

## **JURY MANAGEMENT ADVISORY COMMITTEE**

# **Final Report to the Justices of the Supreme Judicial Court On Phase 1 of the Resumption of Jury Trials in the Context of the COVID-19 Pandemic, and Recommendations Regarding Remote Proceedings**

Submitted: March 11, 2021

Chief Justice Judith Fabricant, Chair	Superior Court
Hon. Sarah W. Ellis	District Court
Hon. Kenneth J. Fiandaca	Boston Municipal Court
Hon. William F. Mazanec	District Court
Hon. David Ricciardone	Superior Court
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As reported in the Jury Management Advisory Committee’s Preliminary Report, dated February 8, 2021, pursuant to the Supreme Judicial Court’s (SJC) Fourth Updated Order Regarding Court Operations under the Exigent Circumstances Created by the COVID-19 (Coronavirus) Pandemic dated September 17, 2020, effective October 1, 2020 (“the Order”), Massachusetts courts began Phase 1 of the gradual resumption of jury trials during the week of January 11, 2021. Phase 1 paused between January 26 and February 16, 2021, after five jury trials had been conducted, and then resumed, with five more trials conducted between February 17 and February 26, 2021. The JMAC reported on the first five trials in its Preliminary Report and Recommendations to the Justices of the Supreme Judicial Court on Phase 1 of the Resumption of Jury Trials in the Context of the COVID-19 Pandemic, submitted February 8, 2021 (“Preliminary Report”) and now completes its evaluation of Phase 1 with this report. This report incorporates the information provided in the Preliminary Report, and provides additional information and recommendations based on the five additional trials.<sup>1</sup>

#### **I. Phase 1 Jury Trial Data: Trials February 17 through 26, 2021**

The five trials conducted during this period were all criminal cases with a defendant not in custody; two were in the Boston Municipal Court (Threat to Commit a Crime and Annoy/Accost a Person)<sup>2</sup>, and the three others were OUI cases tried in the District Court, one each in Fall River, Greenfield, and Plymouth.<sup>3</sup> As in the first part of Phase 1, court leaders in each location selected the cases, in consultation with their Department Chiefs and the Chief

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<sup>1</sup> The Preliminary Report, referenced throughout this Final Report, is attached as Appendix 1.

<sup>2</sup> Docket Numbers 1906CR001347 and 1902CR003155.

<sup>3</sup> Docket Numbers 1941CR000807, 1932CR004678, and 2059CR000238.

Justice of the Trial Court. The two District Court cases in Greenfield and Plymouth employed a remote impanelment process, with consent of the parties; that process is described in Appendix 2 hereto and will be discussed further below. Aside from that aspect of those two cases, each trial lasted one day or less. The five judges who presided over these cases each conducted a debriefing session with trial participants after the trial, as recommended by the JMAC, and provided detailed feedback by means of the standardized questionnaire described in detail in the Preliminary Report. Those questionnaires, along with an updated summary of all ten Phase 1 questionnaires, are appended hereto as Appendix 3.<sup>4</sup> The responses provided in these questionnaires are generally consistent with those provided for the first five Phase 1 trials.

With these five trials included, the attached summary of questionnaires from all ten Phase 1 jury trials shows a generally positive experience, with some concerns expressed. Overall, it appears that these trials, like the earlier Phase 1 trials, indicate that the protocols established for jury trials in the context of the pandemic are functioning well, minimizing risk to all participants, and providing a sense of safety, although the process continues to be highly resource-intensive. The judges particularly praise the extensive efforts of Facilities and Security personnel. Some judges raise concerns or questions about side bar conferences, juror lunches, and the information provided to jurors before the impanelment process begins.

Some of the comments in the questionnaires submitted by the judges, as well as some inquiries recently received from attorneys, have highlighted the need for more public information about the OJC's process in summoning potential jurors and communicating with them prior to their appearance, as well as the data the OJC routinely compiles regarding jury impanelments in the various courts, and the correlation between census data and the demographic composition of

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<sup>4</sup> The JMAC gratefully acknowledges the detailed input of Hon. Kathleen Coffey, Hon. Kevin Finnerty, Hon. William Mazanec, Hon. Michael Vitali, and Hon. David Breen.

jury pools. To respond to that need, OJC is preparing a compilation of information to be made available on its website at MAjury.gov.

## **II. Juror Demographics in Phase 1**

Addition of these five trials to the demographic data previously compiled for Phase 1 does not result in significant change; while the sample remains very small, the data, as reflected in Appendix 4 hereto, remains generally consistent with pre-pandemic jury pools and census data for the counties where these trials were held.

In any discussion of the demographic makeup of jury pools during the pandemic, it bears noting that the data sample is very small.<sup>5</sup> With that caveat, Appendix 4 shows that the percentage of jurors appearing for service who self-identify as a race other than white is roughly similar in CY19, in March 2020 through February 2021 (the pandemic through Phase 1, including grand jury impanelments), and in Phase 1, and that these percentages compare favorably with the federal census benchmark. Indeed, the percentage of jurors identifying as Hispanic during the pandemic and during Phase 1 is actually higher than the percentage of Hispanic jurors who appeared during CY19.

With respect to the remote impanelment process used in two cases, the demographic data provided in Appendix 4 hereto indicate that those jurors who elected to participate remotely and those who elected to participate in person do not differ significantly either from each other or from pre-pandemic jury pools or census data for each of the counties. Again, the very small size of the sample bears noting. In addition, the jurors who indicated a willingness to participate remotely in the Plymouth virtual impanelment were an even more diverse group than those who

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<sup>5</sup> The total number of grand and trial jurors serving from 3/16/20 through 2/24/21 is 0.61% of the number of jurors who served in CY19. The number of trial jurors serving in Phase 1 is significantly lower -- 0.14% of the number who served in CY19.

chose to appear in person (although once both groups were randomly reduced, there was only one person who self-identified as other than white non-Hispanic left in the Plymouth pool).<sup>6</sup>

Appendix 6 compares the demographics of two groups of Phase 1 jurors: those who responded to the OJC's request that they re-confirm their intention to appear (allowing the OJC to control the number of jurors appearing in order to comply with occupancy limits) and those who did not respond but then appeared at the courthouse ("walk-ins"). At first glance, diversity within the two groups is similar. Upon closer examination, however, there are significant demographic differences between the two groups with respect to the subgroups of those who self-identified as other than white, and with respect to Hispanic jurors as well. Specifically, there were no Asian walk-ins (i.e., all Asians in the Phase 1 pools re-confirmed), while approximately 33% of the African Americans and 33% of the Hispanics who appeared during Phase 1 were walk-ins. Thus, excluding those who had not confirmed during Phase 1 would have significantly reduced the percentage of African Americans and Hispanics in the jury pool.

### **III. Juror Feedback**

There are only a handful of comments from Phase 1 trial jurors in the OJC's Juror Feedback Survey responses, due to the small number of trials and the fact that it usually takes a few weeks for jurors to respond after they serve (and they may provide only Yes/No responses, without adding a comment). The comments are attached as Appendix 7. Only one juror mentioned feeling unsafe in the courthouse due to COVID-19, while several others commented that they were pleased with the COVID-19 protocols and appreciative of the court's precautions. All jurors who participated in a remote impanelment felt it was a positive experience, despite some technical difficulties. Several jurors felt the volume of communications received regarding

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<sup>6</sup> Both the remote and in-person pools in Greenfield were overwhelmingly white, consistent with the very high percentage of white residents in the population of Franklin County. See, generally, Appendix 5.

their service was excessive. The other comments were similar to those received pre-pandemic, concerning parking, waiting in line, etc. The Yes/No responses were consistent with those received prior to the pandemic, with 80-90% or more of the respondents reporting a positive experience with the OJC, the website, the court officers, etc. Asked whether their impression of jury duty had changed as a result of their service, 42% of respondents said their impression had improved, 52% said it had remained the same, and none said that it had diminished – a slight improvement over pre-pandemic ratings, when there are usually at least a few respondents who say their impression has diminished as a result of their most recent jury duty experience.

#### **IV. Remote Impanelment**

Appendix 2 hereto provides a detailed description of the remote impanelment process used in two District Court cases, one on February 17, 2021, in Greenfield, and one on February 23, 2021, in Plymouth. Overall, after some initial technical challenges were resolved, the process appears to have been reasonably smooth. In each case, OJC offered those summoned as potential jurors the option of participating remotely or in person. Both groups split fairly evenly between the two methods. In each case, the court interviewed those who elected to participate remotely by Zoom, and interviewed those who elected to participate in person in the courtroom. All those who participated, whether remotely or in person, received credit for service. Each court instructed those seated to return the next day to proceed with the trial.

One of the main challenges in this process was the transmission of the Confidential Juror Questionnaires (CJQ) from those participating remotely, and handling of them, in a manner that would maintain their confidentiality as required by statute, M.G.L. c.234A, §23. The courts in these two cases succeeded in doing so, but the process required significant investment of time on the part of JISD, OJC, and District Court administrative staff, such that more extensive use of the

same process may be infeasible. Personnel with technical expertise are exploring alternative approaches to this process.

Part of the purpose of remote impanelment was to minimize the number of people who would have to come into a courthouse, thereby reducing risk to potential jurors as well as to court personnel and trial participants. These two cases seem to have achieved that purpose to some extent, although the two-day process for trials that otherwise would have taken one day undermines that effect: some participants have to come into the courthouse twice, when they would otherwise have come only once. On the other hand, some persons who would otherwise have come to the courthouse never did, eliminating potential exposures altogether for them and for the people they would have encountered in the courthouse. As we proceed to longer trials, remote impanelment may prove more effective in minimizing the number of persons entering courthouses each day.

## **V. Recommendations**

Based on the overall experience of Phase 1, we make the following recommendations.

First, we reiterate the recommendations regarding side-bar communications, and juror lunches, expressed in the Preliminary Report at pages 12-13.

Second, we recommend that the District Court, and other departments if they choose to do so, be authorized to proceed with additional remote impanelments, with consent of parties. As indicated above, the information gleaned from the two remote impanelments conducted so far does not identify any significant demographic difference between the jurors who elected to participate remotely and those who elected to participate in person. With such a small sample, however, we are not in a position to conclude that no such difference will appear with further use of remote impanelment procedures. For that reason we recommend that when remote

impanelment procedures are used in criminal cases, jurors should continue to be offered the option of participating in person.

Third, we recommend that the Superior Court be authorized to experiment with conducting jury trials in civil cases entirely remotely, with the consent of all parties. Attorneys with civil cases pending in Superior Court have been expressing increasing interest in this approach, citing successful experiences in several other states, including California, New Jersey, and Washington,<sup>7</sup> along with the likely delay in the court reaching civil cases once 12-person jury trials resume. We envision a remote process that would begin with impanelment conducted by essentially the same means as the District Court remote impanelments, but without in-person participation by any jurors, followed by presentation of evidence entirely through Zoom, with documents transmitted by email and displayed electronically. Deliberation would occur in a similar manner, with careful steps taken to preserve confidentiality of the process. We would require a clear statement of consent by all parties, in writing, including waiver of any objection to composition of the jury pool. So far, we have identified a personal injury case, in Plymouth County, in which all parties have indicated willingness to consent to such a process, with a tentative trial date of May 24, 2021. If that trial proceeds in a manner satisfactory to the parties and counsel, we expect that others will follow.

