent of the 1.5 million jurors (450,000) who reported to courthouses in 2007 completed jury service in the Jury Assembly Room.¹⁵ According to the NCSC, no more than 80,000 should have done so. The cost in excess jurors that is likely due to having jurors report to courthouses, but ultimately not be assigned to a panel for jury selection is approximately \$4.2 million incurred by the courts and at least \$200 million incurred by jurors and their employers.

Finally, there are the costs incurred due to summoning and qualifying jurors who never report to a courthouse for jury service. Although the costs incurred by jurors and their employers are likely to be negligible,¹⁶ the courts still incur substantial expenses for printing, postage, and staff processing, which is estimated at \$9.80 per juror summoned and qualified for service. During the 2007 calendar year, the superior courts summoned and qualified approximately 4 million jurors, but only had 1.5 million report for service; the remaining 2.5 million jurors completed jury service on telephone standby or otherwise were told not to report for service.¹⁷ Again, based on NCSC recommendations, the superior courts could

¹⁵ See *supra* note 27.

¹⁶ Undoubtedly, some jurors and their employers experience inconvenience and possibly some minor costs in making themselves available for jury service, even if they did not ultimately have to report for service.

¹⁷ Jurors can fulfill their jury by appearing in person for jury service for a maximum of one day or one trial, or by being assigned to on-call status for up to one day, or being assigned to standby status for up to 5 days. FACT SHEET:

have summoned and qualified approximately 870,000 jurors statewide to satisfy the trial courts' demand for jurors. The administrative costs incurred in summoning and qualifying these jurors was approximately \$36 million. The total costs for under-utilization of jurors by the superior courts during this period were approximately \$50 million and more than \$340 million incurred by jurors and their employers. These estimates excludes costs incurred by jurors who were placed on telephone standby, but never reported to a courthouse for service, but rescheduled routines or canceled plans or appointments in anticipation of service.

Panel Size Reduction Study: Program Goals, Data and Methods

A significant focus of this assessment of juror utilization is the Panel Size Reduction Study implemented by the Joint Working Group on Jury Administration. The impetus for the study was to identify strategies to reduce the waste from unused jurors on jury panels, both as a courtesy to prospective jurors and to conserve valuable court resources. A total of eight superior courts participated in the pilot study: Fresno, Los Angeles, Napa, Riverside, San Joaquin, Santa Clara, Shasta and Siskiyou. Collectively, these eight superior courts reflect the geographic, operational, and cultural diversity of superior courts in California. In recognition of this diversity, the Working Group rejected a “cookie cutter” approach and did not seek to establish a single optimal panel size for all superior courts. Rather, the intent was for each of the participating pilot courts to develop, implement, and adhere to their own panel size guidelines that would significantly reduce the number of unused jurors on panels in those courts and to increase judicial confidence that it is possible to impanel juries from smaller panels. The duration of the formal panel size reduction study was October 1, 2009 through April 30, 2010. Of course, if the study revealed substantial improvements in juror utilization, the participating courts were encouraged to extend the program indefinitely and to expand the scope to as many trials judges in those courts as possible.

Four of the participating courts (Los Angeles, Napa, Riverside, and Santa Clara)¹⁸ had existing standard panel size guidelines. In these courts, the primary goal was to assess whether those guidelines were adequate and to adhere more closely to those guidelines. In the remaining pilot courts, the NCSC developed recommended panel sizes based on historical juror usage for different case types and trial length.¹⁹ These courts either adopted the NCSC guidelines as recommended or made adjustments in response to comments and concerns by judges in those courts. Table 3 describes the panel size

ONE DAY OR ONE TRIAL JURY SERVICE (March 2010). In 2008, the California superior courts summoned and qualified 4,070,350 prospective jurors, but only 1,510,921 completed their jury service in person. Note that the number of jurors summoned and qualified does not include jurors who failed to respond to a qualification questionnaire or who failed to appear for jury service.

¹⁸ As of March 2006, Santa Clara's Jury Standards Committee recommended jury panel size guidelines which stated, misdemeanor 40, felony 60, serious felony 80, civil limited 35, civil unlimited 50, and no guidelines for complex civil and criminal. See generally: Superior Court of California, County of Santa Clara, *Jury Guidelines and Policies & Jury Panel Information*, June 26, 2009.

¹⁹ To develop its recommendations, the NCSC analyzed juror usage by case type and estimated trial length for each of the participating courts. In general, the recommendations reflect panel sizes sufficient to accommodate juror usage for 90% of the trials of each case type.

guidelines adopted by each of the participating courts. Each of the participating courts recruited several trial court judges for the study, asking them to adhere as closely as possible to the panel size guidelines from October 1, 2009 through April 30, 2010, to provide supplemental information about the trials they conducted during the study period, and to participate in a mid-term focus group to discuss interim study findings.

Table 3: Panel Size Guidelines Adopted by Participating Superior Courts			
Case Type or Trial Length	Panel Size	Case Type or Trial Length	Panel Size
Fresno County		San Joaquin County	
Felony*		Felony	
1-2 days	35	1-5 days	60
3-5 days	50	6-10 days	85
6-10 days	65	11-19 days	125
11-20 days	70	20+ days	200
* Add 5-10 jurors if cases involves first-degree murder or sex offenses. Disregard panel size guidelines if anticipated trial length is more than 20 days.		Misdemeanor	
Misdemeanor**		1-5 days	45
1-2 days	35	6-10 days	70
3-5 days	40	Santa Clara County	
** Add 5-10 jurors if anticipated trial length is more than 6 days.		Homicide	140
Civil***		Felony - DV, Sex offenses	100
1-5 days	30	Felony - Offense against a child	130
6-10 days	50	Felony - Other	75
11+ days	60	DUI- Misdemeanor & Felony	55
*** Add 5-10 jurors if case involves employment related claims or if anticipated trial length is more than 11 days.		Misdemeanor - DV	65
Traffic	35	Misdemeanor - Other	50
Los Angeles County†		Civil - 9 days or less	50
1-5 days	30	Civil - 10 days or more	90
6-10 days	35	Shasta County	
11+ days	n/a	Felony	45
Napa County†		Misdemeanor	31
Felony	40	Civil	44
Misdemeanor	35	Other	45
Civil	35	Siskiyou County	
Riverside County†		Felony	75
Felony		Misdemeanor	50
Exceptional	As needed	Civil	48
Serious	50-75		
Routine	35-50		
Misdemeanor	30-45		
Civil			
1-4 days	30-40		
5-10 days	40-50		
11+ days	50-60		
† Denotes Existing Panel Size Guidelines			

Court administrators and jury managers can review their own data (see sample report in Figure 2) and use the “Panel Size Worksheet” (see Appendix B) for determining optimal panel size for their own courts. For a further discussion on how to determine optimal panel sizes for your court, also see “Best Practices on Panel Size” (Appendix C). Figure 1, for example, shows data from an illustrative list of civil trials. The cases are in ascending order based on the number of jurors used, shown in the next to last column on the right. Also shown in the table are the estimated trial length, the panel size (that is, the number of jurors actually sent to the courtroom), and the case number and trial dates. In this example, the panel size at the 90th percentile is 95 jurors,²⁰ but by visually inspecting the data it is obvious that that number is skewed by the two cases at the bottom of the list that required 108 and 187 jurors, respectively. Presumably these were extraordinary cases, which the trial judge knew well in advance of trial would require larger jury panels to impanel the jury. A visual review of the data shows that a standard panel size of 65 would be more than sufficient to accommodate the vast majority of cases. If the extraordinary cases are excluded from the calculation altogether the panel size at the 90th percentile would be 60 jurors.

Figure 1: Determining Optimal Panel Size

Case Number/Name	Panel Size Sent	Estimated Trial Length	Number Jurors Used	% Jurors Unused	If red, required panel size is larger than recommended
BAF5153	55	1	33	40.0%	●
BAF5212	79	4	36	54.4%	●
BAF5302	44	8	39	11.4%	●
BAF5200	65	5	42	35.4%	●
BAF5286	65	15	42	35.4%	●
BAF5427	55	5	42	23.6%	●
BAF5090	99	10	46	53.5%	●
BAF5200	100	4	50	50.0%	●
BAF3938	70	9	53	24.3%	●
BAF5153	55	8	55	0.0%	●
BAF4935	114	16	60	47.4%	●
BAF4710	67	14	64	4.5%	●
BAF4935	131	15	108	17.6%	●
BAF5296	250	1	187	25.2%	●

Optimal Panel Size

²⁰ Because there are only 14 cases on the list, which are not evenly divisible by 10, the 90th percentile does not fall precisely on one of the cases. Rather, it falls between the two cases in which 64 and 108 jurors were used, respectively. Precisely where between the two numbers the percentile falls is based on a weighted average of all of the numbers in the range.

To evaluate the impact of the study, the NCSC used several primary sources of information. To establish baseline measures of panel utilization, the NCSC project staff reviewed 2008 statistics for the Superior Courts of Fresno, Napa, San Joaquin, Shasta, and Siskiyou Counties. These were compiled by Steve Bouch, then the Court Executive Officer for the Superior Court of Napa County and a member of the Working Group. The NCSC also reviewed statewide jury yield, juror utilization, and jury operations cost data compiled by the Administrative Office of the Courts. Finally, Paula Hannaford-Agor and Nicole Waters of the NCSC joined Kristin Greenaway and Ayanna Cage of the Administrative Office of the Courts on a series of site visits to the participating pilot courts from September 28 through October 8, 2009.²¹ During the site visits, the NCSC/AOC teams interviewed judges and court executive officers and collected baseline data from the Superior Courts in Los Angeles, Riverside, and Santa Clara counties as well as supplemental data about juror utilization in each of the participating courts. During the site visits, they also met with the trial judges who had agreed to participate in the study to explain the study requirements and protocols and to answer questions about the study.

The Bouch dataset revealed significant differences among the pilot courts with respect to panel size and juror utilization across all case types. Table 4 details the number of trials for each case type in which a jury was sworn,²² the average panel size for the respective case types, and the average number and percentage of jurors used (e.g., sworn, excused for cause or hardship, or removed by peremptory challenge) during the 2008 calendar year. For felony trials, average panel sizes range from 56 jurors (Napa) to 116 jurors (San Joaquin, non-capital felony trials only) while the average number of jurors used ranges from 38 (Napa and Shasta) to 86 (San Joaquin, non-capital felony trials only). The percentage of jurors used for felony panels ranged from 61% (Fresno and Shasta) to 76% (Riverside) compared to the NCSC recommended utilization standard of 90% or more. Misdemeanor and civil cases showed similar variation across sites.

²¹ The teams were designed so that one NCSC representative accompanied one AOC representative. Paula Hannaford-Agor and Ayanna Cage visited the four southernmost counties and Nicole Waters and Kristin Greenaway traveled along the northern route.

²² Table 4 includes only trials in which a jury was sworn; cases in which a jury panel was sent to a courtroom, but jury selection was discontinued before the jury was sworn, are excluded from these analyses.

