

**Citizens Jury Project
Spring 2004 Report on Juror Concerns:
December 1, 2003- March 31, 2004**

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Preface

The Citizens Jury Project (CJP) was created in 1995 following the recommendation of the Jury Project, a blue-ribbon panel formed by New York State Chief Judge Judith S. Kaye to review and reform jury service in New York State. CJP serves as an advocate for individual jurors in the courts and strives to make systemic reforms that improve conditions for all jurors.

The Citizens Jury Project responds to ideas and concerns of jurors, and assesses the conditions of New York courts through our ombudservice presence in the courts and ongoing data collection and analysis. The ombudservice booths, staffed by interns—currently one post-graduate law student recently admitted to the Bar, a graduate student in the social psychology doctoral program at the University of Kansas, a post-Masters journalist, a graduate student at John Jay College of Criminal Justice, and an undergraduate senior from Manhattan College—are the in-court presence of the project. At these booths, which are located outside the jury assembly rooms at 60, 100, and 111 Centre Street in Manhattan, and inside the jury room of 360 Adams Street in Brooklyn, interns interview and assist jurors and gather the data presented in CJP reports.

The last Citizens Jury Project trimester report focused on the issue of access to the court facilities and processes for jurors with disabilities. The following report will focus on an issue related to procedural access and juror comprehension: the law of evidence in relation to juries. The importance of this issue has been clearly voiced by our highest court:

To experienced lawyers it is commonplace that the outcome of a lawsuit—and hence the vindication of legal rights—depends more often on how the factfinder appraises the facts than on a disputed construction of a statute or interpretation of a line of precedents. Thus the procedures by which the facts of the case are determined assume an importance fully as great as the validity of the substantive rule of law to be applied. (*Speiser v. Randall*, 357 U.S. 513)¹

Using evidence to establish the truth of proposed facts is a complicated and sometimes thorny task. Recently, both nationally and internationally, evidence and its use have been fervently debated. The use of evidence in the Anglo-American courts contrasts the use of evidence in other forums: due to the adversarial nature of the process, there is an expectation that the evidence will favor the party that presents it to the court. But through argument, competing narratives, judicial impartiality, and our jury system, we aspire for objective judgment. The strength of our justice system is not simply that it is designed to protect individual rights, but that these rights are realized collectively.

¹ *Speiser v. Randall*, 357 U.S. 513, 520-21, 78 S. Ct. 1332, 1339, 2 L. Ed. 2d 1460 (1958). Quoted in: David W. Barnes, *Statistics As Proof* (1983).

This report will discuss the issue of the law of evidence in relation to the jury broadly, first analyzing differences between the Anglo-American adversarial system and continental inquisitorial systems, as a way to understand distinct elements of our system. The report will then turn to research on and theories of juror decision-making. The analysis will suggest that juror comprehension is highly related to their evaluation of evidence and that effective communication with jurors is pivotal.

In the second part of this report, CJP presents and analyzes the 517 comments of jurors interviewed by CJP from December 1, 2003 to March 31, 2004. Jurors' concerns in relation to service suggest ways in which to continue to improve the court environment and processes so that they are comprehensible and accessible to all jurors. Jurors' comments also reveal their cognizance of and appreciation for the significant reforms that have been introduced into the system.

Now well into our ninth year, CJP looks forward to continuing our collaborative work with the Office of Court Administration (OCA) and courts throughout the state. Jury reform has improved the administration of justice in New York and jurors' perception of the justice system. By giving jurors an active voice in our courts, and listening and responding to their concerns, the relationship between the courts and the communities of New York is strengthened and the groundwork is established for future administrative reform.

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1. AN OVERVIEW OF THE REPORT & UPDATE ON CJP ACTIVITIES

(A) Introduction

New York jurors recognize and appreciate the improvements that have been made to the jury system which, since the mid-1990s, has become more inclusive, comprehensible, and efficient.² Jurors consistently share appreciative comments with the Citizens Jury Project regarding friendly and informative court staff, shorter terms of service, and physical improvements to the courthouses. Meanwhile, jurors' more critical comments can serve as a guide into areas of future reform. Across New York and Kings County courts, jurors express concern about the burden service can put on their employment, financial, and familial responsibilities. Jurors' comments also suggest that administrative efficiency remains a concern and that there is a need to open the courtroom doors and examine voir dire, juror comprehension, and language issues. The State is addressing these issues through two initiatives: the Commission on the Jury³ is examining the issue juror utilization and the Jury Trial Project is looking at ways to improve juror comprehension and satisfaction through jury trial innovations. CJP commends both initiatives and, more generally, the Judiciary's recognition that jurors' insightful positive and critical comments must continue to be heard and responded to.

(B) Court Procedural and Facilities Accomplishments

Stemming from the collaborative efforts of members of the Judiciary and court and city officials, the following environmental and instructional improvements are being implemented in both New York and Kings County courts:

1. **360 Adams Street Environmental & Procedural Improvements:** In response to CJP's *Kings County Court Facilities Assessment*,⁴ Kings County court officials and Office of Court Administration officials are in the process of implementing significant environmental and procedural improvements to the 360 Adams Street courthouse. These improvements are discussed in greater detail in section 7A of this report.
2. **Environmental Improvements in New York County Courts:** OCA has agreed to work with the City on increasing the staffing in and around the New York County assembly rooms and expediting certain work orders. Section 3C of this report details these developments.
3. **Elevators:** The elevators at 120 Schermerhorn are currently being refurbished. The elevators at 100 Centre, 60 Centre, and 60 Lafayette

² For a summary of these reforms, see: New York State Unified Court System, *Jury Reform in New York State: A Second Progress Report on a Continuing Initiative* (March, 1998).

³ For more information, visit: www.jurycommission.com/

⁴ Available online: www.juryproject.org/reports.html

Street are also scheduled for refurbishment. All contracts have been awarded for work on the elevators at 100 Centre; the project will last for approximately two years.

4. **Computer and Wireless Access:** Jurors at 60 Centre Street can now take advantage of wireless access throughout the courthouse, and jurors at 111 Centre now have access to an onsite computer that provides Internet service and other features. OCA is offering these services in partnership with Courtroom Connect, a wireless Internet service provider that also provides wireless services in courts in California and Delaware.

While these improvements clearly suggest a positive, pro-active approach toward the facilities, other procedural and facilities-related aspects of service have been previously discussed and are in need of attention:

1. **Lack of information during service:** Jurors at all four Kings and New York County courts continue to express concerns and confusion about service, from summoning to dismissal.
2. **Delays and wasted time during service:** Jurors' comments on delays and "wasted time" reflect the importance of the Commission on the Jury. In addition to the Commission's work, CJP recommends that each court examine ways in which to improve juror utilization, an issue that is systemic but also affected by the culture of and demands on each court.
3. **Drinking water:** CJP encourages court officials to continue to press the City to make the necessary plumbing improvements so that the water that flows to the water fountains in the New York County courthouses can be turned on again. Until the water fountains are fully functional, jurors should have access to a water cooler or, at least, water should be available for purchase through concession and vending services.

(C) Update on CJP Activities

In collaboration with the Unified Court System, CJP continues to offer an ongoing presence in New York and Kings County courts. In addition to this work, CJP recently completed a civil voir dire observation project. During the time period of June 2, 2003 to March 1, 2004, fifteen CJP interns observed forty civil voir dire in New York, Kings, Bronx, Nassau, and Westchester County. After each voir dire, interns completed a survey prepared by OCA and wrote comments on and narrative descriptions of the voir dire. At the close of the project, CJP statistically analyzed the survey data and wrote a memo discussing our findings.

In response to the last CJP trimester report on access to the court facilities and processes for jurors with disabilities, CJP and the Citizens Court Monitoring Project, the other Fund for Modern Courts in-court program, examined the way

that our interns and volunteers assess disability access issues. As a result, the Citizens Court Monitoring Project surveys were revised to include questions that relate to disability access. The following questions were added to the surveys that over 300 volunteers in 15 counties use when monitoring the courts:

- Did any aspects of the courthouse design appear to hinder access for people with disabilities?
- Were there any problems related to the maintenance of the facility that would hinder access for people with disabilities? (e.g. elevators not working, disabilities-accessible restrooms out of order, etc.)
- Were any accommodations made for people with disabilities in the courtroom(s) you observed? If so, for whom and what?

The Court Monitoring Project also added questions related to linguistic access, an issue that CJP and the Court Monitoring Project frequently encounter in the courts:

- Were there any litigants who required a foreign language or sign interpreter during the proceedings? If so, was an interpreter available?
- Were there any delays in proceedings due to the lack of an interpreter?

CJP and the Court Monitoring Project will continue to work together on how best to assess and advocate for disability and linguistic access in the courts.

2. THE LAW OF EVIDENCE IN RELATION TO THE JURY SYSTEM

(A) Overview

“Objective evidence and certitude are doubtless very fine ideals to play with, but where on this moonlit and dream-visited planet are they found?”

(William James, *The Will to Believe*)

“The human understanding is like a false mirror, which, receiving rays irregularly, distorts and discolors the nature of things by mingling its own nature with it.”

(Francis Bacon, *Novum Organum*, Aphorism 41)

The law of evidence has often been characterized as “the child of the jury system,”⁵ thought to protect jurors from their own cognitive shortcomings: the mingling of human experience and nature into the guarded realm of reason. Another prominent theory suggests that it is the Anglo-American adversarial system that necessitates the complexity of our evidence law; the established evidentiary rules are thought to counteract polarity and bias, protect against distortions of truth, even the playing field, and promote fair play.⁶ Whether the intertwined roots of Anglo-American evidence law are a result of our jury system, the adversarial system, other factors, or some combination thereof, it seems clear that there is some friction: the highly-technical laws of evidence stand in direct contrast to jurors’ “common sense justice”⁷ and reflect the broader tension between the rule of law and individualized judgment that is informed by public values and norms.

This section will provide a brief comparison between the Anglo-American adversarial system and the continental inquisitorial laws and procedures related to evidence, as a way to understand distinctive elements of our adversarial system. Following this analysis, CJP will discuss juror decision-making in relation to evidence and will conclude with recommendations. This broad examination of evidence law in relation to the jury system is meant to suggest interconnections between law, theory, and social science research; combined, these fields paint a complicated but vivid picture of current thought. Our understanding of evidence in relation to the jury has policy implications for the future of New York’s jury system.

⁵ James B. Thayer, *A Preliminary Treatise of Evidence*, 266 (1898).

⁶ Edmund M. Morgan, *The Jury and the Exclusionary Rules of Evidence*, 4 *U. Chi. L. Rev.* 247 (1937); Dale A. Nance, *The Best Evidence Principle*, 73 *Iowa L. Rev.* 227 (1988); John H. Langbein, *Historical Foundations of the Law of Evidence: A View from the Ryder Sources*, 96 *Colum L. Rev.* 1168 (1996). Cited in: Roger C. Park, *An Outsider’s View of Common Law Evidence: Evidence Law Adrift*, 96 *Mich. L. Rev.*, 1486, 1488 (1998).

⁷ Norman J. Finkel, *Commonsense Justice: Jurors’ Notions of the Law* (1995).

(B) The Adversarial and Inquisitorial Systems in Relation to the Law of Evidence

Mirjan R. Damaska's work on evidence suggests that a way to understand the distinct features of the Anglo-American adversarial system and the continental system (such as the German or French inquisitorial system) is through comparison. He argues that the Anglo-American fact-finding process and evidentiary system is largely based on three primary factors: "the peculiar organization of the trial court; the temporal concentration of proceedings; and the prominent role of the parties and the counsel in legal proceedings."⁸ Damaska suggests that each of these factors serves as a supporting pillar: "take away any of these three factors, and then the distinctive common law doctrines and practices require a new interpretative frame in order to maintain their vitality—indeed, to survive."⁹ Within the argument stated in his book, *Evidence Law Adrift*, and in related articles,¹⁰ Damaska mentions a subset of significant features that affect and in some cases are a result of the three pillars. For brevity, the following table summarizes these pillars and other salient features that relate to the law of evidence and the jury system.

Anglo-American Adversarial System	Inquisitorial Continental System
Judges are considered impartial arbitrators and generally do not play an active role in proceedings.	Judges are considered impartial arbitrators who gather evidence, ask questions during proceedings and are the majority of the factfinders.
The trial court is bifurcated by the use of the jury. The judge decides questions of law and other issues independently.	Most trial courts are unitary. Some continental systems have mixed courts, in which citizens serve as lay judges. Judges and lay judges decide questions of fact and law together.
Concentrated trials: parties bring evidence that has not been previously reviewed by the court. However, extensive pre-trial proceedings and discovery have detracted from the concision of concentrated trials	Episodic trials: the gap between the two is decreasing, but the inquisitorial system remains a more extended process. The length of a trial affects hearsay in that there is time to seek out the declarant and, if appropriate, the court can compare the declarant's testimony to the hearsay witness' testimony.
Lawyers investigate, assemble, and present the evidence. Evidence is thus associated with parties. This evokes a	Parties or their lawyers nominate witnesses and suggest forms of proof, but the judge accepts forms of proof, making

⁸ Mirjan R. Damaska, *Evidence Law Adrift*, 4 (1997).

⁹ *Id.*

¹⁰ Mirjan Damaska, *Of Hearsay and Its Analogues*, 76 *Minn. L. Rev.* 425, 427 (1992). Mirjan R. Damaska, *Rational and Irrational Proof Revisited*, 5 *Cardozo J. Int'l & Comp. L.* 25 (1997). Mirjan Damaska, *The Uncertain Fate of Evidentiary Transplants: Anglo-American and Continental Experiments*, 45 *Am. J. Comp. L.* 839 (Fall, 1997). This summary is also informed by: Roger C. Park, *An Outsider's View of Common Law Evidence: Evidence Law Adrift*, 96 *Mich. L. Rev.* 1486, 1492 (May, 1998).

concern with fabrication, “hostility toward hearsay” ¹¹ and a reverence of the process of cross-examination. Expert testimony is also limited so as to prevent parties from presenting dubious, partisan experts.	the evidence more neutral. Judges and court officials select and evaluate evidence. Thus, “the same persons decide the admissibility of evidence and the weight it deserves.” ¹² Hearsay is less of an issue because declarants are not associated with one party. Challenges of witnesses’ testimony are considerably more rare, directed, and restrained. The examination of evidence becomes a “single integrative enterprise.” ¹³
Fact-finders are passive in the examination of the evidence.	Professional judges and lay judges ask questions during proceedings.
Fact-finding is ultimately intersubjective, through deliberation and in relation to standards of proof, particularly when unanimity is required.	In mixed court systems and in Continental jury systems, majority vote predominates.
Unexplained verdicts, unless interrogatories were submitted. ¹⁴	Written reasons for verdicts are required: “...unexplained judgments are anathema.” ¹⁵

Despite the increasing convergence of the systems, criticism of each system is potent. In relation to evidence, critics of the adversarial model assert that such a system distorts ordinary means of rational inquiry.¹⁶ Evidence is partisan and the presentation of distinct sides of a case is seen as an artificial contortion of narrative, further disrupted by objections, sidebars, and the questions and answer method.¹⁷ Critics postulate that the laissez-faire approach inherent in the adversarial model values dispute resolution as the primary goal of all procedure.¹⁸ Further, “...the idea that hearing two partisan accounts helps the trier discover the truth only works where the contestants have equal resources, a condition not often met.”¹⁹ This illustrates the interrelatedness of public issues that affect trials: the issue of adequately funded assigned counsel is pivotal to the

¹¹ Damaska, *supra* note 8, at 80.

