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UNITED STATES GENERAL ACCOUNTING OFFICE

WASHINGTON, D.C. 20548

GENERAL GOVERNMENT
DIVISION

MARCH 4, 1981

B-201448

The Honorable William E. Foley
Director, Administrative
Office of the United
States Courts

Dear Mr. Foley:

Subject: Federal Jury Management Practices (GGD-81-42)

As a result of our followup work on two previous GAO reports and in light of your interest in improving juror usage efficiency, we are reporting areas that we believe merit your attention.

Our current study has shown that there has not been much improvement in juror utilization over the past 5 years, as evidenced by statistics on the percentage of jurors not selected, serving, or challenged (unused jurors), over this period. The importance of optimizing juror utilization is evidenced by considering that about \$5.7 million was expended in the year ending June 30, 1980, for unused jurors. Our study indicated that untapped opportunities exist to further reduce the number of prospective jurors summoned to appear at district courts but not selected to serve. Such a reduction would not only result in savings in jury costs, but would also decrease the number of persons inconvenienced and thereby improve the relationship between the courts and the public.

We believe that the absence of improvement in recent years is a result of: (1) many district courts not using efficient juror utilization practices; (2) the judicial councils not assuming an active role over district jury usage practices; and (3) the judiciary not having adequate information on jury management practices. In addition, the statistical indices used to measure juror usage efficiency do not accurately reflect how efficiently district courts are using their jurors.

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We believe that the Administrative Office should improve the management information it gathers on district court jury practices so as to assist the judicial councils and courts in identifying specific areas where cost savings could be achieved. We also believe that the judicial councils should insure that district courts are using their jurors in the most efficient manner through such means as the pooling of jurors and the simultaneous examination and selection of two or more juries to be subsequently used in separate trials before the same judge.

We performed our work in the western district of Washington, the northern district of California, the Ninth Circuit Judicial Council, the Federal Judicial Center, and the Administrative Office of the U.S. Courts. We also contacted several Federal district court clerks and circuit executives at other locations.

We do not plan to conduct further work on this subject at this time. However, we would appreciate receiving any comments you may have on our observations and any actions the Administrative Office plans to take. We are sending this report to Chief Judge C. Clyde Atkins, Chairman of the Judicial Conference Jury Committee, and to the chairmen of the judicial councils.

Sincerely yours,

NCJRS

W.J. Anderson

MAR 5 1982

William J. Anderson
Director

ACQUISITIONS

Enclosure

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GAO OBSERVATIONS

ON

FEDERAL JURY MANAGEMENT PRACTICES

INTRODUCTION

In 1970 and again in 1976, we reported that district court juror utilization practices could be improved. 1/ In our 1976 report we recommended that the judicial councils direct district courts to use procedures suggested by the Federal Judicial Center and the Administrative Office of the U.S. Courts for effectively using jurors. Some districts may have improved their juror usage efficiency since our last report but there is evidence that many opportunities in this regard are still available.

During the period July 1, 1975, through June 30, 1980, Federal petit juror 2/ costs increased by about \$9.2 million, or 59 percent. In 1976, petit juror costs were about \$15.6 million and for 1980 they were about \$24.8 million. Over the same period, the costs of jurors called in but not selected, not serving, or not challenged (unused jurors) also increased substantially. Payments to these unused jurors were about \$3.8 million in 1976 and about \$5.7 million in 1980--an increase of about \$1.9 million, or 50 percent.

Two factors are contributing to rising jury costs. First, the Jury System Improvements Act of 1978 increased the daily attendance fee from \$20 to \$30 and also increased mileage and subsistence rates. Second, the 1978 Federal Judgeship Act increased the number of Federal district court judgeships by 117. Judiciary officials expect this increase in the number of judgeships to result in more cases being

1/"Opportunities for Improvement in the Administrative and Financial Operations of the United States District Courts," (B-133322) October 8, 1970; and "Further Improvements Needed in Administrative and Financial Operations of the U.S. District Courts," (GGD-76-67, May 10, 1976).

2/Person selected according to law, impaneled and sworn in a district court to determine questions of fact, in any civil or criminal action, through hearing the evidence presented at trial.

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tried, which will in turn cause juror usage and costs to rise accordingly. Because the judiciary is spending more on petit jurors each year, the Administrative Office needs to give greater attention to improving juror usage efficiency.

OPPORTUNITIES FOR
IMPROVEMENT EXIST

Information is not available on how efficiently individual district courts are using jurors but there are indications that improvement is possible.

A 1978 Administrative Office survey showed that many courts have not implemented efficient jury management practices. According to the survey

--63 percent of the courts were not pooling jurors 1/;

--45 percent were not using multiple voir dire 2/;

--87 percent were not setting deadlines for settlements in civil trials; and

--90 percent were not setting deadlines for pleas in criminal cases.

Setting deadlines improves juror utilization by not scheduling and selecting jurors for trials that subsequently are settled at the last minute.

Although some districts may have improved their jury management practices since this survey, recent Administrative Office statistics show that the judiciary as a whole has not appreciably improved its jury usage efficiency since 1975.

