

# Jury Trial Management For the 21<sup>st</sup> Century

Presenting judicial education programs  
**Focusing on Jury Selection  
And Jury Deliberations**



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The State Justice Institute  
&  
The International Academy of Trial Lawyers Foundation

## Introduction

Through grants from the State Justice Institute (“SJI”) and the International Academy of Trial Lawyers Foundation (“IATLF”), this “Jury Trial Management for the 21<sup>st</sup> Century” curriculum was prepared to assist judicial educators to develop and present programs that ultimately improve the management of jury trials in their home jurisdictions.

The production of this curriculum stems from the increasing interest by the legal community, researchers, the media, and the broader public in judicial management of jury trials. While the over-all rate of jury trials has declined as a percentage of case filings, the frequency of empirical jury-trial research, promulgation of best practices, and media attention to jury trials has grown substantially in the last decade. From the “OJ” cases to former Illinois Governor George Ryan’s lengthy jury trial, we are repeatedly reminded that media reporters and their audiences care deeply about jury trials.

The organized bar has become more focused on jury trial management also. The American Bar Association in 2005 published aspirational “gold standards” for the conduct of jury trials. Bringing together the latest empirical research and jurisprudence on jury trials, the ABA’s *Principles for Juries & Jury Trials* called upon American courts and trial lawyers to take specific steps to improve jury trials during the next decade. Complementing the ABA’s effort, the National Center for State Courts (“NCSC”) completed the *State of the States Survey of Jury Improvement Efforts*, a three-year study tracking how jury trials are managed and conducted in all state courts. Upon its release in 2007, the *State of the States Survey* provided bench and bar policy makers with a baseline of information by which to measure whether and how their own state courts seek to make use of modern jury trial practices.

During the three-year data collection process leading up to the release of the *State of the States Survey* findings, bench and bar leaders in Arkansas, California, the District of Columbia, Florida, Illinois, Louisiana, Maryland, New York, Ohio, Pennsylvania, Texas, Virginia, Washington, West Virginia, and Wisconsin asked NCSC staff to present findings from the survey. From these engagements, two recurring areas of interest to judges emerged: (1) improving the efficiency and effectiveness of jury selection, and (2) managing or preventing troubled jury deliberations due to, for example, juror confusion, misconduct or apparent deadlock.

Regarding jury selection, the perennial challenge is to elicit meaningful information about prospective jurors’ abilities to maintain fairness and impartiality, and to obtain that information with reasonable efficiency. The parties and their lawyers want to learn as much as possible about the attitudes and life experiences of each would-be juror in order to discern who might be unfit to serve. But at times, lawyers obtain so little information that jury selection becomes a hunch game. The trial judge, with dozens or hundreds of cases on his or her docket, wants to administer justice in a timely and efficient manner so that other cases can be given prompt attention. Speed can be a top goal for some judges. Others, however, share the lawyers’ thirst for juror information so they can rule intelligently on motions to strike for cause. Still other judges feel obliged to carry out on

their own initiative the difficult tasks required under *Batson v. Kentucky* and its progeny to guard against race and gender discrimination during the exercise of peremptory strikes. These competing professional interests are seldom resolved to anyone's satisfaction. Consequently judges and lawyers alike believe there is great need for improvements in jury selection methods and *Batson* challenges.

The *State of the States Survey* also showed there is a thirst for practical ways to help judges respond to troubles encountered by deliberating juries. The six-month criminal trial of former Illinois Governor Ryan and the corporate fraud prosecution against senior executives at Symbol Technologies in New York City present vivid case studies of the challenges facing a trial judge when juror misconduct, confusion or deadlock befalls a deliberating jury.

The following curriculum-sets respond to those needs and concerns. One set of courses aims at improving the management of the jury selection portion of a trial. The other group of teaching lessons concentrates on developing methods to help deliberating juries who encounter trouble reaching a verdict, have difficulty understanding their role, endure misbehavior in their own ranks, or face other problems.

## **Acknowledgments**

Funding from SJI and IATLF enabled the NCSC and the National Judicial College ["NJC"] to engage Judge Gregory E. Mize (Superior Court of the District of Columbia & judicial fellow, National Center for State Courts) as project director. In turn, an advisory committee of nationally recognized jury trial experts was convened to brainstorm about the appropriate content for the "Jury Trial Management for the 21<sup>st</sup> Century" curriculum. The committee was comprised of Judge B. Michael Dann (Ret.) (Superior Court, Maricopa County, AZ), Professor Shari Diamond (Northwestern University Law School & American Bar Foundation), Judge Richard J. Knowles (Ret.) (2<sup>nd</sup> Judicial District, Albuquerque, NM), Patricia Lee Refo, Esquire (Snell & Wilmer, LLP & former Chair, A.B.A. Section of Litigation), and Judge Barry Schneider (Ret.) (Superior Court, Maricopa County, AZ). This all-star working group met for two days in December 2008 at the NJC. Under the leadership of William Brunson, director of special projects at the NJC, and Judge Mize, the advisory committee identified a universe of problems, issues and challenges facing trial courts during the jury selection and jury deliberation stages of a trial. The working group also reached consensus on learning objectives and activities in the subject topics. After their in-person meeting, the team refined and organized the fruits of their brainstorming into the curriculum and resources contained here. Judge Mize thereafter took on the responsibility of principal program author.

Additional recognition and thanks are owed to Paula Hannaford-Agor, director of NCSC's Center for Jury Studies, and to G. Thomas Munsterman, director emeritus of the Center, for giving invaluable input during the curriculum development process.

Noteworthy too, several of the modules were “road tested” at bench and bar conferences. At the 2009 annual conference of the Nevada District Judges Association, Judge Mize assembled a distinguished faculty from Nevada to deliver a three-hour program utilizing these Managing Jury Selection Effectively modules: Module #2, “Ruling on For-Cause & Peremptory Challenges” and Module #4, “Respecting Juror Privacy & More.” At the 2009 National Jury Summit of the American Board of Trial Advocates, faculty from the east and west coasts presented a centerpiece program that combined elements from Jury Selection Module #3, “Judge & Lawyer Collaboration” and Module #6, “Promoting Judge-as-Educator Role.” Feedback from both program audiences yielded valuable refinements to all of the Jury Selection modules.

### **Using the Curriculum**

The designers of this curriculum assumed that the principal users would be trial judges who have already presided over at least a few jury trials. The curriculum is not a primer on jury trials for those recently appointed or elected to a trial bench. For new jurists, the most likely educational resources will be bench books and orientation courses produced by individual court systems.

Each curriculum set contains five or six teaching modules that can be used in a variety of combinations by users. Depending on the amount of available programming time, the enclosed array of modules affords judicial educators the flexibility to link a series of modules into hourly, half-day, or whole-day programs hosted by judicial or bench-bar education conferences.

The “Managing Jury Selection Effectively” curriculum contains six, 60- or 90-minute modules: (1) “Obtaining Crucial Information from Prospective Jurors,” (2) “Ruling on For-Cause and Peremptory Challenges,” (3) “Judge & Lawyer Collaboration during Jury Selection,” (4) “Respecting Juror Privacy & More during Jury Selection,” (5) “Time Management,” and (6) “Promoting Judge-as-Educator during Jury Selection.”

The “Helping Troubled Deliberating Juries” set of courses contains five, one-hour modules: (1) “Improving the Deliberative Process,” (2) “Helping Jurors Overcome Jargon,” (3) “Responding to Deliberating Juries Having Questions or Reporting an Impasse,” (4) “Responding to Misconduct/Mishaps in Deliberations,” and (5) “Respecting Juror Privacy & Responding to Their Stress.”

Each module provides learning objectives and learning activities aimed at suggesting to judges how they might improve their management of the jury-centered portions of a trial – jury selection and deliberations. There is an emphasis on role-playing and audience participation in order to promote group dialogue centering on realistic challenges that arise repeatedly in courtrooms and jury rooms across the country.

The participant materials are designed to be audience-centered. That is, they are to be used by the participants *during* the educational session. The curriculum materials also contain extensive bibliographies. If the participants choose to continue studying these topical areas, which is a significant goal of the curriculum, the bibliographies will serve them well. The materials also contain one or more hypotheticals for use during each module.

PowerPoint slides are also included for use during the presentation. Some slides contain speaker notes that provide either background information or insights into how a faculty member might use each slide.

To support the curriculum, the NCSC and the NJC will endeavor to maintain a rolling roster of experienced jurists, empirical researchers, respected veteran trial lawyers, trial consultants, and articulate former jurors who are willing to serve as faculty for upcoming programs that utilize this curriculum. It is envisioned that these faculty members would complement faculty based in the host jurisdiction – together constituting a talented orchestra ready to present information-rich and locally relevant programming.

To ensure that program materials are acquired and shared in the intended manner and quality, all components of this curriculum are in PDF format. However, the producers encourage the materials to be used widely and in a fashion that best fits particular judicial audiences. Thus, educators interested in obtaining any program materials in an amendable Word format should contact Judge Gregory E. Mize, judicial fellow, Center for Jury Studies, National Center for State Courts, at 703-841-6932 ([gmize@ncsc.org](mailto:gmize@ncsc.org)) or Paula Hannaford-Agor, director, NCSC's Center for Jury Studies, at 757-259-1556 ([phannaford@ncsc.org](mailto:phannaford@ncsc.org)). These interested users should be mindful of the copyright terms shown below. For educators who make modifications to the curriculum, please contact Judge Mize at the contact sites shown above and William Brunson, director of special projects, the NJC, at (800) 255-8343 to share the content of the modifications and any consequent successes.

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