In making this recommendation, we have considered whether such a process would be consistent with the mandate under G. L. c. 234A, § 3, that all persons have equal opportunity to

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<sup>7</sup> See [aswtlawyers.com](https://aswtlawyers.com/alameda-jury-awards-1370935-verdict-to-woman-injured-by-college-student), “Alameda Jury Awards \$1,370,935 Verdict to Woman Injured by College Student,” <https://aswtlawyers.com/alameda-jury-awards-1370935-verdict-to-woman-injured-by-college-student>; kingcounty.gov, “Virtual Civil Jury Trial Preparation,” <https://www.kingcounty.gov/courts/superior-court/get-help/civil-jtrials.aspx>, “Civil Bar Remote Bench Trial Training” <https://youtu.be/ir5ekhlAOel>; njcourts.gov, “Order Authorizing Virtual Civil Jury Trials During COVID-19,” <https://www.njcourts.gov/courts/assets/supreme/ordervirtualciviljurytrials.pdf>; Memorandum from Michigan State Court Administrator Thomas Boyd “re: Virtual Jury Trials,” <https://courts.michigan.gov/Administration/SCAO/Resources/Documents/COVID-19/RemoteJuryTrials.pdf>

be considered for juror service, and no persons be excluded because of race, color, religion, sex, national origin, economic status, or occupation. As discussed supra, the small sample of jurors involved in the two remote impanelments conducted so far has not revealed a racial or ethnic difference between those who chose to participate remotely and those who chose to participate in person. As the data collected by OJC does not identify economic status, we are unable to determine whether those two groups differ economically. Under the present emergency circumstances, we believe it reasonable to take that risk, in civil cases in which parties agree to do so.

We emphasize that both these recommendations for remote proceedings are limited to the duration of the emergency circumstances arising from the COVID-19 pandemic, and such time thereafter as may be necessary to address the case backlog resulting from it. Jury trials conducted in person are a central feature of our system of justice; we look forward to their full resumption as soon as health circumstances permit.

The Jury Management Advisory Committee appreciates the opportunity to provide this information and recommendations to the Justices. We look forward to providing our evaluation of jury trials conducted in Phase 2, as directed in the Supreme Judicial Court's Fifth Updated Order Regarding Court Operations Under the Exigent Circumstances Created by the COVID-19 (Coronavirus) Pandemic.

# APPENDICES

1. JMAC Preliminary Report and Recommendations to the Justices of the  
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# **JURY MANAGEMENT ADVISORY COMMITTEE**

## **Preliminary Report and Recommendations**

### **To the Justices of the Supreme Judicial Court**

#### **On Phase 1 of the Resumption of Jury Trials in the Context of the**

#### **COVID-19 Pandemic**

Submitted: February 8, 2021

## **I. Introduction**

Pursuant to the Supreme Judicial Court’s (SJC) Fourth Updated Order Regarding Court Operations under the Exigent Circumstances Created by the COVID-19 (Coronavirus) Pandemic dated September 17, 2020, effective October 1, 2020 (“the Order”), Massachusetts courts began Phase 1 of the gradual resumption of jury trials during the week of January 11, 2021, and so far have conducted five jury trials. In accordance with the Order, consistent with recommendations contained in the report of the Jury Management Advisory Committee (JMAC, “Committee”) dated July 31, 2020, Phase 1 consists of a limited number of six-person jury trials conducted in person in a select number of locations. The courts conduct no more than one trial at a time in each location, and observe other specified limitations, such as on the number of peremptory challenges available to each party. The Order provided that the SJC “shall issue direction” regarding Phase 2 “after reviewing the JMAC’s evaluation of Phase 1,” but that “cases to be tried in Phase 2 in accordance with the JMAC’s recommendations may be scheduled in anticipation of Phase 2 commencing in February 2021, with such jury trial dates subject to revision after the SJC’s review of the JMAC’s evaluation of Phase 1.”<sup>1</sup> The Order further provided that “[a]ll plans and

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<sup>1</sup> See, “Jury Management Advisory Committee, Report and Recommendations to the Justices of the Supreme Judicial Court on the Resumption of Jury Trials in the Context of the COVID-19 Pandemic,” July 31, 2020,

expectations regarding the resumption of jury trials may be adjusted if there is a significant change in the rate of COVID-19 transmission in the Commonwealth.”

On January 25, 2021, in response to recommendations from court leaders and the JMAC, the SJC agreed to pause Phase 1 jury trials from January 26 through February 12, 2021. The Justices will make a determination regarding the remainder of Phase 1 before February 12, after considering all relevant information available at that time, including conditions in the Commonwealth with respect to COVID-19.<sup>2</sup>

To assist the Justices in that determination, the Committee offers this preliminary evaluation of the resumption of jury trials thus far in Phase 1, and recommendations regarding further resumption of jury trials.

### **Phase 1 Jury Trial Data**

The five trials conducted so far in Phase 1 consist of one District Court criminal case tried in each of Lowell, Plymouth, Salem, and Worcester District Courts, and one Superior Court civil case tried to a jury of six in Middlesex Superior Court in Woburn. The Trial Court selected these locations from a group of nine facilities throughout the Commonwealth screened for their ventilation and occupancy capacities.<sup>3</sup> The District Court cases each lasted one day or less, with the Lowell and Plymouth cases tried on Tuesday, January 12, 2021, and the Salem and Worcester cases tried on Tuesday, January 19, 2021. The Superior Court civil case lasted three half-days on a 9 a.m. to 1 p.m. schedule, commencing on January 25 and concluding on January 27. Court leaders in each location selected the cases, in consultation with their Department Chiefs and the Chief Justice of the Trial Court. Three of the District Court criminal cases

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(hereinafter “JMAC Report”), Part V.1.

<sup>2</sup> Letter of January 24, 2021, from Chief Justice Budd to Chief Justices Carey and Fabricant.

<sup>3</sup> See Mass.gov, “Tighe & Bond HVAC Evaluations of Courthouses.” <https://www.mass.gov/info-details/courthouse-hvac-system-evaluations>

(Lowell, Plymouth, and Worcester) charged operating under the influence;<sup>4</sup> the fourth (Salem) charged distribution of a class A controlled substance.<sup>5</sup> The Superior Court civil case presented a claim of personal injury.<sup>6</sup> These cases met the Committee's recommendation that this first round of cases consist of relatively minor matters not involving incarcerated individuals.<sup>7</sup> The average age of the four criminal cases was one year from date of filing. The civil case was filed in 2016.

The five judges presiding over these jury trials each provided detailed feedback by means of a standardized questionnaire prepared by the Committee and covering the following ten areas: Compliance with Risk Reduction Protocols, Juror Movement within the Courthouse, Impanelment Procedure, Courtroom Cleaning, Courtroom Set-Up, Juror Lunch, COVID-19 Specific Trial Procedures, Public Access, Model Voir Dire and Jury Instructions, and Jury Deliberations. As the JMAC had recommended, each judge conducted a debriefing session with trial participants, including counsel and court personnel, and reported the views expressed during these sessions in the questionnaire responses. The District Court judges provided additional feedback during post-trial meetings with Trial Court leaders, including the Jury Commissioner and the JMAC Chair.

The judges' responses were generally very positive, with eight of the ten areas of consideration scoring an average of at least 8 out of 10 for effectiveness. The judges noted the enormous collaborative effort put forth by all of the participants in the process, including the Office of Jury Commissioner (OJC), Facilities and Security personnel, Clerks, and the litigants

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<sup>4</sup> Docket numbers 2011CR02726, 1959CR0539, and 1936CR475, respectively.

<sup>5</sup> Docket number 2067CR0004.

<sup>6</sup> Docket number 1681CV02984.

<sup>7</sup> JMAC Report, *id.*

and their attorneys. A summary of the trial judges' evaluations follows.<sup>8</sup>

Overall Compliance with Risk Reduction Protocols (Average Score: 9.4 of 10)<sup>9</sup>

The judges reported excellent compliance with mask use by all, with minimal prompting. Masks were available for distribution, but not needed, as all participants, including jurors, came prepared with masks. Testifying witnesses either wore masks or face shields, or testified without face coverings while sitting inside a plexiglass-enclosed witness box. Facilities personnel had installed ample hand sanitizer dispensers, and except in one instance, a designated cleaner wiped down surfaces between witnesses in view of the jury. One judge commented that “[a]ttorneys were receptive and appreciative of safety precautions.”

Juror Movement within Courthouse (Average Score 9.4 of 10)

The judges uniformly noted excellent compliance with safe entry of jurors into the buildings and jury pool rooms, as well as maintenance of at least six to eight feet of spacing between jurors, all largely due to the exceptional efforts of court officers.<sup>10</sup> One judge noted the need for more court officers than usual, to the extent that the number of officers appeared cumbersome. Judges also noted that officers had to pay special attention to lining up jurors before attempting movement in and out of courtrooms.

Jury Impanelment Procedure (Average Score 8.6 of 10)

Each of the courts started the impanelment in the jury pool room, because of its relatively large capacity, and then moved to a courtroom. Each court also had to provide space for juror “walk-ins,” i.e., those appearing for service without having previously confirmed that they would

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<sup>8</sup> The Committee gratefully acknowledges the detailed input of the justices involved: Hon. John F. Coffey, Hon. Stacey J. Fortes, Hon. James M. Sullivan, Hon. Robert A. Brennan, Hon. Jennifer L. Ginsburg, and Hon. Helene Kazanjian. Appendix 1 consists of a summary of the five Phase 1 Jury Trial COVID-19 Judicial Questionnaires, prepared by OJC Project Coordinator Tanisha Perkins, followed by the five questionnaires.

<sup>9</sup> This and the following average scores are based on five reported scores unless otherwise noted.

<sup>10</sup> Trial Court standards provide for six foot spacing. The Trial Court Facilities Department has set occupancy limits for jury pool rooms based a standard of eight feet to allow for flow patterns.

do so. Each of the courts, therefore, dealt with a larger group than anticipated, which meant that capacity limits in the jury pool room necessitated the use of secondary space. One District Court judge noted the necessity of individual voir dire to vet these individuals, who had not availed themselves of the screening process now overseen by OJC. The same judge perceived serious difficulties in conducting individual voir dire at side bar. She noted that participants had to stand too close together to be heard by all and properly recorded.<sup>11</sup> Other courts avoided the use of sidebar by either conducting individual voir dire in a hallway adjacent to the courtroom, or having jurors other than the individual being interviewed wait in a separate courtroom.

In the civil trial in Middlesex Superior Court in Woburn, during the initial stage of the voir dire process, the clerk set up a Zoom connection so potential jurors who were located in a separate courtroom (because of the occupancy limit in the jury pool room) were able to observe the judge and hear the questions. Court officers in the room with those jurors announced the numbers of those who gave affirmative responses to the group questions. Counsel were unable to see those jurors during this part of the process, but did not object.

#### Courtroom and Courthouse Cleaning (Average Score 8.8 of 10)

The judges observed that facilities personnel did a fine job of cleaning the buildings in general and the courtrooms in particular. Nevertheless, one noticed that desks and podium areas needed dusting. In one case, as noted above, the witnesses stand was not cleaned between witnesses; that judge attributed the lapse to his own oversight.

#### Courtroom Set-Up (Average Score 7.8 of 10)

Each of the Phase 1 District Courts sat from four to six jurors in a jury box designed for 14 or 16 jurors. The court that sat only four in the box used part of the public gallery for the rest

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<sup>11</sup> This may have resulted, in part, from a volume increase in the FTR white noise feature in this location prior to the trial.

of the jurors. In the courtroom in Middlesex Superior Court in Woburn, the jury box has been reconstructed to fit 16 with distancing, so that the eight impaneled jurors were able to use the reconstructed jury box. Some courtrooms had plexiglass panels that separated the jurors from each other and from the rest of the courtroom. In some instances these caused problems regarding sightlines, acoustics, and glare, necessitating regular adjustments for visibility and audibility. One judge suggested that more display monitors would address these challenges. Another questioned the court's ability to accommodate a greater number of jurors or participants in the courtroom as currently configured.

