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January 7, 1992

Council on Court Procedures
c/o Frederic C. Merrill
Executive Director
University of Oregon
School of Law
Eugene, OR 97403-1221

Re: January 11, 1992 Meeting
Consideration of Six-person Juries

Dear Mr. Merrill:

This letter and enclosed articles are submitted in opposition to a reduction of jury size from 12 to 6. The Council wisely prevailed on the legislative judiciary committees to refer the matter to the Council for more study and appropriate action. The Oregon Association of Defense Counsel (OADC) opposed the proposed cost-saving measure before the judiciary committees because of the absence of a showing of effective cost savings and the absence of information of the potential effect on the judicial system.

Research now suggests that bigger is better and smaller saves little time or money. In June, 1990, the National Center for State Courts, released the results of their two-year study of civil trials in Los Angeles for the Judicial Council of California. The study revealed no significant savings of either time or money with the reduced eight-person juries. Furthermore, the study confirmed what numerous studies have confirmed -- that **small jury panels reduce minorities' participation; they are less representative of the communities from which they are drawn.**

The sanctity of 12 as the magic number for a jury has been the subject of a number of U.S. Supreme Court cases, particularly six cases decided in the '70s which dealt with the constitutionality of jury decisions reached by juries with fewer than 12 members. In the first of these cases, Williams v. Florida, (1970), the court cited six studies as evidence that there is no discernible difference between the process used and the results reached by the two differed-sized juries.

However, when social scientists reviewed those six studies, they found them flawed, unverifiable, based on eyewitness opinions by individuals who were not trained observers, and generally unscientific and unreliable. The critics of the U.S. Supreme Court's decisions in these cases state that "the court's use of empirical evidence is uniformly dreadful." They go on to advance the proposition that there is a considerable body of social science which makes a case for the superiority of 12-member juries over six.

In her 1991 article on the subject, written for the Tennessee Bar Journal, Dr. Lucy Keele, a Ph.D. from the University of Oregon and now on the faculty of the California State University, says that the real issue in evaluating the relative merits of various sized juries is how well each reflects the varying values of the given community and how well each jury completes its task, which is to carefully evaluate the case before it and come to the best possible decisions. When you analyze the criteria for measuring a jury's effectiveness -- demographic representation, the deliberation process, group dynamics on conformity, individual participation in the process, and quality -- studies recommend 12 over 6. She points out that both the Litigation Section and the Torts and Insurance Practice (TIPS) Section of the ABA have adopted platforms in favor of retaining and restoring 12-person juries based on the findings of these studies.

These reports put in question whether the objective of cost savings can be achieved, and suggest that the quality of our system will suffer by reducing juries to six.

Very truly yours,

Ronald E. Bailey

REB/jlc
Enclosures:
▸27 Tennessee Bar Journal, Keele, Lucy M. (Jan-Feb 1991)
▸ABA Articles Summarizing Los Angeles County Study
cc: Henry Kantor (w/o enc.)

An Analysis of Six vs. 12-Person Juries

By Lucy M. Keele, Ph.D.

The litany of court woes is long and well-known: congestion, case backlog, administrative costs. State and federal courts are desperate to find ways to ensure justice while moving cases along in a more timely fashion.

Our modern jury system is a direct descendent of the English jury system which had its beginnings in the 11th century. In its infancy, the jury was both witness and trier of fact, and the importance of a case was revealed by the size of the jury — seriousness of the crime as well as number of witnesses determined the jury's size which could be as large as 48 people. By the 14th century, jury size was standardized into a 12-member body of men whose sole duty was to make a decision of guilt or innocence based on fact.

In the American colonies, the 12-person jury was established in 1607 by the Charter of Jamestown. From this beginning, it was fully incorporated into the American legal system of the young nation via Article III, Section 2 of the Constitution, which secured the right to a jury trial in all common law actions in the federal courts where the matter in controversy exceeds the sum of $20. This right was extended to state criminal prosecutions by the 14th Amendment. State constitutions generally extend express guaranties of the right to a jury trial in civil and criminal matters. In both the civil and criminal arenas, the option to have factual controversies adjudicated by a jury of one's peers remains a fundamental right.