Table 4: Panel Utilization for Pilot Courts (2008)

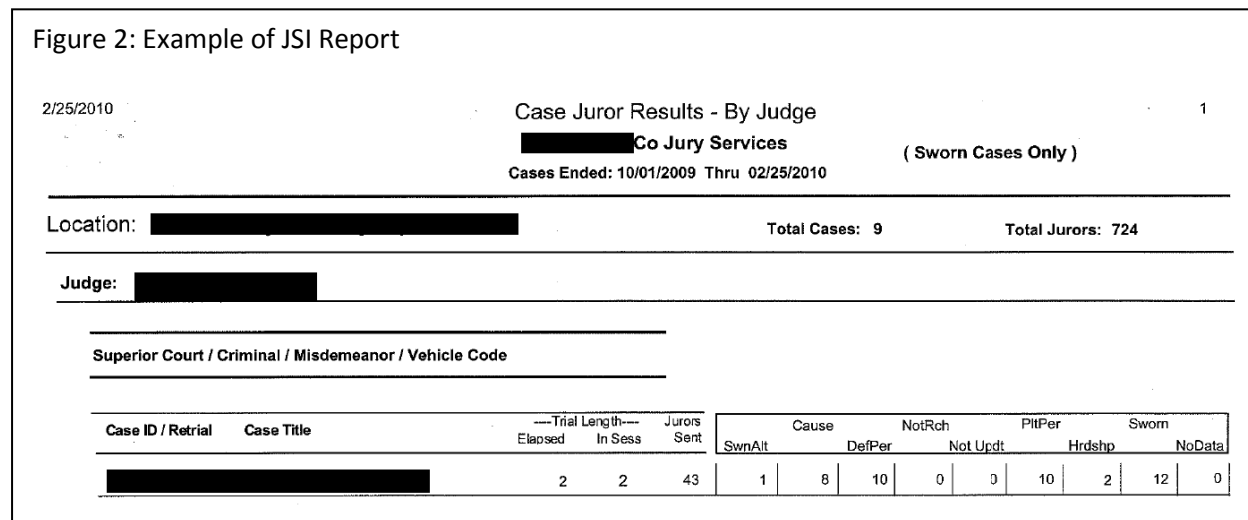
Court / Case Type	# Trials	Average Panel Size	Average # Jurors Used	Average % Jurors Unused
Fresno				
Felony	133	69	42	39%
Misdemeanor	44	47	30	36%
Civil	46	57	32	44%
Other	5	41	25	39%
TOTAL	228	62	37	40%
Los Angeles				
Felony	1,946	60	44	27%
Misdemeanor	1,449	42	31	26%
Civil	917	47	35	26%
Other	17	62	41	34%
TOTAL	4,329	51	38	25%
Napa				
Felony	19	56	38	32%
Misdemeanor	37	41	26	37%
Other	4	45	28	38%
TOTAL	60	46	30	35%
Riverside				
Felony	871	89	68	24%
Misdemeanor	72	65	44	32%
Civil	101	119	90	24%
TOTAL	1,044	90	68	24%
San Joaquin				
Felony	71	152	121	20%
Misdemeanor	59	63	43	32%
Other	4	66	35	47%
TOTAL	134	110	84	24%
Santa Clara				
Felony	143	93	69	26%
Misdemeanor	93	54	39	28%
Civil	53	63	48	24%
TOTAL	289	75	55	26%
Shasta				
Felony	77	62	38	39%
Misdemeanor	11	51	30	41%
Civil	8	61	37	39%
Other (TR)	17	53	37	30%
TOTAL	113	60	37	38%
Siskiyou				
Felony	5	89	66	26%
Misdemeanor	3	60	26	57%
Civil	4	51	33	35%
Other	7	62	30	52%
TOTAL	19	66	39	41%

Table 5 shows the anticipated impact of the pilot courts’ respective panel size guidelines had they been applied to the 2008 caseload in those courts. Only “eligible” trials were included in the table, which means that a jury was sworn during the pilot study period and applicable guidelines exist for the trials. Because a principal objective of the study was for the pilot courts to implement and adhere to their respective courts’ panel size guidelines, these “compliance” rates serve as the primary baseline measure for the purpose of the evaluation. Overall, approximately 1 in 5 (21%) of the jury trials conducted by the pilot courts requested jury panels that would have complied with the courts’ respective panel size guidelines, although a clear majority (60%) of the juries *could have been impaneled* had the guidelines been followed. For the sake of brevity, and some levity, these cases are referred to as the “could’a, should’a” cases—that is, the juries could have been impaneled based on the guidelines, and thus judges should have adhered to the guidelines. Hypothetically, 100% compliance with the panel guidelines would have reduced the number of jurors sent to courtroom by 25,767 (7% of the total jurors sent to courtrooms). Based on the previous statewide average cost of \$23.63 per juror reporting, this reduction would have saved California \$608,874.

Table 5: Hypothetical Panel Size Compliance (2008)

Court	Trials Eligible for Guidelines	Panels Sent w/in Guidelines		Panels that Could Have Met Guidelines		Potential Jurors Saved	
		N	%	N	%	N	%
Fresno	256	99	39	235	92	2,657	19
Los Angeles	3,913	584	15	2,098	54	15,674	7
Napa	60	22	37	55	92	353	13
Riverside	763	295	39	541	71	3,903	4
San Joaquin	130	26	20	77	59	843	6
Santa Clara	288	104	36	230	80	1,266	6
Shasta	113	7	6	95	84	980	15
Siskiyou	12	5	42	11	92	81	6
Total	5,535	1,142	21	3,342	60	25,757	7

The data used to assess the impact of the panel size reduction efforts came from two sources: reports generated by *Jury+Next Generation*, the jury automation system employed by all but one of the pilot courts,²³ that documented juror utilization for trials conducted by the participating judges; and a supplemental data sheet which each participating judge was asked to complete for each trial. The automated reports provided case-by-case details concerning the number of jurors sent for each trial, the estimated trial length, the date and time that the panel was sent, and the disposition of jurors. See Figure 3.



The supplemental data sheet provided additional information about the case and the jury selection process that is not routinely captured in the jury automation system but might provide information about the panel size request and subsequent utilization statistics. See Appendix A. Each of the participating judges was asked to complete the supplemental data sheet for every case tried during the pilot study timeframe. The supplemental data sheets were then collected by the Jury Services Manager for each court and forwarded to the Administrative Office of the Courts for data entry.

A series of webinar meetings were conducted in March, 2010 with judges and jury staff from the participating courts to present interim findings based on data collected from October 1, 2009 through February 15, 2010. The discussions concerning those findings were used to interpret the initial findings and solicit feedback from the judges about their experience with the pilot program. Because each of the pilot courts adopted different panel size guidelines and had different numbers of trial judges participating in the study, the evaluation findings are presented on a court-by-court basis, rather than on an aggregate or comparative basis. Following the court-by-court findings is a discussion of common problems and lessons learned from the study.

²³ The Superior Court of Los Angeles County uses a customized jury automation system that is based on the original *Jury+* system developed by Jury Systems, Incorporated.

Evaluation Findings

In the following section, we compare the 2008 calendar year baseline data with the data collected during the pilot project time period (October 2009- April 2010). The pilot project time period covers seven months, with typically only a portion of the bench participating. Thus, caution is advised when interpreting small numbers of panels, and in some counties, the caseload variations that are possible when limiting the pilot data to a proportion of the trial court bench. In the Riverside County Superior Court, for example, only 3 judges out of more than 100 trial judges participated in the pilot program and these judges do not necessarily reflect the jury selection practices of their judicial colleagues. Moreover, 2 of the 3 participating judges in Riverside were assigned primarily to civil calendars, although more than 90% of the Riverside jury trial caseload consists of criminal trials, making it difficult to make conclusions about the appropriateness of the panel guidelines for all criminal trials. In lower volume courts, such as Shasta and Siskiyou, the impact of one or more extraordinary cases (e.g., high profile or extremely lengthy) may distort either the baseline or the pilot project statistics. Finally, the ongoing economic crisis that began in late 2008 may have also affected panel usage in the pilot study, particularly with respect to the number of jurors excused for hardship.

For each county, the following data were collected:

Table 6: Data Presented for Participating Counties

	Definition
Total Trials	All trials during the specified time period
<i>Eligible</i>	Jury sworn, guidelines available, presided over by participating judge
<i>Met Guidelines</i>	Panel sent to courtroom was within guidelines
<i>Could'a Should'a</i>	Trial judge could have impaneled a jury within guidelines, but a larger panel was sent to the courtroom
<i>Exceeded</i>	Trials that required more than the guidelines specified to impanel a jury

Using these data, the compliance data from each site is compared between the two time periods (“baseline ’08” vs. “pilot study”). Recall, compliance is the rate at which panels met, or for the 2008 baseline data, would have hypothetically met the panel guidelines set for each county. Each section reports the compliance rates (met the guidelines), along with the *coulda’ shoulda’* rates for all trials in which the guidelines would have been sufficient to impanel a jury. For some trials, juries could not be impaneled within the guidelines due to unusual circumstances such as high profile trials, extremely lengthy trials, unusual circumstances such as multiple defendants, etc. As a general matter, panel size guidelines are not intended to be sufficient for all trials, but rather for routine trials. To present a more accurate picture of each court’s ability to adhere to its own guidelines, these exceptional trials are excluded from the guideline compliance analyses, but the number of such trials for each court is footnoted in Figures 4-11. Only trials in which the jury could have been impaneled within the guidelines are shown in the figures.

As a general matter, panel size guidelines are not intended to be sufficient for all trials, but rather just for “normal” trials.

Fresno County

The panel size guidelines adopted by the Superior Court of Fresno County were among the most complex, with differing guidelines based on case type, anticipated trial length, and allowances for additional jurors per panel for certain types of criminal offenses (homicide, sex offenses) and civil claims (employment). Felony cases with an anticipated trial length exceeding 20 days, and civil cases with an anticipated trial length exceeding 11 days were not subject to the panel size guidelines. A total of six of superior court judges participated in the pilot program and collectively tried 36 jury trials of which 22 juries could have been impaneled using the panel size guidelines. Figure 4 illustrates the percent in compliance of those trials for which the guidelines were sufficient. An additional 14 cases required more jurors than could be accommodated by the panel guidelines.

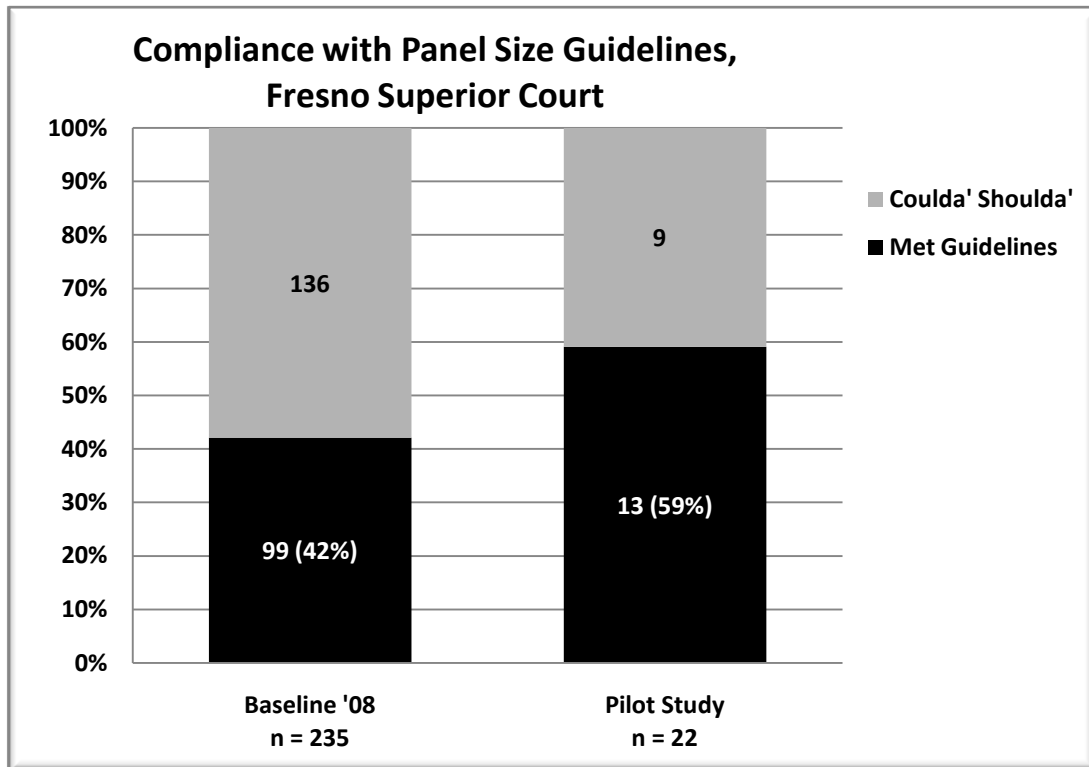


Figure 4: Superior Court of California, County of Fresno.

Exceeded guidelines: 2008 8% (21 cases), Pilot 39% (14 cases), excluded from the Figure.

Had the panel size guidelines been in place in 2008, the Fresno County Court would have been in compliance with those guidelines in 42% (99 of 235) of the trials and could have impaneled juries within the panel size guidelines in another 136 cases. The guidelines would have been insufficient to satisfy the demand for jurors in only 21 of a total of 256 cases in 2008 (see “Exceeded guidelines” listed below Figure 4). The guidelines would have been sufficient to impanel juries in a total of 92% (235 of 256) of the trials conducted that year.

Fresno’s compliance rate of 59% during the pilot program was an improvement over that of 2008. Some of the difficulty comparing the two time periods was related to a difference in the caseload composition from 2008 to the pilot program. The baseline data, which captured all jury trials in 2008, reflects 58% felonies, 18% civil, and 22% misdemeanor trials. Whereas, the pilot study caseload consists of 61% felony and 31% civil trials, and 8% misdemeanor trials. The panel size guidelines were developed based on historical utilization practices in 2008 and would have been sufficient to impanel juries for more than 90% of the trials conducted that year. During the pilot program, however, the guidelines would have accommodated only 61% of the trials. During the site visit on October 7-8, 2009, several of the judges commented that the impact of the economic crisis was extraordinarily severe in Fresno County, causing widespread unemployment and forcing judges to excuse many more jurors for financial hardship than previously. The supplemental data collection efforts during the pilot study were not completed by all of the participating judges. Using the available data, judges often (in 4 of 5 cases) ran short of jurors in the 1 to 5 day civil cases, but only by a few jurors. This suggests that increasing the panel size for the short civil trials may be warranted.