#### Juror Lunch (Score: 5 of 10)<sup>12</sup>

Only one court had a jury deliberate through a lunch hour. The six jurors in that case, in Worcester, used a jury deliberation room normally used by a jury of up to 16, so that the six had sufficient space for social distance. The judge instructed the jurors to eat their lunches, put their masks back on, and then begin deliberation. Despite the size of the room and that instruction, the judge expressed serious concern about unmasked people who are not members of the same household eating together in a confined area. In Middlesex Superior Court in Woburn the court ordered lunch for jurors, anticipating that they would deliberate through the lunch hour, but planned to instruct them to wait to begin deliberations until after the group had eaten in smaller groups in multiple rooms. This never happened as the jury returned a verdict before the lunch break, and jurors took their lunches with them.

#### COVID-19 Specific Trial Procedures (Average Score 8.5 of 10)<sup>13</sup>

One court relied on electronic equipment to display exhibits, while the rest provided individual copies to each juror for that juror's exclusive use throughout the trial. Two of the

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<sup>12</sup> Only one score was reported for this category; see text *infra*.

<sup>13</sup> Based on four reported scores.

judges felt that there was sufficient room and protection to conduct sidebar conferences in the normal manner. One reiterated serious issues with sidebar conferences (as mentioned above), as well as conferences between lawyer and client during trial.<sup>14</sup> Two of the District Court judges reported that jurors were not permitted to take notes; the other two did not report on this point either way. Jurors in the Superior Court trial were provided with materials for note-taking and instructed on that subject.

Public Access (Average Score 9.75 of 10)<sup>15</sup>

Each of the courts participating in Phase 1 jury trials had a courtroom that could accommodate more members of the public than actually showed up to observe. In addition, each of the courts provided remote access to the trials through the telephone bridge line.<sup>16</sup>

Model Voir Dire and Jury Instructions, If Available (Average Score 9.66 of 10)<sup>17</sup>

Two of the courts used model voir dire and/or jury instructions that have been drafted for use in the pandemic and posted on Courtyard, in the Judges section, in a folder labeled Superior Court Model Jury Instructions. These judges found them well done and very useful. The judges who did not use the models felt that the protective measures were self-evident or that the current opt-out procedures were effective in addressing COVID-19 concerns.

Jury Deliberations (8.8 of 10)

Four of the courts involved in the Phase 1 jury trials had the jury deliberate in a separate courtroom that was configured for this use, or another room that was large enough to maintain appropriate physical spacing. This appeared to be an effective arrangement, with sufficient

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<sup>14</sup> The Trial Court is in the process of purchasing from FTR a number of portable communication devices for use between attorney and client, and between counsel and the judge, to address this issue. The device is the “Williams AV: Digi-Wave 400 Transceiver with MIC 144 Headset Microphone.”

<sup>15</sup> Based on four reported scores.

<sup>16</sup> In the Woburn case, the clerk arranged a Zoom connection to allow certain court leaders to observe. The Zoom link was not available to the public.

<sup>17</sup> Based on three reported scores.

space for the purpose and instructions on continued physical spacing. Salem used the trial courtroom itself, which was locked and appropriately monitored by a court officer just outside the interior door of the courtroom.

## **II. Juror Demographics in Phase 1**

Since jurors who appear during the pandemic effectively self-select,<sup>18</sup> and since the pandemic has disproportionately affected the Commonwealth's communities of color, diversity of jury pools is an issue of substantial concern. The judge and attorneys who participated in the Lowell trial particularly expressed this concern, based on observation of the jury pool in that case. Nevertheless, the data regarding the small sample of these five jury pools do not appear to show a significant divergence from pre-pandemic jury pools or from census data for these counties.<sup>19</sup>

The data do, however, indicate that the so-called "walk-ins" (jurors who appeared without having confirmed their intention to do so) in these five jury pools were a more diverse group than the jurors who had confirmed, and in that sense were necessary to the representative character of these jury pools.<sup>20</sup> As indicated *supra*, the presence of walk-ins posed a challenge in each instance, since each court had to accommodate more jurors than were anticipated, and more than could be accommodated in the jury pool room. One potential method of addressing that challenge would be for the OJC to send notices of cancellation to jurors who do not confirm. These data suggest, however, that use of that method might reduce diversity in the jury pools to a level that would be inconsistent with the population of the counties.

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<sup>18</sup> All persons summoned are entitled by law to postpone their service for up to a year, and anyone who contacts the OJC to express concerns about COVID-19 is assisted with a postponement or disqualification.

<sup>19</sup> See Appendix 2, which provides data comparing these 5 jury pools with calendar year 19 jury pools and with census data for these counties.

<sup>20</sup> See Appendix 3, which provides data comparing jurors who confirmed and appeared with jurors who appeared without having confirmed ("walk-ins") in these 5 jury pools.

The increased diversity among walk-ins also may have another implication. The OJC provides instruction, through its website and mailings, on jurors' various options to delay or to be disqualified or excused from service. Walk-ins, as a group, may include a disproportionate number of jurors who have not learned of their options, and who believe that they have no choice but to appear. In Lowell, for example, two jurors over age 70 appeared, one bearing an oxygen device; both would have been disqualified if they had so requested through the OJC website, "JurorHelp" email, or Call Center. To the extent that walk-ins are a more diverse group than those who confirm, their appearance may suggest that jury service during this time is putting a greater burden on members of minority groups than on others.

As to the size of the pools summoned for service in Phase 1, the OJC endeavored to keep these consistent with pre-pandemic pools for the same type of jury trials.<sup>21</sup> The data regarding Phase 1 jurors reveal a greater number of prospective jurors summoned to achieve target goals, which may indicate that the OJC will need to issue significantly more summonses to yield a sufficiently large pool to impanel a jury of 12 (14-16 with alternates). The data also showed that in Phase 1, a somewhat greater number of jurors were utilized to seat six to eight jurors compared to pre-COVID-19 pools.<sup>22</sup>

### **III. Juror Feedback**

In accordance with standard practice, the OJC asked jurors participating in Phase 1 impanelments to complete a survey on the experience.<sup>23</sup> Of the twenty-six comments received

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<sup>21</sup> This is but one of the areas in which the OJC has had to implement resource-intensive manual efforts to support jury operations in the courts. The inability to rely on automation and past practice is severely limiting the OJC's ability to provide jury pools to all but a few courthouses, although the OJC is working to develop procedures to expand the number of pools that can be provided. See, Appendix 4, attached.

<sup>22</sup> See, Appendix 5, which compares juror utilization in these 5 cases with pre-COVID utilization.

<sup>23</sup> The survey contains 10 rating-style questions and a free-form box for comments. Not all jurors who answer the ratings questions provide comments. <https://survey.vovici.com/se/54861F090AE3276E>

with juror survey responses, at least seventeen reflected a positive reaction, in which the respondent expressed appreciation for the great number of safety measures taken.<sup>24</sup>

Nevertheless, comments included several points of criticism. Juror responses from one location were critical of coordination among court officers.<sup>25</sup> Jurors who appeared for the Salem trial, and then learned that a person who had been in the courthouse on the day of the trial had reported testing positive, expressed significant negative reactions. One such juror labeled “[c]alling jury duty during these times . . . reckless.”<sup>26</sup>

#### **IV. Remote Impanelment**

Although no remote impanelments have yet occurred, preparations are ongoing for two remote-impanelment pilot trials. We describe those preparations here because they bear on our recommendations. A Greenfield District Court case is scheduled for Tuesday, February 16, 2021, and a Plymouth District Court case is scheduled for Tuesday, February 23, 2021.

The Office of Jury Commissioner has notified prospective jurors that they may participate in voir dire remotely in these trials. The juror response as of this writing is as follows:

##### **Greenfield:**

21 jurors have accepted the offer to participate in voir dire remotely;

18 jurors have responded to an earlier email/letter that they intend to appear, but have

not responded to the offer to participate in voir dire remotely;

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<sup>24</sup> See Appendix 6, attached.

<sup>25</sup> The perceived lack of coordination may have resulted from the absence on the trial date of the designated primary and back-up jury pool officers due to COVID-19 related issues.

<sup>26</sup> The morning after the Salem trial, a lawyer who had been in the building at the time of the trial reported testing positive. He was near, but not within six feet of, some of the potential jurors as they entered the building, for a period of less than five minutes. This report resulted in closure of the building on the day after the trial, and the OJC notified all members of the jury pool that day. A somewhat similar event occurred in Middlesex Superior Court in Woburn. Four days after the end of the trial, a staff person who had been present throughout the trial reported testing positive; again the OJC notified all members of the jury pool, although the information available indicated that none had been in close contact with the staff person. No Woburn jurors have commented on this topic as of this writing, but that may reflect the timing of the notice in relation to submission of the surveys.

14 jurors responded to a summons that they would appear on this date but have not responded to any post-summons communications;

15 jurors have not responded to any communication including the summons; and,

6 of the non-responders have an email address on file with OJC.<sup>27</sup>

**Plymouth:**

28 jurors have accepted the offer to participate in voir dire remotely;

9 jurors have responded to an earlier email/letter that they intend to appear, but have not responded to the offer to participate in voir dire remotely;

21 jurors responded to a summons that they would appear on this date but have not responded to any post-summons communications;

15 jurors have not responded to any communication including the summons; and

14 of the non-responders have an email address on file with OJC.

The OJC will randomize and assign juror numbers to combine the group of jurors participating in voir dire remotely with the non-remote group to preserve pool representativeness and diversity. As the actual trial dates approach, these pools will need to be reduced to a more manageable size commensurate with a six-person jury trial. The OJC will likewise complete the reduction process in a randomized fashion, although doing so may result in some jurors appearing in person instead of others who would have participated remotely.

The OJC has mailed the Reminder Notices (including map, directions and Confidential Juror Questionnaire) to the Greenfield jurors as of January 29, 2021 and the Plymouth jurors as

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<sup>27</sup> Non-responders for whom the OJC does not have an email address are more likely to become “walk-ins,” because of the tight timelines involved in trying to create jury pools during the pandemic by asking people to re-confirm that they intend to appear. The OJC emails cancellation notices to non-responders the day before the service date if possible, but those who cannot be reached by email have received multiple mailings telling them to appear (three summonses and a reminder notice). Unless they call the Juror Line the day before their service and hear (and understand) that non-responders must not appear, they may follow the directions on those mailings and come to court.

of February 5, 2021.

Both courts involved in this pilot project have identified the appropriate person to be the “Technical Clerk” for purposes of managing the remote jurors through the Zoom impanelment session. Technical assistants from the Administrative Office of the District Court have met with the trial judge and staff at each location to ensure all necessary equipment is present and functional and to conduct a run-through of the remote impanelment process with the trial judge, the Technical Clerk, Jury Pool Officer and staff.

## **V. Observations and Recommendations**

This report describes five trials of relatively minor cases, each to a jury of six, each involving an investment of resources far exceeding that normally required for any single case among the nearly four thousand trials the Massachusetts Trial Court impanels in a normal year. Although the sample is too small for any firm conclusions, we make the following preliminary observations.

First, the protocols recommended in the JMAC report appear to be generally feasible and effective for juries of six in these buildings, although we recommend certain adjustments regarding side bar conferences and juror lunches. Side bar conferences should not occur. As noted *supra*, devices that the Trial Court is in the process of acquiring should provide a sufficient alternative. In the absence of such devices, courts should make arrangements for the use of separate spaces.

Juror lunches present a serious challenge with no simple and uniform solution. Having jurors remove their masks and eat together in one room, even with social distance, poses an unacceptable risk of infection. For short cases, a 9 a.m. to 1 p.m. schedule may be the best option, although every time jurors leave the courthouse and then reconvene the next day, they are

subject to exposure and may bring infection back with them. Sending jurors out of the courthouse to eat lunch on their own poses the same risk, and in some locations options to purchase lunch are limited or non-existent. In addition, a juror dining in a local establishment may expose members of the community around the courthouse to the virus, if the juror is infected. Some courthouses provide parking lots, where jurors might eat in their cars, and some are near open spaces where jurors might eat outdoors in favorable weather, but many courthouses have neither. Separating deliberating jurors in serious cases, and exposing them to public contact, presents security risks unrelated to COVID-19. In some buildings, sufficient separate rooms or other spaces may be available so that the court can arrange for a small number of jurors to eat separately, without conversation, and resume wearing masks as quickly as possible. Overall, we recommend that judges conducting jury trials select among these options with careful attention to all of these risks, and give appropriate instructions for the option selected.