The sanctity of 12 as the magic number for a jury was first questioned in *Thompson vs. Utah* (1898), when the Supreme Court held that the Constitution required a 12-member jury in federal criminal cases; this opinion was later upheld in *Capital Traction vs. Hog* (1899) when the Court held that federal civil trials also required 12-member juries. As early as 1900, however, the 12-person jury at the state level was undermined when the court upheld the constitutionality of an eight-member jury in a state civil case (*Maxwell vs. Dow*). Seventy years later, a Florida statute was upheld in *Williams vs. Florida* (1970), when the court held that a six-person jury was sufficient to try any non-capital criminal case. Three years later, the Court held in *Colgrove vs. Battin* (1973) that in civil trials there is no measurable difference in the quality of decisions made by six or 12-member juries. Six-person juries are the rule in federal civil cases, while criminal trials in federal court require 12 persons as triers of fact. Forty states allow for juries ranging in size from six to 10 for civil trials; only 10 states continue to require 12.

Unanimous versus non-unanimous verdicts have also been the subject of recent court decisions: in *Johnson vs. Louisiana* (1972) and *Apodaca vs. Oregon* (1972), the court held that non-unanimous verdicts of nine out of 10 and 10 out of 12 were sufficient for determining the guilt or innocence of an accused. In 1979, the Supreme Court ruled that unanimous verdicts in criminal trials were required if the jury numbered only six (*Burch vs. Louisiana*).

The old phrase "necessity is the mother

Dr. Lucy Keele, communications specialist, works with witnesses and attorneys to improve their ability to communicate effectively to jurors. Dr. Keele has a Ph.D. in speech communications from the University of Oregon and is on the faculty of the California State University.

of invention" comes to mind when considering the impetus for juries numbering fewer than 12 and for non-unanimous verdicts as a basis for decision-making. The litany of court woes is long and well-known: congestion, case backlog, administrative costs. State and federal courts are desperate to find ways to ensure justice while moving cases along in a more timely fashion. The primary reasons most frequently offered for reducing jury size are: 1) reduction in jury size will correspond to less cost to maintain the system; 2) the time spent by judges, lawyers, clerks and jurors is better spent if the jury size is reduced; 3) judges' expertise and experience can effectively take the place of a jury; and 4) the difference between 12 and six is insignificant as set forth in both *Williams* and *Colgrove*.

For the past 20 years, social scientists, court administrators and legal scholars have debated the merits of juries numbering fewer than 12. The rationale for jury size reduction has been the subject of sharp critique, and the bases on which the Court made its decisions are generally debunked as non-scientific research, warranting a critical review of the arguments in favor of six-person juries.

Cost and Time

Chief Justice Burger estimated in 1971 that reducing the size of federal civil juries to six would result in an annual savings of $4 million. This figure represents a modest 2.4 percent of the total federal judicial budget for that year and a little more than one thousandth of one percent of the federal budget of that same year. The empirical data referenced in the Court's response to the economic advantage were in part taken from evidence offered by Judge Lloyd L. Wiehl in 1968. He stated that in a Massachusetts District Court experiment, six-member juries resulted in prompt trials and lower costs. He concluded that there would be at least a one-third savings in public funds if the size of juries were reduced.