Looking more closely at the actual panel sizes and numbers of jurors used and unused tends to confirm the perception of more jurors needed for all trial types. In the felony trials, for example, the average panel size (69 jurors) did not change from 2008 to the pilot test period, but the number of jurors used increased from 42 to 54. There were similar trends for misdemeanor and civil trials. The size of misdemeanor panels decreased from 47 to 39 jurors, but the average number of jurors used increased from 30 to 33. The size of civil panels actually increased from 57 to 59, and the average number of jurors used increased from 32 to 49. The net effect presents an interesting picture about the impact of the panel size guidelines in the Fresno Superior Court. The proportion of unused jurors decreased by half (40% in 2008 to 20% in the pilot program), but the potential impact on the total number of jurors sent to courtrooms for jury selection was a more modest 2% decrease overall. See Table 5. This may reflect differences in jury selection practices by the participating judges as compared to their peers, in the types of trials that were included in the pilot program, in demographic and socioeconomic characteristics of the jury pool itself, or any combination of these factors.

Case Type	# Trials		Average Panel Size		Average # Jurors Used		% Panel Unused		Potential Annual Decrease in Jurors to Courtrooms	
	2008	Pilot	2008	Pilot	2008	Pilot	2008	Pilot	#	%
Felony	133	22	69	69	42	54	39%	22%	0	2%
Misdemeanor	44	3	47	39	30	33	36%	15%	352	
Civil	46	11	57	59	32	49	44%	17%	-92	
Other	5	n/a	41	n/a	25	n/a	39%	n/a		
TOTAL	228	36	62	63	37	51	40%	20%	260	

Los Angeles County

The Superior Court Los Angeles County adopted panel size guidelines several years ago for cases with anticipated trial lengths of 10 days or less. According to the guidelines, trials lasting 1 to 5 days should receive a 30-person panel and trials lasting 6 to 10 days should receive a 35-person panel. Compared to guidelines adopted by the other pilot courts, the Los Angeles County Court guidelines are stricter than most of the other courts participating in the pilot program. Monthly reports are provided to the presiding judges of each of the court locations within the Los Angeles Superior Court. In 2008, approximately 92% of the sworn juries in Los Angeles were subject to the guidelines; 8% of the trials in which a jury was sworn were anticipated to last more than 10 days. Seventeen trial judges in eight different court locations in the Los Angeles County Court participated in the pilot program, the most of any of the pilot courts. Collectively, they tried 108 cases of which 80 were subject to the guidelines. Of those, 40% (32 cases) ultimately required more jurors than could be accommodated by the guidelines and were excluded from the analyses. The remaining 28 trials, which had anticipated trial lengths greater than 10 days, are also excluded from the analyses.

Overall, the pilot program judges in Los Angeles were remarkably successful. Compared to 2008, during which the compliance rate was 28%, the pilot judges nearly doubled the compliance rate to an average of 47% (46% for 1 to 5-day cases, and 50% for 6 to 10-day cases). During the interim March 2010 WebEx meeting, the Los Angeles judges indicated that they experienced only a few instances in which they felt they were likely to run out of jurors, but none actually did. A handful of judges expressed concern over calling a supplemental panel and these data revealed requests for larger panel sizes during the pilot study for those judges. While attorneys rarely use all statutorily available peremptory challenges, a few judges anticipated this possibility as a rationale for calling a larger panel. But in every case, the attorneys appeared satisfied with the seated jurors and were willing to forego any remaining peremptory challenges. Only two cases in the pilot study time period required 55 or more jurors to impanel a jury. These two cases were exceptional for applying the guidelines in that the defendant faced murder charges and trial lasted 10 days.

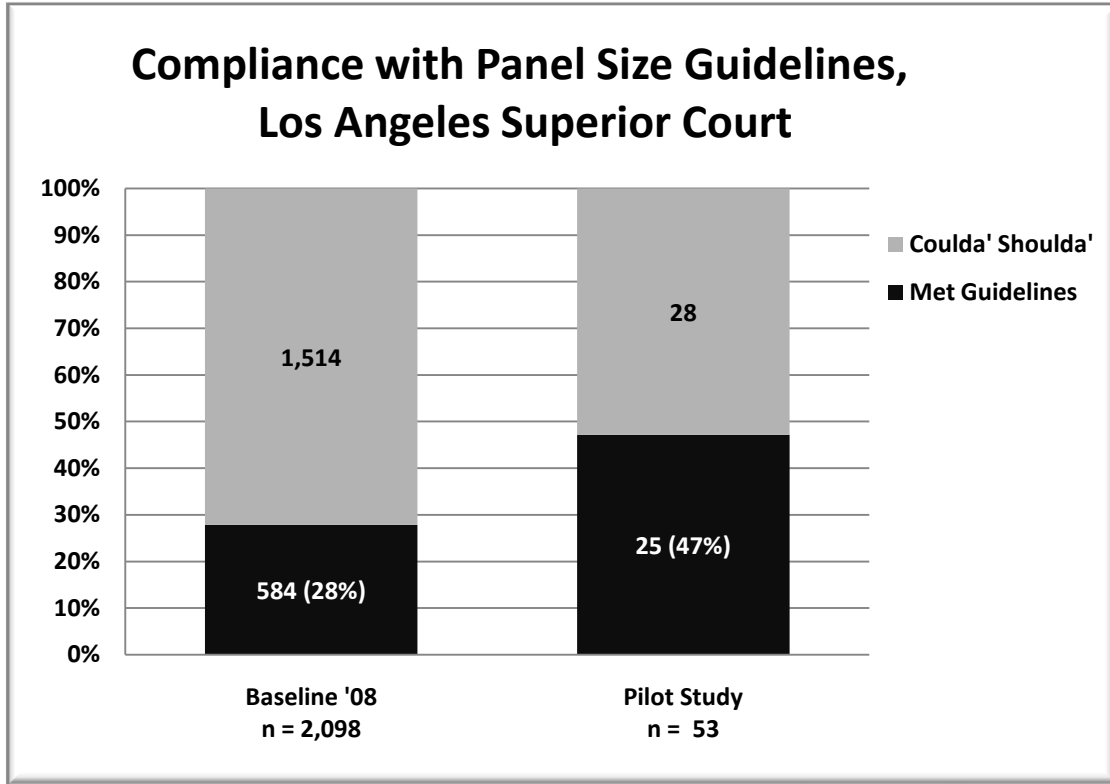


Figure 5: Superior Court of California, County of Los Angeles.

Exceeded guidelines: Baseline 46% (1,815 cases). Pilot 43% (37 cases), excluded from figure.

The potential impact of these changes is quite substantial. Even after taking account of lengthier trials that were not subject to the panel size guidelines, the average panel size decreased from 60 to 50 for felony trials and from 42 to 40 for misdemeanor trials; average panel sizes for civil trials increased slightly from 47 to 49. See Table 6. The average number of jurors used also decreased for all three case types, resulting in an overall decrease in the percentage of unused jurors from 26% to 20%. If this level of performance were replicated on a court-wide basis, the Los Angeles County Superior Court would send more than 20,000 fewer jurors to courtrooms each year (a 9% overall decrease).

Case Type	# Trials		Average Panel Size		Average # Jurors Used		% Panel Unused		Potential Annual Decrease in Jurors to Courtrooms	
	2008	Pilot	2008	Pilot	2008	Pilot	2008	Pilot	#	%
Felony	1,946	43	60	50	44	40	27%	20%	19460	9%
Misdemeanor	1,449	9	42	40	31	28	26%	30%	2898	
Civil	917	39	47	49	35	40	26%	18%	-1834	
Other	17	n/a	62	n/a	41	n/a	34%	n/a		
TOTAL	4,329	91	51	49	38	39	26%	20%	20,524	

NCSC staff noticed one anomaly in the Los Angeles pilot data—namely, that in many of the “*should’a, could’a*” cases in Los Angeles, the supplemental case information sheet indicated that the trial judge originally requested the appropriate number of jurors according to the guidelines, but the number of jurors sent on the panel often exceeded this number. In some instances, there appeared to be confusion on the part of the jury staff as to the guideline recommendations. If so, this would indicate the need for additional training for jury staff. In other cases, especially in some of the lower-volume court locations in Los Angeles, excess jurors were apparently included on the panels to avoid leaving only a handful of jurors idling in the jury assembly room for the remainder of the day. The prevailing sentiment in these situations is that sending excess jurors to join a jury panel is a lesser evil than sending them home without being sent to a courtroom at all. This essentially is the problem faced in many low-volume courts in which variation in the daily yield can make it difficult to anticipate the number of jurors who will appear for service.

Although this is a common problem in smaller courts, the jury trial dynamics in many of the court locations in Los Angeles are more similar to those of Shasta and Siskiyou, in which only one trial may be scheduled for any given day, than to those of the Criminal Justice Center or Stanley Mock Courthouses that summons jurors for dozens of trials per day. Judges serving in these court locations may need to look to the strategies employed in the smaller-volume courts to improve compliance with the Los Angeles panel size guidelines. See “Juror utilization in high-volume versus low-volume courts,” *infra*.

Napa County

The Superior Court of Napa County had panel size guidelines in place before the pilot program began. Its guidelines are remarkably straight-forward, based on case type: 40 jurors for felony trials and 35 jurors each for misdemeanors and civil trials. These guidelines are also comparatively strict compared to those adopted by the other pilot programs.

A total of six Napa County judges participated in the pilot program itself. Although during the pendency of the pilot program, the entire Napa County bench (8 judicial officers) agreed to make the guidelines mandatory for all cases. For the purpose of this evaluation, however, the pilot program trials consist only of those tried by the original participating judges. In 2008, the Napa County Court impaneled 60 criminal juries (19 felony cases, and 41 misdemeanor cases), but civil cases were not included in the baseline data. Overall, the Court achieved a 40% compliance rate for these cases.

During the pilot program, the participating judges tried 15 cases, of which 13 juries either were impaneled or could, have been impaneled using the guidelines (87%). The proportion of cases that could be accommodated by the guidelines was slightly lower than 2008 (92%), but this may be due to the small number of trials in the pilot program sample.

Of those cases for which the guidelines were sufficient, Napa County experienced a modest increase in its compliance rate from 40% to 50%. The compliance rate applied equally to felony and misdemeanor trials. The single civil trial in the sample exceeded the guidelines, which, if included, would have lowered the overall average. Based on feedback from Napa, this civil trial was unusual, lasting two weeks. To make the sample comparable to the 2008 baseline data, the civil case was excluded from the figure.

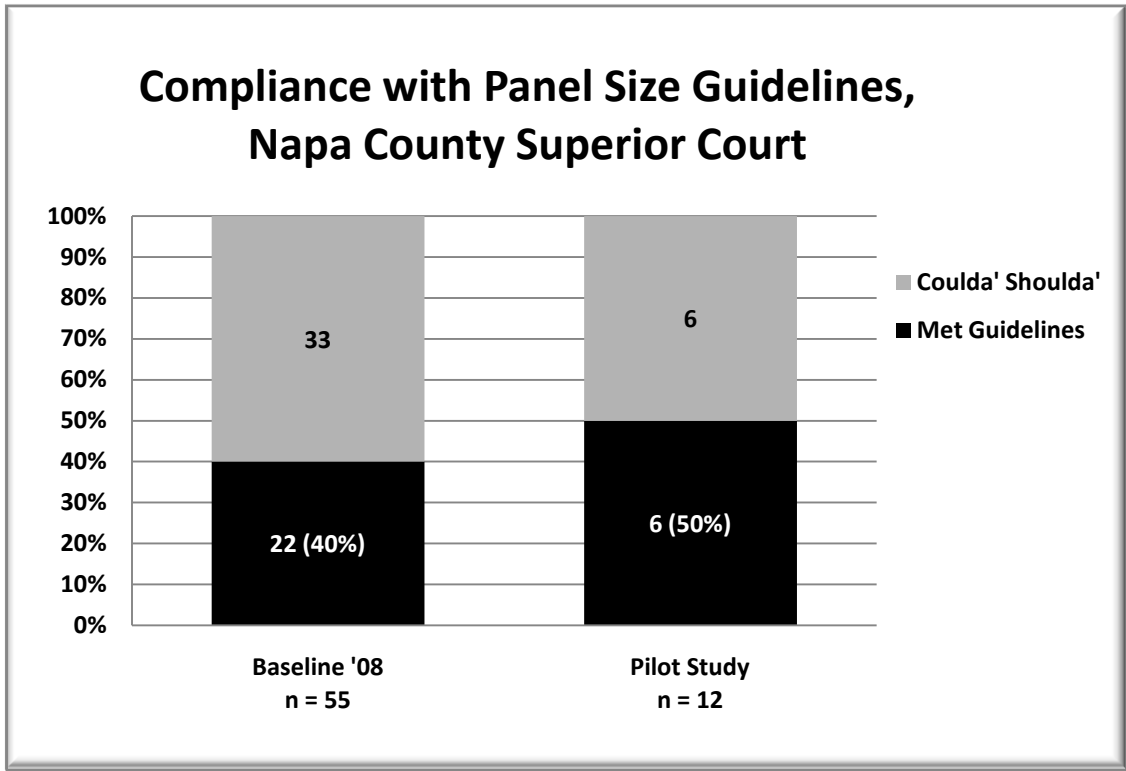


Figure 6: Superior Court of California, County of Napa.