¹² Mirjan Damaska, *Of Hearsay and Its Analogues*, 76 *Minn. L. Rev.* 425, 427 (1992).

¹³ *Id.* at 433.

¹⁴ Public examination of deliberations and jury verdicts in the US happens through the media. The recent Tyco case illustrates how this approach can be problematic, particularly when a juror’s name is disclosed. In a country with large number of high-profile cases, a more systemic concern arises. As Jeff Frederick, director of jury research at Charlottesville National Legal Research Group noted, “We have a lot of highly publicized cases, and with highly publicized cases people tend to form opinions.” “There is a concern about the possibility of jurors coming in with a little bit more of a fixed notion of what they want to do.” Clayton Collins, *Jurors: the Lowlights in Some High-Profile Trials*, *The Christian Science Monitor*, (visited April 6, 2004) <<http://www.csmonitor.com/2004/0405/p11s01-usju.htm>>.

¹⁵ Damaska, *supra* note 8, at 45

¹⁶ *Id.*

¹⁷ Roger C. Park, *An Outsider’s View of Common Law Evidence: Evidence Law Adrift*, 96 *Mich. L. Rev.* 1486 (May, 1998). Gordon Van Kessel, *Adversarial Accesses in the American Criminal Trial*, 67 *Notre Dame L. Rev.* 403 (1992).

¹⁸ *Id.*

¹⁹ *Id.* at 1492.

proper functioning of juries and the administration of justice in our adversarial system.

Critics of the continental system assert that an adversarial trial is the best way to protect individual rights and maintain a system in which these rights are central.²⁰ Continental judges are said to favor cross-case consistency over individualized justice, causing the factual foundation of decisions to be void of real life experience.²¹

The importance the adversarial system puts on a trial and a jury's role within it can be understood through the theory of legal realism, which suggests a movement away from elite decision-making, toward post-modern skepticism of objectivity. As notions of objectivity fade, relativism gains prominence in the interpretation of trial processes: "The mere doubling of narratives relativizes each and begins the process by which the trier is forced to look through the competing narratives and toward a truth beyond storytelling."²² Modern trials can be seen as "...a response to the modernist predicament of our needing our conventions while simultaneously knowing that we have created them and can criticize them."²³ Many scholars consider the presentation of a trial as an important public act. As Milner S. Ball remarks:

At best, the presentation of a case is a coincidence of reality and illusion, illusion not in the sense of perjury, but in the sense of theatrical metaphor—the reenactment of relevant and material elements for reflection and judgment. Although illusive, the paradoxical interplay of reality and illusion does seem to correspond with the deeper truth of the way we experience life, which is to say that it is a strength, and not a weakness or fault, in both the playhouse and the courtroom.²⁴

Language is thus a form of action and reenactment.²⁵ The trial process is seen as a way to capture events through multiple perspectives, governed by consistent court process. Citizens' interaction with government is integral to this

²⁰ Monroe H. Freedman, *Understanding Lawyers' Ethics* (1990).

²¹ Damaska, 1997, *supra*, note 10.

²² Robert P. Burns, *The Lawfulness of the American Trial*, 38 *Am. Crim. L. Rev.* 205, 208 (Spring, 2001).

²³ Robert P. Burns, *A Theory of the Trial*, 183 (1999).

²⁴ Milner S. Ball, *The Play's the Thing: An Unscientific Reflection on Courts Under the Rubric of Theater*, 28 *Stan. L. Rev.* 81, 82 (1975). Quoted in: Michael L. Seigel, *A Pragmatic Critique of Modern Evidence Scholarship*, 88 *Nw. U.L. Rev.* 995 (1994).

²⁵ James Boyd White writes: "The art of talking and writing is in part a navigation in tension and uncertainty through this problem, namely, the degree to which we are understood or understand. Yet perhaps the most remarkable thing about language is that despite its imperfections it can sometimes work to achieve a communication of internal experiences, however incomplete, and even a mutual shaping of internal experience. It is a field of tension all right, but one where people can in fact meet one another, from a distant land yet also as kindred." James Boyd White, *Acts of Hope: Creating Authority in Literature, Law, and Politics*, 132-133 (1994).

process and to the verdict, which gains public acceptance, in part, through public participation.

Aspects of the comparison between a trial and theater can be seen as postmodern, but the comparison also hints at a more antiquated notion of jurors as passive audience members. Since the emergence of a professional trial bar, jurors have been conceived of as passive observers rather than active learners.²⁶ In recent years, the advent of jury trial innovations suggests alternative ways for jurors to become more engaged in and better comprehend proceedings.²⁷ Basically, such reforms shift the way that judges and lawyers relate to jurors: the dialogic shifts to a triadic relationship. To a degree, these innovations challenge existing power structures and the scripted drama in the courtroom; it has been suggested that several of the innovations move the adversarial system closer to the inquisitorial system.²⁸ However, these innovations can also be seen as congruent with jurors' cognitive processes and the intended role of the jury in our adversarial system. Empirical research suggests that juror decision-making is an active, not neutral, process and that even the most pro-active innovations fail to have harmful procedural or substantive effects.²⁹ Improving juror comprehension is a common goal. Part of the big idea behind the jury system is that it serves as a check on government and a means to balance power.

The notion that jurors should be considered and treated as active learners has been met with criticism, but does not threaten the system in a way that continental judicial activism would. Mirjam Damaska notes "...against the background of a competitive factfinding process...it is risky for a third party to intervene in the forensic contest without appearing to offer assistance to one or the other litigant. In fact, judicial questioning may secure an advantage to a litigant which his lawyer could not have obtained, and which the other litigant cannot neutralize." And, in relation to a civil jury, "judicial questioning could be understood as reveal[ing] the judicial assessment of the trustworthiness of evidence to impressionable amateurs."

Judicial impartiality³⁰—or more, each system's understanding of judicial impartiality—can be seen as a great divide between the continental and Anglo-American adversarial system. Certain advantages that the continental system

²⁶ Hon. B. Michael Dann, "Learning Lessons" and "Speaking Rights": Creating Educated and Democratic Juries, 68 *Ind. L.J.* 1229 (1993).

²⁷ G.T. Munsterman, Paula L. Hannaford, and Marc G. Whitehead, *Jury Trial Innovations* (1997).

²⁸ Valarie P. Hans, *The Juries Role in Administering Justice in the United States: U.S. Jury Reform: The Active Jury and the Adversarial Ideal*, 85, 87 (2002).

²⁹ For example, Hans cites juror questioning, a reform that allows jurors to ask questions of witnesses that are typically first submitted to and approved by a judge. A major national study conducted by Larry Heuer and Steve Penrod found "There is no evidence that the more active, question-asking jury departs from neutrality along with its departure from passivity. In Heuer and Penrod's national study, being allowed to ask questions did not affect jury verdicts, the rate of judicial agreement with jury verdicts, or the attorneys' and judges' satisfaction with the jury verdict." *Id.* at 93.

³⁰ In extension, the parties' control of the evidence—both the development and presentation of evidence—is a central characteristic of the adversarial system.

may have over the adversarial system, such as the neutrality of evidence and greater judicial knowledge of the evidence, are contingent on different perceptions of judges and judicial power. As Roger Park remarks, the non-adversarial system has distinct advantages only "...if one can take for granted that the legal environment will come equipped with judges who are unbiased, hardworking, delicate with the liberties of others, incorruptible and impervious to the wishes of influential friends."³¹ Problems with judicial conduct and the selection of judges³² suggest the necessity of balancing power through the adversarial process and the jury system, which works to infuse the community into the process.³³

(C) Juror Decision-Making

While the jury system has influenced the development of evidence law, "One of the fixed points of the social scientific study of the trial is that the juror makes his or her decision after an intense encounter with the evidence, and it is the evidence in the case, more than any other factor, that determines the outcome."³⁴ Cognitive psychologists' research suggests that in the decision-making process jurors use social schemas to understand the evidence and develop stories³⁵:

Researchers have discovered that jurors attempt to arrange trial evidence in the form of a narrative or story. The narrative contains important events, action sequences, and presumed motives. Jurors fill in missing details to make the narrative more consistent and to make it fit with their world knowledge.³⁶ Then they match the story to the available verdict categories to determine a verdict in the case.³⁷

³¹ Park, *supra* note 17, at 1493.

³² The American Bar Association, *Justice in Jeopardy: Report of the American Bar Association Commission on the 21st Century Judiciary* (June, 2003). Deborah Glodberg Craig Holdman, and Samantha Sanchez, *The New Politics of Judicial Selection* (February, 2002).

³³ Blackstone recognized that juries have the power to counteract judicial bias and misconduct. Juries safeguard against "the violence and partiality of judges appointed by the crown...Our Law has therefore wisely placed this strong and two-fold barrier, of a presentment and a trial by jury, between the liberties of people and the prerogative of the crown." 4 William Blackstone, *Commentaries on the Laws of England* 343 (Oxford 1765-1769). Quoted in: Douglas G. Smith, *Structural and Functional Aspects of the Jury: Comparative Analysis and Proposals for Reform*, 48 Ala. L. Rev. 441, n 104 (Winter, 1997).

³⁴ Robert P. Burns, *A Theory of the Trial*, 34 (1999).

³⁵ Nancy Pennington and Reid Hastie significantly contributed to the development of the story model. See, for example: Nancy Pennington and Reid Hastie, *The Story Model for Juror Decision Making*, in *Inside the Juror: The Psychology of Juror Decision Making*, 194 (1993).

³⁶ For example, "Jurors' previously held views about what constitutes an adequate explanation of the litigated event plays a central role in their understanding and evaluation of the evidence." Marilyn T. MacCrimmon, *Fact Determination: Common Sense Knowledge, Judicial Notice, and Social Science Evidence*, *International Commentary on Evidence* (visited April 4, 2004) <www.law.qub.ac.uk/ice/papers/judicial1.html>.

³⁷ Abbott & Batt, *supra* note 4, at 3-14.

Therefore, Reid Hastie suggests, there are three processing sub-stages in the “story model”: “evidence evaluation; learning the verdict choice set; and evidence-verdict match process.”³⁸

From a legal perspective, mainstream evidentiary theory posits that generalizations serve as the glue in the process of inferential reasoning.³⁹ Background generalizations “can be vague or precise, supported by general knowledge or scientific evidence, value-laden and rooted in common knowledge of a given society.”⁴⁰ Although stories and generalizations have significantly different functions,⁴¹ William Twining suggests that they do interact: “A well formed story needs to be coherent, but to be true, it must also be plausible and backed by particular evidence. Plausibility is tested by background generalizations; the truth of specific factual conclusions is tested by reasoning from particular evidence.” Twining suggests that “a stock of knowledge”⁴² links stories and generalizations. Perhaps this idea can be extended to juries, whose role, in part, is to introduce the “stock of knowledge” into the court process. As Neil Vidmar notes: “Juries inject community values into the formal legal process, and thus can bring a sense of equity and fairness against the cold and mechanistic application of legal rules.”⁴³

Researchers have found that the idea that jurors bring community norms and values to the courts is not an idealization, but quite true.⁴⁴ These findings, the story model, and the theory of background generalizations all suggest the importance of diverse juries. Juries must represent an adequate cross-section of the community so that the jury can serve as a democratic institution in which minority and divergent narratives are voiced and considered.⁴⁵

³⁸ Pennington & Hastie, *supra* note 35 at 29.

³⁹ David Schum, *Evidential Foundations of Probabilistic Reasoning* (1994). Cited in: William Twining, *Civilians Don’t Try: A Comment on Mirjan Damaska’s “Rational and Irrational Proof Revisited,”* 5 *Cardozo J. Int’l & Comp. L.* 69 (Spring, 1997).

⁴⁰ William Twining, *Civilians Don’t Try: A Comment on Mirjan Damaska’s “Rational and Irrational Proof Revisited,”* 5 *Cardozo J. Int’l & Comp. L.* 69 (Spring, 1997).

⁴¹ “Generalizations are logically necessary in the context of rational argument; stories are psychologically necessary in the context of human decision making. The logical “dangers” are different from the dangers of poor “judgments.” William Twining, *Narrative and Generalizations in Argumentation About Questions of Fact*, 40 *S. Tex. L. Rev.* 351, 358 (Summer, 1999).

⁴² In describing this idea, Twining states: “A “stock of knowledge does not consist of individual, empirically tested, and readily articulated propositions; rather, both individually and collectively, we have ill defined agglomerations of beliefs that typically consist of a complex soup of more or less well grounded information, sophisticated models, anecdotal memories, impressions stories, myths, proverbs, wishes, stereotypes, speculations and prejudices. [...] The content of a “stock of knowledge” does not consist solely or mainly of ready-made generalizations, still less of empirical laws. Beliefs may be embedded in stories, examples, and experiences that are particular and may not have been articulated in general terms.” *Id.* at 362.

⁴³ Neil Vidmar *World Jury Systems*, Oxford University Press (2000).

⁴⁴ Walter F. Abbott & John Batt *A Handbook of Jury Research*, American Law Institute, ABA. (1999)

⁴⁵ Community representation and minority representation have also both been found to be predictors of perceived fairness of the jury process. Robert J. MacCoun and Tom R. Tyler, *The Basis of Citizens Perceptions of the Criminal Jury*, 12 *Law and Human Behavior* 333 (1988).

A modern challenge to the traditional adversarial system and our jury system is that evidence has become increasingly scientific.⁴⁶ Expert testimony has superseded sensory testimony,⁴⁷ largely due to the empirical leaps that have been made in the fields of human genetics and statistics.⁴⁸ However, research and trial experiences suggest, "...the trial process itself may be as much an impediment to jury comprehension and their understanding as the complexity of the legal concepts and evidence, or the competencies of jurors."⁴⁹ Damaska's work highlights the tension between common sense and scientific knowledge, but he also points out that although the average juror may have difficulty understanding and processing complex scientific information, the average judge is similarly perplexed, evidenced by the fact that the Continental system employs experts to evaluate complex evidence and judges defer to experts' judgment.⁵⁰ The jury suggests that individuals—a judge or an expert—should not work alone and that questions of fact should be comprehensible: while upholding individual rights in the adversarial system, the jury system works through the collective.