To substantiate their claim that the six-member jury is more efficient, hence saving time and money, the Supreme Court cited a study conducted by W. Pabst in which he reviewed the District of Columbia U.S. District Court as it was undergoing a transition from 12 to six-person juries. During the first half of 1971, 69 civil cases were tried by 12-person juries; during the second half, 78 cases were tried by six-person juries. From the data collected, the court announced a savings of 41.9 percent in direct person-hours per trial due to reduced jury size. In 1972, however, Pabst undermined the court's conclusions drawn from his study when he wrote that overall savings may be related more directly to the size of the panels that the juries are selected from than to the reduction in direct juror hours. Pabst's calculations were based on four factors: average time of *voir dire*, average trial time, average number of people on jury panels and the size of the jury (six versus 12). His data revealed that the average time for *voir dire* (52 minutes for six-person juries vs. 52.1 minutes for 12-person juries) in six and 12-member juries was virtually identical. These two factors are the only ones that directly relate to actual time used in court; the data reveal no actual court time saved by reducing the jury size.

The size of the jury panel is directly related to the administrative capacity of the court to manage juror usage. The reduction from 27.54 people used to impanel a 12-person jury compares to 21.67 people needed to select a six-person jury; this represents a reduction in person-hours of 21 percent instead of the 41.9 percent overall reduction cited by the Court. The other 20.9 percent of saved person-hours is attributed to the difference found when multiplying the number of jurors by the number of persons in the panel from which the jury is chosen; this number is significant because it reveals that in a jury of 12, six more people are spending person-hours in jury duty. According to Pabst's data, the court is not affected by the extra person-hours cited. The only ones affected are the six jurors who spend their time in court.

A Federal Judicial Center Study (1971) buttressed Pabst's conclusions. Their data show that Federal District Court judges spend 8 percent of their total working time trying civil jury cases. Estimating that impaneling the jurors takes about 10 percent of the trial time, then only 10 percent of eight percent (or just under one percent) of the judge's total working time is consumed impaneling juries. Intuitively, it may seem that a reduction in jury size would take less judicial time, but because in most federal courts the jurors are examined by the judge who usually directs his/her questions to all jurors at once, there are no savings. Even if impaneling time were cut in half, the amount of time saved is only four-tenths of one percent of the judge's total working time. Studies conclude that it takes one and one-half minutes longer to impanel a jury of 12 than a jury of six.

Another aspect of the time rationale for a six-person jury is that attorney time and jury's decision-making time can be shortened. Citing a New Jersey study, the Supreme Court reported in the *Williams* decision that the hour savings was from 11 hours to 5.6 hours. Hans Zeisel observed, however, that this study was conducted in a jurisdiction in which the litigants had a choice of jury size; the larger juries tried the more complicated cases, necessitating longer deliberation time.

Finally, deliberation time is a factor influencing decisions about jury size. Although generally unsupported by statistical evidence, advocates of the six-person jury claim that the deliberation time will be reduced in relation to the reduced jury size — fewer jurors, less time to reach a decision. An alternative explanation, even if this equation holds, would be that "majority persuasion" is more effective in a smaller group. Smaller juries may be faster, but this does not necessarily mean they are more effective than, or even as effective as larger juries.

Functional Considerations

The functional differences between six and 12-person juries were explored in the *Williams* decision. The Court cited six studies as evidence that there is "no discernable difference between the result reached by the two different sized juries." Unfortunately, the Court may have overstated the case of functional equivalence between juries of six and 12. To qualify the "studies" as verifiable is questionable when the six studies are reviewed: 1) Judge Wiehl cited Charles Joiner when Joiner asserted "it could easily be argued that a six-man jury would deliberate equally as well as one of 12." However, Joiner offered no supporting evidence, so Wiehl's conclusion is flawed; 2) five-person juries used

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in the District of Columbia were presided over, in part, by Judge Tamm, who said they were "satisfactory" — hardly solid evidence; 3) Cronin based his conclusions regarding the success of the Worchester, Mass., experiment on interviews with the court clerk and three attorneys involved in cases, none of which resulted in a verdict of more than $2,500. The court clerk said "six-member jury verdicts are about the same as those returned by 12-member juries." The three lawyers said they could not detect any differences in verdicts rendered by juries of different sizes. These data are hardly substantive; 4) the Court's fourth cited authority consisted of a summary of Cronin's study and the Massachusetts experiment. Again, lawyers and clerks are quoted as saying there are no differences. This does not constitute evidence; 5) an article from the *ABA Bulletin* noted that the Monmouth, N.J., County Court had experimented with a six-person jury in a civil negligence case. Simple reporting is not evidence; 6) a summary of the economic advantages found by a Connecticut law which allowed litigants to choose a six-member jury was offered. No mention was included of the quality of the jury's decision.