Exceeded guidelines: Baseline 8% (5 cases), Pilot 13% (2 cases) and 1 civil case, excluded from figure.

While overall Napa has remarkably low panel sizes, Mr. Bouch suggests that panel sizes are important, but even more important are the utilization rates. The Napa County judges did experience a modest decrease in the percentage of unused jurors (from 35% to 28%), which if continued for a full year would result in 11% fewer jurors sent to courtrooms for jury selection. See Table 7.

Case Type	# Trials		Average Panel Size		Average # Jurors Used		% Panel Unused		Potential Annual Decrease in Jurors to Courtrooms	
	2008	Pilot	2008	Pilot	2008	Pilot	2008	Pilot	#	%
Felony	19	7	56	46	38	35	32%	24%	190	11%
Misdemeanor	37	7	41	37	26	26	37%	30%	148	
Other	4	1	45	57	28	31	38%	46%	-48	
TOTAL	60	15	46	43	30	31	35%	28%	290	

Riverside County

The Superior Court of Riverside County began its panel reduction efforts in 2007 with panel size guidelines established for criminal trials based on the severity of the offense (exceptional felonies, serious felonies, routine felonies, misdemeanors) and for civil cases based on anticipated length of trial. The Riverside panel size guidelines are unique among the pilot program courts in that they specify an acceptable panel size range rather than a single value. The ranges for criminal cases are 30 to 45 jurors for misdemeanors, 35 to 50 jurors for routine felony trials, 50 to 75 jurors for serious felonies, and “as needed” for exceptional trials, which include high profile, multiple defendant, and cases with unusual evidence or parties. For civil trials, the ranges are 30 to 40 jurors for 1 to 4 day trials, 40 to 50 jurors for 5 to 10-day trials, and 50 to 60 jurors for trials exceeding 10 days. For the purpose of this evaluation, the upper range of each guideline was used as the threshold for compliance. The guidelines are voluntary; judges can request larger panels without seeking prior approval, but greater attention has been paid to the issues of juror utilization since July 2009. Regular reports are provided to the Jury Management Committee and the Executive Committee monitors the percentage of trial panels that exceed recommended size limits and the percentage of juries that could have been impaneled using the recommended panel size limits.

During 2008, Riverside County Court impaneled 1,044 juries, of which 763 were subject to the guidelines. The established guidelines were sufficient to accommodate 71% of the cases tried. Overall 55% of the juries that could have been impaneled under the guidelines were in compliance. As a general matter, felony trials fared better under the guidelines (61% overall compliance) than misdemeanor or civil trials (both 29%).

Three judges, all sitting in different court locations, participated in the pilot program.²⁴ Collectively, they tried 16 cases, all of which were subject to the guidelines. In contrast to the 2008 baseline caseload, of which 60% of the juries were impaneled for felony trials, the pilot program trials overwhelming consisted of civil trials (75%). From a guideline compliance perspective, these judges performed admirably. Two felony juries could not have been impaneled using the guidelines, but of the 14 remaining cases in which juries could have been impaneled, 13 were compliant (93%) with the guidelines. Both of the two remaining criminal trials (1 felony and 1 misdemeanor) were able to impanel juries under the guidelines and the compliance rate for civil cases was 90%, a dramatic improvement over the baseline. Of the two civil trials that exceeded the guidelines unnecessarily, one was a medical malpractice claim with a trial length of 26 days, (in session 14 days). The other civil trial was 17 days (12 in session). The second civil trial exceeded the panel size guideline of 50-60 by only 17 and of the total panel of 77, 54 were excused for hardship.

It is clear that the civil panel size guidelines are more than sufficient to accommodate the needs of the Riverside County Court in nearly all cases. In fact, during the Webex meeting in March, one judge

²⁴ The Riverside sites included the Hawthorne Courthouse, a renovated elementary school that holds trials for civil cases only; Indio, the second highest volume court location within the Superior Court of Riverside County; and the Downtown Riverside courthouse. Only one judge of the three pilot program judges was assigned to a criminal calendar.

opined that the guidelines may be excessively lenient; he would favor reducing all of the civil guidelines to the lower boundary of 30 to 40 jurors, regardless of the anticipated length of trial. Although one participating judge was able to impanel all four juries within the guidelines, the small sample of criminal cases makes it more difficult to assess the guidelines' suitability in Riverside.

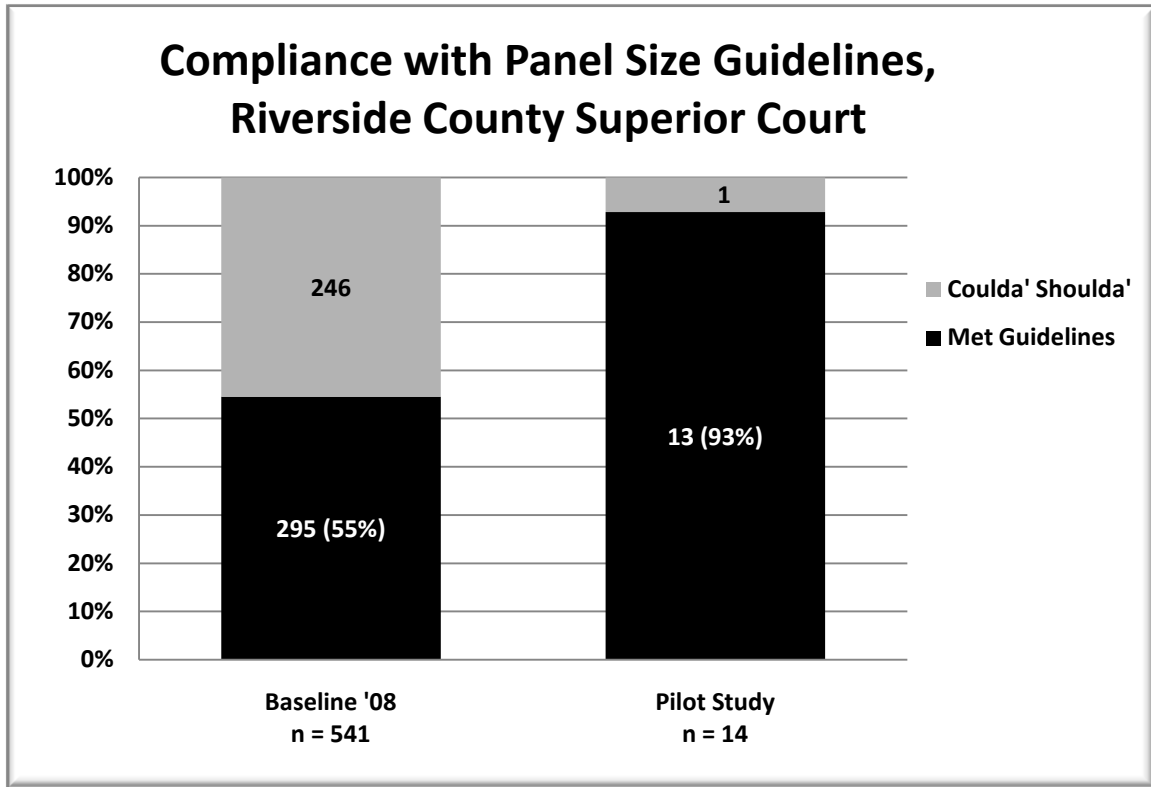


Figure 7: Trial Compliance for the Superior Court of California, County of Riverside.
 Exceeded guidelines: Baseline 29% (222 cases), Pilot 12% (2 cases), excluded from figure.

Table 8 compares the average panel size, average number of jurors used, and percentage of panel unused for the 2008 trials and the pilot program trials. Two of the felony trials conducted during the pilot program were exceptional cases that greatly exceeded the panel size guidelines. Including these in the comparison calculations would have significantly skewed the average panel size and average number of jurors used, so these been omitted from the calculations. It is not prudent to make predictions about the potential impact of the guidelines on annual juror use in criminal trials on the basis of a single felony and a single misdemeanor trial, but enough civil trials were conducted during the pilot program to make some estimates about the potential impact on those cases. Adhering to the guidelines in 90% of the civil trials reduced the average panel size from 199 to 53 jurors, which if extended to all civil trials would decrease the number of jurors sent to courtrooms for civil trials by more than half (12,019 in 2008 versus 5,353 using pilot program guidelines). Because the average number of jurors used decreased commensurately (90 to 40), the percentage of jurors unused did not change appreciably.

Table 8: Panel Utilization for Riverside County Superior Court (2008 Baseline versus Pilot Project)

Case Type	# Trials		Average Panel Size		Average # Jurors Used		% Panel Unused		Potential Annual Decrease in Jurors to Courtrooms	
	2008	Pilot	2008	Pilot	2008	Pilot	2008	Pilot	#	%
Felony	871	1	89	41	68	34	24%	17%	41,808	46%
Misdemeanor	72	1	65	35	44	17	32%	51%	2,160	
Civil	101	12	119	53	90	40	24%	25%	6,666	
TOTAL	1,044	14	90	49	68	46	24%	25%	50,634	

San Joaquin County

The Superior Court of San Joaquin County was one of the more difficult courts for which to make guideline recommendations. Its 2008 trial caseload included a fairly large number of jury panels that would be described as “extraordinary” in any of the other pilot program courts, including one 50-day felony trial that ultimately used 808 jurors out of a panel of 897 to impanel the jury (12 jurors plus 8 alternates). Overall, these cases tended to skew the recommended panel guidelines considerably higher in San Joaquin County compared to the other pilot program courts, particularly in lengthier trials. Ultimately, the NCSC determined that anticipated trial length was the single most determinative factor in predicting juror usage²⁵ and recommended the following guidelines for the pilot program: 60 jurors for 1 to 5-day felonies; 85 juror for 6 to 10-day felonies; 125 jurors for 11 to 19-day felonies; and 200 jurors for felony trials of 20 days or more. For misdemeanor trials, the recommended panel sizes were 45 jurors for 1 to 5-day trials, and 70 jurors for 6 to 10-day trials. Civil trials are not subject to panel size guidelines. Had these recommended panels been in place in 2008, they would have been sufficient to accommodate 59% of the criminal trials conducted that year. For the 77 juries that could have been impaneled under the guidelines, the San Joaquin County Court would have had an overall 34% compliance rate (36% felony and 32% misdemeanor).

Two judges from San Joaquin participated in the pilot program. Collectively they tried 18 cases, of which 12 (67%) could have impaneled juries within the guidelines. The overall compliance rate did not change substantially (33% for both felony and misdemeanor). Eight trials could have been impaneled if the guidelines were followed, but the judges requested larger panels. Had the guidelines been followed in these cases, it would have resulted in a savings of 88 jurors. The low compliance rate in San Joaquin is an indicator that additional training for the judges and jury staff would be beneficial if the court plans to implement the guidelines to the full bench. Of the six trials in which the guidelines were exceeded, three were significantly over the guidelines (in excess of 32, 78, and 88). From the judge’s feedback during the WebEx meetings, these trials were particularly troubling child victim cases. As such, our recommendation is to consider an enhancement in the guidelines to accommodate child victim cases, or other commonly heard but problematic cases for impaneling a jury, such as domestic violence charges.

²⁵ San Joaquin Superior Court has comparatively lengthy trials. The average felony trial, for example, was 10 days compared to 7 days each in Los Angeles and Riverside, both of which have similar caseloads to San Joaquin. Ostensibly, the longer trials result in commensurately more jurors who are excused for hardship.