Second, the feasibility and effectiveness of these protocols for short trials with juries of six does not establish that the same protocols will be feasible and effective for longer, more complex trials, with juries of 12 (14 or 16 with alternates). With the exception of Middlesex Superior Court in Woburn, the courtrooms used for these cases would not accommodate 12-person juries with social distancing. Court personnel have devoted substantial efforts to preparing a courtroom in each of the available buildings for 12-person trials, but these arrangements have yet to be tested in actual trials. Courtroom configurations in some of these locations appear likely to function satisfactorily, others less so.<sup>28</sup>

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<sup>28</sup> As of this writing, efforts remain in progress to license non-courthouse buildings for the conduct of jury trials in five counties in which courthouse building systems have not been determined to provide ventilation adequate for jury trials.

Perhaps more significantly, counsel who have attended trial-readiness and scheduling conferences express significant reservations about trying serious cases under pandemic protocols. Concerns include constraints on effective cross-examination with social distancing; difficulty in perceiving reactions of jurors wearing masks; interruptions from infections among court personnel or others in courthouses and resulting court closures and potential mistrials; and jury pools that, even if representative with respect to constitutionally-protected demographic categories, may be skewed in other, less measurable respects. Also, the trials conducted so far have required a level of cooperation among participants that may not occur when the stakes are higher.

Most significantly from a court perspective, the presence of a large number of people in a courtroom for multiple days in sequence poses an unavoidable risk of infection, even with careful observance of all protocols. Any infection that may occur among jurors or other participants would likely be attributed to exposure during trial, whether actually linked or not.

Based on these observations, we make the following recommendations. First, we recommend that the two trials planned for remote impanelment proceed as scheduled in Greenfield and Plymouth District Courts on February 16 and 23, respectively. We make this recommendation based on the substantial investment of resources that has already taken place in planning for that process, and the possibility that successful implementation of remote impanelment may facilitate larger numbers of trials than would otherwise be possible over the coming months.<sup>29</sup> If the remote impanelments result in fewer potential jurors coming to the courthouse in person, the risks of exposure will be substantially lessened.

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<sup>29</sup> We have had preliminary discussions about the possibility of fully remote trials of civil cases with consent of all participants. Information gathered from remote impanelments in these two cases may assist in consideration of that possibility, as well as consideration of the further use of remote impanelment for criminal and civil cases.

Second, except as to the two cases scheduled for remote impanelment, we recommend that the current pause continue for a longer period, to be determined in consideration of two related factors: rates of COVID-19 infection in Massachusetts, and vaccination of court personnel. Infection rates currently appear to be on a downward trend from the high of early January, but remain dramatically higher than they were at the time the JMAC issued its report on July 31, 2020, and at the time the Order took effect on October 1, 2020.<sup>30</sup> Further, a recent study indicates that the more contagious “U.K. variant” of the virus is spreading rapidly in the U.S., doubling roughly every ten days, and will be the dominant variant in this country by March.<sup>31</sup>

Regarding vaccination, court security personnel have been offered vaccination already, and other court personnel are classified in Stage 3 of Phase 2 of the Commonwealth’s vaccination plan, which we are informed may be reached later in February or in March. Vaccination of a substantial percentage of court personnel may reduce the frequency of illness and resulting court closures, and increase confidence among jurors and trial participants in the safety of their presence in courthouses.<sup>32</sup>

Our third recommendation relates to scheduling trials for Phase 2. The JMAC report recommended that trials to be conducted in Phase 2 consist of cases that have the highest priority, including serious criminal cases with defendants in custody and youthful offender cases.

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<sup>30</sup> See Appendix 7, attached, which provides numbers of positive tests for COVID 19 from March 8, 2020, through January 31, 2021.

<sup>31</sup> See, e.g., *New York Times*, February 7, 2021, <https://www.nytimes.com/2021/02/07/health/coronavirus-variant-us-spread.html?action=click&module=Spotlight&pgtype=Homepage>

<sup>32</sup> We note the uncertainty about whether vaccination prevents transmission as well as illness. Still, less illness among court personnel, and fewer resulting closures, appears likely to increase confidence generally. We also recognize that the Trial Court may not have full information about the percentage of personnel who receive vaccinations, but it will obtain some information through requests for paid leave being offered for the purpose, subject to documentation of vaccination.

(Report, p. 18). We made that recommendation based on the urgency of the due process and public safety interests those cases present. As indicated *supra*, the Order provided that the SJC “shall issue direction” regarding Phase 2 “after reviewing the JMAC’s evaluation of Phase 1,” but that “cases to be tried in Phase 2 in accordance with the JMAC's recommendations may be scheduled” with dates “subject to revision after the SJC's review of the JMAC's evaluation of Phase 1.” Accordingly, courts have been conducting conferences to assess trial-readiness and set tentative trial dates beginning in March, focusing on the most serious cases with defendants in custody.

Judges conducting these conferences have reported that counsel express substantial reluctance to schedule these cases for early trial dates in Phase 2, based on the concerns discussed *supra*, including potential interruption of lengthy trials, or mistrials, due to infections and court closures; the risk of infection arising from large numbers of people being in the same place for multiple days in sequence; and the challenges of conducting complex trials under pandemic protocols. Judges and court personnel echo some of these concerns.

Accordingly, we recommend that courts have flexibility to set tentative trial dates for Phase 2 beginning with relatively short, simple cases, in which a person in custody seeks to proceed to trial as soon as possible, and to set more complex, lengthy cases for a later stage of the resumption of jury trials. Such scheduling should reflect consultation with Regional Administrative Justices and First Justices in each court, along with Chief Justices of each department and the Chief Justice of the Trial Court.

The Jury Management Advisory Committee appreciates the opportunity to provide this information and recommendations to the Justices.

## Appendix 2

### Report on District Court Remote Impanelment Pilot Project

A hybrid of remote and in-person impanelment procedures was used in the District Court for two criminal jury trials. On February 16 and 17, 2021 the case of the *Commonwealth v. Joshua Acus*, docket no.1941CR000807, was tried before the Honorable William Mazanec in the Greenfield District Court.

On February 23 and 24, 2020 the case of the *Commonwealth v. Collin Higgins*, docket no. 2059CR0238, was tried before the Honorable Michael Vitali in the Plymouth District Court.

The Office of Jury Commissioner sent communications by first class and electronic mail to all summoned jurors, offering the option to appear by video conference for impanelment, rather than in person.

The Office of Jury Commissioner generated a list of the jurors who elected to participate in impanelment by video conference and a separate list for those who elected to participate in person. Those who did not designate a preference were added to the in-person list.

In each trial, although the number of jurors who opted to use video conference impanelment was large enough to seat a jury of six, it was unclear whether there were demographic or other differences between those opting for remote versus in-person service. Therefore, the total pool of potential jurors required reduction. The entire jury pool for each trial was reduced by the Office of Jury Commissioner to twenty-three jurors, from which eight jurors (six deliberating jurors and two alternates) would be selected. This reduction was conducted randomly across the pools of jurors who responded for either video conference or in-person participation.

The remaining prospective jurors who elected to appear for impanelment by way of video conference were sent a Zoom video conference meeting identification number, and log-in instructions. These jurors were also provided with instructions for downloading, completing, and then securely uploading the Confidential Juror Questionnaire (CJQ), using secure file sharing software designated for this purpose by the Trial Court. The jurors electing to use video conference were also provided with electronic mail and telephonic communication information for the technical clerk, should they encounter any technical difficulties.

The Office of Jury Commissioner assigned juror numbers to all potential jurors. Numbers were assigned randomly between the pool of potential jurors participating by video conference and the jurors participating in person. The purpose of the random number assignment across the two pools was to ensure that jurors appearing by either video conference or in person were not prioritized for selection with higher or lower numbers. Jurors who did not respond to the Office of Jury Commissioner after receiving their summonses were treated in standard course as walk-in jurors.

On the morning of impanelment, the Assistant Clerk and the technical clerk collaborated to log in each potential juror participating remotely beginning on or before 8:30 a.m. Receipt of each CJQ was confirmed. The potential jurors were admitted to the Zoom video conference one at a time, and renamed with their juror identification number. Each juror was then placed in the Zoom waiting room. Jurors in the Zoom waiting room did not have the ability to communicate with each other. They were provided with status updates by the clerks on the waiting room home page.

In Plymouth, two jurors on video conference were excused after check-in by the judge. One juror had traveled out of state within a timeframe that would have prohibited entry into the courthouse the following day. The other excused juror was unable to activate her video screen. Both received credit for their service.

The jury pool court officer checked in all jurors who appeared in person, and collected their CJQs. Once the jurors on video conference were checked in by the clerk, and in person jurors were checked in by the jury pool officer, the jury pool officer was able to upload this information to the OJC in accordance with standard protocols. The CJQs for both the video conference jurors and the in-person jurors were collected, printed where necessary, and paper copies were provided to the judge and the attorneys.

The judge greeted the jurors on video conference from the courtroom. A laptop with a Zoom video conference feed was positioned on the judge's bench. This enabled the jurors on video conference to view the judge in a Zoom window, and vice versa. The judge greeted the in-person jurors in the jury pool room or other designated space in which social distance could be achieved.

Thereafter, the attorneys and defendant were brought into the courtroom. The in-person jurors were brought into the courtroom and sat in socially distant seats. The judge provided jurors on video conference and in person with instructions simultaneously, which included instructions specific to COVID-19, and the use of video conferencing during impanelment. Voir dire questions were put to the venire at large, including COVID-19 specific question.

Access to the public was provided in both trials by available in-person seating. In one trial a YouTube channel was established with the link provided upon request.

Both trials used a combination of Zoom and Polycom video conferencing technology. It was anticipated that certain Polycom hardware, owned by the Trial Court, would be useful for the remote aspects of impanelment. Specifically, a large television screen connected to Polycom enabled the attorneys to see all of the jurors on video conference projected on a large screen in the courtroom. Additionally, a moveable Polycom camera provided remote jurors with a large view of the courtroom, and the ability to focus on speaking parties within the courtroom.

Ultimately, however, the use of Polycom proved a technical hindrance. At approximately 10:00 a.m. for each trial, the Polycom connection failed, causing a delay in each impanelment. Trial Court IT indicated that Polycom uses significantly more bandwidth than Zoom. Despite knowledge of the failure of Polycom in the Greenfield District Court trial, and significant

subsequent efforts to trouble shoot Polycom shortcomings before the second trial, the same situation occurred in the Plymouth District Court trial.

Both trial teams had anticipated the potential failure of Polycom, in light of past similar experiences during unrelated District Court pandemic proceedings. Fortunately, both trial teams implemented a planned alternative, and both were able to proceed successfully by way of Zoom video conference alone. In Greenfield District Court, the high tech courtroom utilized additional monitors and laptops for Zoom, which allowed the parties to view the jurors and the jurors to view the courtroom. Similarly, in Plymouth, additional computers and the defense attorney's iPad with a privately owned data plan were used. A recommendation from the remote impanelment pilot is to proceed with future remote impanelment proceedings by way of Zoom video conferencing alone. Polycom video conferencing is not recommended for future remote impanelment purposes.

Individual voir dire was performed on each potential juror in the venire. In-person jurors were brought into the courtroom, one at a time, when their juror number was called. Jurors on video conference were admitted from the virtual waiting room, one at a time, when their juror number was called. Subtracting time spent during the Polycom technical trouble, each impanelment took two hours or less to complete. Each impaneled jury consisted of a mix of the in-person and video conference jurors. Eight jurors were impaneled for each trial, to allow for six deliberating jurors and two alternates. Attorneys on both sides indicated on the record that they were content with the juries selected.