Nearly all of the evidence used to support the *Williams* decision relies solely on eyewitness opinion by individuals who are not trained observers and who are not necessarily proceeding from any recognized and consistent assumptions regarding the goals of jury decision-making.

Similarly, the 1973 *Colgrove vs. Battin* decision finding no difference in quality between six and 12-person juries was based on flawed research. In support of their decision, the justices cited four recent studies providing "convincing empirical evidence of the correctness of the *Williams* conclusion that there is no discernible difference between the results reached by the two different sized juries." The first study was based on 128 workman compensation trials in which six jurors were used unless the litigating parties requested 12. The fact that a 12-member jury costs twice as much to the litigant suggests that the choice was not made randomly. The second study was the New Jersey study comparing six and 12-person juries in simple and complex litigation (drawbacks of this study were noted earlier). The third study cited was conducted by the University of Michigan, utilizing a laboratory setting in which different sized juries were shown a videotaped trial, after which they deliberated. The researchers concluded that after hearing the same testimony and given ample deliberation time, six and 12-person juries reached similar decisions. The major problem with this research, however, is that the case was heavily weighted in favor of the defense; in the pre-deliberation vote, 10 of the juries already had the necessary 10 of 12 or five or six to render a verdict. The final study cited in *Colgrove vs. Battin* reviewed the Michigan court before and after six-member juries were instituted. The authors conclude no discernable difference. Their conclusions would be stronger had other court changes not been instituted simultaneously, such as the formation of a mediation board and modification of procedural rules. This last study is not negated, but it is not strong enough to conclude that six and 12-person juries are alike.

In June 1990, The National Center for State Courts released the results of their two-year study of 133 civil trials in municipal court in Los Angeles for the Judicial Council of California. State law in California currently allows six-person juries in civil trials when both lawyers agree. The Los Angeles study revealed no significant savings of either time or money with the reduced jury size.

The *Williams* decision did, however, set up criteria by which the effectiveness of a jury could be judged. The Court determined that a reduction in size would not adversely affect the quality of a jury's decision if the following were to remain intact: 1) the assurance of a fair possibility of obtaining a representative cross-section of the community; and 2) the requirement that group deliberation take place. Research that relates jury size to these two goals is imperative.

Demographic Representation

The real issue in evaluating the relative merits of various sized juries is how well each jury reflects the varying values of people in a given community. Since there are few verifiable data to conclude that six is preferable to 12 in dimensions of cost, efficiency, and time savings, the question for interested parties is how well each jury completes its task, which is to carefully evaluate the case before it and come to the best possible decision.

Nancy McDermid, Ph.D. and LL.D., sharply criticized the notion that research on six versus 12-person juries was revealing. She argued vigorously that a serious limitation of most of the studies is that there is very little recognition of the underlying premise of trial by jury, which is not that the jury should make a quick decision or come to agreement on some kind of "right answer," but rather, that the jury should consider all the evidence before reaching a decision.

Dr. McDermid posits that most research does not take into account the absolute need of the jury to reflect community values. Hans Zeisel supports this concern when he reasons that although no individual 12-member jury can be expected to be fully representative of all competing community values, a six-member jury is even less likely to be so. Zeisel demonstrates statistically that a six-person jury is much less likely to match community norms than a 12-person jury.