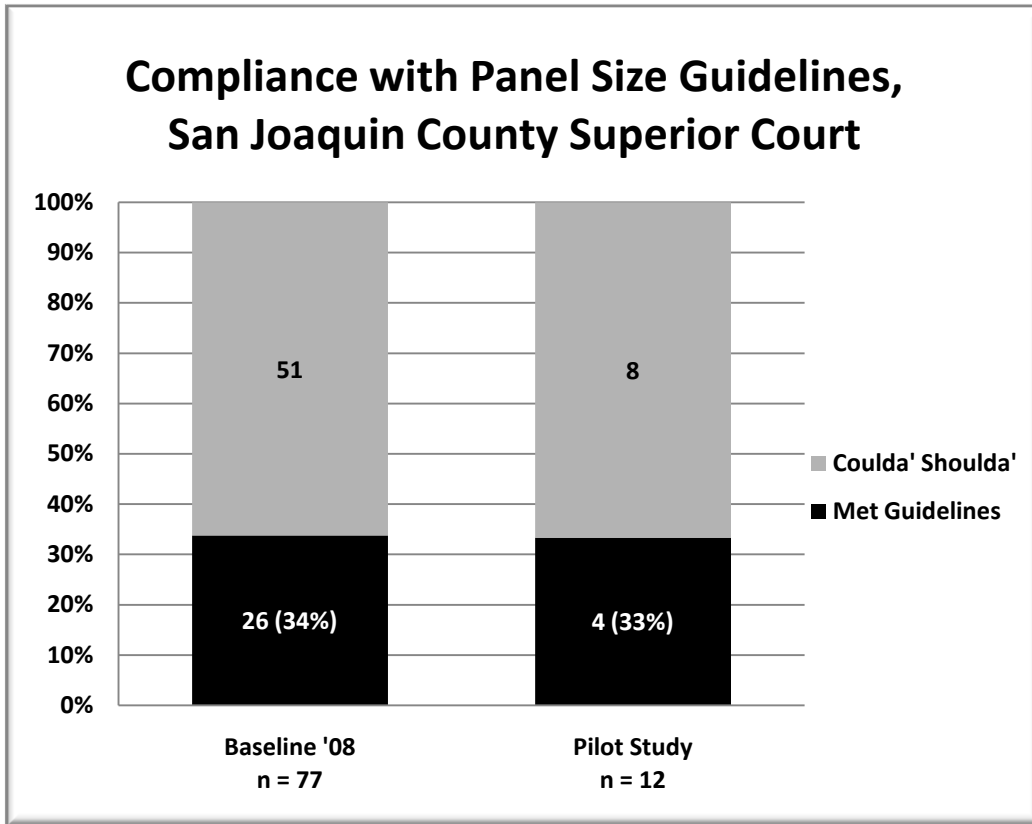


Figure 8: Trial Compliance for the Superior Court of California, San Joaquin.

Exceeded guidelines: Baseline 41% (53 cases), Pilot 33% (6 cases)

In spite of the comparatively low compliance rate, the very existence of the guidelines may have had a moderating impact on sizes of the panels that judges requested. The average panel size decreased from 152 to 132 jurors for felony trials and from 63 to 53 for misdemeanor trials. Simultaneously, however, the average number of jurors used also decreased. Although the percentage of jurors not used decreased from 32% to 28% for misdemeanor trials, the percentage of jurors not used in felony trials actually increased from 20% to 26%. See Table 9. The overall effect, if extended to the rest of the bench, would result in an 18% reduction in the number of jurors sent to courtrooms in the San Joaquin Superior Court each year, but a slight increase (2%) in the number of jurors not used.

Case Type	# Trials		Average Panel Size		Average # Jurors Used		% Panel Unused		Potential Annual Decrease in Jurors to Courtrooms	
	2008	Pilot	2008	Pilot	2008	Pilot	2008	Pilot	#	%
Felony	71	14	152	123	121	91	20%	26%	2059	18%
Misdemeanor	59	4	63	53	43	38	32%	28%	590	
Other	4	n/a	66	n/a	35	n/a	47%	n/a		
TOTAL	134	18	100	107	84	79	24%	26%	2,649	

Santa Clara County

The panel size guidelines adopted by the Superior Court of Santa Clara County were the result of a compromise between the NCSC recommended guidelines based on 2008 panel usage statistics and the preferences of the participating pilot program judges concerning appropriate panel sizes for various types of cases. Panel guidelines adopted by Santa Clara in 2006 were significantly lower than the panel guidelines adopted for this project. The 2006 guidelines suggested panel sizes of 40 for misdemeanor trials, 60 for felony trials, and 80 for serious felonies. Civil trials were divided between limited (35 jurors) and unlimited (50 jurors). Complex criminal and civil did not follow a set of guidelines, leaving panel sizes to the trial judge's discretion.²⁶

Panel guidelines ultimately adopted for this pilot project in Santa Clara provided much larger panels: for felonies involving homicide (140 jurors), domestic violence and sex offenses (100 jurors), offenses against children (130 jurors), and all other felony (75 jurors). Misdemeanor panel sizes ranged from 50 to 65, depending on the offense, and civil panel sizes ranged from 50 to 90, depending on anticipated trial length. Had these guidelines been in effect in 2008, they would have been sufficient to accommodate jury selection in 87% of the court's jury trial caseload (290 cases). Of the 246 cases in which the guidelines were sufficient, the court would have hypothetically met the guidelines and successfully impaneled a jury in 176 cases (72% compliance). Compliance with felony panels would have been the most successful (82%), followed by civil panel compliance (73%) and misdemeanor panel compliance (60%).

²⁶The 2006 guidelines for Santa Clara identified civil trials as unlimited or limited jurisdiction cases in reference to the former jurisdictional threshold for the superior courts (amount in controversy \$25,000 or greater) and the municipal courts (amount in controversy less than \$25,000).

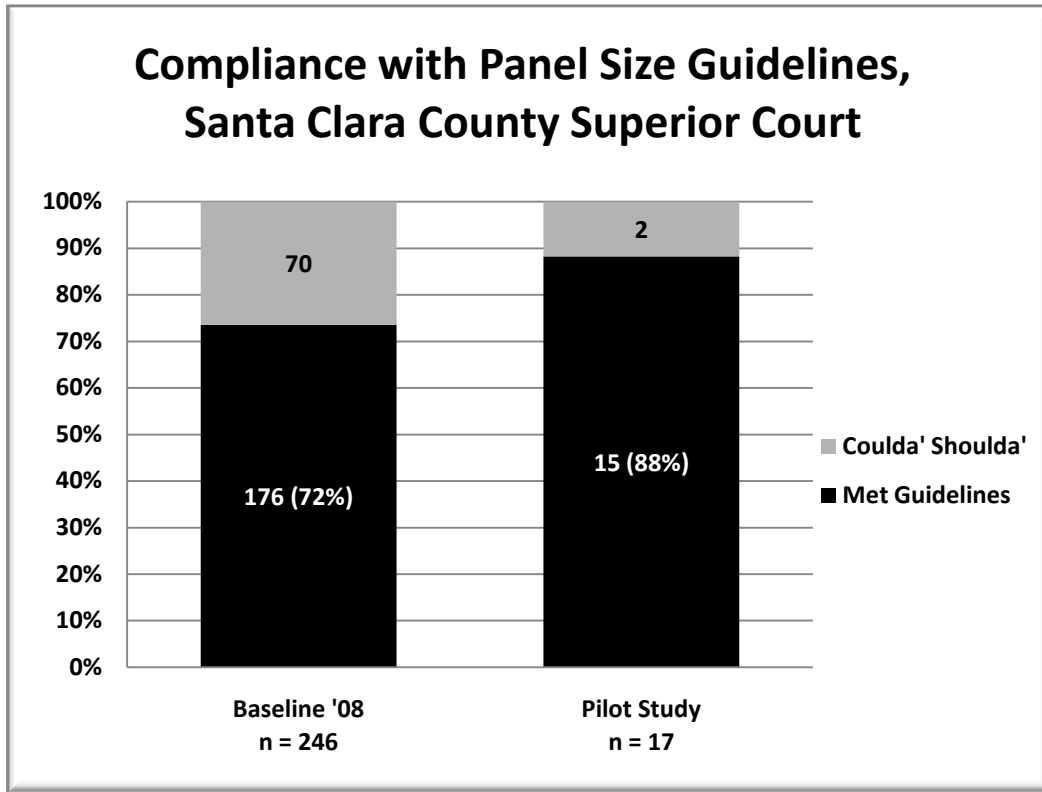


Figure 9: Trial Compliance for the Superior Court of California, County of Santa Clara.
Exceeded guidelines: Baseline 15% (44 cases), Pilot 6% (1 case), excluded from figure.

Three judges participated in the pilot project in Santa Clara. During the course of the pilot program, participating judges in Santa Clara conducted 18 trials, of which the juries for 17 could have been impaneled under the guidelines (94%). The impact of the guidelines present a mixed picture overall. Judges' compliance with the pilot program guidelines was admirable. Overall they achieved 88% compliance with the panel guidelines including 100% of the felony cases and 80% each of the misdemeanor and civil trials compared to the 72% compliance rate that would have been achieved had these guidelines been in place in 2008. Although the compliance rate is high, the number of unused jurors in those 19 trials was 319, which indicates that the panel size guidelines may be unnecessarily high for impaneling juries. In fact, the percentage of unused jurors for all trial types actually increased from 26% in 2008 to 31% during the pilot program. In light of these numbers, Santa Clara should revisit the earlier guidelines set in 2006 and consider reducing panel sizes for implementation to the full bench.

Table 10: Panel Utilization for Santa Clara County Superior Court (2008 Baseline versus Pilot Project)

Case Type	# Trials		Average Panel Size		Average # Jurors Used		% Panel Unused		Potential Annual Decrease in Jurors to Courtrooms	
	2008	Pilot	2008	Pilot	2008	Pilot	2008	Pilot	#	%
Felony	143	3	93	62	69	44	26%	29%	4433	22%
Misdemeanor	93	10	54	59	39	41	28%	31%	-465	
Other	53	5	63	50	48	34	24%	32%	689	
TOTAL	289	18	75	57	55	40	26%	31%	4,657	

Shasta County

The guidelines adopted by the Superior Court of Shasta County were among the more stringent of the pilot program courts. Felony and “other” trials (usually traffic DUI cases) were set at 45 jurors per panel, followed by civil (44), and misdemeanor (31) cases. Had these guidelines been in place in 2008, the guidelines would have been sufficient to accommodate 84% of the trials of the 113 trials that took place, but the hypothetical compliance rate for juries that could have been impaneled according to the guidelines would have been just 7%. Two judges participated in the pilot program from Shasta County.

By the time the pilot program began in October 2009, however, either the caseload or the dynamic of jury selection in Shasta County had changed such that the guidelines would now accommodate only 60% of the trials. In spite of these new obstacles, the trial judges were able to increase the compliance rate from 7% to 27%. Still, an additional 11 juries could have been impaneled had the judges adhered to the posted guidelines.

A closer examination of the cases revealed that most panels exceeded the guidelines by only a few jurors. In fact, if each of the recommended panel size guidelines were increased by 5 jurors, these new guidelines would have been sufficient to accommodate all 15 trials (plus an additional 4 of the 9 trials designated in a note below Figure 10 as exceeding the guidelines) and the court’s compliance rate would increase to 68%. The percentage of panels that exceeded the guidelines is higher for Shasta than for the other pilot sites. Therefore, the extra 5 jurors across all guidelines might further alleviate some of the concerns expressed by one judge during the WebEx that the guidelines were still too restrictive and improve the results presented here.

Comparing the caseload from the baseline data in 2008 to the pilot data, there were more misdemeanor and “other” cases (21% up from 10%, and 33% up from 15%, respectively) and fewer felonies (42% down from 68%). Recall, those designated as “other” were predominantly DUI cases. Thus, the shift in the caseload handled by the participating pilot judges may explain some of the variation.

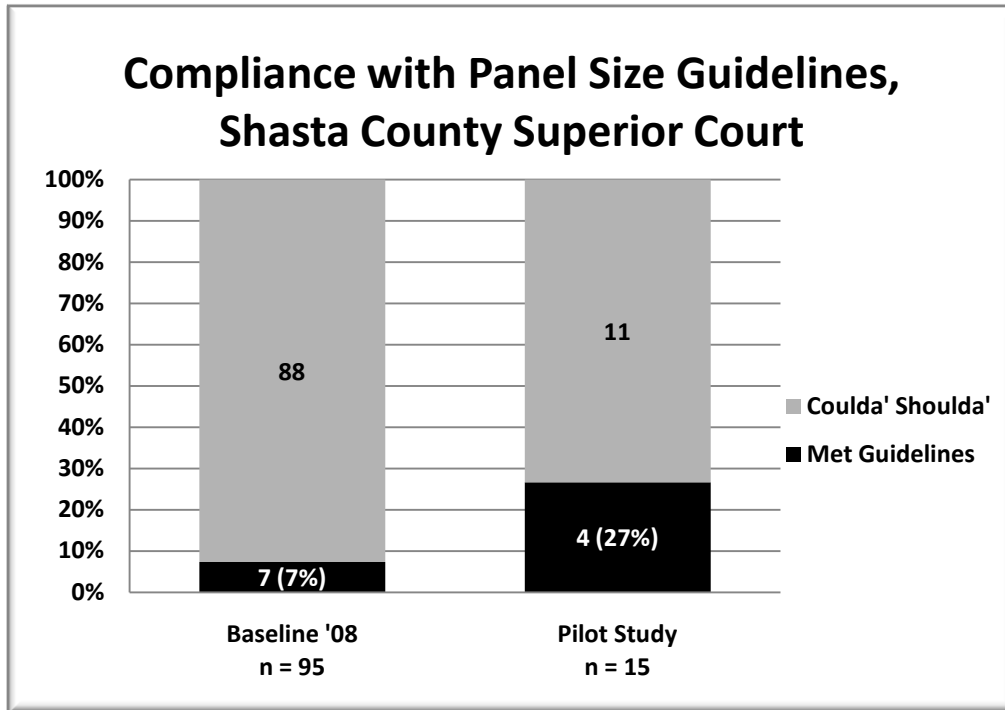


Figure 10: Trial Compliance for the Superior Court of California, County of Shasta.
Exceeded guidelines: Baseline 16% (18 cases), Pilot 38% (9 cases), excluded from figure.