(D) Jury Instructions

In light of the complexity of the trial process—whether or not a case is wrought with scientific nomenclature—the language the court uses to instruct jurors has garnered considerable attention. The need for plain English language instructions is evident in the context of how we understand juries as an institution that derives its strength from diversity, which includes cultural (and, in extension, linguistic) diversity and professional diversity rather than professional juries. The principal role that evidence plays in relation to jurors' individual and collective decision-making also suggests the need for clear instructions. Yet, empirical research consistently illustrate that jurors do not comprehend jury instructions.⁵¹ While there is little evidence to support the notion that jurors are cognitively incapable of evaluating evidence that is limited or excluded by law,⁵² "It is [also] inconsistent to claim that jurors have cognitive shortcomings and at the same time expect them to follow complicated limiting instructions."⁵³ And indeed, problems with juror comprehension of judicial instructions extend beyond limiting

⁴⁶ Damaska, *supra* note 8.

⁴⁷ *Id.*

⁴⁸ "Disputes involving insurance coverage, medical malpractice, product liability, toxic torts, employment discrimination, paternity, privacy, and intellectual property will become increasingly complex as the knowledge of not only human, but plant and animal genetics, and the practical application of that knowledge, become more widespread." Robert D. Myers, Ronald S. Reinstein, & Gordon M. Griller, *Judicature*, Vol. 83(3), 2 (November-December 1999).

⁴⁹ *Id.* at 3.

⁵⁰ Damaska, *supra* note 8, at 33.

⁵¹ Joel D. Lieberman & Bruce D. Sales, What Social Science Teaches Us About the Jury Instruction Process, 3 *Psych. Pub. Pol. and L.* 589 (December, 1997).

⁵² "The fact remains that evidentiary arrangements which rest on the assumption that jurors are poor fact finders clash with the organizing energies of the traditional justice apparatus." Damaska, *supra* note 8, at 29

⁵³ Park, *supra*, note 17 at 1488.

instructions to the full gamut of instructions, ranging from eyewitness testimony to death penalty instructions.⁵⁴

Research suggests that psycholinguistic principles can aid in the revision of pattern jury instructions. Elwork, Sales, and Alfani's work suggests the following guiding principles:

- Eliminate the use of legal jargon
- Replace uncommon words with familiar words
- Replace abstract with concrete words
- Don't use homonyms
- Eliminate complex sentences
- Use the passive voice with care
- Examine the logical organization of instructions⁵⁵

Plain English judicial instructions benefit all jurors. In the context of New York, however, the need to continue to improve judicial instructions is also critical due to the diversity populations living in the state and the inclusiveness of the laws governing the jury system. For example, Article XVI, § 510 of the New York State Consolidated Laws states that in order for jurors to serve, they must "understand and communicate" in English, but not necessarily read or write in English. This law can be seen as inclusive, and also, realistic. More than a quarter of the residents of New York speak a native language other than English. Of these individuals, the U.S. Census Bureau found that 13% report speaking English less than "very well". Spanish is the most predominantly spoken language, and Spanish-speaking people comprise the majority of individuals who speak English less than "very well". These factors combined with the 57.9% growth rate of the Hispanic population from 1990 to 2000 (while the total U.S. population increased only 13.2%)⁵⁶ suggest that language and diversity issues will not subside and that plain English instructions can promote comprehensible and fair court proceedings.

In addition to the linguistic content of the instructions, the manner in which the instructions are conveyed affects juror comprehension. Research seems to indicate that providing a jury with a written copy of judicial instructions could aid in juror comprehension.⁵⁷ New York's Jury Trial Project is considering this and

⁵⁴ Lieberman & Sales, *supra* note 51.

⁵⁵ Amiram Elwork, Bruce Sales, & James Alfani, *Juridic Decisions: In Ignorance of Law or In Light of It*, *Law and Human Behavior*, 1, 163 (1977). Amiram Elwork, Bruce Sales, & James Alfani, *Making Jury Instructions Understandable* (1982). Cited in: Lieberman & Sales, *supra*, note 51.

⁵⁶ United States Census Bureau, *The Hispanic Population*, Census 2000 Brief (2001).

⁵⁷ Larry Heuer and Steve Penrod, *Instructing Jurors: A Field Experiment with Written Preliminary Instructions*, *Law and Human Behavior*, 409-430 (1989). *Jury Comprehension in Complex Cases*, 1989 ABA Litig. Sec. Rep.

three other innovations related to judicial instructions.⁵⁸ These innovations are seen by many as complementary to the adversarial process. Indeed, the New York State Bar Association's Committee on the Jury System recently came out in support of providing jurors with a written copy of the charge.⁵⁹

The recent reforms proposed to improve juror comprehension of jury instructions suggest that the law of evidence is not just a way to frame and control the evidence submitted. Clearly communicating the law to jurors serves as a means to strengthen the system and humanize the legal process.⁶⁰

(E) Conclusion & Recommendations

Encompassed in the law of evidence are a number of important goals including but beyond the rationalist ideal of creating court processes that result in an objective, accurate verdict.⁶¹ The laws of evidence help to frame deliberations,⁶² facilitate the acceptability of verdicts, and provide a forum in which the public can witness the arbitration of justice and participate in their government.

⁵⁸ The three other jury trial innovations related to jury instruction reform include: (1) providing jurors with preliminary instruction prior to the presentation of evidence; (2) charging the jury before summation; (3) providing jurors with copies of the verdict sheet and possibly including elements of the claims and/or definitions related to the steps of the process of reaching a verdict.

⁵⁹ John Caher, *State Bar Weighs In on Jury Reform Ideas*, New York Law Journal (visited March 23, 2004). <<http://www.nylj.com>>.

⁶⁰ Language and narrative connect the litigant to the jury; the right to a trial and a jury considered together suggest the need for comprehensible proceedings. To quote James Boyd White again, "Cases are often not neatly packaged in the categories established by legislative or judicial rules but exhibit surprising configurations of their own, bringing to surface the tensions and contradictions in our social life and culture. [...] The fact that the case is always narrative means something from the point of view of the litigant in particular. For him the case is, at its heart, and occasion and a method in which he can tell his story and have it heard. He has a right to a jury to ensure that he will have an audience that will understand his story and speak his language. The presence of a jury requires that the entire story, on both sides, be told in ordinary language and made intelligible to the ordinary person." James Boyd White, *When Words Lose Their Meaning: Constitutions and Reconstitutions of Language, Character, and Community*, 265 (1984).

⁶¹ Beyond this general assertion, there are specific examples of rules of evidence that trump the accuracy of the verdict for an external objective. Michael L. Seigel cites the traditional rule of barring evidence of subsequent remedial measures as an example. "...[T]he traditional rule operates to exclude such evidence based primarily on the rationale that a contrary rule would cause persons to leave dangerous conditions unremedied, which would result in additional harm. Thus accuracy of verdicts is sacrificed to accomplish a more important external objective." *A Pragmatic Critique of Modern Evidence Scholarship*, 88 Nw. U.L. Rev. 995, 1008 (Spring, 1994).

⁶² In *Evidence Law Adrift*, Damaska presents a thorough examination of limited admissibility rules and evidentiary concludes: "It appears that limited admissibility rules and evidentiary instructions are of little significance if conceived as protection against individual cognitive shortcomings. They fare much better, however, when understood as devices directed at influencing group deliberations. So understood, both instructions and limited admissibility rules can be defended as mandated by the urgency to organize arguments about evidence in tribunals in which citizen-judges, enlisted in the administration of justice as hoc, struggle to arrive at a verdict." *supra* note 8, at 40.

General Recommendations:

Treat jurors as active learners: Most jury trial innovations relate to juror comprehension and are not a threat the adversarial system. Without suggesting that research surrounding each innovation should be examined critically, the innovations that the Jury Trial Project is currently considering have considerable merit and appear to facilitate the factfinding process.

Improve the language and administration of jury instructions: Instructions should be written in plain English and clearly conveyed to jurors.

Continue to work to promote the inclusion of individuals and groups into the jury system: Inclusion is vital for impartiality, including the fair evaluation of evidence.

Clarify and economize on documentary evidence: Related to the idea of plain English jury instructions, evidence itself should not be opaque nor so profuse that it stymies jurors.⁶³ CJP recommends putting reasonable limits on the amount of documentary evidence submitted. To organize the evidence submitted, CJP also recommends the use of juror notebooks. In states such as Arizona⁶⁴ and Colorado,⁶⁵ judges can allow jurors to use notebooks, which may contain exhibits, written definitions of technical terms, deposition excerpts, biographical information, and photographs. Jurors can also use these notebooks for note-taking⁶⁶ and, when temporally appropriate, jurors may be given a copy of final jury instructions to include in their notebooks. The American Bar Association recommends the use of juror notebooks, particularly for complex and lengthy trials.⁶⁷

⁶³ Arthur D. Austin, *Complex Litigation Confronts the Jury System: A Case Study*, 100 (1984).

⁶⁴ Arizona Rules of Criminal Procedure, Rule 18.6D

⁶⁵ The Colorado Rules of Criminal Procedure, Rule 16 (F) The Colorado Rules of Civil Procedure, Chapter 25, Rule 316.

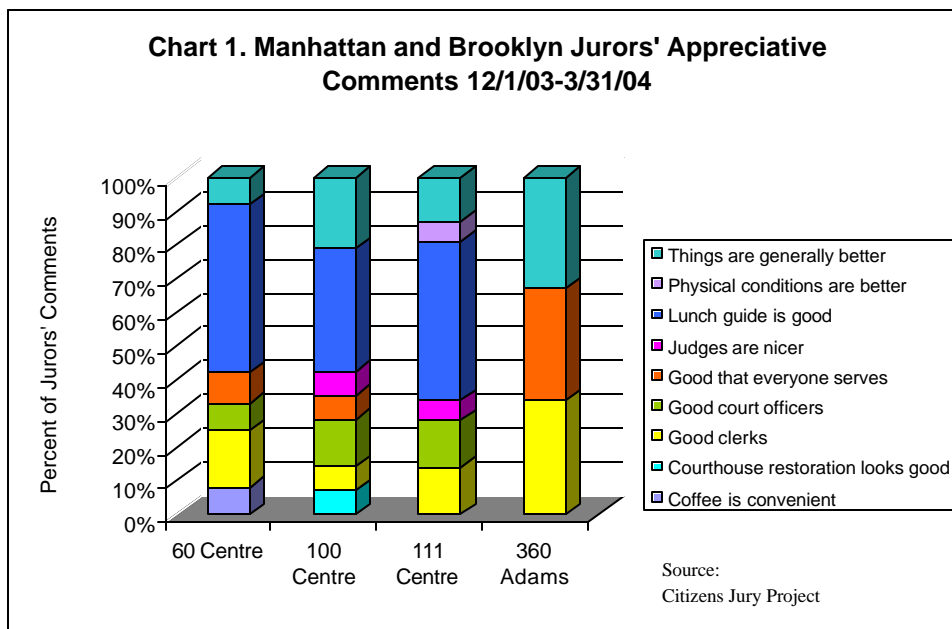
⁶⁶ For a discussion on the research and merits of note-taking, please see CJP's Summer/Fall 2002 report: www.juryproject.org/findec02.pdf

⁶⁷ American Bar Association, *Juror Comprehension in Complex Cases*, A.B.A Litig. Sec. Rep. (1989).

3. SUMMARY OF JURORS' COMMENTS FROM NEW YORK AND KINGS COUNTY

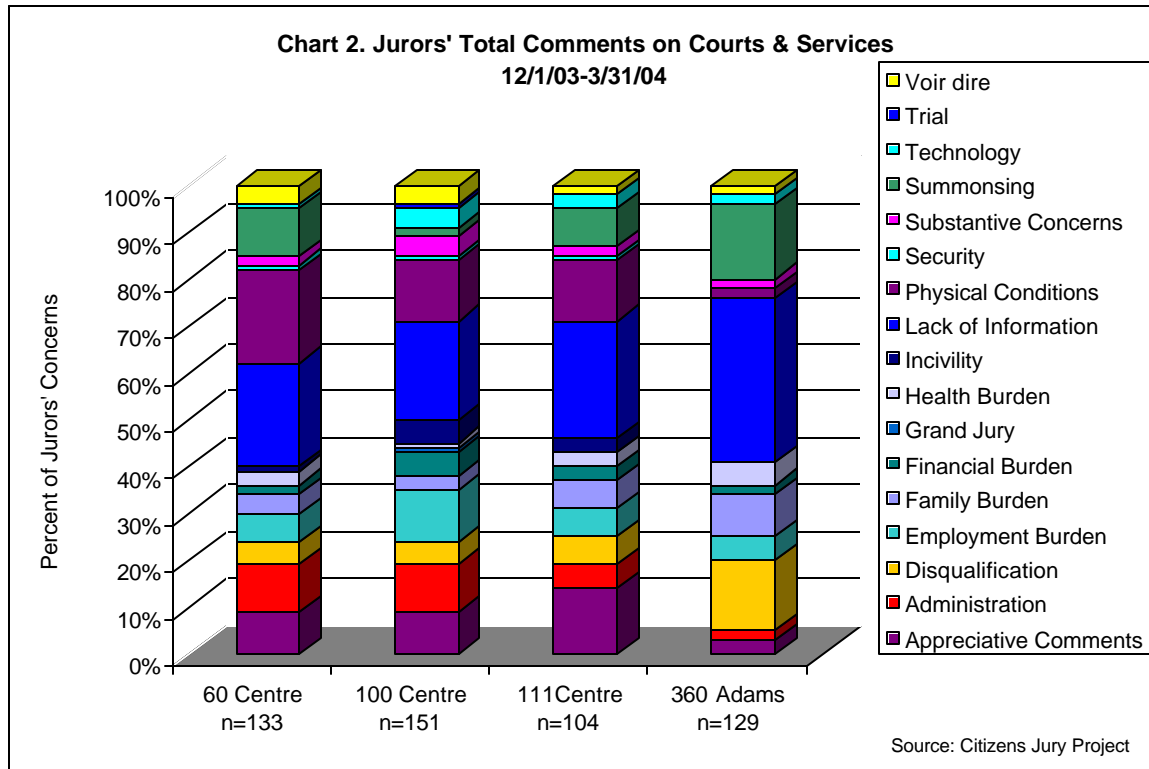
(A) Appreciative comments

New York and Kings County expressed a variety of appreciative comments about the court environments and processes. Jurors recognize that “things are generally better” (Chart 1, aqua) and are appreciative of the clerks’ (yellow) and court officers’ (lime green) professionalism. Jurors’ comment that “it’s good that everyone serves” (red) reflects their cognizance of the reforms that improve the inclusiveness of the system. Jurors also voice appreciation for the general improvement of the physical conditions in New York courts (lavender) and specific environmental improvements, such as courthouse restoration (light blue).