The most serious indictment of the smaller jury is the decreased likelihood of minority representation. Numerous studies have confirmed that small jury panels reduce minorities' participation. Zeisel suggests that on more than one occasion when the jury is reduced from 12 to six persons, it is less representative of the community from which it is drawn. He calculated that a 12-person jury is one and one-half times as likely as a six-person jury to have at least one minority member. Zeisel articulates the impact of the less representative character of the six-person jury when he notes that such a jury is not a true reflection of community attitudes and experiences. Women, furthermore, constitute 30 percent of all six-person juries, but 57 percent of all 12-member juries. Greater age and occupation diversity are found on 12-person juries.

The 1990 National Center for State Courts research is specific in condemning

-person municipal juries studied. The found it twice as likely that at least one black person will serve on a 12-person jury as on an eight-person jury. About 20 percent of the 133 civil trials reviewed included no blacks, and 31 percent included no Hispanics. The people who conducted the study concluded that a reduction in the number of jurors per jury lessened the mathematical likelihood of having at least one minority juror in a given case. It follows that six-person juries will have even less chance of including a minority, even if the community being represented is composed of many minorities.

The Deliberation Process

The second requirement for an effective jury set out in the *Williams* decision is that the jury must promote deliberation. The jury system is predicated on the notion that people see and evaluate things differently; it is one function of the jury to bring these divergent attitudes together into a single unified decision. This can only be accomplished by the deliberation process.

Basic statistics remind us that more viewpoints are available in a larger group. Again, no one is arguing that 12 is perfect; 12 is, however, 100 percent more than six. Nor does anyone argue that differing viewpoints ensure deliberation, but there are advantages from the greater number. Minority representation may inhibit overt prejudice in the deliberation process that may unfairly influence others. Related to this advantage is the additional effect that with more differing viewpoints there is greater opportunity for needed expertise among the jurors. One researcher related how one black juror was able to explain to fellow jurors why a black youth might flee from the police even if he were innocent. The potential that so-called "expertise" may be misleading is offset by the greater likelihood in a greater number to have counterinput if the explanation offered is meritless. There is also the potential that in a larger jury there will be a greater chance for the one extreme viewpoint, such as the individual who believed that God had ordained a conviction of the "Harrisburg 7." Such extreme views, however, are rare; even if present, the potential for offsetting is greater among 12 than among six.

Conformity

Consideration of the jury deliberation process requires a review of jury size and accompanying group dynamics. The first dynamic to explore is conformity. Research is replete with examples demonstrating that an individual holding a minority opinion is unlikely to resist group pressures to conform unless he/she is aware that at least one other member shares the position. Conformity to the group is not a rare occurrence. Rita Simon found that 10 percent of her jury subjects were willing to admit that they voted against their preferred positions. Conclusive research on small group conformity was conducted by Asch. From his many experiments, it is clear that a person alone is very vulnera-

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ble to group pressures; by adding just one more confederate, the person felt more secure in holding out against the influence of a large majority. A jury of six with one holdout is proportionally the same as a jury of 12 with two holdouts, but while the proportions are the same, the influence of the majority of a six-person jury over its minority is much greater, according to Asch's work, than that of the 12-member jury over its minority of two. Zeisel's statistics confirm this conclusion. He reported that in 290 six-person criminal trials, juries hung only 2.4 percent of the time, whereas, in a larger nationwide sample, 12-person juries hung 5 percent of the time. Whether or not hung juries are desirable or undesirable depends entirely on the perspective of the participants, but, in any case, minority opinion holdouts represent an aspect of community opinion that should be reflected in the jury's decision.

Participation

Proponents of the six-person jury point to research in small group dynamics which suggests that larger groups are less likely than smaller groups to foster individual participation. Bales and Strodtbeck, for example, showed that as groups increase in size, there is less time available for each member to participate, and those who do contribute are likely to talk more and be more visible and influential. The differences in the frequency of participation are intensified and polarized, and subgroups are more likely to develop. Obviously, minority opinions won't be heard if there is less opportunity for minorities to participate. This concern is not as relevant to jury deliberation, however, because there is no fixed time limit on jury discussions. Also, juries, unlike the groups in Bales and Strodtbeck's study, have a foreperson who is likely to seek out the contribution of each jury member. In another study by Strodtbeck, for instance, it was found that jury forepersons, traditionally thought to be the most verbally active members, were involved in only about 25 percent of the interaction in 12-member juries and tended to take neutral positions.