1/The process of selecting jurors for more than one jury from the same pool of prospective jurors.

2/The simultaneous examination and selection of two or more juries to be subsequently used in separate trials before the same judge.

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Petit Juror Utilization

<u>Year</u>	<u>Not selected, serving, or challenged</u>	<u>Selected or serving</u>	<u>Challenged</u>
-----(percent)-----			
1976	24.1	60.2	15.6
1977	24.1	60.4	15.5
1978	24.0	60.5	15.5
1979	24.6	59.2	16.2
1980	23.1	60.9	15.2

Source: 1980 Juror Utilization in U.S. District Courts

As shown in the above table, the percentage of jurors not selected, not serving, or not challenged has not changed much in 5 years. We believe this indicates that the situation we identified in 1976 and shown in the 1978 Administrative Office's study still exists. In our opinion, the lack of improvement results at least in part from the fact that the judiciary does not have the data needed to identify specifically what can be done in each district to improve juror usage efficiency.

In February 1980, Chief Justice Warren E. Burger, in his Annual Report on the State of the Judiciary, said that "We deal far too casually with time of citizens called for jury duty." He said that juror usage had improved but more could be done and that "There are more accurate ways to identify the number of jurors needed and likely to be used." In December 1980, the Chief Justice in his year-end report on the judiciary said that

"Many innovations are taking place in the area of jury utilization. * * * But we can no longer ask our neighbors to sit in dingy waiting rooms for long hours--and days--without being called to sit on a jury, simply because of poor management of a great tradition. We must strike a balance so that we can preserve a valuable heritage or we may lose it."

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INADEQUATE DATA ON JURY
MANAGEMENT PRACTICES

All judiciary officials we talked to generally agreed that district courts can use their jurors more efficiently. The judiciary, however, does not have current information on the jury management practices of each district court and therefore cannot readily identify those courts where opportunities exist to improve juror utilization.

As previously mentioned, the Administrative Office, as part of a special study, gathered information on individual district court jury management practices. The information obtained included

- identification of those districts which used more efficient juror selection techniques such as jury pooling, multiple voir dire, and separate orientation days;
- the average panel sizes used for selecting petit juries in each district; and
- the number of alternates routinely selected in each district.

Although the Administrative Office intended to include the results of this survey in its annual Juror Utilization Report, it never did. According to the Chief, Statistical Analysis and Reports Division, the Administrative Office does not plan to update this information in the near future.

We believe that the Administrative Office should regularly gather, analyze, and report this type of information. It would be useful for various management purposes such as

- providing the Judicial Conference and judicial councils with valuable information for policy-making decisions;
- identifying juror usage trends which may warrant corrective action;
- identifying districts with good juror usage efficiency and the particular practices they use;

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- identifying districts with poor juror usage efficiency and pinpointing possible solutions; and
- determining the extent to which certain jury management practices are used or not used and thereby identifying areas to emphasize in training programs and seminars.

MISLEADING STATISTICAL INDICES
OF JUROR USAGE EFFICIENCY

The statistical indices the judiciary uses to measure juror usage efficiency may be substantially overstating the extent to which district courts are efficiently using jurors. Because of this, the Administrative Office, judicial councils, and district courts may not be giving this area the attention it needs.

Since 1971, the Administrative Office has been gathering statistical data on district court juror usage. The district courts, via the monthly Petit Juror Usage Report, provide the Administrative Office with data on the number of jurors brought in, selected, challenged, and not used. Along with this data, the districts also compute and report their Juror Utilization Index, a measure of juror usage efficiency. Each year, the Administrative Office summarizes and reports this information in its annual Juror Utilization Report.

The figures derived as a result of these statistics are heavily influenced by trial length, a factor not related to juror selection or usage efficiency. The reason that the statistics are influenced is because the jurors used (selected or serving) are recounted in the universe for each day they serve on a trial. In contrast, those challenged or not used (not selected, not serving, or not challenged) are counted only on the day they appeared for possible selection.

To measure effectiveness of juror usage efficiency, the Administrative Office uses what it calls its Juror Utilization Index. This index is derived by dividing the total available jurors by the total jury trial days. This shows the average number of jurors available per jury trial day. Consequently, a lower index indicates higher efficiency in use of jurors. This situation may be best illustrated by the hypothetical example that follows.

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Assume that a court calls in 50 persons for jury duty for a criminal trial. Through the jury selection process, 8 jurors are challenged and released, 12 are selected for the trial, and the remaining 30 are not selected or challenged (not used). If this trial lasted only 1 day, the jury statistics would be calculated and reported as follows.

<u>Trial Day(s)</u>	Total jurors brought in <u>(available to serve)</u>	Jurors selected	Jurors challenged	Jurors not selected or challenged
1	50 (100%)	12 (24%)	8 (16%)	30 (60%)

As the above figures show, the court selected 24 percent of the total number of jurors called in, challenged 16 percent, and did not use (not selected or challenged) 60 percent. On the basis of these figures the index for this court would be 50 (50 available jurors divided by 1 trial day).