Examining the potential impact on overall juror use was complicated by the presence of a single felony case in which 263 jurors out of a panel of 299 were needed to impanel the jury. Including this case in Table 11, below, would have skewed the average panel size upward to 85 and the average number of jurors used to 65. Estimates of the potential annual number of jurors sent to courtrooms would erroneously show an increase of more 6,000 jurors (123%). Table 11 therefore excludes this case from its calculations. It shows small to moderate reductions in the average panel sizes for all case types and mixed changes in the average number of jurors used. As a result, the overall percentage of jurors used actually decreases substantially from 38% to 24%. The potential decrease in number of jurors sent to courtrooms, however, is 320. Although this is a modest amount, it does represent a 5% decrease overall.

Case Type	# Trials		Average Panel Size		Average # Jurors Used		% Panel Unused		Potential Annual Decrease in Jurors to Courtrooms	
	2008	Pilot	2008	Pilot	2008	Pilot	2008	Pilot	#	%
Felony	77	10	62	61	38	43	39%	30%	77	5%
Misdemeanor	11	5	51	50	30	42	41%	16%	11	
Civil	8	1	61	49	37	30	39%	39%	96	
Other (TR)	17	8	53	45	37	33	30%	27%	136	
TOTAL	113	24	60	53	37	39	38%	24%	320	

Siskiyou County

Siskiyou, like Shasta, has a smaller caseload as compared to the other pilot sites. As such, judges and jury manager face unique challenges for impaneling a jury. For example, predicting the number of days per week jurors are needed and whether a case will proceed to trial rather than resulting in a settlement or plea. As a response to this issue, Siskiyou has adopted a “plead to the sheet” policy in which litigants must plead 10 days prior to the date of trial. Siskiyou data were unique in that the number of trials held during the calendar year of 2008 equaled the number from the seven month pilot project period, indicating that there was an increase in the number of trials.

The NCSC provided suggested guidelines based on juror usage in 2008, but Siskiyou did not feel comfortable with the small panel sizes, so NCSC and Siskiyou collaborated to arrive at an agreeable set of guidelines. The guidelines adopted by the Superior Court of Siskiyou County were simple; felony trial guidelines were set at 75 jurors per panel, 50 for misdemeanor cases, and 48 for civil. Had these guidelines been in place in 2008, the guidelines would have been sufficient to accommodate 92% of the 12 trials that took place, but the hypothetical compliance rate for juries that would have been impaneled within the guidelines would have been nearly half (45%). As there are only 4 trial judges in Siskiyou, all judges agreed to participate in the pilot program.

Judges routinely requested nearly double the number of jurors sent to the courtrooms. However, the analysis presented here is based on the number sent to the courtroom, not the requested number. Even with this reduction, judges were nearly always (89%) able to impanel juries within the guidelines. The cases that exceeded the guidelines were justifiably exceptional cases. One was a high profile murder case that involved child abuse and the other was a murder with prior conviction enhancements. The latter case only used 8 jurors more than stated by the guidelines (used 83, guidelines suggested 75), but 126 jurors were sent to the courtroom (250 were requested). Clearly this is a shift in the culture for Siskiyou judges, as suggested by their initial concern over the suggested panel sizes as too low. Yet, the data indicate the cushion for comfort is sufficient.

Siskiyou expressed a concern for the high unemployment rate in the county (18%). As would then be expected, Siskiyou is also among the highest of the pilot sites in the use of hardship excusals at 30%. Despite the economic woes, the panel size guidelines appear sufficient to accommodate jurors who raise hardship concerns.

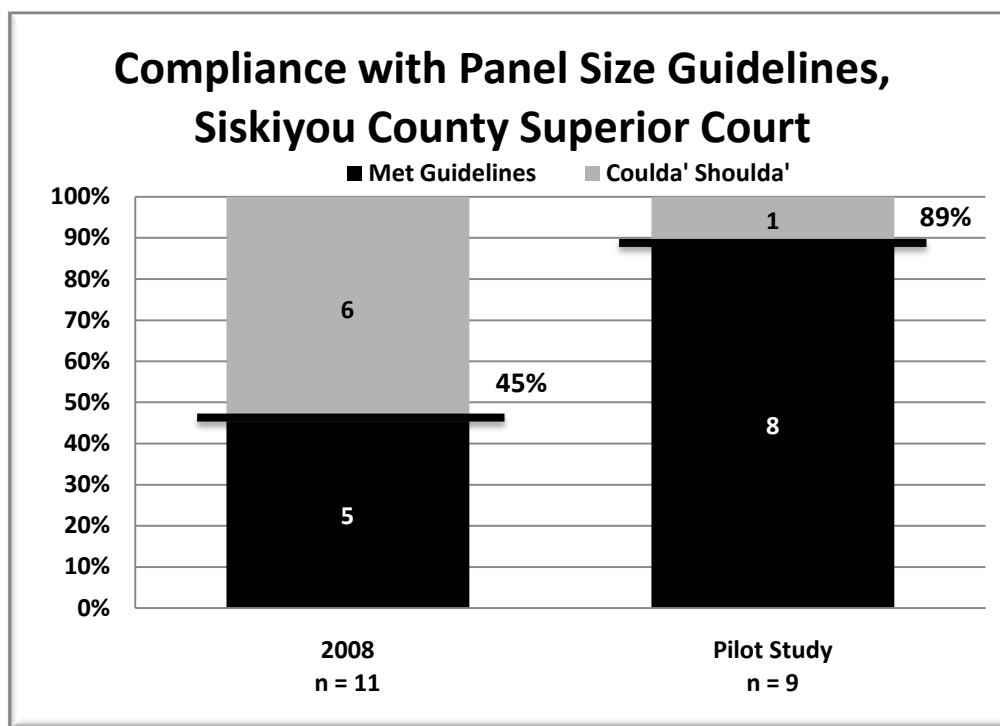


Figure 11: Trial Compliance for the Superior Court of California, County of Siskiyou.
Exceeded guidelines: Baseline 8% (1 case), Pilot 25% (3 cases), excluded from figure.

In addition to improved compliance, the use of the guidelines also improved the overall panel usage statistics. With the exception of the single civil trial conducted during the pilot program, which was 52 jurors compared to the 51-juror average panel size in 2008, the average panel sizes all decreased. See Table 12. Although the average number of jurors used actually increased for misdemeanor and civil trials, the reduced panel sizes were sufficient to impanel juries for these cases, and the overall percentage of unused jurors decreased from 41% to 20%. Like Shasta County, the low volume of jury trials in Siskiyou means that the potential impact of this change would be small in absolute terms (116 fewer jurors sent to courtrooms annually), it does represent a 9% decrease in the number of jurors.

Case Type	# Trials		Average Panel Size		Average # Jurors Used		% Panel Unused		Potential Annual Decrease in Jurors to Courtrooms	
	2008	Pilot	2008	Pilot	2008	Pilot	2008	Pilot	#	%
Felony	5	8	89	77	66	61	26%	21%	60	9%
Misdemeanor	3	3	60	40	26	35	57%	13%	60	
Civil	4	1	51	52	33	35	35%	33%	-4	
Other	7	n/a	62	n/a	30	n/a	52%	n/a		
TOTAL	19	12	66	66	39	52	41%	20%	116	

Common problems and lessons learned from Panel Size Reduction Project

The success of the Panel Size Reduction Project is difficult to assess insofar that it involved eight different courts with different caseloads and local legal cultures, all of which adopted different panel size guidelines. Nevertheless, the pilot program provided many useful insights, not only concerning the relationship between panel size and other components of juror utilization, but also about how panel size, especially smaller panels, affects the dynamics of jury selection. Below are some lessons learned from the project.

Juror utilization in high-volume versus low-volume courts

Theoretically, reduced panel sizes are easier to implement in high-volume courts compared to low-volume courts due to the increased availability of supplemental panels as necessary. High-volume courts use a common pool from which several, even dozens, of jury panels are sent to courtrooms each day. Not only is there often a small remnant of jurors left in the jury assembly room, but it is also easier to recycle jurors if necessary. The major obstacle for trial judges in high-volume courts is simply the desire to avoid the logistical awkwardness of integrating jurors from a supplemental panel into the voir dire process. Low-volume courts, in contrast, usually only summons enough jurors to accommodate a single trial. If the panel runs short for any reason, it may be a full day or even longer before the court can secure more jurors to complete the jury selection. For this reason, low-volume courts tend to err on the side of larger panels.

In making the distinction between high-volume and low-volume courts, it is important to emphasize that it is the trial activity in a given location that is the determining factor. Although the Los Angeles Superior Court boasts nearly one-third of the jury trials in California each year, many of its individual court locations more closely resemble the dynamics of low-volume courts.

One solution to this dilemma in low-volume courts is simply to attempt to mimic the summoning dynamics in high-volume courts by concentrating trial activity into a limited period of time, as has been accomplished in other states. This can be done in multi-judge courts by agreement among the judges to schedule the start of all jury trials for defined periods each month (e.g, first week of the month, first and third Mondays). This allows the jury manager to summon a single pool of jurors that can be shared among all the judges, leaving a small remnant in the jury assembly room to supplement panels if necessary. In single-judge courts, the trial judge can schedule jury selection only for all upcoming trials for a single day of the month. The jury manager then summons a sufficient number of jurors to impanel several juries. The judge can then accept any settlements or plea agreements and begin jury selection for the first trial. After the jury, including alternates, is selected and sworn, the judge instructs the jury to return on a future date to begin trial. Then the judge begins jury selection for the next trial, using the same technique, until all juries have been impaneled. In this way, the trial judges have more flexibility when impaneling jurors for the upcoming trials.

Effective pretrial communication

During the site visits, the AOC and NCSC found that the amount of information shared among the judicial officers, the master calendar judge, and the jury manager concerning upcoming trials varied tremendously. In some cases, the jury manager was routinely included in communications between judicial officers and the master calendar judge about the nature of the trial, the number of trial issues yet to be resolved, and the basis for panels larger than standard guidelines. More often, though, the jury manager was left uninformed and unable to prepare in advance for special situations. Indeed, often the master calendar judge received little information other than the case was “trial ready” to pass along to the trial judge.

The more information that can be shared, the better prepared the jury manager can be to provide appropriately sized jury panels at the time they are needed. At a minimum, the judge that oversaw pretrial case management should provide a recommendation concerning the appropriate panel size if standard panel guidelines are not sufficient, the basis for that recommendation, and a brief description of any pretrial issues that remain to be resolved before jury selection can commence. Finally, the pretrial judge should also provide sufficient notice to the jury manager and master calendar judge if an exceptionally large panel will be required for jury selection.

Judicial and Court Staff Training

Another issue that came up during the WebEx meetings was the need for ongoing judicial and court staff training, both about the existence and details concerning panel size guidelines and the rationale for these guidelines. Some of the judges in Los Angeles, for example, mistakenly believed that the guideline for all cases with anticipated trial length less than 10 days was 35 jurors; they were unaware of the 30-juror guidelines for cases with anticipated trial length less than 5 days, and routinely requested 35-person panels for these shorter trials. It appears that some of the jury staff in Los Angeles were similarly confused about the guideline criteria. Even if the trial judge requested a 30-juror panel, staff would send 35 jurors under the mistaken belief that this was the standard panel size.

Finally, lower-volume courts need to be trained not to send surplus jurors on panels just to avoid having them left in the jury assembly room. Many judges and jury staff believe that they are doing those jurors a favor by sending them to a courtroom. In reality, however, doing so may actually increase the costs of unused jurors if the voir dire continues for more than one day, which is often the case when voir dire begins in the afternoon. In that situation, jurors and their employers incur at least twice the cost of their jury service and the court incurs costs due to juror fees commencing on the second day. For those jurors who are actually questioned during the voir dire, regardless of whether they are impaneled as trial jurors, the experience may be worthwhile, but the same cannot be said of those jurors who are tacked onto the end of the panel list, but only experience the frustration of watching others be questioned.

For judges, regular bench meetings are an ideal forum for this type of training as communicating this information takes a minimum amount of time (e.g., 10 minutes or less) to remind judges of the existence of the panel size guidelines and the relevant criteria, and to emphasize their importance. This

is also an ideal time to inform judges of the court’s compliance record with panel size guidelines. See “Effective Judicial Feedback,” below. The same is true for jury staff. They can be reminded during routine staff meetings as well as ongoing training. Jury staff should also receive concrete feedback during performance reviews about their record for compliance with panel size guidelines.