Quality

Finally, numerous studies concerning the impact of a reduction in jury size have shown that the quality of the group's discussion is higher in larger groups. One study in particular concluded that the dynamics of jury decision-making are adversely affected by a reduction in jury size. In experiments involving different sized groups working on complex human relations problems, it was revealed that the larger group was able in the same length of time to organize and establish channels of communication superior in quality to those of the smaller group. Complex human relations problems are the common tasks of juries.

Matlon's book on communication in the legal process sums up other research regarding six versus 12-person juries in civil suits. All studies except one found no statistically significant differences favoring the plaintiff when juries of six and 12 were compared; criminal litigation verdicts also do not differ between six and 12-person juries given the same case material, although 12-member juries are more consistent in reaching the same decision on the same case than are multiple six-person juries given the identical information.

The American Bar Association's Section of Litigation supports ABA efforts to restore civil jury size to 12, permitting 10 of 12 to render a verdict. Section Chair Michael Tigar offered the rationale in an August 1990 statement, "It [12-person jury] enhances the chances of truly attaining the deliberative process we all want and diminishes the disproportionate effect of having a strong or aberrant juror."

The Section of Tort and Insurance Practice (TIPS) also supports the ABA move to restore the 12-person jury. Their reasoning stems from a review of a TIPS report which concluded that a smaller jury "reduces markedly the accommodation of minority views, and its verdicts are less

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dictable than those of the 12-person jury, both with respect to the liability decision and the size of the damage award." The TIPS report also noted that six-member juries fail to represent various minorities or a cross section of societal attitudes.

At this time, there are few data which support that a smaller than 12-person jury will save litigation time or money. The process of deliberation when assessed against criteria for decision-making required in the *Williams* decision tilts in favor of the larger-sized jury.

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PERSPECTIVES

(Continued from page 3)

in the immediate future. To help prepare for this eventuality, the TBA currently has active committees on advertising and professionalism, and the TBA House of Delegates is taking up the issue of specialization. What has previously been regarded as three separate issues of advertising, professionalism, and specialization can now be seen as interrelated aspects of the same problem.

The fact that a 200-year-old document called the Bill of Rights can reach out and bite the legal profession at this late date attests to its continuing vitality as it begins its third century of existence.

Jury Study Revised

A ground-breaking study comparing eight- and 12-member juries has been revised, and an implied criticism of attorneys has been considerably toned down.

Researchers for the National Center for State Courts had found a greater than expected number of juries in several municipal courts in Los Angeles County with no black jurors. (See "Small-Jury Study," March *ABA Journal*, page 24.) The disparity between statistical prediction and courtroom reality was worse for the smaller juries, leading the researchers to conclude last year that "the exercise of peremptory challenges or challenges for cause, for whatever reason, increased the number of juries without blacks."

When the study was delivered to the Judicial Council of California in November, the council demanded clarifications. In the revised report, the blame ascribed to attorneys' challenges has vanished.

"[T]he primary explanation of minority representation on the juries was the jury size and, not surprisingly, the number of blacks on the panels from which the juries were selected. Peremptory challenges, challenges for cause and excuses from the panel were not statistically related to the representation of blacks. ... Discriminatory use of peremptory challenges was not seen in these municipal court civil jury selections."

—*Don J. DeBenedictis*

Small-Jury Study

Fewer jurors mean less minority representation, report says

Cutting juries from 12 members to eight should cut the time and money courts spend on trials, right?

Not quite, says an unreleased report on a ground-breaking, two-year experiment in Los Angeles. Smaller juries on average save courts only 36 minutes and $87 per small civil trial, the study found. The cost savings for courts, parties, jurors and jurors' employers combined is less than $2,000.