Now, assume this hypothetical trial continues into a second day. The 12 jurors selected to sit on the jury are brought in again. The other jurors eliminated from jury duty for this trial on the first day, however, are not brought in. If this trial ends on the second day, the jury statistics would be calculated and reported as follows.

<u>Trial Day (s)</u>	Total brought in <u>(available to serve)</u>	Jurors selected	Jurors challenged	Jurors not selected or challenged
1	50	12	8	30
2	<u>12</u>	<u>12</u>	<u>0</u>	<u>0</u>
Total	<u>62</u>	<u>24</u>	<u>8</u>	<u>30</u>
Percent	100	39	13	48

As shown above, the 12 jurors selected for jury duty are added to both the "total brought in" and the "jurors selected." The jurors challenged and those not challenged or selected, however, are not counted again for this second trial day. Therefore, the percentage figure indicating jurors selected increases in relation to the number of trial days whereas the percentage figure for the number of jurors not selected or

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challenged decreases. This results in an overstatement of the jurors selected percentage and an understatement of the jurors not used percentage.

The index is similarly affected by trial length and declines rapidly with each additional trial day. In the hypothetical example, the index was 50 on the first day and 31 on the second day, even though the court's juror usage efficiency had not changed. If this trial had continued for 2 more days, the index would have dropped to 21.5.

Thus, courts with longer trials, on the average, will appear to be more efficient than those with shorter trials, even though the former may actually be using their jurors less efficiently. In our opinion, we believe a better measurement of juror usage efficiency would be to determine the jurors used and not used on the first day of each trial (jury selection day). This would provide a much better picture of the efficiency of juror usage than the existing method. To demonstrate our point, we examined in detail the selection of jurors in the western district of Washington (Seattle location only) for 1979 and factored out the trial length. The following table summarizes our calculations and compares them to the Administrative Office's data which includes trial length.

<u>Juror category</u>	Per Administrative Office	Percent of <u>total</u>	Per GAO	Percent of <u>total</u>
Total number of available jurors	<u>a/</u> 3,249	100	<u>b/</u> 1,768	100
Number of jurors selected or serving	<u>a/</u> 2,000	62	<u>b/</u> 517	29
Number of jurors challenged	495	15	495	28
Number of jurors not selected, not serving, or challenged	754	23	754	43

a/Includes the number of trial days for which jurors served.

b/Does not include the number of trial days, merely the actual number of jurors called or selected.

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As the table shows, when considering what happens only on jury selection day and factoring out subsequent trial days, the district court in Seattle had 754, or 43 percent, unused jurors per our calculation which indicates that about half of the jurors summoned are dismissed. In contrast, the existing system indicates that only about one out of every four jurors summoned is dismissed.

The Administrative Office has stated that efficient juror management is enhanced by reducing the percent of those jurors not selected, not serving, or not challenged. The Office also identified several factors that can improve juror utilization in this area. These are: jury pooling; less than 12-member civil juries; multiple voir dire; staggering of trial starts; deadlines for settlements or pleas; effective use of pretrial hearings; and use of the code-a-phone for notifying jurors of postponement or cancellation of a trial. Because of the influence that trial length has on the index, we do not believe it is a very useful management tool to identify those districts that are not efficiently using their jurors. Therefore, we suggest that the Administrative Office consider discontinuing its use or replacing it with a First Day Juror Utilization Index.

In this regard, two district court clerks (Illinois northern and Wisconsin western), while working as members of an Administrative Office committee, recently conducted a study on juror utilization statistics. In this study, they concluded that the index is a meaningless figure for the reasons just mentioned above. We discussed this study with both clerks and they told us that the committee has become defunct due to time constraints and other priorities. Both agreed, however, that more work should be done in this area and the jury statistics should be changed.

JUDICIAL COUNCILS NOT ACTIVELY
MANAGING JUROR USAGE PRACTICES

Judicial councils are responsible for seeing that the business of each court within the circuit is effectively and expeditiously administered and for taking such actions as may be necessary, including the issuance of orders, to accomplish these ends (28 U.S.C. 332). In 1976, we reported that the judicial councils, to a large extent, were not actively carrying out these responsibilities in a number of areas, including district court juror utilization. We found indications during our recent audit that this situation has not changed significantly.

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Based on our discussions with circuit executives for 9 of the 11 judicial councils, it appears that most councils have not been actively insuring that district courts efficiently use jurors, although the level of activity in this area varied by judicial council.

According to the circuit executives, none of the councils have issued directives, policy statements, or guidelines on jury management. Two judicial councils periodically conduct jury management seminars or workshops but the others limit their activity to monitoring the statistical data in the Administrative Office's annual Juror Utilization Report.

The circuit executives generally agreed that there is room for improvement but believed that most courts in their respective circuits were doing relatively well. All but one cited the Juror Utilization Index and other Administrative Office jury statistics as the basis for their observations. Reliance on these statistics may explain, in part, the lack of action by many judicial councils because, as noted on pages 5 to 7, the jury utilization efficiency indices do not present a true picture of how efficiently district courts are using their jurors. Based on these discussions and our own analyses, we believe that the Administrative Office's statistics may have led the judiciary to believe that juror usage efficiency in district courts is not a problem.