(B) All juror comments

“Lack of information” is once again the most common concern expressed by New York and Kings County jurors (Chart 2 below, bright blue). Jurors also frequently commented on the summoning process (green) the physical conditions (plum), and the “wasted time” attributed to the administration of the process (red). Concerns related to administrative inefficiency are often linked to jurors’ demanding personal and professional lives. Jurors’ employment (aqua), financial (forest green), family (periwinkle), and health concerns (lavender) inhibit their willingness and ability to serve.

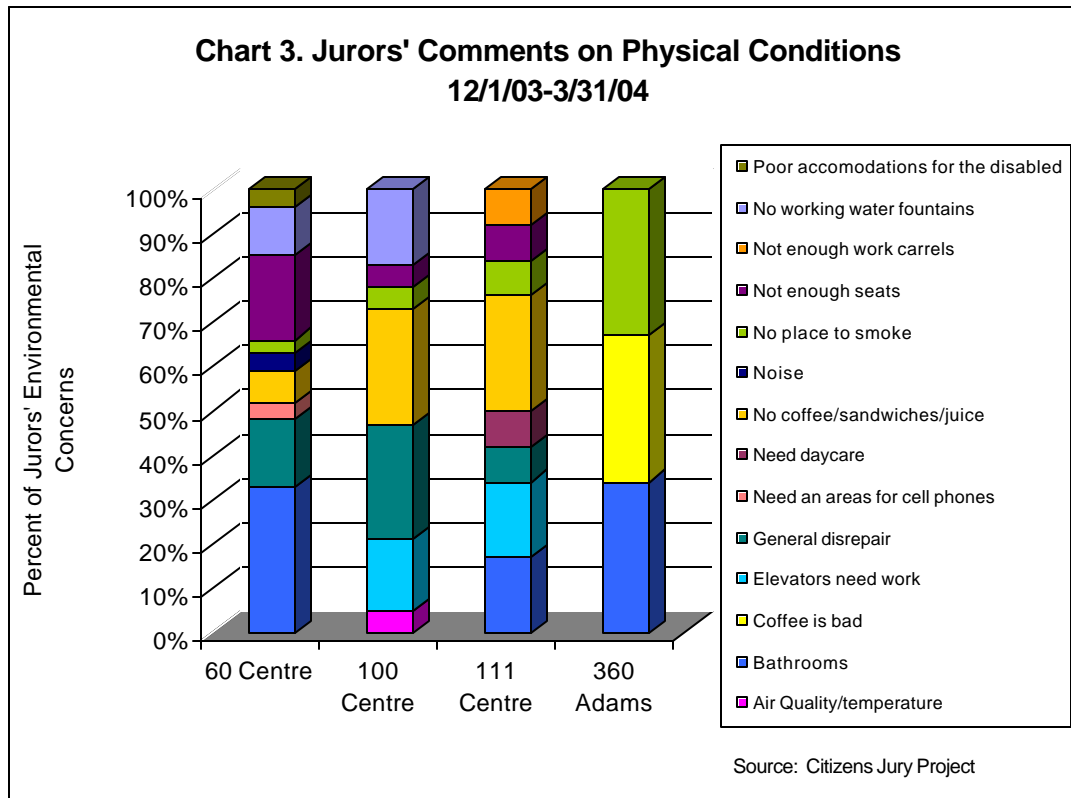


(C) Physical Environment

On March 17, CJP met with New York County court officials and an OCA administrator to discuss the physical conditions of and civil voir dire processes within 60, 100, 111 Centre Street courthouses. In regard to the physical environments of the courthouses, New York County court officials suggested that additional staffing is needed in and around the assembly room areas and that the City should act on certain work requests that New York County courts have submitted. For example, as mentioned in previous CJP reports, 60 Centre has requested the removal of a non-structural wall between two empanelling rooms within the courthouse. This improvement would create a more accessible empanelling room that could accommodate larger venires. In typical fashion, OCA has responded affirmatively and has agreed to work with the City on expediting certain work orders and increasing the staffing in and around the assembly rooms.

The environmental changes being made in New York and Kings County (discussed in section 7) will improve jurors' impressions of the court system and experiences within it. The comments that CJP collected during this past trimester suggest future court facilities work that should be addressed. The general disrepair (forest green), lack of seating (grape) and working water fountains (lavender), and the inaccessibility of coffee, sandwiches, and juice (mustard) were common issues in New York County courts. Jurors at 360

Adams Street voiced fewer concerns about the physical environment, but did comment on the need to go outside to smoke (lime), the bathrooms (bright blue), and the coffee (yellow).



4. 60 CENTRE STREET

(A) Summary of juror concerns

I just want to say, things are much better than they were the last time I was here. (2/9/04)

I went down there [room 139] this morning to change my day from April 19 to April 26 and the clerks were so friendly and accommodating. (3/26/04)

Jurors appreciate the courteous and diligent staff at 60 Centre Street and the significant improvements that have been made to the court facilities and processes. The top critical concern, lack of information, suggests that communication between court staff and jurors can continue to be improved upon, but also that the system can provide more comprehensive pre-service information. Related to “lack of information” concerns, jurors complain about

wasted time. Providing jurors with more information before and during the process can lessen jurors' perception of wasted time.

Consistent with past reports, the upkeep of the bathrooms at 60 Centre Street was jurors' most common environmental concern. The large amount of jurors summoned each day accounts for the difficulty of maintaining the bathrooms and another critical concern, the need for additional seating in the assembly room. The lack of working water fountains in New York County courthouses remains an issue for jurors at 60 Centre, particularly because the coffee stand adjacent to the assembly room—the jurors' only source of water—shuts down in the early afternoon.

Top Juror Concerns—60 Centre Street 12/01/03 – 3/31/04 (Total Concerns = 133)	
Top 5 Appreciative Comments	Count
Lunch guide is good	6
Good clerks	2
Things are generally better	1
Good that everyone serves	1
Good court officers	1
Top 10 Critical Concerns	Count
Lack of information/incorrect information	26
Bathrooms	9
Wasted time	7
Would like a postponement/dismissal	5
Not enough seats	5
General disrepair	4
Very disruptive to my work	4
Elder/child care	3
No working water fountains	3
Too many people called/dismissed	2

(B) Breakdown of juror concerns

There are several hundred women using one bathroom next to the assembly room, so I understand that it's difficult to accommodate us, but there are real problems with its maintenance and amenities. The bathroom has two or maybe three soap dispensers, but only one works. The same is true with the towel dispensers--only one works. [...] Also, because there are so many people using one small restroom, the court should clean it more frequently and provide paper toilet seats. I think the uncleanliness is particularly difficult for jurors with disabilities, who have to put their hands on the toilet if they are in a wheelchair. (1/13/04)

The quote above illustrates that environmental concerns do not simply have cosmetic effects, but can be a public health issue, which disproportionately affects those most in need of accommodations.

The limited amount of space in the assembly room area is particularly problematic when the call exceeds the number of chairs in the assembly room. Jurors must stand, sit on the floor, or find a nearby seat:

They shouldn't call more people than they have seats! It is stupid. I am sitting in a phone booth here!

[Intern note: This man had sat there for quite a while making no phone calls. He and about 15 other jurors didn't have seats. At 10:15 two cases were called and seats began to appear.] (3/17/04)

Jurors' comments also suggest that perhaps the chairs in the room could be arranged in a way that more aptly utilizes the space:

If you put rows of four chairs across and narrower aisles, you could fit in enough chairs to fit the jurors. Also, lose the tables below the main wall and put in more chairs. (1/12/04)

When a heavy caseload necessitates a large call, CJP recommends removing and rearranging some court furniture so that all jurors can sit.

60 Centre: Physical Conditions	Count
Bathrooms	9
Not enough seats	5
General disrepair	4
No working water fountains	3
No coffee/sandwiches/juice	2

A majority of the jurors who voiced summoning concerns were seeking a postponement or deferral. Other jurors commented on disproportionate summoning and problems with their name or address. Some jurors summoning concerns related to the information provided on the summons itself, which they felt could be more detailed and should reflect the actual timing of the process:

The summons did not say that jury service was going to last three days and did not have the hours on it, so it is difficult to plan. The summons should suggest to bringing reading material. The summons said to be there at 8:30 but it did not start until after 9:00. (3/25/04)

60 Centre: Summoning	Count
Would like a postponement/deferral	5
Disproportionate summoning	2
Problems with name or address	2
In non-compliance	1
Summoned within 2 years of previous service	1

“Lack of information” was again the most common critical concern expressed by jurors at 60 Centre Street during this trimester. The lack of information for non-English speaking jurors can be particularly trying because these individuals cannot advocate for themselves easily and often must rely on others for assistance. The following comments are from a young girl who accompanied her mom to the courthouse, to serve as a translator:

They said children are not allowed here. The lady in there [assembly room] told us to go to Rm 139. My mom wants to know if she can drop me on the first floor and come back up?

[Intern comment: I told her there is no child care service in this building and that they should go together to room 139 to try to postpone or apply for a deferral.] (3/24/2004)

Non-English speaking jurors’ comments also seem to suggest a lack consistency in the process of assessing jurors’ facility with English. The following comments are from a juror who spoke to the intern in Spanish:

I don't speak English that much. I understand a little, but I really can't speak.

[I told him to go to room 156. After 10 minutes, he came back.]

They told me that since I am an American citizen I have to serve, no matter what... (3/22/04)

As discussed in previous reports, CJP recommends providing multi-lingual information prior to service. Kings County has taken the steps necessary to soon offer telephonic, multi-lingual information; New York County should follow suit. Providing adequate, multi-lingual information prior to service conveys respect and promotes systemic efficiency.

60 Centre: Lack of Information	Count
Lack of information/incorrect information	26
Needed information ahead of time	2
Needed directions to the courthouse	1

Jurors who spend their service waiting in the assembly room often express that service is a waste of their time:

This system of selecting jurors needs more thought. We leave our work places to sit there waiting to be called, and then waiting to be picked. But most of the time we're not even called but rather sit there, a whole day wasted. If you call 200 people for jury duty, you should have the judges and lawyers ready to interview each and everyone of them. If not, send those people home! [...] There is a lot of time consumed for no reason. (2/2/04)

Happy to serve but the assembly room is too overcrowded. I thought that January would be an optimal time to serve but the assembly room was overbooked with people—I could not find a seat. I work for a company where I am the only one who does my work so it is frustrating to take time off of work. Three days is too long to take off of work. I am sure you can get a MIT mathematician to statistically create a more efficient system. (1/8/04)

As the comments above suggest, jurors' life concerns (related to employment, family and/or health) are further aggravated by delays during service. Good administration involves providing jurors with adequate information prior to service and informing jurors about the reasons behind delays during service.

60 Centre: Administration/Technology	Count
Wasted time	7
Process does not start on time	2
Not enough cases for jurors	2
Adopt one-day-one trial rule	1
Improve technology	1
Need more phones	1
Service is too long	1
Service should be more flexible/accommodating	1

60 Centre Street jurors comment on wasted time during voir dire and the trial process. Although part of the problem is simply the high caseload, aspects of the voir dire process are illogical and impede the process. A simple improvement that can be made is to collect the jurors' surveys in the assembly room and allow lawyers to review the surveys before the jurors are seated in the empanelling rooms or courtrooms:

It would save time if the lawyers received our questionnaires before the jurors arrive. Seems like we wait about 20 to 30 minutes while they read the forms.

[Intern note: the woman also noted that only a court officer, besides the attorneys, was present in the courtroom until she left] (60 Centre, 3/3/04)

CJP encourages lawyers to review the questionnaires before jurors are seated in the empanelling room or courtroom. CJP also recommends supervising civil voir dres, to expedite the process and guard against unnecessary excusals.⁶⁸

60 Centre: Voir Dire	Count
Civil voir dire should be supervised	2
Should be prescreening	2
Too many people called/dismissed	2

Despite some signs of growth, New York's economy continues lag. New York has lost a larger percentage of jobs than the nation's loss since March 2001 (-2.9% compared to -1.8%) and harbors a 6.9% unemployment rate, essentially the same as it was in February of 2003.⁶⁹ Anxiety about work and finances is shared among unemployed, employed, and self-employed workers:

I run a retail store and I have nobody to run it with me while I'm on jury duty. I've been here for 2 days now and have not been called. Today is the third day. Is there anyway I can fax something and return to the building? I was called the first time during the Christmas season and I got a postponement right away. Now I don't want another postponement, you know? Do I have to serve again, 'cause my business is suffering? (1/22/04)

OCA's employer/employee handbook is a excellent resource for jurors, whose questions and concerns can be quelled by the information provided. To compliment the handbook, CJP recommends that clerks address employment and financial concerns during morning orientation.

60 Centre: Employment/Financial Burden	Count
Very disruptive to my work	4
Financial hardship	2
Am losing major work assignments	1
Juror pay is not enough	1
My business will suffer	1
Self-employed people should be exempt	1
Work nights	1

⁶⁸ In 1995, the *Report on the Civil Voir Dire Study*, examined data on civil voir dres that was collected from courts in diverse locations (urban, suburban, and rural) from January 30-May 19, 1995. The report, authored by Chief Judge Judith S. Kaye and then Chief Administrative Judge E. Leo Milonas, concluded: "Judicial involvement in the selection of civil juries clearly affected both the efficiency and perceived fairness of voir dres, and some level of judicial supervision was supported by a majority of judges and attorneys" Hon. Judith S. Kaye, Hon. E. Leo Milonas, Report on the Civil Voir Dire Study (1995).

⁶⁹ The Public Policy Institute of New York State, Inc., *Facts and Figures About New York's Economy* (visited April 19, 2004) <<http://www.ppiny.org/nyecon.htm>>.

Caretakers and the elderly are two other groups whose concerns should be directly addressed prior to service and during morning orientation. In regard to the elderly, the system faces the difficult task of assessing whether or not these individuals' health concerns warrant excusal.

I am 71 years old and I retired 6 years ago. Since then, I have been used to waking up late and taking naps in the afternoons. Jury service is very disruptive to my routine. There should be an age limit to jury service. Old people are not energetic enough to sit through the whole day for three days. I went through jury selection but I told the lawyer about my concerns, that I get sleepy in the afternoons, and I was dismissed from that case. My suggestion is that jury service should be optional for the elderly. I am so happy you are here to take my comments. (1/8/04)

It can be argued that this elderly juror's time was wasted since he sat through voir dire but was then excused. On the other hand, it is perhaps judges, not lawyers, who are best equipped to make this type of decision.