Selected jurors were instructed to appear in court the following morning at a time certain. Seated jurors were instructed and cautioned by each judge, prior to release for the next day, in accordance with model jury instructions not to investigate or discuss any details of the case, including with others or online. The remaining jurors were thanked and excused. Jurors were sworn in by the judge at the beginning of the second day.

In Greenfield, one of the seated jurors who had participated remotely telephoned the court after the impanelment concluded, but prior to appearing in person to begin the trial, to report that she had learned of a potential exposure, of which she was unaware during the impanelment. She was instructed by the judge not to appear in the court the next day and was excused due to COVID-19 exposure. Six of the remaining jurors were able to deliberate at the close of the trial and return a verdict. All impaneled jurors reported without incident to Plymouth the following day for trial. Six of the impaneled jurors were able to deliberate at the close of the trial and return a verdict.

Based on the success of the hybrid remote and in person impanelment pilot in Greenfield and Plymouth, the District Court anticipates expanding this model to four locations, identifying cases in which the parties agree to this procedure.

GREENFIELD DISTRICT COURT 2/16/21	
<b>Initial Juror Summons by OJC</b>	
Jurors Who Accepted Video Conference Impanelment	22
Jurors Who Responded an Intention to Appear, but Not by Video Conference	17
TOTAL CONFIRMED JURORS	39
Jurors Did Not Respond to OJC Communication or Postponed	15
Jurors who Postponed	14
<b>Confirmed Jurors Randomly Reduced</b>	<b>23</b>
Jurors Who Accepted Video Conference Impanelment	12
Jurors Who Responded an Intention to Appear, but Not by Video Conference	11
Jurors Who Did Not Respond	21
<b>Remote Jurors Requiring Technical Assistance Prior to Trial</b>	<b>0</b>
<b>Day of Impanelment</b>	
Appeared by Video Conference	12
Appeared in Person	11
Excused by Judge Prior to Appearance	0
Juror Utilization	20/24 (83%)
TOTAL SEATED JURORS	8
From Video Conference	3
From in Person	5
<b>Day of Trial</b>	
Seated Jurors who Reported in Person	7/8
<b>Trial Start Time 2/17/21</b>	<b>9:00 a.m.</b>
<b>Return of Verdict 2/17/21</b>	<b>10:50 a.m.</b>

PLYMOUTH DISTRICT COURT 2/23/21	
<b>Initial Juror Response to OJC</b>	
Jurors Who Accepted Video Conference Impanelment	28
Jurors Who Responded an Intention to Appear, but Not by Video Conference	17
TOTAL CONFIRMED JURORS	45
Jurors Did Not Respond to OJC Communication or Postponed	12
Jurors who Postponed	17
<b>Confirmed Jurors Randomly Reduced</b>	<b>23</b>
Jurors Who Accepted Video Conference Impanelment	17
Jurors Who Responded an Intention to Appear, but Not by Video Conference	6
Jurors Who Did Not Respond	10
<b>Remote Jurors Requiring Technical Assistance Prior to Trial</b>	<b>2</b>

<b>Day of Impanelment</b>	
Appeared by Video Conference	15
Appeared in Person	10
Excused by Judge Prior to Appearance	2
Juror Utilization	20/25 (80%)
<b>TOTAL SEATED JURORS</b>	<b>8</b>
From Video Conference	4
From in Person	4
<b>Day of Trial</b>	
Seated Jurors who Reported in Person	8/8
<b>Trial Start Time 2/24/21</b>	<b>9:00 a.m.</b>
<b>Return of Verdict 2/24/21</b>	<b>11:40 a.m.</b>

## Appendix 3



### Phase 1 Jury Trial COVID-19 Judicial Questionnaire Results

Jury Management Advisory Committee, March 2020

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#### QUESTIONNAIRE FEEDBACK RESULTS

**The following data includes feedback from the following:**

Boston Municipal Court - Judge Kathleen Coffey  
Boston Municipal Court - Judge David Breen  
Fall River Justice Center - Judge Kevin Finnerty  
Greenfield District Court - Judge William Mazanec  
Lowell Justice Center - Judge John Coffey  
Middlesex Superior Court - Judge Helene Kazanjian  
Plymouth District Court - Judge James Sullivan  
Plymouth District Court - Judge Michael Vitali  
Salem District Court - Judge Robert Brennan  
Worcester Trial Court - Judge Jennifer Ginsburg

#### 1. Overall Compliance with Risk Reduction Protocols

**Average Score: 9.4**

**High Score: 10**

**Low Score: 9**

Noteworthy Remarks:

**Plymouth Trial Court:** Attorneys were receptive and appreciative of safety precautions.

**Salem District Court:** After consultation with the parties, witnesses removed masks during testimony (jurors reported no health/safety concerns and agreed it was important to credibility assessment. Court forgot to have witness stand cleaned between first and second witnesses. No hand sanitizer on bench or counsel tables.

#### 2. Juror Movement within the Courthouse

**Average Score: 9.4**

**High Score: 10**

**Low Score: 9**

Noteworthy Remarks:

**Plymouth Trial Court:** Juror entrance was staggered social distancing and juror movement was not a problem.

### 3. Juror Impanelment Procedure

**Average Score: 8.6**

**High Score: 10**

**Low Score: 6**

Noteworthy Remarks:

**Greenfield District Court:** This trial was a remote impanelment pilot trial so twelve jurors appeared virtually and eleven in person. In person jurors answered COVID-19 questions at the courthouse door but remote jurors answered the same questions to the technical clerk during the remote check-in process. We greeted the two different pools separately so that the judge could explain the different processes to each group. The general voir dire address began from the courtroom via a zoom/polycom/FTR merged system but the polycom system failed as a result of limited bandwidth availability.

**Middlesex Superior Court:** We did need a juror overflow room because more than 30 jurors appeared and it put us over our maximum capacity. The jurors in the overflow room were able to view the main room via video and participate in answering questions. However, the lower number jurors were not in the main room. I worry that in another case the lawyers might object to this procedure. It would be better if we had a system that put the higher numbers in the overflow room.

**Plymouth Trial Court:** (virtual) But for the technological shortfall of PolyCom, the empanelment was efficient and seamless. The virtual waiting room made it easy to bring jurors "in" to the courtroom and "out of the courtroom" to allow for sidebar conversations without compromising social distancing. Lawyers could make challenges and objections out of the hearing of the virtual juror in question and out of the hearing of all jurors while stationed at their respective tables.

**Salem Trial Court:** Diverse pool and seated jury racially, ethnically, and socio-economically.

**Worcester Trial Court:** Although practice rounds went ok, during real trial many jurors had a hard time hearing me through hole and lawyers struggled to hear also. Lawyers participating in this trial are not interested in doing virtual empanelment. They both felt they wanted to see potential juror in person to be able to assess.

### 4. Courtroom and Courthouse Cleaning

**Average Score: 8.8**

**High Score: 10**

**Low Score: 7**

Noteworthy Remarks:

**Lowell Justice Center:** Facilities were present during trial.

**Plymouth Trial Court:** Impanelemnt of a more complex case utilizing multiple jurors and witnesses would be best served by having several cleaners assigned to facilitate a quick transition from one person or group to another.

**Worcester Trial Court:** Lawyers commented that some areas of courtroom such as desks and podium were very dusty and were cleaned by lawyers before trial.

## 5. Courtroom Set-Up

**Average Score: 7.8**

**High Score: 10**

**Low Score: 7**

Noteworthy Remarks:

**Greenfield District Court:** The plexi-glass and seating arrangements were acceptable although there were challenges with the defense counsel communicating to his client and we have already begun looking for a practical solution. One juror indicated to the court that her line of sight of the judge was split by the plexi-glass barriers but that she was able to slightly shift her sitting position to eliminate that.

**Middlesex Superior Court:** We could use more monitors to deal with exhibits. It was not a huge issue in this case because but one of the exhibits were agreed upon and in binders. One exhibit came in later and it was put on the Elmo to view but there were not enough monitors for everyone to see it clearly. This would not be a problem if we had a smart courtroom or multiple monitors. Also, jurors had a little bit of difficulty hearing the lawyers because with the masks on.

**Plymouth Trial Court:** Able to create sufficient space to keep the jurors apart from other participants, however, more jurors or participants would prove challenging the adjustment of shades was needed as the sunlight reflected off plexiglass.

**Salem Trial Court:** Presence of plexiglass caused some awkwardness. 14-person jury box fit 6 jurors well. Difficult to position parties so that attorney able to have a front angle to all participants (lectern in fixed location due to FTR connection). Generally good, but sight lines not ideal due to health and safety precautions.

**Worcester Trial Court:** Plexiglass is good for safety, not as good for sightlines. Lawyer said difficult to see witness sometimes through all the plexiglass. I could not see at least one juror well due to plexiglass. Lawyers had to stay near microphones so as to be heard through masks and multiple layers of plexiglass, which they reported, and I observed, was a challenge. We made multiple adjustments before and during trial to accomplish best scenario.

## 6. Juror Lunch

**Average Score: -**

**High Score: -**

**Low Score: -**

Noteworthy Remarks:

***No numeric score received for this question.***

**Worcester Trial Court:** They were in a large deliberation room where we had set up tables and chairs apart from each other and put plexiglass up and air purifier in room. Overall, I was not thrilled with this arrangement because they were eating and drinking in a room that was not huge with each other. Health experts discourage us from eating and drinking with people who are not

in our households, so this does not seem good to me. Next time, we should find a bigger space for lunch, which involves possibly another courtroom?

## **7. COVID-19 Specific Trial Procedures**

**Average Score: 9.6**

**High Score: 10**

**Low Score: 9**

Noteworthy Remarks:

**Salem Trial Court:** the process of delivering exhibits to jurors a bit awkward.

**Worcester Trial Court:** While not an issue in this case, communication between defense counsel and defendant will be issue going forward. Even if defense counsel and defendant don't mind huddling together to talk, this does not appear to be safe and does not look good for jurors. We put plexiglass between counsel and defendant, so not sure they could really hear each other through that. During voir dire, side bar was a problem. Despite our efforts, lawyers and I had a hard time hearing each other at side bar through tiny hole in plexiglass which resulted in us having to be too close together. This was not a huge issue in this case as there were not many contested issues at all, but in a contested case it could be big problem. We are exploring alternatives for side bar conferences.

## **8. Public Access**

**Average Score: 9.75**

**High Score: 10**

**Low Score: 9**

Noteworthy Remarks:

**Plymouth Trial Court:** The courtroom ran a zoom and public access line for public observation.

## **9. Model Voir Dire and Jury Instructions, if Available**

**Average Score: 9.6**

**High Score: 10**

**Low Score: 9**

Noteworthy Remarks:

**Greenfield District Court:** The voir dire and instructions were adequate although not entirely applicable to a remote or virtual impanelment without significant changes. Both attorneys were satisfied with the courts voir dire and jury instructions.

**Salem Trial Court:** Several individuals viewed via zoom. Due to the fixed location of the camera, the zoom view was of the bench; preferably it would provide a view of the witness stand.

## 10. Jury Deliberations

**Average Score: 8.8**

**High Score: 10**

**Low Score: 6**

Noteworthy Remarks:

**Middlesex Superior Court:** Jurors commented that it was a bit difficult to hear each other but they understood why they had to be so far apart and they were able to make due.

**Salem Trial Court:** Jurors reported that they were comfortable with the set-up.

### **Details and impressions about the conduct of the trial and the experience of the participants:**

Noteworthy Remarks:

**Boston Municipal Court:** It has been quite some time since any of us were involved in a jury trial. I do not know if that was perceived by the jurors, but it was something that I noted early on. As a result, I did make a conscious effort to slow some things down and tried to be patient with everyone

**Fall. River Justice Center:** The capacity limitations which prevented the entire venire from being in one room for voir dire during empanelment (which is not typical for this district court) made the empanelment process take more time. Hesitance to use sidebar during empanelment was probably also not necessary and could probably be employed safely.

**Greenfield District Court:** We initially impaneled eight jurors for this trial with five in person and three remote. On the morning of the trial the court received a phone call from one of the remotely impaneled jurors indicated that after she was impaneled the day before she learned that night that she had been exposed three days earlier to a COVID-19 infected person within her social bubble..... Had this juror appeared in person rather than remotely and thereby potentially exposed other jurors and staff this trial would likely not have happened. Because this juror was impaneled remotely and never came into the building at all the trial was completed with the remaining seven jurors.

**Lowell Justice Center:** Attorneys felt there was a cumbersome number of court officers during in impanlement and trial. They also felt the jury pool was skewed and was not representative of a typical low jury pool, judge agrees. Overall attorneys felt not ready for trial as the pool is skewed in overall atmosphere of courtroom.

**Plymouth Trial Court:** The size and layout of the building was crucial, even with that said, a six-person jury trial is about all that could be accommodate. Larger juries in more complex trials would be extremely difficult to manage safely.

**Plymouth Trial Court:** The trial was uneventful, but for me it was remarkable. The efforts of everyone working to ensure due process and the ability to try a case fills me with optimism as we move toward more jury trials.

**Salem Trial Court:** Although not ideal conditions, all involved court staff indicated that they feel ready and able to conduct jury trials at the Salem District Court, and that our missteps would

be resolved after a few trials. It remains to be seen how the process will work with a more complex case with physical evidence, multiple witnesses, or a defendant in custody.

**Worcester Trial Court:** The court officers are due a lot of credit for working well with jurors and being very flexible and responsive. We tried to make it safe for jurors, but there is a limit to what a courthouse can do in terms of cleanliness. More work needs to be done on side bars. Maybe technology can help. During this nasty peak of the pandemic, where so many members of our community are sick and contagious, I do not think we should be doing it right now.

## Overall Questionnaire Results At-A-Glance

Question	Court										Average
	BMC 1	BMC 2	Fall River	Greenfield	Lowell	Middlesex	Plymouth 1	Plymouth 2	Salem	Worcester	
1. Overall Compliance w/Risk Reduction Protocols	10	8	10	10	10	10	9	10	9	9	9.5
2. Juror Movement within the Courthouse	10	6	10	10	10	10	9	10	9	9	9.3
3. Juror Impanelemnt Procedure	10	4	8	9	10	8	10	8	9	6	8.2
4. Courtroom and Courthouse Cleaning	10	9	10	10	10	10	8	10	9	7	9.3
5. Courtroom Set-Up	10	6	9	10	10	7	8	8	7	7	8.2
6. Juror Lunch	10	8	10	10	n/a	n/a	-	n/a	n/a	-	9.5
7. COVID-19 Specific Trial Procedures	10	8	10	10	10	10	-	8	9	-	9.4
8. Public Access	3	6	10	10	10	10	-	7	9	10	8.3
9. Model Voir Dire and Jury Instructions	8	4	10	8	10	10	n/a	10	n/a	9	8.6
10. Jury Deliberations	10	7	10	9	6	9	10	9	9	10	8.9
Overall Court Score	91	66	97	96	96	93	90	89	88	84	89

“-“ indicates no response received.



# Boston Municipal Court

## Phase 1 Jury Trial COVID-19 Judicial Questionnaire

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**Name of Judge:** David Breen

**Jury Service Date:** February 24, 2021

All scores are rated on a scale from 1-10 with 1 being Least Effective/Successful and 10 being Most Effective/Successful.

### 1. Overall Compliance with Risk Reduction Protocols

**Score:** 8

**Comment:** I have no idea who gave jurors masks but they all wore them at all times. Court personnel were also always masked. I had all pertinent participants (lawyers, defendant, witnesses, myself) briefly take off masks (one at a time) during introductions so jurors could see whether they knew anyone. (I did not ask jurors to take off their masks at any time and did not ask the defendant if he objected to having a masked - essentially anonymous - jury).

I asked the ADA to provide each witness with a plastic face shield (I was never told whether they were otherwise available through the court - are they? This is something the judge should probably know) and had each witness wear only the shield (no mask) while testifying so jurors could see their faces. Unfortunately, there was no plastic barrier on the side of the witness box facing the jurors or in front of the jury itself. The witness box in the courtroom, however, is approximately 10-12 feet from jury box.

The lawyers were required to stand in front of the ADA's table when addressing the jurors (again, no plastic barrier in front of jurors but lawyers required to wear masks at all times). That location is about 8-10 feet from the jury box. There was no hand sanitizer in the jury box (this was not something I noticed but [Attorney\_\_\_\_\_] from the BMC Legal Counsel office noted it to a court officer who apparently retrieved a container and made it available to jurors). A court officer also wiped down the witness stand between witnesses. (One issue that came up was one witness who repeatedly held the microphone in her hand. The microphones themselves did a good job of amplifying in the courtroom.)

### 2. Juror Movement within the Courthouse

**Score:** 6

**Comment:** I have no information as to what instructions were given to jurors prior to entering the courtroom regarding social distancing, etc. I was told that the jurors (who were two floors below) had to take an elevator - only two at a time presumably with a court officer - to get the sixth floor prior to the voir dire process. That did delay the start of the case for quite some time.

Once the trial began, I estimate there were between 2-3 court officers in the courtroom at all times. Prior to and during voir dire, however, there were anywhere from 2-8 court officers in the room. (That was too many.) While the gallery looked safe (with jurors and some spectators sitting at assigned spaces), there were often times when I felt that there were too many others in the area around the bench (2 ADAs, defendant, defense counsel, session clerk, probation clerk,



# Boston Municipal Court

## Phase 1 Jury Trial COVID-19 Judicial Questionnaire

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4-6 court officers, etc.). I also cannot speak to bathroom breaks protocols or what happened to jurors once they were outside of my sight.

Because it is still unclear on the maximum capacity for the courtroom (more on that below), I asked the court officers to bring nine jurors up the courtroom for voir dire. Unbeknownst to me, the court officers brought all of the remaining jurors from the pool up to the sixth floor at the same time as the nine jurors I needed (part of the reason for the delay, given they could only transport two at a time) and placed three potential jurors into a small, windowless "robing room," with no obvious ventilation, and the remaining approximately 13 jurors into another courtroom next to the one I was conducting the trial in. All of these 16 jurors appeared to be sitting six feet apart in their respective locations and masked when I went to discharge them for the day. (It was only when I offered to "greet" and discharge the jurors that I learned of their whereabouts and conditions of where they were waiting.)

The "robing" room (where three potential jurors waited) was also where the alternate juror for the trial was seated during deliberations. I did not observe whether the room was cleaned before he was placed in that room. I hope that it was and that the alternate was told that information to help assuage any concerns he may have had.

I did have each juror approach at sidebar before they were seated in the jury box. I limited the Commonwealth to only one ADA at sidebar. (In addition to the assigned ADA and the Rule 3.03 ADA who sat with her, there was also a supervising ADA in the gallery.) The Defendant did not wish to approach sidebar, so it was just me, the two lawyers, and one juror at a time at sidebar. I did ask each of us all to maintain distance (though it was likely less than six feet) and asked the supervising ADA to alert us if our voices could be heard in the gallery over the sound-canceling noise machine given that we were speaking louder than normally at sidebar due to the distancing.

I also asked the court officer if we could open the door to the back hallway that is near the sidebar area so as to increase airflow and allow the juror to stand more in the doorway, but that proved to not be feasible because of the extra (waiting) jurors being next door and the court officers were concerned about our voices being amplified into that room. (In hindsight, I would have insisted that the door be left open at least while we were doing the sidebars when amplification is not an issue.)

The two jurors who were excused for cause were told to simply return to the gallery. The remaining seven were seated and there were no peremptory challenges made by the lawyers. Had there been the need to conduct additional voir dire, I would have left the remaining jurors in the box, had one court officer bring the excused jurors downstairs, and had another court officer bring in another batch of potential jurors and started the process all over. (That would have caused the selected jurors in the box to hear the instructions all over again but would have prevented too much traveling around the courthouse and further delay as a result.)



# Boston Municipal Court

## Phase 1 Jury Trial COVID-19 Judicial Questionnaire

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It was never clear to me why a court officer from my current “home” court of Roxbury had to travel to the Central Division for the trial. While he did a fine job, he is not familiar with the layout and procedures of that courthouse and it seems to invite potential “cross-contamination” from different work pods.

### 3. Juror Impanelment Procedure

**Score:** 4

**Comment:** See comments above regarding part of the impanelment.

I cannot speak to the check-in process. I do know that I was told at about 8:50 a.m. that nine jurors had checked-in. I was also told the nineteen had confirmed prior to the day of the trial. Eventually 25 jurors appeared.

The lawyers were ready at 9:00 a.m. When I asked a court officer to call down to the jury pool room at about 10:00 a.m., I was told that they were still checking people in and that the jurors had not been shown the video.

The attorneys wanted to know what instructions and/or information the jurors had been given in advance about COVID protocols and/or whether they had been given the option of deferring service if they had COVID concerns. (It would be helpful to have that information and/or copies of any such communications so the lawyers know what has already been covered - if anything - by the Jury Commissioner's office.) Despite having a PTC the day before the trial to go over any last minute issues, neither attorney had thought to prepare any proposed voir dire questions to ask of the jurors about such concerns, but asked me to make such an inquiry.

I proposed/asked the venire (and both parties agreed) the following: “Is there anything about the COVID-19 Pandemic and being here as a juror that may affect your ability to focus on this case, take sufficient time to consider the evidence when it is time to do so, and/or will otherwise affect your ability to be fair and impartial in this case?” Only one person answered in the affirmative (at sidebar he stated that he and his wife had been staying home almost exclusively and that this jury service was one of the first times leaving home).

I would recommend some changes to the check-in process. Given that it seems that it takes longer to check jurors in than usual and that more jurors appeared than had confirmed (per my conversations with a Worcester District Court judge, this happened there too), perhaps the jury pool officers should simply take the first 10 jurors who check-in to a separate room after they are screened and show them the movie.

On a related note: Are the jurors given any type of video or greeting by anyone in the jury room to explain what steps have been taken to make the building safer (either in person or via a video)? Also, I was never asked to greet the jurors, which is a standard practice in some of the other BMC courts. I do not know what the standard practice is at the Central Division of the BMC with regards to greeting jurors, but given the COVID-related issues, it would likely make



# Boston Municipal Court

## Phase 1 Jury Trial COVID-19 Judicial Questionnaire

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sense for a judge to be educated about the steps that have been taken in the particular building and to convey some of that to the jurors if it is not already being done.

I would not be comfortable doing a virtual impanelment. (I do think there could be a video shown to the potential jurors about all of the court-specific COVID precautions that have been taken.)

### 4. Courtroom and Courthouse Cleaning

**Score:** 9

**Comment:** I observed a court officer cleaning the witness stand between witnesses. I do not know whether microphone covers were used (although, in hindsight, they should have been used and changed between witnesses). I do think it is important to wipe down the witness stand between witnesses because (1) the witnesses were wearing face shield and not masks so they could be expelling virus from the bottom of the shield and (2) it is a visible reminder to the jurors that we are being vigilant.

### 5. Courtroom Set-Up

**Score:** 6

**Comment:** In hindsight, I wish that I had been given a walk-through of all of the areas where the jurors would be present prior to the morning of the trial (perhaps on days when there are no jurors, judges who are scheduled to conduct jury trials in the coming weeks could be given a tour/walk-through?). On the morning of the trial, I did walk down to the courtroom to see the set up. I was happy to see the plastic barriers in front of the counsel tables, between the judge and the clerk, between the judge and witness stand, etc. I was somewhat surprised that the jury box area was completely exposed and that the witness stand had no plastic barrier between the witness and jury area.

The gallery had clearly marked "Sit Here" signs throughout and appeared to have approximately 18 of such seats (which is consistent with the "Maximum Occupancy 18" sign that I was told is displayed outside the main entrance to the courtroom).

The jury box area had some chairs that are permanently affixed to the floor and some rolling chairs. While the BMC Central jury box usually has two rows of four seats, someone had turned it into three rows. That allowed for further distance between the chairs in the same row, but the middle row of seats did not appear to be at least six feet from the seats diagonally in front of them. I personally moved those middle row chairs and stretched-out the first and third rows so as to create more space. (At least two of the juror chairs were not then behind the wooden rail that separates the jury box from the rest of the courtroom.) The only (minor) issue that created was that we had to re-number the jury seats with the lawyers so we were all being consistent when referring to which juror was in which seat when discussing peremptory strikes. (I only include this so as to highlight it as an unexpected, yet easily fixed, issue.)



# Boston Municipal Court

## Phase 1 Jury Trial COVID-19 Judicial Questionnaire

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The lawyers conducted their direct examinations from their tables. They each conducted openings and closings in front of the prosecution table (about 8-10 feet away from jurors). That did mean that there was no place to put notes down (due to the plastic shield at the end of the prosecution table). In hindsight, perhaps a lectern might have been helpful.

### 6. Juror Lunch

**Score:** 8

**Comment:** I am told that the court officers ordered lunch for all 25 jurors in the morning prior to voir dire. (That seems to be a waste given that all but seven of them were dismissed at 11:50 a.m.)

I have no additional information as to lunch.

### 7. COVID-19 Specific Trial Procedures

**Score:** 8

**Comment:** I don't recall any sidebar conference during the trial but I would have allowed the lawyers to approach to sidebar while masked and maintaining some distance. All objections were ruled on from the bench.

I don't believe there was any plastic barrier between the defendant and defense counsel at their table. I did ask counsel on the record if his client wanted to be present at sidebar during voir dire and he declined.

There were no exhibits and no need to approach. Counsel for the defendant did cross-examine the civilian witness with the 911 recording (prior inconsistent statement) but simply played it into the microphone via his iPad so it was amplified for all to hear. He also cross-examined an investigator for the DA's office about a report he wrote but did not need to show it to the witness. (Now that I have seen this potential issue, I would likely ask witnesses to take any written reports they authored to the witness stand with them but put them down on the table to avoid having a lawyer "approach" to cross, if possible.)

Jurors did not take notes. Jurors did ask for written copies of the jury instructions. Because this was not the usual courthouse I work in, I did not have access to "clean" written instructions.

Query: Is this something the trial court would invest in? Laminated and "clean" (no case law or footnotes) jury instructions for the jurors on the basics (BRD, etc.) and elements for all of the common charges would be great to have and could be wiped down afterwards.

### 8. Public Access

**Score:** 6

**Comment:** The Clerk did not initially have the Bridge Line Number for the courtroom (the Clerk usually works in Roxbury courthouse...which begs the question as to why a Clerk and Court Officer need to travel from one court to another for the trial given that may cause cross-



# Boston Municipal Court

## Phase 1 Jury Trial COVID-19 Judicial Questionnaire

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contaminations between courthouses) but I am told he eventually got that information and activated the line (I do not know at what time). I do not believe that Zoom was activated.

The defendant had a friend who wanted to watch the trial in person. I allowed that person to sit in the courtroom throughout. I did state that we were limited to 18 people in the gallery. Prior to the voir dire the defense attorney stated that this friend would wait outside (he did not specifically state that it was due to COVID but I made a record that if he or she wanted to listen-in to the Bridge Line s/he could call in from the hallway on his/her phone).

As I reflect back, I now have questions about whether the Bridge Line and/or Zoom are muted during sidebar conferences (including voir dire of potential jurors). That is something I will ask about next time.

As noted above and below, there were never more than 18 people in the gallery of the courtroom (between the nine jurors who sat on one side of the courtroom and a handful of about 5-6 spectators from what I presumed was the DA's office, I believe we never reached more than 15 people there). There were times when other folks wandered in and out of the courtroom (various court officers, Regional Director for Security, etc.) It would be very helpful to know what the maximum capacity is for the ENTIRE courtroom.

### 9. Model Voir Dire and Jury Instructions, if Available

**Score:** 4

**Comment:** In January of 2021 I was able to obtain (via Jennifer Ginsburg from the District Court) a copy of the Superior Court Model Jury Instructions. Judge Ginsburg also forwarded me a revised version of those instructions that she used for a recent trial in Worcester District Court. I ended up using a combination of those to sculpt my own instructions.

As noted above, there are still many questions that are not known and that would be helpful in instructing the jurors (e.g., Maximum Capacity of the room, whether the room has air filters/purifiers, etc.).

Also as noted above, I drafted a question that morning in the courtroom about comfort level of sitting on a jury during the age of COVID. It would be nice to have some consistent and model instructions to suggest with regards to that topic.

### 10. Jury Deliberations

**Score:** 7

**Comment:** I do not know where the jury deliberated or what the layout of the room looked like. I also do not know whether they maintained social distancing, etc. I did give an instruction to wear masks, etc., during deliberations but did not address what to do if there was a violation.

The alternate juror sat in a windowless "robing" room by himself.



# Boston Municipal Court

## Phase 1 Jury Trial COVID-19 Judicial Questionnaire

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After 10 minutes, the jurors came back with a question (wanting copies of jury instructions). After being brought back into the courtroom and given the elements again verbally, they returned to deliberate at 4:30 p.m. I was about to bring them back to the courtroom and discharge them for the evening at about 5:05, when I was told they had a verdict.

### **Please share details and impressions about the conduct of the trial and the experience of the participants.**

As noted throughout, the biggest concern that I continue to have is the lack of information for the judges to have about what is going on (with the jurors) and the COVID protocols that are in place for the particular courtroom (Maximum Capacity, air filters, etc.).

One comment I would make that is not already addressed above is that everyone (myself, lawyers, court officers, clerk, etc.) is rusty. It has been quite some time since any of us were involved in a jury trial. I do not know if that was perceived by the jurors, but it was something that I noted early on. As a result, I did make a conscious effort to slow some things down and tried to be patient with everyone (more than usual!). For example, the lateness of bringing jurors into the courtroom and the fact that a witness that both the ADA and Defense wanted (the Investigator for the Commonwealth) was not ready when we all were (an issue that comes up in any trial, but was particularly frustrating given the pressure to try to complete the trial in one day as per the COVID parameters we were given about selecting “quick” trials during this stage).

There are also too many people in the well/judge's bench area of the courtroom prior to trial.



# Boston Municipal Court

## Phase 1 Jury Trial COVID-19 Judicial Questionnaire

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**Name of Judge:** Kathleen Coffey

**Jury Service Date:** February 17, 2021

All scores are rated on a scale from 1-10 with 1 being Least Effective/Successful and 10 being Most Effective/Successful.

**1. Overall Compliance with Risk Reduction Protocols**

**Score:** 10

**Comment:** none

**2. Juror Movement within the Courthouse**

**Score:** 10

**Comment:** none

**3. Juror Impanelment Procedure**

**Score:** 10

**Comment:** none

**4. Courtroom and Courthouse Cleaning**

**Score:** 10

**Comment:** none

**5. Courtroom Set-Up**

**Score:** 10

**Comment:** none

**6. Juror Lunch**

**Score:** 10

**Comment:** none

**7. COVID-19 Specific Trial Procedures**

**Score:** 10

**Comment:** none

**8. Public Access**

**Score:** 3

**Comment:** Courthouse continues to have limited access and restrictions for general public. There was no bridge line provided.

**9. Model Voir Dire and Jury Instructions, if Available**

**Score:** 8

**Comment:** none



# Boston Municipal Court

## Phase 1 Jury Trial COVID-19 Judicial Questionnaire

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### 10. Jury Deliberations

**Score:** 10

**Comment:** none

**Please share details and impressions about the conduct of the trial and the experience of the participants.**

Very positive experience. reason..... preparation, preparation, preparation. D.A., defense counsel, clerk, judge, probation had all spoken ahead of trial about the importance of being on time, addressing pre-trial motions and compliance with covid health protocols. This was a West Roxbury case tried in the Central Division.

Parties were eager to have trial proceed. Court staff ( court officers) most helpful and cognizant of enforcement of Covid protocols.



# Fall River Justice Center

## Phase 1 Jury Trial COVID-19 Judicial Questionnaire

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**Name of Judge:** Kevin J. Finnerty

**Jury Service Date:** February 23, 2021

All scores are rated on a scale from 1-10 with 1 being Least Effective/Successful and 10 being Most Effective/Successful.

### 1. Overall Compliance with Risk Reduction Protocols

**Score:** 10

**Comment:** Plenty of room in our courthouse for keeping safe distances; universal compliance with masks; plenty of hand sanitizer in convenient locations; plexiglas around bench, witness stand, and rolling station in front of podium between attorney and jury box. Most jurors provided their own masks, but masks were available for participants who did not have them.

### 2. Juror Movement within the Courthouse

**Score:** 10

**Comment:** Non-public hallway to trial courtroom from jury assembly room. Juror voir dire was conducted in groups because of capacity limitations in the courtroom gallery.

### 3. Juror Impanelment Procedure

**Score:** 8

**Comment:** Voir dire in groups took longer and was less convenient for all, but was necessary because of gallery limitation.

### 4. Courtroom and Courthouse Cleaning

**Score:** 10

**Comment:** This courthouse is very well maintained by Facilities Department.

### 5. Courtroom Set-Up

**Score:** 9

**Comment:** Not ideal because of the gallery limitation and the need to keep jurors distant from each other, but it was workable and adequate plexiglas protection for all participants. The attorneys made their opening and closings from a central podium. Jurors had no issues hearing the attorneys, the witness or the judge.

### 6. Juror Lunch

**Score:** 10

**Comment:** Lunches were provided for jurors as the evidence closed just before the lunch recess and in anticipation of that timing lunches had been ordered sufficiently in advance.



# Fall River Justice Center

## Phase 1 Jury Trial COVID-19 Judicial Questionnaire

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### 7. COVID-19 Specific Trial Procedures

**Score:** 10

**Comment:** Sidebars with attorneys were conducted as usual, they were brief and all participants were masked and stayed further apart than typical. Objections were made as usual. One document exhibit was admitted and no special procedure for that was needed.

### 8. Public Access

**Score:** 10

**Comment:** N/A When the jury was greeted, they were advised of courthouse protocols to ensure safety and the empaneled jury was provided specific courtroom information.

### 9. Model Voir Dire and Jury Instructions, if Available

**Score:** 10

**Comment:** N/A When the jury was greeted, they were advised of courthouse protocols to ensure safety and the empaneled jury was provided specific courtroom information.

### 10. Jury Deliberations

**Score:** 10

**Comment:** Sufficiently large deliberation room for the six deliberating jurors.

**Please share details and impressions about the conduct of the trial and the experience of the participants.**

The capacity limitations which prevented the entire venire from being in one room for voir dire during empanelment (which is not typical for this district court) made the empanelment process take more time. Hesitance to use sidebar during empanelment was probably also not necessary and could probably be employed safely.

Other than as stated, the trial ran smoothly with the safety precautions (masks, plexiglas shields, distancing).



# Greenfield District Court

## Phase 1 Jury Trial COVID-19 Judicial Questionnaire

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**Name of Judge:** William Mazanec

**Jury Service Date:** February 16-17, 2021

All scores are rated on a scale from 1-10 with 1 being Least Effective/Successful and 10 being Most Effective/Successful.

### 1. Overall Compliance with Risk Reduction Protocols

**Score:** 10

**Comment:** We had very good compliance with protocols. Mask compliance was excellent. One mask provided to an arriving juror on the day of the trial. One witness case and the witness was allowed to remove his mask for testimony only. Facilities staff did an excellent job cleaning witness stand between jurors during voir dire.

Court officers managed jurors well keeping them safely distanced at all times.

### 2. Juror Movement within the Courthouse

**Score:** 10

**Comment:** The court officers did a great job ensuring jurors moved safely from pool room to trial courtroom during voir dire. Jurors were safely moved to a nearby courtroom after they finished voir dire or they were safely escorted to exit if dismissed. The day of the trial the court officers did an outstanding job ensuring the jurors were properly seated in courtroom and safely spaced in deliberation room.

### 3. Juror Impanelment Procedure

**Score:** 9

**Comment:** This trial was a remote impanelment pilot trial so twelve jurors appeared virtually and eleven in person. In person jurors answered COVID-19 questions at the courthouse door but remote jurors answered the same questions to the technical clerk during the remote check-in process. We greeted the two different pools separately so that the judge could explain the different processes to each group. The general voir dire address began from the courtroom via a zoom/polycom/FTR merged system but the polycom system failed as a result of limited bandwidth availability. The District court staff had expected this failure and had a back-up plan prepared using equipment in the courtroom to arrange a second zoom off of a stand-alone computer located in that room linked by HDMI cord to the polycom display. The zoom uses 50% less bandwidth than polycom to perform the same function. In this way within minutes we resumed the general voir dire and the arrangement performed perfectly for the duration of the impanelment. Jurors reported noticing no issues with the system failure because of the timely adaptation. After the general voir dire questions we conducted individual voir dire in the trial courtroom by bringing in one juror at a time in the order of their OJC assigned numbers. In-person jurors were seated in a witness stand behind plexi-glass barriers and the FTR microphone placed in the convergence of three different plexi-glass barriers so that the two attorneys could properly distance from the judge, the juror and each other. Remote jurors had their image brought up onto the judge's laptop which was then placed directly in front of the same FTR microphone and then turned around for the attorneys to see and question. A separate camera



## Greenfield District Court

### Phase 1 Jury Trial COVID-19 Judicial Questionnaire

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captured the judge's image for the juror to see on their screen during this process. The process went without any issues as we questioned all but two of the twenty-one jurors before we were able to seat eight jurors. The jurors were seated in this fashion without being in the courtroom. The seated jurors were comprised of three remote jurors and five in-person. The chosen jurors were then brought into the courtroom both virtually and in-person, informed of their selection and provided instructions for appearing the following day for the trial. All jurors reported feeling safe throughout the process and the remote jurors reported being very pleased with the process.

Both attorneys were very pleased with the remote impanelment process and thought it worked very well.

#### **4. Courtroom and Courthouse Cleaning**

**Score:** 10

**Comment:** Facilities staff were present and quite visibly cleaning in between jurors during individual voir dire. The court room was cleaned before each day of the trial and this was known and appreciated by all trial participants.

#### **5. Courtroom Set-Up**

**Score:** 10

**Comment:** We are fortunate to have a very new high-tech courtroom which not only made the virtual impanelment process easier it made the trial easier. Although there were no exhibits there were photographic "chalks" used which were easily displayed on the video monitor system. The plexi-glass and seating arrangements were acceptable although there were challenges with the defense counsel communicating to his client and we have already begun looking for a practical solution. One juror indicated to the court that her line of sight of the judge was split by the plexi-glass barriers but that she was able to slightly shift her sitting position to eliminate that. We are already at was to improve that issue. Otherwise the courtroom set-up received high marks from all participants.

The attorneys made their opening and closings from a central podium. Jurors had no issues hearing the attorneys, the witness or the judge.

#### **6. Juror Lunch**

**Score:** 10

**Comment:** We did not have to deal with lunch. Because the jury had been selected the day before the jury trial began a 9:00 am and the jury began deliberating by 10:30 am with a verdict at about 10:45am. The jurors were departed by 11:00. Using a remote impanelment procedure in the District Court we could often avoid the risk of lunch altogether. All participants agreed the best way to deal with jurors having lunch in the courthouse was to avoid it if at all possible.



# Greenfield District Court

## Phase 1 Jury Trial COVID-19 Judicial Questionnaire

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### 7. COVID-19 Specific Trial Procedures

**Score:** 10

**Comment:** The procedures employed at this trial were standard COVID-19 trial procedures which were rehearsed with court staff, security, facilities and both counsel twice before the actual trial. The extra preparation was required both because of the remote jury impanelment procedure and the need to coordinate individual movements within the courtroom. The rehearsal with counsel and staff was important and yielded some modifications prior to trial which ensured safe spacing during impanelment as well as the trial itself.

### 8. Public Access

**Score:** 10

**Comment:** No members of the public attended the impanelment on day one and two staff members from the DA's office watched the trial on day two.

### 9. Model Voir Dire and Jury Instructions, if Available

**Score:** 8

**Comment:** The voir dire and instructions were adequate although not entirely applicable to a remote or virtual impanelment without significant changes. Both attorneys were satisfied with the courts voir dire and jury instructions.

### 10. Jury Deliberations

**Score:** 9

**Comment:** The jurors deliberated in an adjoining courtroom with wide spacing of the numbered, assigned seats. There were no complaints about hearing on another. Jurors were generally very complimentary of the arrangements for safe deliberations.

**Please share details and impressions about the conduct of the trial and the experience of the participants.**

The general impression was that this was a very good process and specifically that the remote impanelment process was highly successful. The feedback from the attorneys regarding the virtual voir dire portion was that it was much better than they had anticipated. General juror feedback to the court from virtual jurors was quite positive. Specifically one juror commented that they had expected more problems and they were surprised at how smoothly it went from their perspective. All seated jurors indicated to the court that they felt safe throughout the entire process. The attorneys both indicated they felt safe and had no reservations or complaints about either the in-person individual voir dire or sidebar conference arrangements as they were handled in this trial. The only concern registered was concerning the plexi-glass barrier at counsel table between the defendant and his attorney. The attorney indicated he had no issues adapting to the situation in this trial but he thought it would be an issue going forward.

\*\*\*We initially impaneled eight jurors for this trial with five in person and three remote. On the morning of the trial the court received a phone call from one of the remotely impaneled jurors indicated that after she was impaneled the day before she learned that night that she had been



## Greenfield District Court

### Phase 1 Jury Trial COVID-19 Judicial Questionnaire

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exposed three days earlier to a COVID-19 infected person within her social bubble. This was information she did not have when she was impaneled the day before. She was about to schedule herself for a COVID-19 test and did not want to expose others by coming in for the trial. She was excused by the court. This juror did not appear at all reluctant or scared to serve and in fact was so eager to serve that she wanted to know if she could serve next month. She was instructed to call the OJC since she had already satisfied her obligation for the next few years. Had this juror appeared in person rather than remotely and thereby potentially exposed other jurors and staff this trial would likely not have happened. Because this juror was impaneled remotely and never came into the building at all the trial was completed with the remaining seven jurors.



# Lowell Justice Center Court

## Phase 1 Jury Trial COVID-19 Judicial Questionnaire

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**Name of Judge:** John F. Coffey/Stacey Fortes

**Jury Service Date:** January 12, 2021

All scores are rated on a scale from 1-10 with 1 being Least Effective/Successful and 10 being Most Effective/Successful.

### 1. Overall Compliance with Risk Reduction Protocols

**Score:** 10

**Comment:** Facilities and court officers did fantastic job with protocols; all participants complied. Mask compliance was excellent. Masks were made available, but not needed. One witness case-the witness was allowed to remove her mask and replace with transparent face mask prior to testimony. testimony was behind plexiglass. Cleaners and sanitizers were readily available. Air purifier was under witness box.

### 2. Juror Movement within the Courthouse

**Score:** 10

**Comment:** Jurors were told to maintain 6 feet of distance as they entered the courthouse. They were notified that they could enter the building as early as 7:30. Approximately 11 court officers participated at various stages of trial. Court officers did an excellent job directing staff. We had 37 jurors and split them into two separate jury pool rooms based on max capacity and allowing seats for press/spectators.

### 3. Juror Impanelment Procedure

**Score:** 10

**Comment:** Half of the jury impanelment was conducted in jury pool room. After statutory questions jurors went upstairs to wait outside courtroom by two's and were then directed into courtroom for individual voirdire.

### 4. Courtroom and Courthouse Cleaning

**Score:** 10

**Comment:** Facilities did an excellent job cleaning during the proceeding. Facilities personnel were present in jury pool rooms and present during trial. Cleaning occurred before and after witness.

### 5. Courtroom Set-Up

**Score:** 10

**Comment:** Jurors mentioned courtroom jury box could use more plexiglass. Seven jurors were seated in 12-person jury box. Sightline needs to be adjusted so defendant has better view of witness stand. Sufficient space was created to keep jurors apart.

### 6. Juror Lunch

**Score:** N/A

**Comment:** No juror lunch was provided. We did not break for lunch.



# Lowell Justice Center Court

## Phase 1 Jury Trial COVID-19 Judicial Questionnaire

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### 7. COVID-19 Specific Trial Procedures

**Score:** 10

**Comment:** Plexiglass at sidebar and sufficient room to maintain social distancing. counsel made oral objections . Electronic equipment was used for exhibit. Jurors did not take notes

### 8. Public Access

**Score:** 10

**Comment:** Public had available seats in courtroom and public access line.

### 9. Model Voir Dire and Jury Instructions, if Available

**Score:** 10

**Comment:** Used model questions, then used specific COVID-19 questions submitted by defense counsel.

### 10. Jury Deliberations

**Score:** 6

**Comment:** Jury deliberated in probate court training room. Jurors and foreperson were given instructions to wear mask and distance. Exhibit was left on table in middle of room with instructions on distancing to handle.

### **Please share details and impressions about the conduct of the trial and the experience of the participants.**

The Jury Commissioner should ask COVID-19 questions to pre-screen jurors as suggested in JMAC report. We had 2 jurors with medical issues report to courthouse that might not have if screened.



# Middlesex Superior Court

## Phase 1 Jury Trial COVID-19 Judicial Questionnaire

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**Name of Judge:** Helene Kazanjian

**Jury Service Date:** January 25 – 27, 2021

All scores are rated on a scale from 1-10 with 1 being Least Effective/Successful and 10 being Most Effective/Successful.

### 1. Overall Compliance with Risk Reduction Protocols

**Score:** 10

**Comment:** We had a few individuals (one lawyer, one court staff) who struggled with keeping their masks on over their nose but that was addressed.

### 2. Juror Movement within the Courthouse

**Score:** 10

**Comment:** The court officers did an outstanding job of making sure that everyone moved through the courthouse in a safe manner. They managed both the jury room and an overflow room for empanelment.

### 3. Juror Impanelment Procedure

**Score:** 8

**Comment:** This mostly went without any issue. We did need a juror overflow room because more than 30 jurors appeared and it put us over our maximum capacity. The jurors in the overflow room were able to view the main room via video and participate in answering questions. However, the lower number jurors were not in the main room. I worry that in another case the lawyers might object to this procedure. It would be better if we had a system that put the higher numbers in the overflow room. That way we would only have to question the jurors in the overflow room if we didn't get a jury from the first 30.

### 4. Courtroom and Courthouse Cleaning

**Score:** 10

**Comment:** We had one of the courthouse cleaners clean the witness stand in between jurors and witnesses. This made everyone feel more comfortable.

### 5. Courtroom Set-Up

**Score:** 7

**Comment:** We could use more monitors to deal with exhibits. It was not a huge issue in this case because but one of the exhibits were agreed upon and in binders. Each juror had his or her own binder and we had a separate binder for plaintiff's and defendant's witnesses. One exhibit came in later and it was put on the Elmo to view but there were not enough monitors for everyone to see it clearly. This would not be a problem if we had a smart courtroom or multiple monitors.

Also, jurors had a little bit of difficulty hearing the lawyers because with the masks on. Lawyers should be reminded to speak up and we can probably turn up the volume in the courtroom.



# