JURY CONSIDERATIONS FOR

LONG TERM CASES

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TABLE OF CONTENTS

		Page
INTRODUCTION		3
1.	**Lead Time on a Long Term Case: Three Months' Notice**	3
A.	Use of voir dire questionnaires	4
B.	Use of pre-screening letter/questionnaire	4
C.	Sequestration	4
D.	Follow-up meetings	5
2.	**Explanation of Procedures and Discussion with Counsel**	5
3.	**Time Screening: Strongly Recommended**	6
A.	Counsel should stipulate to time screening	6
B.	Hardship claims result in eventual excusal of same jurors	7
C.	How the screening process works	7
4.	**Procedures Following Screening**	9
A.	Number of jurors to report	9
B.	Special panels should *not* report on Tuesday	9
C.	Identify impanelment location	10
D.	Resolve logistical issues with questionnaires	10
5.	**Jury Manager and CRD Procedures During Voir Dire**	11
CONCLUSION		12

The successful impanelment of a long term trial is dependent on having all key court personnel informed and involved. The fundamentals to this success are the thinking and planning ahead, anticipating contingencies, and being prepared. Communication at all levels is crucial.

INTRODUCTION

In preparing for long term trials, it is necessary **to think and plan ahead, anticipate contingencies, and be prepared**. The procedures that the Jury Section followed in past years, including in 2000 to ensure that the court had a pool of 220 screened jurors available to serve on a seven to eight month case involving the so-called "Mexican Mafia," as well as procedures utilized in connection with other protracted cases, are set out below.

All preparation involves sufficient advance notification to the Jury Section so that it can make the logistical arrangements for handling a large venire pool, the need to explain all procedures well in advance to counsel, screening procedures that are defined on a step-by-step basis, and voir dire procedures that ensure tracking of each potential juror who is brought before the court.

1. Lead Time on a Long Term Case: Three Months' Notice

The staff, space, and time requirements for handling a huge venire pool make it essential that the Jury Section have sufficient notice in advance of trial to make the necessary arrangements. It is recommended that the Judge, Courtroom Deputy, Court Security, and Jury Manager meet at least ***three months*** before the start of the trial to discuss the jury needs and the administrative logistics.

A. Use of Voir Dire Questionnaire. A meeting to discuss the logistics involved in administering a questionnaire that is part of voir dire is essential. Depending on the subject matter, a voir dire questionnaire is occasionally used. The questionnaire expedites the selection process in notorious and/or lengthy cases. If the voir dire questionnaire is used, advance notice and preparation time are essential to ensure that the logistical concerns are identified and resolved. Copies of voir dire questionnaires are available in the jury section for your review.

B. Use of a Pre-screening Letter/Questionnaire. Notorious and/or long term cases usually require a pre-screening letter/questionnaire in order to obtain a time-screened panel. A printout of months' calendars showing days intended for trial may help explain the schedule. Depending on the notoriety or length of the case, a meeting three months in advance of the trial should be held among the Judge, courtroom deputy, counsel and Jury Manager. This meeting should be convened even earlier if the judge is considering sequestration of the jury. (A jury has only been sequestered twice in the Central District in the last 23 years.) Copies of pre-screening letters/questionnaires are available from the Jury Section for your review.

C. Sequestration. Sequestration involves consideration of juror security, juror meals, entertainment, transportation (rental of vans), personal needs, and parking. The U.S. Marshal's participation is essential since the USM is in charge of

most of these off-site responsibilities.

D. Follow-up Meetings. One or more subsequent meetings may be necessary to confirm the following information:

1. The size of the desired venire pool;

2. The number of jurors, including alternates, to be selected;

3. Whether the available number of peremptory challenges to be exercised by the parties has been enlarged by the court;

4. Whether notoriety of the case suggests that many persons will have heard of it and may hold opinions on the subject of the trial;

5. Whether or not the pool will be time-screened;

6. The starting date and time;

7. Final, best estimate of length of trial;

8. Interruptions anticipated during trial, including observance of federal and possibly religious holidays;

9. Standardized court hours.

2. Explanation of Procedures and Discussion with Counsel

It is recommended that the foregoing plans, procedures, and considerations be discussed thoroughly, on the record, with counsel. By following this procedure, all interested parties will be aware of the logistics and be afforded an

opportunity to make their objections, if any, submit their suggestions, and otherwise have relevant issues resolved in open court. If the parties express a preference for use of a questionnaire, the attorneys can be charged with its creation, its due date to the court for final approval, the duplication, and final distribution of completed questionnaires.

Two areas of concern to counsel recur: (1) the random selection of jurors from the jury pool and (2) the random selection of jurors for voir dire. The Jury Manager stands ready to explain the random selection of jurors to counsel. Counsel have shown significant interest regarding the procedures followed, first, to obtain prospective jurors and, second, the procedures involved in selecting the first jurors to be seated in the jury box.

According to the jury plan of this district, the selection of names from the master jury wheel is accomplished by a purely random process. This random process ensures that each county within each division is substantially and proportionally represented in the master wheel in accordance with Title 28, United States Code, Section 1863 (b)(3). Our procedures have been upheld in various reported decisions.

3. Time Screening: Strongly Recommended

A. Counsel should stipulate to time-screening. The time-screening of jurors for availability in long term cases is highly recommended. Most judges obtain a

stipulation from counsel to agree to this procedure. Some judges offer a tradeoff: the court will make use of an extensive written questionnaire prepared by counsel (and after final approval by the judge) in exchange for which the jurors are screened for availability so that only time-qualified jurors complete the questionnaire.

B. Hardship claims result in the same jurors being excused in the long run.

Experience has also shown that screening jurors for "time" expedites the voir dire process. An objection may be raised to time-screening because it is believed that a certain section of the population excuses itself. However, again, experience has shown that this segment of the population would eventually be excused by counsel (or the court for hardship) anyway. Time-screening is expeditious and cost effective. *Not* time-screening may give the appearance of complete impartiality, but the result is the same and it is time-consuming and expensive.

C. How the screening process works.

1. Since the Central District is now a One-Step court, all jurors receive a questionnaire with a summons date. In a Two-Step court there are two mailings; a questionnaire to determine if they are qualified, followed by a summons to qualified jurors informing them to report on a specific date. It is essential that timely notice be provided to the Jury Section. Under the One-Step process more jurors are NOT available to serve, especially on long term trials; thus, more screening

letters/questionnaires would have to be mailed.

2. After the screening procedures have been settled and the court has approved the parties' agreements or stipulations, the Jury Manager drafts a letter and questionnaire to be mailed to a certain number of prospective jurors. The number of letters mailed is dependent on those factors listed above, such as: length of case; number of defendants; notoriety; enlarged challenges; court hours and the target number of available jurors needed.[1]

Attached is a sample copy of a letter sent to 18,000 prospective jurors from the Master Questionnaire Jury Wheel. This sample is similar to the letter/questionnaire sent to the 3,000 prospective jurors in the high-profile case just footnoted. Note that the letter is brief, yet it encourages people to volunteer and provides them with as much information as necessary so that they may make an intelligent decision. All letters/questionnaires must be returned. If the prospective

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[1] For example, in one notorious criminal case, 3, 000 questionnaires were mailed to qualified jurors. The goal was to obtain a pool of 300 available jurors. The jurors who received the questionnaire were only provided with limited information. They were not provided with the name of the case nor the subject matter. However, all other information was provided, in particular the possibility of being sequestered for eight weeks. Three thousand questionnaires from the Qualified Jury Wheel yielded 300 available jurors (10%). Upon arrival and after being informed of all the details of the case, 50 jurors were excused for personal reasons. Within a week and half, the court selected its jury from the first 80 available jurors. The remaining 170 jurors were on call and were not utilized.

juror is requesting to be excused, it is especially important that the questionnaire be returned and an explanation for the excusal from this particular trial be provided.

3. Statistics on the number of prospective jurors who have volunteered for either a long term trial or notorious trial are kept on a daily basis.[2] The purpose of this tally is to maintain a count of available jurors, ensuring that the desired goal is achieved. The results are reported weekly by the Jury Manager to the judge's courtroom deputy. The Courtroom Deputy is responsible for informing the judge.

4. Procedures Following Screening

Two-three weeks before the start of the trial, the trial judge should meet with counsel, the Jury Manager, the CRD and the U. S. Marshal to review the procedures for the impanelment. The following points should be considered:

A. Number of screened jurors to report (allow for an absentee rate of 5-10%).

B. The day of the week and the time of day the jurors are reporting. It is advisable to have this type of panel report on a day *other than Tuesday*. Tuesday is

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[2] The juror yield from the Master Jury Wheel is not as predictable as the Qualified Jury Wheel. In long cases, it is better to have more available jurors than not enough. For example, in the so-called Mexican Mafia case, 18,000 questionnaires were mailed from the Master Wheel. We obtained 550 volunteers (3%) for this seven to eight month trial. Our goal was to obtain 220 available jurors.

jury day for the entire court, and one special panel will require all the space available in the jury assembly room and the attention of all jury personnel.

C. Identify specifically the location to which the jurors are to report.

D. Will a questionnaire be issued?

1) Length of questionnaire?

2) Who is responsible for copying initial questionnaire?

3) Is the judge addressing the panel?

4) Is it an anonymous jury?

5) How are juror numbers assigned?

6) Where are the questionnaires to be completed?

7) How many copies of the completed questionnaire are needed?

8) Who pays for these copies? (A minute order is needed if the Clerk's Office is responsible for making the copies. This request should be coordinated with the Procurement Section.)

9) When and where will copies be picked up?

10) When will jurors return? (If a questionnaire is utilized, some jurors may be excused based on the answers to their questionnaire and will need to be told not to report. This procedure must be coordinated with the CRD.)

11) Who will coordinate with the jury section the number of jurors needed?

12) Is there a need for security to transport the panel from one courtroom to another?

5. Jury Manager and CRD Procedures During Voir Dire

Communication between the Jury Manager and the CRD is a prerequisite during jury selection. For example, assume that there is a panel of 200 available jurors. Most courtrooms cannot accommodate a panel this size. Therefore, the panel will be divided into sub-panels (selected in random order) and sent to the courtroom when called. Depending on the pace at which the voir dire proceeds, it may not be necessary to have the entire panel report. Part of the panel would be placed in an "on-call" status.

It is essential that the CRD inform the Jury Manager of the number of jurors and the time that they are to report each day. If not all jurors are to appear, it is also imperative that the CRD inform the Jury Manager of the reporting instructions to be placed on our call-in system. Special consideration must be given to jurors who live over 80 miles one way from the courthouse. For juror convenience, it is recommended that these jurors be in the first group of jurors to participate in the voir dire or allowed to stay overnight while awaiting to be questioned in voir dire.

For the purpose of recording attendance, it is suggested that all jurors report to the jury assembly room to be checked in. Since jury selection in these long cases usually takes days, it is crucial that the jurors know beyond any doubt whether they have been excused or if they are to call in for new reporting instructions. This information must also be communicated to the Jury Manager.

CONCLUSION

In summary, the successful impanelment of a long term trial is dependent on having all court key players informed and involved. Also, fundamental to this success, is thinking and planning ahead, anticipating contingencies, and being prepared. Communication at all levels is crucial.

Please feel free to contact the Jury Manager if you have any questions concerning the foregoing recommendations, practices, or procedures. We welcome additional recommendations or suggestions for increasing jury selection fairness and efficiency.