Caretakers of children and the elderly continue to express concern about the effect jury service has on their caretaking responsibilities. Rather than simply excusing caretakers, CJP encourages the New York court system to explore and implement policies that promote the inclusion of caretakers throughout the process of service.⁷⁰

60 Centre: Family/Health Burden	Count
Elder/child care	3
Medical problem/old age	2
Elderly should not have to serve	2
Need to pick up children	1
Work from home to be with children, elderly, or person with a disability	1

(C) Recommendations

1. Physical Environment:
 - Consistently staff the assembly room with one employee whose sole responsibility is cleaning the assembly room and bathrooms, and stocking the bathrooms regularly.
 - Clean and maintain bathrooms on a regular basis--at least two to three times daily.

⁷⁰ CJP's Spring 2003 Report on Juror Concerns discussed various states' approaches to child care reimbursement for jurors. The report is available at: www.juryproject.org/reports.html

- Arrange the court furniture in the assembly room and juror lounge/lunch room so that both spaces are accessible for jurors with disabilities.
 - Accommodate large calls by removing and rearranging court furniture so that extra chairs can be added to the assembly room.
 - Provide a water cooler for jurors or at least make certain that the vending machines and coffee stand are consistently stocked with water. Until the water is tested and the water fountains in the courthouse are repaired, jurors need to have access to bottled water.
2. Summoning:
- Modify the map and information on the summons to reflect the Canal Street subway station. This station services nine subway lines and is located within blocks of the courthouse. Also, note on the summons that the Brooklyn Bridge/City Hall 4,5,6 stop is the most accessible subway station for jurors with disabilities.
 - Provide information about the wireless access services at 60 Centre in the summoning process.
3. Lack of Information:
- Give clear instructions to jurors about where they should report once they are chosen to participate in a voir dire or to serve on a panel. In the event of changes in service or room changes, offer coherent information to jurors about where and when to report.
 - Provide jurors waiting in the assembly room with updates on why delays have arisen and when jurors should expect the next venire to be called.
4. Administration
- Give jurors more comprehensive information about jury service during morning orientation and throughout process.
 - Consistently provide information for jurors with disabilities during morning orientation.
 - Address non-English speakers during morning orientation, and let them know that they can report to room 139 for a language interview.
 - Start calling jurors to voir dices early, and start cases punctually.
 - Collect surveys from jurors before calling them to the empanelling room or courtroom, and do not call jurors until the lawyers have reviewed the surveys.
 - Conduct a pilot project in which all voir dices are judicially supervised. The Jury Trial Project made this recommendation in its final report in 1994. Ten years later, the recommendation remains valid: judicial supervision could prove to be less administratively beneficial, not detrimental.

5. 100 CENTRE STREET

(A) Summary of juror concerns

Serving a jury is, while disruptive to daily life, actually a very interesting experience—like a great civics lesson. (2/5/04)

I always have a good experience as a juror. [Juror has served four times.] I just visited Walter, isn't he a nice guy? He was on "The View" the other day. I am lucky because I have always been picked the first morning I'm called, so I've never had to wait for days. (2/25/04)

Jurors at 100 Centre recognize the value of service, a process that promotes learning through participation. Court officers' and clerks' kind demeanor and professionalism contribute to jurors' positive impressions of the system. Efforts to promote systemic efficiency are particularly appreciated: engaged jurors are productive and content jurors.

"Lack of information" is the category that represents a clear majority of jurors' critical comments at 100 Centre. Jurors also comment on wasted time and the effects that service has on their employment and caretaking responsibilities. The physical environment was also frequently addressed; jurors commented on the general disrepair of the facilities and voice the need for a more accessible beverage and refreshment stand.

Top Juror Concerns—100 Centre Street	
12/01/03-3/31/04	
(Total Concerns =151)	
Top Appreciative Comments	Count
Lunch guide is good	5
Things are generally better	3
Good court officers	2
Good that everyone serves	1
Good clerks	1
Top 10 Critical Concerns	Count
Lack of information/incorrect information	27
Wasted time	10
Very disruptive to my work	6
General disrepair	5
No coffee/sandwiches/juice	5
Religious/personal objection	5
Elder/child care	3
Intrusive personal questions	3

Would like a postponement/deferral	3
No working water fountains	3

(B) Breakdown of juror concerns

Jurors' top environmental concerns at 100 Centre relate to the general disrepair of the facilities and the need for an accessible coffee and refreshment stand. Jurors' request for a coffee stand stems, in part, from the need for accessible water. One juror simply asked:

Is there any chance I can get some water on this floor? (3/2/04)

While a coffee stand could sell water to jurors, so too could the vending machines. When the vending machines also do not work, jurors become exasperated:

Excuse me, the vending machines and water fountain inside the jury room do not work. What am I supposed to drink? The soda machines are empty and there's no water coming from the water fountain. (3/24/04)

Unlike most New York County courts, 100 Centre offers a water cooler to jurors on a regular basis. CJP commends the court for providing the water cooler, but recommends replenishing it regularly. Occasionally, jurors complain that the cooler is empty and without it, there is no accessible drinking water.

100 Centre: Physical Conditions	Count
General disrepair	5
No coffee/sandwiches/juice	5
Elevators need to work	3
No working water fountains	3
Air quality/temperature	1
Not enough seats	1

Compared to previous trimesters, jurors at 100 Centre expressed relatively few summoning concerns during this trimester. Some jurors approached CJP with questions about how to obtain a postponement or dismissal, while others commented on disproportionate summoning.

Jurors suggest that a call-in system could improve the efficiency of the summoning process:

I have waited for two days to be called, and nothing has happened. A more efficient system would involve having jurors "on-call" so that they can

conduct their business rather than sitting in a room for many days.

(3/31/04)

Although the demand for jurors in New York County typically precludes the possibility of offering a call-in system, the juror's comments quoted above underscore the importance of informing jurors about the difficulty of precisely estimating the call and the reasons behind delays.

100 Centre: Summoning	Count
Would like a postponement/deferral	3
Not fair—some people are never called	2

The issue of “lack of information” typically centers on specific subjects of concern and/or specific populations. “Lack of information” concerns related to employment are quite common, though concerns have lessened since the distribution of OCA’s guide for employees and employers.

Do you work for a court? I have a question, pretty normal one. I was told to come here today, tomorrow and Monday. I knew that my employer is gonna pay me, when I can't work because of my jury duty. But, you know, I am usually working on Tuesday through Friday and Monday is my day off. I don't work on Monday, but should come here on Monday because of my jury duty. In this case, can I be paid on Monday? Who is going to pay me?

(1/8/04)

The question above is directly addressed in the payment chart provided in the guide. The employee/employer guide has been useful for jurors who come the court with a variety of employment questions and also CJP: the guide helps interns convey information to jurors visually and provides comprehensive answers to employment issues.

The one population that the employment guide does not assist is multilingual jurors who cannot read in English. Multi-lingual/non-English speakers are a population who consistently seek information and assistance from CJP. While some summoned jurors lack any ability to speak in English, others speak broken English and are nervous about their ability to comprehend in-court proceedings:

I.. Gave summon to a people in this room. I should come here tomorrow, but I don't understand English exactly. Ah.. I speak English. But, hmm, how can I say? I don't understand all English in the court. I don't know.. Somebody said go outside and ask what I do. But where and who I ask?

(1/8/04)

Multi-lingual/non-English speakers should be provided with multi-lingual information prior to service. Multi-lingual information will allow jurors to gain an understanding of the process before they have to serve and to participate in a

language interview before service. Early assessment lessens the burden of service on individuals and improves the efficiency of the system.

100 Centre: Lack of Information	Count
Lack of Information/incorrect information	27
Needed directions to the courthouse	2
Needed information ahead of time	2

“Wasted time” is the administrative concern most frequently voiced by jurors at 100 Centre. Some jurors suggest that gathering more information about jurors prior to service can decrease their waiting time during service:

I have a question for you. Yesterday I was picked on a jury panel. The judge went on listing names of potential witnesses, police officers names, for such a long time. Then he asked if there was anyone who could not be available for a 6 to 8 week long trial. I have to be out of town next week, so I was excused. I came back here but so far nothing else has happened and today is my second day. Couldn't they ask in advance, let's say by sending you a questionnaire at home, if you can serve for long trials, instead of calling you here and making you waste time doing nothing?

(100 Centre 3/2/04)

Other jurors don't have any solutions to offer, they just want the process to be more efficient:

You should clone him [referring to Walter]. It is so pleasant to be here although I haven't been called. It's my third day and I want to be called! It's boring to just sit here! (100 Centre, 3/31/04)

100 Centre: Administration	Count
Wasted time	10
Service is too long	3
Service should be more flexible/accommodating	1
Adopt one-day-one-trial rule	1

The criminal voir dire and trial processes evoke fears about privacy and safety for some jurors serving at 100 Centre.

I had a bad stalking experience before. I don't understand why do people call ours names out in the courtroom where we sit with a person who is accused of committing a crime. I just don't think it's a good idea. Also, I don't like it when the judge asked us where we live. They should mention our names like Roger S, or R. Smith. (3/3/04)

The questions [during voir dire] are too personal to be discussed openly. They should be written out instead. (1/22/04)

New York has established strong administrative safeguards to protect juror privacy, but CJP suggests that, in addition to these safeguards, jurors should be routinely informed about their rights and responsibilities during voir dire, opening, and closing instructions. As CJP recommended in its Spring 2003 Report on Juror Concerns,⁷¹ which focuses on the issue of juror privacy, the court system should create standards that guide the procedure by which judges (and lawyers, when voir dire is unsupervised) address jurors privacy concerns.

Sometimes concerns about safety and privacy relate to jurors' personal experiences within the court system or as a victim of crime. The following comments from a victim of crime suggest the interrelatedness between jurors' fears and stress, and reflect the need to establish a protocol for addressing juror stress:

I was called for jury duty yesterday. [...] I was seated in the box and they asked me a question and I just broke down. This whole process makes me nervous. [...] I cried all the way home last night. [...] So far the experience has been bad—I can't even get through the selection process. (3/24/2004)

100 Centre: Voir Dire & Trial Concerns	Count
Religious/personal objection	5
Intrusive personal questions during voir dire	3
Should be pre-screening before voir dire	2
Object to name being called in front of defendants	1
Should be allowed to ask questions during trial	1

During this past trimester, jurors at 100 Centre expressed a considerable amount of employment and financial concerns. Small business owners and self-employed workers were particularly vocal about the effect that jury service has on their employment responsibilities:

I have a small advertisement firm in SoHo. We are struggling downtown business—I lost a client in the World Trade Center. I won't have time to serve. It is a waste of everybody's time. (1/20/04)

Financial concerns weigh heavily on the minds of jurors, especially those who are paid hourly or work on a tips or commission basis.

I am an actress and waitress. I gave up my shifts at the restaurant to be here. My employer is paying other people who cover my shifts. Do I still get paid? (1/20/04)

⁷¹This report is available at: <http://www.juryproject.org/reports.html>.

The employer/employee guide and CJP's presence in the courts inform jurors about their employment rights and help put jurors' minds more at ease.

100 Centre: Employment/Financial Burden	Count
Very disruptive to my work	6
Financial hardship	3
Self-employed people should be exempt	3
Pay is not enough	3
Student feels entitled to an exemption	1
Am losing major work assignments	1
Concern with employer's unhappiness	1
Doctors should be exempt	1
Only get paid for hours worked	1
Work nights	1

Technology can allow jurors to work while they wait, allaying the stress of those whose heads are stuck at work. Some jurors summoned to 100 Centre are cognizant of the wireless service offered at 60 Centre and would like the same service at 100 Centre.

Isn't there a wireless computer workstation in here? I was told that there's supposed to be a setup where jurors can work while waiting. Maybe it's at civil court and not at criminal court, do you know? (3/24/04)

100 Centre: Technology	Count
Improve technology	2
Need phone lines for computers	2
Faulty phone-in system during trial	1
Should have call-in system	1

In the category of "Family/ Health Burden," caretakers voiced the majority of concerns. Although information on service is now readily accessible for employers and employees, the same cannot be said for caretakers. CJP recommends providing caretaker information on the Unified Court System website and relevant court literature, such as the petit juror handbook. This information can be particularly useful for caretakers, who live unpredictable lives that are often dictated by those they care for.

I am currently serving at 100 Centre but my infant daughter got sick today and I had to skip serving. Is there anyone I can call to tell them why I'm not there today? (1/22/04)

100 Centre Street jurors also expressed concerns related to their health and/or age. The following juror's comments underscore the need to treat all jurors with respect, to discuss their concerns with them before casting their concerns aside as illegitimate:

Last weekend I was in the hospital getting tests for a heart conditions I've contracted. The hospital staff said that it would be all right to serve as a juror, but once I began serving I started feeling really tired. I was in a voir dire and I told the judge that I didn't think I could continue to serve. He was very nice and told me to go speak with the clerk in the jury assembly room. The clerk in the assembly room was a different story. He yelled at me and said, "Why do you think that you're so special? You know that if you stop now you'll have to come back and serve soon--you haven't completed your service." He was very rude and later I noticed he was rude to someone else. What can I do? I want to issue a complaint. You know, I'm a Broadway actor and work nights. Service is difficult for me anyway. But I have served and wanted to serve this time. His treatment of me was unfair and rude. (2/11/2004)

100 Centre: Family/Health Burden	
Elder/child care	3
Medical problem/old age	2
Elderly should not have to serve	1
Need to pick up children	1
Work from home to be with children, elderly, disabled	1

(C) Recommendations

1. Physical Environment:
 - Collaborate with the CJP and the Commission for the Blind and Visually Handicapped in our efforts to provide coffee stands for jurors that would be located outside of the jury assembly rooms.
 - Consistently staff the assembly room with one employee whose sole responsibility is cleaning the assembly room and bathrooms and stocking the bathrooms regularly.
 - Continue to consistently provide a water cooler for jurors. Until the water is tested and the water fountains in the courthouse are repaired, jurors need to have access to bottled water.
 - Clean and maintain bathrooms on a regular basis--at least two to three times daily.

2. Summoning:
 - Modify the map and information on the summons to reflect the Canal Street subway station. This station services nine subway lines

and is located within blocks of the courthouse. Also, note on the summons that the Brooklyn Bridge/City Hall 4,5,6 stop is the most accessible subway station for jurors with disabilities.

3. Lack of Information:

➤ Give clear instructions to jurors about where they should report once they are chosen to participate in a voir dire or to serve on a panel. In the event of changes in service or room changes, offer coherent information to jurors about where and when to report.

➤ Provide jurors waiting in the assembly room with updates on why delays have arisen and when jurors should expect the next venire to be called.

4. Administration

➤ Give jurors more comprehensive information about the process of serving during morning orientation and throughout process of service.

➤ Address non-English speakers during morning orientation, and let them know that they can report to room 139 for a language interview.

➤ Start calling jurors to voir dire early and start cases punctually.