What actually gets cut is the number of juries that include minorities. And the likely explanation is attorneys' peremptory challenges.

The experiment, the first to compare traditional juries directly to smaller ones, randomly assigned either eight- or 12-member juries to civil cases in four large municipal court districts in Los Angeles County.

The study found, for example, that 31 percent of the eight-person juries in Los Angeles Municipal Court had no Hispanics, and 20 percent had no blacks. The study had used sampling theory to predict that when the juries were smaller, the number containing minorities would drop. But the problem proved worse than the statistics foresaw. (See chart.)

The authors of the study—Janice T. and G. Thomas Munsterman of the National Center for State Courts' office in Arlington, Va., with University of Minnesota Law Professor Steven D. Penrod as a consultant—stressed they could not say for sure that lawyers were "using their peremptory challenges and challenges for cause in a discriminatory way."

But they added that "it would be naive to assume that parties would use their peremptory challenges to yield a demographically balanced jury."

The National Center for State Courts conducted the experiment under a contract from the Judicial Council of California, the governing body of the California court system, which acted in turn on an order from the state legislature.

California is one of 23 states that require 12 jurors for all types of jury trials. The other states and the federal courts allow fewer jurors in, most commonly, civil or misdemeanor cases. The American Bar Association "Standards Relating to Juror Use and Management" recommend 12 jurors for serious crimes and at least six in most misdemeanor and civil cases.

The study may doom hopes for legislation to reduce jury size in California courts, according to some Judicial Council members. If the findings about minority jurors are true, "that probably kills the experiment and should," said council member Peter Hinton, a Bay Area plaintiffs' lawyer.

Instead of immediately forwarding the report to the legislature, the council agreed to seek clarifications of portions of the study. It will probably act on the report at its meeting later this month.

Peremptory Issues

Susan Finlay, who chairs the council's Municipal Courts and Justice Committee, said that one topic needing clarification was the effect of peremptory challenges. Attorneys participating in the experiment were allowed to reject six jurors without cause whether they were picking an eight- or a 12-member jury. Finlay said she could not tell from the national center's report whether reducing the number of peremptory challenges along with jury size would have produced more juries with minority members.

Finlay, a municipal court judge in San Diego County, also wondered whether cutting peremptories from six to four would have allowed jury selection in small-jury cases to move faster.

The study found that eight-juror trials lasted on average 0.6 hours less than 12-juror trials. But the finding is complicated by the fact that litigants in 33 cases slated by random assignment for eight-person juries demanded 12 jurors instead.

This significant number of "opt-out" cases was "a major complication for the study in that 'opting out' may foil the purposes of random assignment," the report states.

In fact, those 33 cases appeared to be weak, overinflated suits. Only 25 percent ended in plaintiff verdicts, compared to 59 percent for the eight-juror cases and 55 percent for the cases assigned 12 jurors. And those cases spent noticeably more time on jury selection.

Discounting the "opt-out" cases, the study found no differences between the number of verdicts for the plaintiff overall. Both sets of verdicts also matched trial judges' predictions equally well.

But the 12-member juries awarded *winning* plaintiffs significantly less money on average: $3,881, compared to $7,645 from eight-person juries and $6,500 from the eight-person and opt-out juries combined. Civil cases in California municipal courts are limited to $25,000.

—Don J. DeBenedictis

Percent of Juries Without Minorities

(Los Angeles Municipal Courts)

	8-PERSON JURY: 8 JURORS ASSIGNED	12-PERSON JURY: REFUSED 8-PERSON JURY	12-PERSON JURY: 12 JURORS ASSIGNED
WITHOUT HISPANICS			
Expected	20%	23%	10%
Actual	31%	30%	18%
WITHOUT BLACKS			
Expected	6%	1%	3%
Actual	20%	7%	16%
Total No. of Cases	35	27	45

Source: "A Comparison of the Performance of Eight- and Twelve-Person Juries" (preliminary version), National Center for State Courts