Technique for Handling Supplemental Panels

There is always some risk that judges may run short of jurors when using smaller panel sizes due to unanticipated circumstances (e.g., a larger than normal proportion of jurors experiencing hardship). The NCSC and AOC staff were interested to learn how judges manage the voir dire when they have to request a supplemental panel. However, none of the judges who participated in the pilot program found it necessary to do so; for all of the cases in the pilot program, judges requested panels large enough to impanel juries. During the WebEx meetings, the NCSC and AOC staff simply asked judges what they would have done if they needed to request a supplement panel or what they have done when they have experienced this in the past.

The uniform response from judges during the WebEx meetings was that running short on jurors is inconvenient, but there are techniques that can be used to minimize the impact. Judges first noted that attorneys often will agree to forego peremptory challenges rather than continue voir dire with a new panel. Even when jury panels are more than sufficient to impanel jury, attorneys rarely exercise all of the peremptory challenges allotted to them. So on the extremely rare occasions that a jury panel runs short, most attorneys do not express great concern that their clients’ statutory rights have been violated. For example, one judge described her technique of hearing the requests of all jurors who ask to be excused for hardship in relatively short trials. She explained that she does not release those jurors until the end of the day, but instead secures the consent of the attorneys to keep those jurors on the panel list. If the attorneys have worked through all of the jurors who did not ask to be excused for hardship, she tells the attorneys that she is willing to order a supplemental panel, but they will still need to consider the jurors who requested to be excused. Rather than exercise peremptory challenges on jurors who have indicated their reluctance to serve, most attorneys simply waive their remaining peremptory challenges, relieving her of the need to order the supplemental panel.

The judges also noted that smaller panels foster a different psychological approach to the jury selection process. When panels are comparatively large—that is, larger than necessary to impanel a jury—then jurors are considered “cheap” and believe it will not “cost” the judge or attorneys much to excuse jurors for a relatively minor reason such as an inconvenience to the juror (rather than real hardship) for serving or a remote likelihood that the juror may harbor some bias or partiality toward a party. In contrast, when the panel is relatively small or has grown smaller over the course of an extended voir dire, jurors become considered more “expensive” and judges and attorneys become less inclined to excuse or remove them without substantial cause.

None of the judges insisted that it is necessary to begin the voir dire process from the beginning when a supplemental panel is requested. The pilot program judges described several approaches that they

found useful for integrating the new panel into the voir dire process. For example, one judge explained that when he is down to the last 10 or so jurors on the original panel, and the attorneys indicate their desire to continue with a supplemental panel, he will order a new panel, but then continue questioning the original jurors. When the new panel arrives, those jurors can hear the types of questions that are being asked and become familiar with the general process through observation. When the judge and attorneys exhaust the original panel list, he takes a short break from questioning to orient the new panel (e.g., describe the case, the charges, and the names of potential witnesses to the new jurors) and then continues the questioning as before. Typically, he explained, this adds no more than 15 minutes to the voir dire process.

Another judge described how he deals with supplemental panels. When the original panel is exhausted, he dismisses the jurors who have not been removed for cause or hardship, telling them to return at a later time. He then brings in the new panel to cover the initial voir dire information and continues to select jurors from the new panel. This approach works even if a supplemental panel is not available until the following day. He simply instructs the jurors from the original panel to arrive later in the morning (e.g., 10 am), but begins voir dire with the supplemental panel as soon as they have completed orientation in the morning. In either case, by the time the original panel returns, the judge and attorneys have generally completed their questioning of the supplemental panel and can finalize jury selection and begin trial.

Effective Judicial Feedback

One lesson learned from the pilot program is the importance of effective feedback to judges about their panel size usage. Many of the judges who participated in the pilot program remarked about how little attention their respective courts paid to the issue of panel size—even those courts that had existing panel size guidelines. There is great truth to the adage that courts tend to document only those things that they deem important, and if it not documented, it cannot be that important. To gain any traction with the bench, courts must begin to measure and report both aggregate and individual compliance with panel reduction efforts in their respective courts. The issue of documentation and feedback to individual judges was raised during the site visits, and was met with mixed reactions. Some superior court leadership indicated their support for regular feedback to judges while others thought only seriously poor panel usage should be brought to the attention of individual judges.

Other states that have tried to improve panel usage have found that judges often have very little basis on which to compare their own performance. Thus, the NCSC recommends that judges routinely be given information about how they compare to their peers with respect to panel usage. Appendix D shows an illustration of the “Panel Size Guidelines Compliance Report,” a worksheet that courts can use as a template for their own monthly reports. It is not necessary that individual names of judges be disclosed to all judges, particularly if the court wishes to avoid the “hall of shame” approach to juror utilization performance. But it is necessary to for individual judges to be told the average panel size and percentage of unused jurors for each court as well as each judge’s individual statistics so that judges can

clearly see how they compare to their trial court colleagues. Other general statistics, such as those used in the Riverside County Superior Court (percent of juries impaneled within guidelines and percent of juries that could have been impaneled within guidelines), also offer useful benchmarks for judges to determine their own performance. Many judges are fairly competitive and such information may prompt low-performing judges to improve, and may spur high-performing judges to set the superior court bar even higher.

Hardship Screening and Excusal versus Postponement Policies

Long cause trials—that is, trials anticipated to last more than 2 to 3 weeks—often require exceptionally large panels just to accommodate the number of jurors who will be excused for hardship. In the strictest sense, a juror who is excused for hardship has been “used” for purposes of juror utilization. Nevertheless, excusing large numbers of jurors who could not serve in lengthy trials, but who might be able to serve in trials of average length, seems to violate the spirit of juror utilization, if not the law. Currently, the California Superior Courts differ in their opinions about the advisability of prescreening jurors for hardship in lengthy trials. Some courts, such as Los Angeles and Orange Counties, routinely prescreen jurors in the jury assembly room while others believe that only the trial judge should excuse jurors for financial hardship. After reviewing the process as it is practiced in the Los Angeles, the NCSC and AOC staff view the practice as beneficial insofar that it provides for an increased likelihood of a meaningful jury experience for jurors who could serve for trials of average length, even if they are unavailable for longer trials.

The caveat, of course, is that the screening criteria must be purely objective; jury staff should not be authorized to exercise discretion as to whether a juror is screened from a lengthy trial for factors other than substantial financial hardship or unavailability due to previous commitments such as business trips, education, or prepaid vacation plans. Those jurors who are removed from the panels for lengthy trials should remain in the jury pool for consideration in other trials on the court’s calendar. Jury staff should also maintain meticulous documentation of the names and reason for screening individual jurors for review as needed.

In trials of average length, an ongoing debate exists concerning whether to excuse jurors for hardship other reasons, or to postpone them to a future date when they may be able to serve. After watching how these questions are resolved in several of the participating courts during site visits, the NCSC and AOC staff concluded that excusal for substantial financial hardship is the preferable course of action, especially in difficult economic times; the financial circumstances of jurors who are struggling financially on the day they report to service are unlikely to improve substantially within the 90 to 180 day window that most courts allow for postponement. But for jurors who are unable to serve due to previous commitments (e.g., accountants during tax season, retail employees during the holiday season, etc.) service should be postponed to a more convenient date.

Conclusions

The panel size reduction program has been enormously informative about the operational and cultural dynamics that affect panel size and local compliance with panel size guidelines. As this evaluation has shown, it is possible through dedicated adherence to panel size guidelines for courts to substantially improve juror utilization and save both courts and jurors considerable time and resources, provided that a number of tangentially related conditions are satisfied. First, judges must have confidence that the guidelines themselves are sufficient to impanel juries. Although well-established principles of judicial administration insist that every case be given individualized attention, not every trial is “unique” with respect to the number of jurors needed to impanel a trial jury. It is clear from the number of “*could’a/should’a*” cases that occurred during the pilot program that a substantial factor in panel size guideline compliance rests in the degree of judicial perception that an upcoming trial is “typical” and thus does not require additional jurors. Of course, for judges to have confidence in the adequacy of panel size guidelines, those guidelines cannot be the product of an AOC-imposed “cookie-cutter” process but rather reflect local conditions and culture. In developing guidelines, therefore, the superior courts should be guided by historical practice with the objective to improve panel utilization.

Another factor, especially in lower-volume courts, is the variation in daily yield. Courts that cannot predict with great certainty the number of jurors who will appear for service will almost always over-summon for the day of trial and often be faced with the problem of more jurors in the assembly room than are needed according to the panel size guidelines. The default for most of these courts is to send these extra jurors to the courtroom. For the purpose of juror utilization, the result is poor panel usage, but the actual cause is over-summoning jurors. This type of practice points to the need to strengthen training for jury staff—both to avoid the inclination to send extra jurors to the courtroom and to better predict variation in jury yield. To this effect, jury staff must be included in the communications loop leading up to trial and must better calibrate the jury summoning practices with actual trial volume.

Finally, it is clear from the pilot program that effective juror utilization is not simply a matter of jury operations, but is quintessentially a judicial management function that is heavily, if not wholly, dependent on judicial pretrial and trial practices. To inculcate effective practices, judges need to be convinced that efforts to improve juror utilization are a meaningful indicator of effective court performance. Other than a moral obligation to be more considerate of jurors’ time and contributions to the justice system, the NCSC staff wondered if additional mechanisms might exist to encourage greater attention to these issues. Because the costs of jury operations are paid for by the state, rather than out of local court revenues, for example, the AOC might consider offering financial incentives to the superior courts for substantially improved performance in juror utilization (e.g., permitting courts to retain a portion of some of the savings gained from improved utilization).

Appendix A: Supplemental Data Collection Sheet

Juror Utilization Study: Jury Panel Size Reduction Efforts Supplemental Form

Overview: Juror Utilization Study

Your court will be one of eight courts participating in the Juror Utilization Study. This is a pilot project that will be conducted by the National Center for State Courts (NCSC) in collaboration with the Administrative Office of the Courts (AOC). The study grew out of efforts of the Trial Court Presiding Judges Advisory Committee (TCPJAC)/Court Executives Advisory Committee (CEAC) Joint Working Group on Jury Administration (JWGJA) to establish panel size guidelines and make other improvements in the area of juror utilization.

Overview: Jury Panel Size Reduction Efforts:

One component of the Juror Utilization Study is to implement panel size guidelines in a small number of courtrooms at each of the pilot sites. Members of the working group solicited volunteer judges at each of the eight sites willing to implement jury panel size reductions for a six-month trial period in their respective courtrooms. These efforts will begin (for most of the participating judges) on **Monday, October 19, 2009** and will continue for six months or through April 2010.

Directions:

1. As a judge participating in the jury panel reduction efforts, we are asking that you follow the panel size guidelines provided to you for the particular type of cases you will be hearing during that time (e.g., Criminal, Civil). The guidelines that you will be following are either (1) local panel size guidelines that have been developed by your court or (2) panel size guidelines that were developed by the NCSC based on jury panel data collected from your court. If you need a copy of the panel size guidelines, please contact the CEO of your court.
2. Additionally, we are asking you to complete the attached form for each of the jury trials you hear during the six-month pilot period. This data will provide additional information to assist us in better understanding the size of the panel selected (*please see attached*).
3. Return completed form to the Jury Management Office.

Thank you for your participation!

Directions: The purpose of the following questions is to provide supplemental information relating to the size of jury panels requested. Thank you for your time and participation.

Date initial panel sent to the courtroom (Month/Day/Year): _____

Case Number: _____

Unique Judge ID:

1. Was a written questionnaire given to jurors for this trial?

Yes

No

2. Was a time screening conducted on jurors for this trial?

Yes

No

3. Please indicate the estimated length of this trial (please count only days the court will be in session): _____ (in days)

4. Please indicate all charges and enhancements by code number and check all boxes that apply below:

Code Number(s): _____

Please check all that apply below:

Criminal:

- Physical child abuse
- Sexual child abuse
- Child endangerment
- Adult sexual assault
- Other adult sexual misconduct
- Domestic violence
- Gang related crime
- Mental health defense
- Intoxication defense
- Other: _____

Civil:

- Personal injury
- Premises liability
- Medical malpractice
- Employment litigation
- Professional malpractice
- Product liability
- Auto tort
- Other tort
- Contract
- Real property
- Other

5. How many peremptory challenges are available per side for this case? _____ (per side)

6. What is the maximum sentence exposure for this case?

- Death penalty max
- Life sentence max
- 90 day or less max
- None of these apply

7. Please identify any special considerations associated with this trial that may require a larger panel size? (Please check all that apply)

- Pretrial publicity
- Child witness
- Well-known litigant or witness
- Three-strikes cases
- Multiple parties (#) _____
- Multiple defendants (#) _____
- Other _____

8. What was the number of jurors you requested for this trial? _____

9. What was the number of jurors you received for this trial? _____

10. Did you impose any time limits on voir dire for this case?

Yes

No

If yes, please explain what those time limits are and how you applied them:

11. What was the actual length of voir dire (in hours)? _____

12. Comments (*optional*): _____

Thank you! Please return the completed form to the Jury Management Office.

Appendix B: Panel Size Worksheet and Instructions

Panel Size Worksheet

Instructions

The Panel Size Worksheet is designed to determine an optimal size for jury panels in different types of cases. To use the Worksheet, you must extract information about historical panel usage from the jury automation system or from other court records. For the most reliable estimates about optimal panel size, enter information for only one type of case at a time (e.g., capital felony, non-capital felony, misdemeanor, civil). Do not mix case types on the same worksheet.

Lines 5 and 8: Enter the Court name and the starting and ending dates of the panel usage information.

Line 8: Enter the case type for the worksheet. Different types of cases typically require different panel sizes from which to select a jury. For example, capital felony trials, trials involving sex offenses or offenses against children, and lengthier trials tend to require larger panels than to compensate for greater numbers of jurors excused for cause or hardship. Calculating the optimal panel size for each case type will result in more reliable estimates.

One Line 18-118: Enter data in the columns as follows -

- Column B: Trial date
- Column D: Case number or name
- Column F: Size of the jury panel sent to the courtroom for jury selection (include any supplemental panels sent)
- Column H: Number of jurors/alternates sworn
- Column I: Number of jurors excused for cause
- Column J: Number of jurors removed by Defendant peremptory challenge
- Column K: Number of jurors removed by Plaintiff/Prosecution peremptory challenges
- Column L: Number of jurors excused for hardship/by stipulation
- Columns M, N, O: Worksheet will automatically calculate the number of jurors not reached, the number of jurors used, and the percentage of the panel used

Based on the information entered, the Panel Size Worksheet will calculate and display a range for the optimal panel size for that case type in the boxes below the entered court name and case type (cells D11 and H11). The lower range of the "optimal panel size" is the mean plus one standard deviation for the cases entered onto the worksheet. The upper range is the size sufficient to accommodate jury selection in 90% or more of normal trials of this type. **Column P** shows a red light icon for trials that required a panel larger than the recommended panel size. Review the records for these trials to identify any unusual characteristics (e.g., high levels of pretrial publicity, unusual litigant or trial issues) that explain the need for a larger panel. As a matter of routine practice, courts should strive to establish panel sizes at the lower end of the range, but permit judges to request panels up to the upper range if conditions warrant (e.g., longer trials, multiple parties, etc.)

Appendix C: Best Practices on Panel Size

Best Practices on Panel Size

Determining the appropriate number of jurors to assign to a jury panel for jury selection is the first step toward effective juror utilization. The panel size should accommodate the anticipated number of sworn jurors and alternates, jurors excused for cause or for hardship, and jurors removed by peremptory challenge. Although it is acceptable for jury panels to include a few extra jurors in case of unanticipated circumstances during jury selection, these “extra jurors” should be kept to a minimum (ideally no more than 10% of the entire panel). Appropriate panel sizes minimize the costs incurred by the court for jury operations and improve juror satisfaction with their jury service experience. Minimizing the number of unused jurors on panels also reduces the number of jurors told to report and, in the long run, the number of jurors summonsed, thus reducing administrative costs overall.

Case characteristics obviously affect the size of the panel needed to select juries. The most significant of these is trial type insofar that this factor determines the number of peremptory challenges available to the parties. Other factors include the type of criminal charges or claim elements. Case involving sex offenses, child victims, and substance abuse, for example, often result in increased numbers of jurors excused for cause due to prospective jurors’ attitudes or life experiences with those issues. Similarly, lengthy trials often result in increased numbers of jurors excused for hardship. Local court culture also affects these factors because judges in different courts may be more or less lenient about excusing jurors for cause or for hardship. Finally, local attorney practices with respect to the exercise of peremptory challenges can affect panel usage. Most attorneys in California do not exercise all of the peremptory challenges available to them.

Determining Panel Size for Your Court

The appropriate panel size for any individual court is best determined from juror usage over time. Courts that use *Jury+* or *Jury+ Next Generation* for their jury automation system can generate the “Case Juror Results by Judge” report to obtain information about the number of jurors used from each jury panel sent to courtroom for jury selection. To establish a reliable baseline, run the report showing at least one full calendar year of trials.

Next, on an Excel spreadsheet, make separate lists of the felony, misdemeanor and civil trials from that report showing the number of jurors sent to the courtroom and the number of jurors used (questioned) during jury selection. Sort the number of jurors who were actually used from lowest to highest. Is there anything that distinguishes the trials that used more jurors from those that use fewer jurors? For example, do certain types of cases or longer trials require more jurors? If so, consider using separate spreadsheets to estimate the optimal panel size for those types of cases (e.g., drug cases, sex offenses, trials longer than 1 week, etc.).

TIP: Use the [AOC Panel Size Worksheet](#) to do determine the appropriate panel size for each case type.

Panel Size Worksheet												
Panel Size Data for:		[Enter Court Name]					[Start Date]					
Case Type:		[Enter Case Type]					[End Date]					
Optimal Panel Size		0		to		0						
			Number of Jurors									
Trial Date [MM/DD/YY]	Case Number/Name	Panel Size	Sworn - Including Alternates	Excused for Cause	Defendant Peremptory Challenges	Plaintiff / Prosecution Peremptory Challenges	Excused for Hardship	Not Reached	# Jurors Used	% Not Used	If red, required panel size is larger than recommended	

The optimal panel size for each type of case should be sufficient to accommodate 75% to 90% of all cases with a sufficient margin of “extra” jurors for comfort (ideally, 10% or fewer). This reflects the panel size adequate to provide jurors for the “normal” cases on the trial calendar. The decision about appropriate cutoff point ultimately depends on the level of risk-averseness for each court. For example, higher volume courts typically have surplus jurors in the Jury Assembly Room available for supplemental panels, if necessary. These can typically afford to adopt panel size guidelines at a lower range than lower volume courts that may have only the jurors who were summoned for a single trial immediately available. In either case, trial judges typically know which cases will require an unusually large number of jurors before trial and can order a larger panel accordingly.

To determine the optimal panel size, sort the list from the lowest to the highest number of jurors used and draw a line at the point where 90% of the cases are above the line and 10% of the cases are below the line. In Figure 2, for example, 14 cases are listed. The 90% cutoff is located at the 13th case (14 x 90% = 12.6). Look for large gaps between the numbers just above and just below the 90% cutoff line. In the figure below, a large gap appears between the 12th and 13th cases (64 jurors used versus 108 jurors used). Further above the cutoff line, the intervals for jurors used is fairly small (3 to 5 jurors) compared to below the cutoff line where it jumps from 108 to 187. In this example, the court should establish a standard panel size of no more than 64 for these types of cases. A higher volume court with the capacity to assign a panel of supplemental relatively easily could adopt a more ambitious panel size guideline for these types of cases (e.g., 60 or even 55 jurors per panel).

Determining Optimal Panel Size for a Superior Court

Trial Date [MM/DD/YY]	Case Number/Name	Panel Size	Estimated Trial Length	Number of Jurors	
				# of Jurors Used	% Jurors Not Used
11/18/2008	BAF5153	55	1	33	40.0%
6/16/2008	BAF5212	79	4	36	54.4%
6/17/2008	BAF5302	44	8	39	11.4%
3/20/2008	BAF5200	65	5	42	35.4%
3/27/2008	BAF5286	65	15	42	35.4%
7/29/2008	BAF5427	55	5	42	23.6%
7/30/2008	BAF5090	99	10	46	53.5%
12/8/2008	BAF5200	100	4	50	50.0%
5/28/2008	BAF3938	70	9	53	24.3%
5/29/2008	BAF5153	55	8	55	0.0%
6/3/2008	BAF4935	114	16	60	47.4%
7/7/2008	BAF4710	67	14	64	4.5%
7/8/2008	BAF4935	131	15	108	17.6%
6/23/2008	BAF5296	250	1	187	25.2%

90% of cases

Optimal Panel Size

It is important to update the panel size estimates periodically (e.g., quarterly) to determine if juror usage changes over time. To do this, delete the oldest cases from the spreadsheet and replace them with the most recent cases.

Establish a Court Policy on Panel Size

Once the optimal panel sizes for all type of cases have been determined, the court should adopt these as a local court policy. To ensure compliance with the policy, judges should only be permitted a larger panel with authorization from the presiding judge or supervising judge. The jury manager should be responsible for generating a standard report on panel size compliance on a monthly basis that summarizes performance on a court-wide basis as well as for individual judges. The monthly panel size report should describe the number of panels sent within guidelines, the number of panels sent that exceeded guidelines, but the jury could have been impaneled within guidelines; and the number of panels sent that exceeded guidelines and the jury could not have been impaneled within guidelines. The report should also document the number of unused jurors above panel guidelines and the estimated administrative costs and juror fees/mileage incurred by the court and the estimated community costs incurred for those unused jurors. The full report should be distributed to the Presiding Judge, Court

Executive Officer, and the Civil and Criminal Supervising Judges. A modified version of the report can be distributed to each trial judge showing the court-wide statistics and each judge's performance.

Example of a Panel Size Guidelines Compliance Report

PANEL SIZE GUIDELINES COMPLIANCE REPORT

[Court Name]

[Month, Year]

Jury Panels

	w/in Guidelines (%)		Exceeded Guidelines Unnecessarily (%)		# Unused Jurors Above Guidelines	Estimated Court Costs for Unused Jurors	Estimated Community Costs for Unused Jurors	Exceeded Guidelines w/ Justification (%)	
Downtown Superior Court	7	64%	4	36%	23	\$ 543.49	\$ 16,399	0	0%
Judge 1	1	100%	0	0%		\$ -	\$ -	0	0%
Judge 2	0	0%	1	100%	13	\$ 307.19	\$ 9,269	0	0%
Judge 3	3	75%	1	25%	1	\$ 23.63	\$ 713	0	0%
Judge 4	1	33%	2	67%	9	\$ 212.67	\$ 6,417	0	0%
Judge 5	2	100%	0	0%		\$ -	\$ -	0	0%

Appendix D: Panel Size Guidelines Compliance Report and Instructions

PANEL SIZE GUIDELINES COMPLIANCE REPORT

[Court Name]

[Month, Year]

Jury Panels

[Court Name]	w/in Guidelines (%)	Exceeded Guidelines Unnecessarily (%)	# Unused Jurors Above Guidelines	Estimated Court Costs for Unused Jurors	Estimated Community Costs for Unused Jurors	Exceeded Guidelines w/ Justification (%)
[Court Name]				\$ -	\$ -	###
Judge 1				\$ -	\$ -	
Judge 2				\$ -	\$ -	
Judge 3				\$ -	\$ -	
Judge 4				\$ -	\$ -	
Judge 5				\$ -	\$ -	
Judge 6				\$ -	\$ -	
Judge 7				\$ -	\$ -	
Judge 8				\$ -	\$ -	
Judge 9				\$ -	\$ -	
Judge 10				\$ -	\$ -	
Judge 11				\$ -	\$ -	
Judge 12				\$ -	\$ -	
Judge 13				\$ -	\$ -	
Judge 14				\$ -	\$ -	
Judge 15				\$ -	\$ -	
Judge 16				\$ -	\$ -	
Judge 17				\$ -	\$ -	
Judge 18				\$ -	\$ -	
Judge 19				\$ -	\$ -	
Judge 20				\$ -	\$ -	
Judge 21				\$ -	\$ -	
Judge 22				\$ -	\$ -	
Judge 23				\$ -	\$ -	
Judge 24				\$ -	\$ -	
Judge 25				\$ -	\$ -	
Judge 26				\$ -	\$ -	
Judge 27				\$ -	\$ -	
Judge 28				\$ -	\$ -	
Judge 29				\$ -	\$ -	
Judge 30				\$ -	\$ -	
Judge 31				\$ -	\$ -	
Judge 32				\$ -	\$ -	
Judge 33				\$ -	\$ -	
Judge 34				\$ -	\$ -	
Judge 35				\$ -	\$ -	

In the shaded grey areas at the top of the page, enter the name of the court and the month and year of the compliance report.

In Column B, enter the names of the trial judges who presided in jury trials during the reporting period.

From the Jury+ System, print a copy of the Juror Results by Judge report.

For each judge:

Enter the number of jury panels for trials in which a jury was sworn that complied with the court's panel size guidelines in Column D.

Enter the number of jury panels that exceeded the court's panel size guidelines, but a jury could have been impaneled had the panel size guidelines been employed in Column G.

Enter the number of jurors sent in excess of the court's panel size guidelines in Column J.

Enter the number of jury panels that exceeded the court's panel size guidelines, but the jury could not have been impaneled using the court's panel size guidelines.