➤ Establish a protocol for addressing with juror stress. Such measures are, of course, particularly important in criminal courts. For example, service may evoke acute anxiety for jurors who have been victims of crime.

5. Technology:

➤ Provide wireless access for jurors. Wireless access will allow jurors to work and communicate with their places of employment while serving. This will not only ease employment burdens created by service, but decrease the amount of jurors who feel service is a waste of time.

6. 111 CENTRE STREET

(A) Summary of juror concerns

The jury clerks handled the job very well. They are humorous and patient. I would like to compliment the jury clerks on their job. (1/13/04)

Lovely staff & moderators—concise and good-natured. Overall, it was not a bad experience. (1/13/04)

Jurors at 111 Centre acknowledge and appreciate jury clerks' and court officials' efforts to work with and accommodate jurors. Positive interactions with court staff leave jurors with good impressions about the justice system.

Jurors' more critical comments suggest that aspects of jury service can be more clearly conveyed to jurors, both before and during service. "Lack of information/incorrect information" was the primary critical concern jurors commented on at 111 Centre. Some jurors also noted that service affects their lives outside of the courts, including their employment and caretaking responsibilities. Certain environmental concerns were also commented on, such as the overcrowding of the elevators in the morning and the need for more accessible beverages and refreshments.

Top Juror Concerns—111 Centre Street	
12/1/03-3/31/04	
Total Concerns = 104	
Top Appreciative Comments	Count
Lunch guide is good	7
Things are generally better	2
Good court officers	2
Good clerks	2
Physical conditions are better	1
Top 10 Critical Concerns	Count
Lack of information/Incorrect information	24
Would like a postponement/deferral	5
Wasted time	4
Elder/child care	3
Improve technology	3
Medical problem/old age	3
No coffee/sandwiches/juice	3
Clerks are unhelpful	2
Elevators need to work	2
Work from home to be with children, elderly or people with disabilities	2

(B) Breakdown of juror concerns

Recent environmental improvements, including the remodeling of the bathrooms on the third and eleventh floor, have made 111 Centre more accessible and comfortable for jurors. Most of jurors' "physical conditions" concerns are not related to the physical environment directly, but more to the amenities offered and the maintenance of each area. Jurors continue to comment on the need for a more accessible coffee and refreshment stand. Jurors also comment on the

maintenance of the bathrooms and the overcrowding of the elevators, particularly in the morning.

111 Centre: Physical Conditions	Count
No coffee/sandwiches/juice	3
Bathrooms	2
Elevators need to work	2
General disrepair	1
Need day care	1

Jurors at 111 Centre consistently comment on “lack of information.” As in the other New York County courts, non-English/multi-lingual speakers often approach CJP worried and ill-informed about the process. The following quote is illustrative of the dearth of information available for non-English/multi-lingual speakers, whose concerns (at least in this case) are not addressed in morning orientation:

I don't think they made an announcement about jurors who do not understand English. I can't speak or understand English very much. What do I do? They called some jurors and called my name but I don't think I serve because I don't understand English. It will be too complex for me.
(3/24/2004)

At 360 Adams, clerks consistently address language facility during morning orientation. Each morning, a staff person speaks in Mandarin and Cantonese to jurors, and often a staff person also addresses jurors in Spanish. While some courts may not need multi-lingual staff on site, New York County clerks' morning orientations should make reference to the language requirements and provide jurors with information on where to report for a language interview.

111 Centre: Lack of Information/Summoning	Count
Would like a postponement/deferral	5
In non-compliance	2
Problems with name or address	1

“Wasted time” is the most common administrative concern voiced at 111 Centre. Some jurors suggest that the problem relates to the call and that the system's predictive powers could be more discriminate:

Day two so far and all is fine. Thus far, I have sat here 1.5 days and have done nothing. I do not know if is possible, but it would be great if they know the day before whether they really need us. (1/13/04)

Other jurors postulate that the jury selection process is the source of the juror utilization enigma:

I think the jury selection process is too extended and perhaps unfair in method. I think it should be arranged so that a group of three independent attorneys interview potential jurors rather than have the trial lawyers. This is more likely to produce an impartial jury and speed the selection process. Also, it would be less of an inconvenience to potential jurors as it can be done in advance of trial date. (1/13/04)

Although it is not advisable or feasible to create an independent panel of attorneys for voir dire, the juror's comments above do suggest what research has confirmed: the adversarial process heightens the need for voir dices but, when unsupervised, the search for impartiality can be a lengthy process.

Jurors see technology as a means to diminish their employment concerns and use their time productively. Jurors at 111 Centre are clearly appreciative of the new email stations, but also suggest that their maintenance is key:

I would suggest they improve the e-mail service in the courthouse, the e-mail station is there but it doesn't work. (3/18/04)

111 Centre: Administration/Technology	Count
Wasted time	4
Improve technology	3
Service should be more flexible/accommodating	1
Need more phones	1

Small business owners and self-employed people are populations who comment frequently on the temporal and fiscal strain that service puts on their lives outside of the courts.

My problem is that I work for a small company—I am basically self-employed. Today is my third day and the jury pay...well, is not even close to what I would be making. Isn't there any kind of excusal for self-employed people? (2/9/04)

Doctors also have other people's lives in their hands:

I'm a doctor with a private practice and there's nobody to run my practice while I'm here, especially if I have to be here for 3 days. Is there a way something can be done about this? It's not just the loss of income; my patients will suffer because I'm not there. (3/24/2004)

It is infeasible for the State to compensate jurors to the level that would ease their financial concerns. However, OCA's efforts to improve the juror information (online and in print) help to ease the burden of service. By understanding the parameters of service before their call date, jurors can plan accordingly.

111 Centre: Employment/Financial Burden	Count
Financial hardship	2
Doctors should be exempt	1
Lawyers should be exempt	1
My patients will suffer	1
Self-employed people should be exempt	1
Student feels entitled to an exemption	1
Very disruptive to my work	1

Both caretakers and the elderly face considerable obstacles in reporting for service. The following caretaker's comments reflect the need to provide clear information and instructions to caretakers both prior to and during service.

This system is too inefficient. I am a full time child caretaker, and this morning the man in this room (362) said that if I am a caretaker I should leave and go to 60 Centre. When I got there, the woman asked for my child's birth certificate, which I didn't have. I showed her my son's picture and she said only the birth certificate will do. I told her what the man said at 111 Centre. She said it is a "choice". If it is a choice I would have never gone there! That's it. I was sent back and wait here. It is just too inefficient.
(2/18/04)

The following elderly woman asks an intern in Spanish:

I don't speak English nor do I understand it, and I am 70 years old. Do I have to serve anyway? Really, I don't understand English and I am too old to sit here and wait. (2/4/04)

In order to promote summons response rates and diversity within the pool, it is critical for the system to continue to devise ways in which to communicate with the diversity of individuals living in New York.

111 Centre: Family/Health	Count
Medical problem/ old age	3
Elder/child care	3
Work from home to be with children, elderly or people with disabilities	2

(C) Recommendations

1. Physical Environment:
 - Collaborate with the CJP and the Commission for the Blind and Visually Handicapped in our efforts to provide coffee stands for jurors that would be located outside of the jury assembly rooms.
 - Provide a water cooler for jurors consistently, or at least make certain that the vending machines are stocked with bottled water. Until the water is tested and the water fountains in the courthouse are repaired, jurors need to have access to bottled water.
 - Clean and maintain bathrooms outside of the jury room on a regular basis--at least two to three times daily.
 - Maintain an adequate number of cleaning staff throughout the building.
2. Summoning:
 - Modify the map and information on the summons to reflect the Canal Street subway station. This station services nine subway lines and is located within blocks of the courthouse. Also, note on the summons that the Brooklyn Bridge/City Hall 4,5,6 stop is the most accessible subway station for jurors with disabilities.
3. Lack of information:
 - Give clear instructions to jurors about where they should report once they are chosen to participate in a voir dire or to serve on a panel. In the event of changes in service or room changes, offer coherent information to jurors about where and when to report.
 - Provide jurors waiting in the assembly room with updates on why delays have arisen and when jurors should expect the next venire to be called.
4. Administration
 - Give jurors more comprehensive information about the process of serving during morning orientation and throughout the process of service.
 - Address non-English speakers during morning orientation, and let them know that they can report to room 139 for a language interview.
 - State clearly to jurors, in morning orientation, that postponements and deferrals can be made in room 139 at 60 Centre Street.
 - Start calling jurors to voir dire early, and start cases punctually.
5. Technology:

- Provide wireless access for jurors. Wireless access will allow jurors to work and communicate with their places of employment while serving. This will not only ease employment burdens created by service, but decrease the amount of jurors who feel service is a waste of time.
- Report malfunctioning assembly room computer terminals promptly so that they may be expeditiously repaired.

7. 360 ADAMS STREET

(A) Summary of juror concerns

Kings County has been proactive in its efforts to improve the court facilities and processes for jurors. In response to recommendations made in CJP's *Kings County Court Facilities Assessment*,⁷² Office of Court Administration officials and Kings County court officials and staff have made and are in the process of making specific improvements to the 360 Adams Street courthouse. The following list summarizes these improvements:

- A cleaning staff person is present in the jury assembly room until 3:00 PM each day; this person's sole responsibility is to clean the assembly room and restrooms. In addition, a clerk now monitors the cleaning and maintenance of the assembly room and restrooms on a daily basis.
- The juror assembly room has been painted and the ventilation ducts have been cleaned.
- Malfunctioning equipment and amenities in the assembly room bathrooms have been repaired.
- 360 Adams Street now offers jurors the opportunity to sign out when they need to momentarily leave the assembly room area. This simple step diminishes jurors' feeling of being "trapped" in the assembly room. By providing a more accurate list of who is present, the sign-out sheet also facilitates the process of calling jurors.
- In the spring of 2004, new microphones will be installed for the assembly room.
- In the summer of 2004, the benches in the assembly room will be replaced with new court furniture, including chairs and computer workstations. Additionally, a new floor will be put in at that time and an electrician will check on the courthouse's electrical system.
- A multi-lingual, telephonic information system is currently being installed. This service will provide information about jury service in Spanish, Russian, Mandarin and Cantonese.

⁷² Available online: www.juryproject.org/reports.html

These environmental and procedural improvements reflect the court’s awareness of the connection between the courts and the communities they serve, while also recognizing that the environment affects people’s ability to participate. Brooklyn is home to a large, growing population of multi-lingual individuals. The assessment of individuals’ language facility is likely to become more not less of an issue in the future. Improving the court system’s outreach to and language assessment of multi-lingual/non-English speakers will strengthen the system itself by promoting knowledge of the jury system and administrative efficiency. Counties such as Queens, which has sizable populations of multi-lingual/non-English speakers, should follow suit.

Kings County’s efforts to improve the court facilities can also be learned from and adopted by other counties. Compared to previous trimesters, 360 Adams Street jurors were less critical of the maintenance of the court facility during this past trimester. CJP believes that this lack of critical comments stems from the fact that a cleaning staff person is now consistently present in the assembly room, an area that is heavily utilized and often over crowded. As mentioned earlier in this report, New York County courts—particularly 60 and 100 Centre Street—would benefit enormously from the consistent presence of cleaning staff in their assembly rooms. For the health and comfort of jurors, New York County should adopt Kings County’s approach to the maintenance of the assembly room areas.

Perhaps even more significantly, Kings County’s recent environmental improvements will promote disability accessibility within the courthouse. For example, by replacing the long wooden benches with individual chairs, the court is accommodating jurors with disabilities or injuries. Also, by replacing malfunctioning microphones, the court is accommodating jurors with hearing disabilities.

Courts are always a work in progress: despite the improvements discussed above, jurors’ comments point to aspects of the court facilities and procedures that can be improved upon. Congruent with previous trimester reports, Kings County jurors’ more critical comments center on the lack of information provided during service and the many ways in which service affects jurors’ lives outside of the courts.

Top Juror Concerns—360 Adams Street	
12/1/03-3/31/03	
(Total Concerns = 129)	
Top Appreciative Comments	Count
Things are generally better	1
Good that everyone serves	1
Good clerks	1

Top 10 Critical Concerns	Count
Lack of information/incorrect information	40
Would like a postponement/deferral	12
Elder/child care	6
Medical problem/old age	6
Needed information ahead of time	5
Wasted time	4
Need to pick up children	3
Work at home to be children, elderly or people with disabilities	3
Disproportionate summoning	2
Problem with payment	2

(B) Breakdown of juror concerns

Jurors' critical comments on the physical conditions were minimal during this trimester. The court's continued efforts to improve the facility and promptly respond to maintenance issues will keep the comments collected in this category low.

360 Adams: Physical Conditions	Count
Bathrooms	1
Coffee is bad	1
There is no place to smoke	1

In contrast to the comments on the physical environment, jurors commented far more frequently on summoning issues. Most jurors approached CJP about the possibility of obtaining a postponement or deferral, while some jurors commented on problems with the summoning process, issues such as "disproportionate summoning," "problems with name or address," and "problems with payment." As reported in the last trimester report, the Superior Court of the District of Columbia has recently devised a creative way to address juror payment, an issue that is often an administrative problem in state courts. To eliminate the delay between service and payment the DC court has purchased and modified an ATM machine, which pays jurors once their service is complete, and also dispenses a receipt and proof-of-service statement.⁷³ CJP believes that this clever use of technology should be adopted in New York and Kings County, both of which are home to many workers who are paid on an hourly basis, are self-employed, or unemployed. Quick payment lessens the fiscal strain that service can impose on people's lives.

⁷³ G.T. MUNSTERMAN, PAULA L. HANNAFORD-AGOR, THE PROMISE AND CHALLENGES OF JURY SYSTEM TECHNOLOGY (MARCH, 2003).

360 Adams: Summoning	Count
Would like a postponement/deferral	12
Disproportionate summoning	2
Problems with name or address	2
Problem with payment	2
Summoned within two years of service	2
Not fair—some people are never called	1
Received multiple summonses	1

Congruent with previous trimesters, “lack of information” remains the most common concern voiced by jurors at 360 Adams. Some jurors report confusion about the process:

How does the process work? You know, what happens next? (3/31/04)

These comments suggest that a basic outline of the process should be given during morning orientation and that occasional updates should be provided to jurors waiting in the assembly room.

Parallel to the comments received in New York County courts, many of the “lack of information” concerns voiced by 360 Adams Street jurors relate to certain jurors’ inability to understand and communicate in English. CJP often encounters a non-English speaker’s friend or relative, who takes time off work or school to serve as a translator:

Excuse me, this is my uncle. He is supposed to start his jury duty tomorrow, but he is off today, so we thought it was a good idea to show up today. You know, the problem is that he doesn't speak any English...
(2/25/04)

The multi-lingual, telephonic information that will soon be available in Kings County jurors will promote knowledge of the system, administrative efficiency, and will decrease the time wasted by jurors who cannot adequately understand and communicate in English.

360 Adams: Lack of Information	Count
Lack of information/incorrect information	40
Needed information ahead of time	5

Non-English speakers’ concerns highlight the interrelatedness of jurors’ “lack of information” and “administrative” concerns. Jurors who feel like they will not sit on a jury due to their profession also illustrate the connection between “lack of information” and “administrative” concerns. The following juror’s comments typify this response:

My problem is that I am a correctional officer, and I surely would not like to sit in a criminal case. I don't even think they would let me. So, why should I stay here and wait for nothing? (2/11)

This juror's comments suggest that he is unaware of the fact that 360 Adams tries civil and criminal cases and also unaware of the efforts that New York has made to promote the inclusion of a variety of professionals, such as eliminating occupational exemptions and the permanent qualified list. In interviewing and advocating for jurors in the courts, CJP interns often mention jury reforms that have been introduced into the system, however, CJP believes that juror education should be a part of every step in the process, as it is a means to promote satisfaction and comprehension.

360 Adams: Administration/Technology	Count
Wasted time	4
Informational phone lines are always busy	1
Need more phones	1

Jurors at 360 Adams voiced a variety of employment and financial concerns. Jurors reported that service is disruptive to their work and can create financial hardship.

360 Adams: Employment/Financial Burden	Count
Very disruptive to my work	2
Concerned with unhappiness of employer	1
Courts should operate flexibly-nights/weekends	1
Financial hardship	1
My students will suffer	1
Pay is not enough	1
Student feels entitled to an exemption	1

Both men and women caretakers speak with CJP about their concerns with serving:

[Man with 3-year-old son] Do I really have to be here? I brought my son. I've asked for a postponement twice already and they keep calling me back.

Me too! I have the same problem [Female, in response]. I don't have a babysitter and I have to get my kids. Does the government pay me for being here and not having a babysitter? (3/31/04)

38.2% of the households in Kings County house children, and more than one third (39.7%) of the children living in Kings County are impoverished.⁷⁴ These figures suggest that providing in-court child care services for jurors would improve the representation of caretakers and individuals with low incomes.

If it is infeasible for New York to offer child care to jurors or child care compensation, CJP suggests that at least more online and printed information for caretakers should be provided prior to service. The current policy of simply excusing caretakers—individuals who play a vital role in New York communities—is inadequate and damaging to a system.⁷⁵

360 Adams: Family/Health Burden	Count
Elder/child care	6
Medical problem/old age	6
Need to pick up children	3
Work from home to be with children, elderly, or people with disabilities	3

(C) Recommendations

1. Physical Environment:
 - Follow through with the environmental improvements the courthouse is planning to implement in 2004. These improvements, such as replacing the assembly room benches with new court furniture, will make the courthouse a more comfortable and accessible.

2. Lack of Information:
 - Give clear instructions to jurors about where they should report once they are chosen to participate in a voir dire or to serve on a panel. In the event of changes in service or room changes, offer coherent information to jurors about where and when to report.
 - Provide jurors waiting in the assembly room with updates on why delays have arisen and when jurors should expect the next venire to be called.

3. Technology:
 - Implement the service that will provide multi-lingual, telephonic information for jurors prior to service.

⁷⁴ U.S. Census Bureau, Census 2000, (visited December 16, 2003) <<http://www.census.gov/main/www/cen2000.html>>.

⁷⁵ For a more in-depth examination of this issue, including other states' approaches to promoting the inclusion of caretakers, please see the CJP's *Spring 2003 Report on Jurors Concerns*: www.juryproject.org/Spring03report.pdf

- Offer information on County website (www.nyjuror.com/kings.html) in Spanish and other predominant languages. Website translation services are free (e.g., <http://world.altavista.com/>) and software is very affordable. Translating the site will promote inclusion and lessen the juror hardship faced by over 10% of New York's residents, who do not understand and comprehend the English language well.

4. Administration:

- Start calling jurors to voir dires early and start cases punctually.
- Give jurors more comprehensive information about the process of serving during morning orientation and throughout process of service.
- Consistently provide information for jurors with disabilities during morning orientation.

8. DISQUALIFICATIONS

(A) An Overview of Disqualified Jurors' Comments

(1) Non-citizens

Congruent with past Citizens Jury Project reports, Non-English speakers comprise the majority of disqualified juror comments: approximately 53% of the total. However, due to an article that was published first in the New York Daily News Bronx/Boroughs Edition on September 25, 2003 (Appendix B) and in the Manhattan Edition of the Daily News on March 15, 2004, the Citizens Jury Project also heard from a number of non-citizens. The basic question that the article addresses is a concern that Allan Wernick, a lawyer and the author of the column, emailed CJP:

How does an undocumented immigrant or permanent resident, not eligible to serve on a jury, notify the court that he or she is not eligible to serve? Someone wrote in and asked because he received a notice to appear. Can you provide some info on this?

CJP's response to this question (based on feedback from OCA) was published along with our contact information. As a result of this article CJP has received approximately 45 phone calls and emails from individuals (or friends/relatives) who asked questions related to their non-citizenship status. These concerns illustrate the fear that many non-citizens harbor about visiting the courts:

I am not a citizen and have been summoned to serve. What do I do? I can't go to the courthouse--even the thought of that makes me nervous. (Queens, 3/31/04)

The comments also reflect a problem with the information provided on the qualification questionnaire. Many non-citizens simply asked:

I am not a citizen but was called to serve. What do I do? (Queens, 3/17/04)

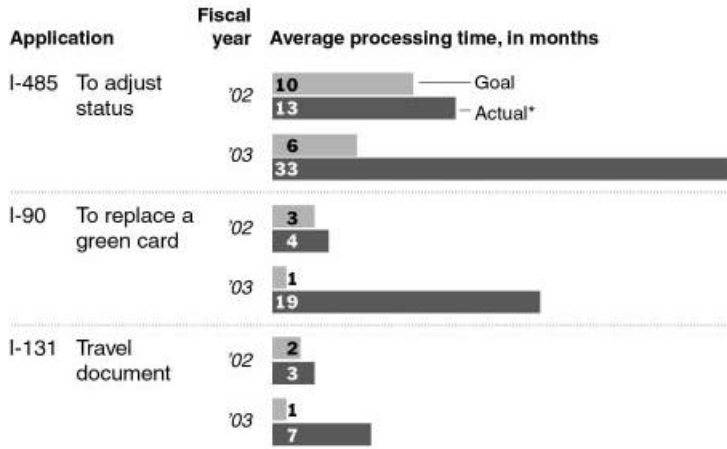
Currently, the qualification questionnaire asks whether a person is a non-citizen and then states, "If not, provide a copy of your visa or alien registration card." The problem with the statement is that alien registration cards (or "green cards") are issued only to immigrants who are legally admitted for residence in the United States. Thus, undocumented immigrants are provided no information—either on the questionnaire or on any other court publication—about what kind of documentation they could present the court. As a result of this lack of information, non-citizens have told CJP that they either ignore the form or simply check "no" in response to the question about citizenship, thinking that will excuse them from service.

The argument that these non-citizens should remedy the problem by applying for a green card is rather shallow. Since September 11, 2001, the political and social environment has been increasingly difficult for non-citizens;⁷⁶ many would like to have legal status but are constrained fiscally or, as the following graph illustrates, stuck in limbo.

⁷⁶ This trend does not seem to be abating. For example, at the writing of this report, the Senate Immigration Subcommittee was considering the Homeland and Security Enhancement (HSEA) Act, while the House was considering a similar proposed law, the Clear Law Enforcement for Criminal Alien Removal (CLEAR) Act. These Acts "would authorize state and local police officers to investigate, arrest, and detain non-citizens whom they decide are "unlawfully present." Advocates are concerned that this legislation would provide state and local officers with unregulated power to deport non-citizens, while providing no remedy for violations of victims' civil rights. It is believed that these proposed laws would lead to arbitrary arrests and detentions, disproportionate fines, and unjust and arbitrary deprivations of property. Human Rights Watch, *U.S.: Proposed Laws Would Lead to Abuse of Immigrants*, (visited April 20, 2004) <<http://hrw.org/english/docs/2004/04/21/usdom8476.htm>>.

Waiting It Out With Immigration

The office of Citizenship and Immigration Services has seen increases in the processing time for immigrant applications despite its goal to cut the backlog to six months or less.



*Fiscal years are October to September; 2003 figures are projected.

Source: General Accounting Office

New York Times, 4/5/04

CJP recommends developing a clear policy for dealing with non-citizens who are unable to provide the court system with an alien registration card or valid visa. OCA has indicated to CJP that non-citizens without the proper documentation have two options. First, these non-citizens could submit alternative documentation, such as a filing receipt from a pending application for permanent residency or a letter from a legal representative. Second, for those who have no such documentation, OCA has suggested that these individuals must speak with a clerk in the central jury office about their non-citizenship. The options of alternative documentation or an in-court interview should be conveyed to non-citizens in the qualification questionnaire and court literature online and in print. Court officials should also be trained about how to assess citizenship status. Non-citizens' comments indicate that OCA may need to develop a more clear protocol for dealing with non-citizens:

I went to the court and showed a court person my expired visa and she said that it was not enough to prove my non-citizenship. She got really angry with me and I didn't know what to do. Can you help? (3/17/04)

By developing a protocol for the assessment undocumented non-citizens and providing information for non-citizens prior to service, the court system will decrease the hardship on those unqualified to serve, while promoting systemic efficiency.

How much longer do I need to stay here (visibly upset)? Look, I am not a citizen...you got to tell me what to do. Why do they want to keep me here? (360 Adams, 1/21/04)

Online and print information on citizenship requirements may also promote the inclusion of new citizens, many of whom appreciate the system and want to participate:

I want to volunteer. I became a citizen in 1999 and haven't received a summons yet. How can I volunteer? (60 Centre, 3/24/04)

...I was just telling a Russian guy sitting next to me that the reason why we are called to serve is to make decisions that affect our peers. You'll never know if a friend is in troubles and you can help him by deciding what is true and what is not true. This is the difference between here and [other countries]...where you cannot even prove your innocence because they lock you up without due process of law. (2/25/04)

Recommendations:

- Develop a clear policy for the assessment undocumented non-citizens.
- Instruct court officers and clerks throughout the state on how to assess and treat non-citizens.
- Provide information for undocumented non-citizens prior to service, on the qualification questionnaire and in court literature.

(2) Non-English/Multi-lingual Speakers

During this spring, CJP has had an intern on staff who is fluent in both Mandarin and Cantonese. The comments that this intern has collected have given CJP insight into the language assessment process from the perspectives of people speaking non-Indo-European languages:

(Speaking in Cantonese)

Man: They just interviewed me and the interpreter told me I can go home this time and asked me to come back next March. What does it mean?

(Intern comment: I told him that by next March his English ability might improve so that he can serve as a juror, and the juror totally panicked.)

Man: What if I still don't speak English?!! (360 Adams, 3/1/04)

.....

(Intern comment: A woman approached me after being interviewed by a translator, who asked her to return in December. The juror spoke in Mandarin.)

Juror: They told me to go home today and come back in December. But I don't want to come back in December. I've been doing this for three times now and each time they ask me to go and come back. Can I just stay here and get it over with?

(Intern comment: I explained to her that if she can't speak English she will be dismissed. But she insisted that she wanted to serve now so that she wouldn't have to come back later. So, I eventually took her back to the translator, who was sitting in the same room as a court official.)

Court Official (to the translator): She can't speak English at all. I know she wants to serve on jury, but she can't be here. Show her the door, and take her out. (To intern) I know this lady here is a good citizen and she wants to serve, but she doesn't speak English. So, that's it. Thank you.

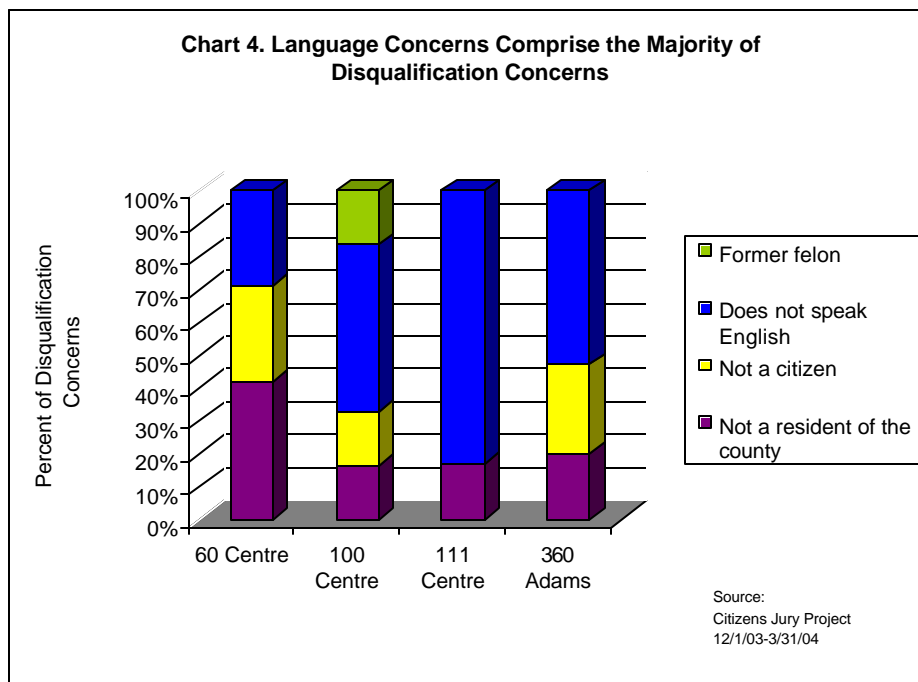
(Intern comment: After the woman was gone, the court official stopped reiterated his thoughts about what a wonderful citizen this lady is, but he had to send her away.) (360 Adams, 2/10/04)

The court system took an important step toward greater inclusion by enacting Article XVI § 510 of the New York State Consolidated Laws, a law that requires jurors to “understand and communicate” in English, but not necessarily read and write. This law is exemplary and carries with it the responsibility of communicating with and assessing a variety of populations.⁷⁷

In terms of assessment, the court system is faced with two difficult tasks. Court officials and clerks must first assess which jurors can adequately comprehend the complex legal terms and processes. In addition, for those jurors deemed linguistically unqualified to serve, the court system must estimate the time it could take for those jurors to acquire a language. Assessing and estimating language acquisition are large fields of study within the fields of linguistics and English as a Second Language, and are skills that linguistic professionals are trained to acquire. CJP recommends that the court system utilize the resources and knowledge that the fields of English as a Second Language (ESL) and Linguistics have developed in relation to assessment and communication with non-English speaking/multi-lingual people. ESL professionals, not simply court staff who have no prior education or experience in the field, should train court staff on how to properly conduct language-qualifying interviews. Professionals in the field should also be asked to provide realistic time frames for language acquisition. Non-native speakers should not be excluded from the process, nor called excessively and unnecessarily.

⁷⁷ For a discussion of the lack of information available for non-English/multi-lingual jurors, please see CJP's Summer 2003 Report on Juror Concerns, section 2 D (3): www.juryproject.org/sum03rep.pdf

As discussed in the preceding section of this report, Kings County has recently committed to providing multi-lingual, telephonic information for jurors prior to service. This toll-free line will provide recorded information about the process of jury service, postponements/dismissals, and the required language interview. The effects of such a service will be positive for both individuals and the system. The service will provide individuals with information prior to service and allow non-English speaking /multi-lingual jurors to enter the courthouse knowingly, not intimidated, resentful, and confused. In turn, the service will facilitate the process of communicating with and assessing these individuals and will improve the accuracy on the count of those qualified to serve. CJP recommends that Queens and other counties with large population of non-English speakers follow suit.



60 Centre: Disqualifications		Count
Not a resident of the county		3
Doesn't speak English		2
Not a citizen		2
100 Centre: Disqualifications		Count
Doesn't speak English		3
Former felon		1
Not a citizen		1
Not a resident of the county		1

111 Centre: Disqualifications	Count
Doesn't speak English	5
Not a resident of the county	1
360 Adams: Disqualifications	Count
Doesn't speak English	8
Not a citizen	4
Not a resident of the county	3

Languages Spoken in New York & Facility with English	
English only	72%
Languages other than English	28%
Speak English less than "very well"	13%
Spanish	13.6%
Speak English less than "very well"	6.7%
Other Indo-European languages	9.3%
Speak English less than "very well"	3.7%
Asian and Pacific Island languages	3.8%
Speak English less than "very well"	2.2%
Source: US Bureau of Census, Census 2000	

The following list is a summary of recommendations provided throughout this report, which address the issues of communicating with and assessing non-English/multi-lingual speakers:

- Utilize the resources and knowledge that the fields of English as a Second Language (ESL) and linguistics have developed in relation to assessment and communication with non-English speaking jurors. Linguistic professionals, not simply other court staff who have no prior education or experience in the field, should train court staff in how to properly conduct language qualifying interviews.
- Provide a line on the qualification questionnaire after the question, "can you understand and communicate in the English language," that states: "if not, you will be asked to participate in a language interview, once you are summoned to serve." This will alleviate some of the confusion expressed by non-English speaking jurors who believe that marking "no" to the question "can you understand and communicate in the English language," disqualifies them from service.
- Include a line on the qualification questionnaire in each county's predominant languages that instructs non-English speakers to call a

hotline that will provide information and instructions in their native languages.

- Create toll-free information lines with recorded instructions for summoned multilingual/non-English speakers about the jury process and how to participate in a language interview prior to service.
- Provide information for non-English speaking/multilingual jurors on the Unified Court System's web site. Currently, no information is available for these jurors. This lack of information contrasts other states' approach. California, for example, addresses the question, "What if I don't speak English?" in their "California Guide to Jury Service: Frequently Asked Questions" (www.courtinfo.ca.gov/jury/faq/faq01.html). In recognition of their linguistic diversity (diversity that is mirrored in New York City and the boroughs) California recently developed a multilingual website: <http://www.courtinfo.ca.gov/selfhelp/glossary.htm>. Although this multilingual information is not available specifically for jurors, it is a significant step in their efforts to reach out to the general public. New York's Unified Court System's website and county websites' juror information pages should be made available in Spanish and other predominant languages.
- Increase communication between the courts and the press that report and publish in languages other than English.

9. SUMMARY OF RECOMMENDATIONS

Common sense is genius in homespun. – Alfred North Whitehead

Alfred North Whitehead was British mathematician, logician, and philosopher who had a great appreciation for common sense. His theories also parallel our justice system in that he put great weight on process, which he understood as the fundamental metaphysical component of the world. Underlying his work is the idea that philosophy is successful when it explains a connection between the logical and scientific world and common subjective experience.⁷⁸

For jurors to use their common sense judgment fairly and thoughtfully they must be included in the process and comprehend it. The following recommendations suggest ways to continue to improve jurors' experiences within the system. This work between the court system and New York communities has, in itself, great meaning.

⁷⁸ Alfred North Whitehead, Stanford Encyclopedia of Philosophy (visited April 3, 2004) <<http://plato.stanford.edu/entries/whitehead>>.

(A) Summary of Recommendations for the Courts

Treat jurors as active learners: Most jury trial innovations relate to juror comprehension and are not a threat to the adversarial system. Without suggesting that research surrounding each innovation should be examined critically, the innovations that the Jury Trial Project is currently considering have considerable merit and appear to facilitate the factfinding process.

Improve the language and administration of jury instructions: Instructions should be written in plain English and clearly conveyed to jurors.

Continue to work to promote the inclusion of individuals and groups into the jury system: Inclusion is vital for impartiality and the fair evaluation of evidence.

Clarify and economize on documentary evidence: CJP recommends putting reasonable limits on the amount of documentary evidence submitted. To organize the evidence submitted, CJP also recommends the use of juror notebooks, at the discretion of the judge.

Provide jurors with detailed information about where to report during all phases of service. In order to alleviate juror confusion during the voir dire process or while serving on a panel, CJP suggests that courts be more clear and explicit about where jurors should report while serving. Lessening juror confusion and stress can allow jurors to focus on the proceedings and will promote comprehension.

Provide more procedural information to jurors in the assembly room and throughout the process. Jurors should be informed about their rights and have a clear understanding of the process of serving. Additionally, providing jurors with regular updates on the day's schedule and explanations why there may be delays can diminish their feeling that service is a waste of time.

Address juror privacy concerns. Information on juror privacy should be readily accessible for jurors. Judges should be trained to address juror privacy concerns and should consistently address the issue of juror privacy, beginning with the judicial instructions prior to voir dire, and as the issue arises throughout proceedings.

- Ensure that a judge or J.H.O. (for civil trials) is present during voir dire.
- Address juror privacy in juror instructions and in the literature and materials provided to jurors.
- Continue to assess and address jurors' safety concerns.

Target environmental improvements in the courts. Jurors clearly respond to improvements made to the physical conditions within our courts. Courts must continually assess whether their facilities are accessible and safe. Jurors' experience in the courts and ability and desire to serve are affected by structural improvements, such as constructing accessible entrances and bathrooms, and procedural improvements such as escorting jurors directly into courtrooms, instead of leaving them in the hall. Timely response to the recommendations provided in this report will help to create clean and safe court environments.

Collaborate with CJP and OCA in devising ways to best accommodate caretakers, non-English speakers, minorities, and individuals with low incomes. Part of the work in accommodating these individuals is systemic, yet it must also be addressed at a court and community-specific level. Court officials and individuals have a day-to-day and historical perspective on the populations and communities that visit each court, and how staff and their facilities can be accommodating.

(B) Summary of Administrative, Public Relations, and Research Recommendations

Summoning

- Provide information for undocumented non-citizens prior to service, on the qualification questionnaire and in court literature.
- Create an online service in which jurors can submit copies of the children's birth certificate to the court. Other populations could use this service too, such as non-citizens and individuals with health concerns that prohibit them from leaving their homes.
- Provide a line on the qualification questionnaire after the question, "can you understand and communicate in the English language," that states: "if not, you will be asked to participate in a language interview, once you are summoned to serve." This will alleviate some of the confusion expressed by non-English speaking jurors who believe that marking "no" to the question "can you understand and communicate in the English language," disqualifies them from service.
- Include a line on the qualification questionnaire in each county's predominant languages, which instructs non-English speakers to call a hotline that will provide information and instructions in their native languages.
- Establish toll-free information lines with recorded instructions for summoned multi-lingual/non-English speakers about the jury process and how to seek postponement/dismissal prior to service.

Court Facilities

- Implement 60 Centre Street's work request to knock down one of the walls between two of the empanelling rooms that are adjacent to the assembly room at 60 Centre. This would create at least one empanelling room that is more accessible and can accommodate larger venires.
- Encourage the City to make the necessary plumbing improvements so that the water that flows to the water fountains in the New York County courthouses can be turned on again. Until the water tests safe and the water fountains are fully functional, jurors should have access to a water cooler or, at least, water should be available for purchase through concession and vending services.

Public Outreach

- Provide caretaker information on the Unified Court System website and relevant court literature, such as the petit juror handbook. This information can be particularly useful for caretakers, who live unpredictable lives that are often dictated by those they care for.
- Provide multi-lingual information about the courts and court processes. The Unified Court System website is an example of a resource that could be made available in, at least, Spanish.
- Provide information for non-citizens on the Unified Court System website and in relevant court literature.
- Include information on the wireless access services on the Unified Court System's juror web site.
- Increase communication between the courts and the press that report and publish in languages other than English.

Court Research

- Continue to study and improve civil and criminal jury instructions. Plain English jury instructions promote juror inclusion and comprehension.
- Implement court research that assesses the non-compliant and disqualified juror populations. Research has indicated that non-respondents generally want to serve but that personal responsibilities/hardship and misconceptions about service inhibit their response.⁷⁹ A state-specific assessment of non-compliant and disqualified jurors can allow for a more in-depth analysis of many of the issues brought up in this report, such as the percentage of non-compliant and disqualified jurors who do not understand and

⁷⁹ Robert G. Boatright, *Improving Citizens Response to Jury Summonses*, American Judicature Society (1998).

comprehend English. This research will also help to further clarify where gaps in information exist, and how the system can best accommodate individuals with personal hardship and responsibilities that inhibit their ability to serve and contribute to the system.

Court System Administration

- Utilize the resources and knowledge that the field of English as a Second Language (ESL) has developed in relation to assessment and communication with non-English speaking jurors. ESL professionals, not simply other court staff who have no prior education or experience in the field, should train court staff in how to properly conduct language-qualifying interviews
- Develop a clear policy for the assessment undocumented non-citizens. Instruct court officers and clerks throughout the state on how to assess and treat non-citizens.
- Reconsider the possibility of offering child care reimbursement to jurors. The high child poverty rate in New York and Kings County, coupled with the difficulty of obtaining public child care, suggests that child care reimbursement is a viable way to promote inclusion.

Appendix A: Top Juror Concerns in Manhattan & Brooklyn Courts

Top Juror Comments & Concerns Manhattan & Brooklyn Courts 12/1/03-3/31/04 (Total Concerns =517)	
Top 5 Appreciative Comments	Count
Lunch guide is good	18
Things are generally better	7
Good clerks	6
Good court officers	5
Good that everyone serves	2
Top 25 Critical Concerns	Count
Lack of information/incorrect information	116
Wasted time	25
Would like a postponement/deferral	23
Elder/child care	15
Very disruptive to my work	13
Bathrooms	12
Medical problem/old age	11
General disrepair	10
Needed information ahead of time	10
No coffee/sandwiches/juice	10
Religious/personal objection	10
Financial hardship	7
Work from home to be with children, elderly or people with disabilities	7
Not enough seats	7
Need to pick up children	6
No working water fountains	6
Juror pay is not enough	6
Problem with name or address	6
Should be pre-screening before voir dire	6
Elevators need work	5
Self-employed people should be exempt	5
Needed directions to the courthouse	4
Service is too long	4
Intrusive personal questions during voir dire	3
My business will suffer	3

How do I let the court know that I don't qualify for jury duty? I'm in the process of getting my permanent residence. I received a notice to appear for jury duty and wrote back explaining that I'm not a U.S. citizen. I know that noncitizens aren't eligible to serve.

Recently, I received a letter stating that I was in "noncompliance" with my jury duty obligations, and that I was being summoned to appear. What should I do?

Name Withheld, New York
A. According to Jane Eggers, director of the Citizens Jury Project of the Fund for Modern Courts, if you have proof that your application for permanent residence is pending, such as a filing receipt, you should send a copy to the court clerk. The address is on your notice. Include a letter explaining that you are in the process of getting permanent residence. If you have a legal representative, instead of the receipt, you can submit a letter from the representative explaining that you are applying for residence.

You are correct that only U.S. citizens can serve on juries. So how did the court clerk get your name? The names come from many places, including lists of registered voters, state taxpayers, licensed drivers, recipients of public assistance benefits and recipients of state unemployment compensation.

Readers called for jury duty who are permanent residents should send a copy of their permanent resident card to the court clerk. Readers who are undocumented and don't have a case pending with the U.S. Citizenship and Immigration Service (formerly INS) should visit the clerk's office and explain the situation. The meeting with the clerk will be confidential. You needn't worry that the USCIS will learn that you are here.

For information regarding your jury duty, contact the Citizens Jury Project by E-mail at: juror@juryproject.org, or by phone at (212) 541-6741, ext. 110.

Shield of citizenship

Can a naturalized U.S. citizen get deported for committing a serious felony like murder or drug possession?

Lenny Webb, Queens
A. No. The government can-

not deport a naturalized U.S. citizen for a criminal act committed after his or her swearing-in ceremony. In a rare case, a naturalized citizen is "denaturalized" when a criminal act leads to the discovery that the person wasn't eligible for citizenship.

For example, suppose Johnny had an old drug conviction that somehow slipped past the United States Citizenship and Immigration Service (USCIS). At his naturalization interview, when asked if he had ever been arrested, he answered, "No." Then, sometime after he was sworn in as a U.S. citizen, the police arrested him for drug dealing and his old conviction was discovered. The USCIS could try to denaturalize him for fraud in the naturalization process, but not for his post-swearing-in criminal activity.

Lying's not way to go

My father, who had a green card, petitioned for me in 1994. Then he moved back to Trinidad. Can I still adjust my status to permanent resident? After he filed for me, he moved back to Trinidad and gave up his green card. I'd like to file my final papers for permanent residence. My U.S. citizen sister and brother have good jobs and are willing to sponsor me.

Helen, Ozone Park
A. Unless you and your father lie about your father's residence, you won't get permanent residence. Lying is not a good idea. If you get caught, you'll have a hard time ever getting a green card or U.S. citizenship.

The law requires that a family petitioner — in this case, your father — be qualified to petition until the time the beneficiary of the petition gets permanent residence. Have your brother and sister petition for you. You'll wait 10 to 12 years to get your green card, but at least you'll have done it honestly.

Allan Wernick is a lawyer and chairman of the City University of New York's Citizenship and Immigration Project. He is the author of "U.S. Immigration and Citizenship — Your Complete Guide, Revised 3rd Edition." Send questions and comments to Allan Wernick, Daily News, 450 W. 33rd St., New York, N.Y. 10001. Prof. Wernick's Web site is: www.allanwernick.com.

IMMIGRATION ADVICE



ALLAN WERNICK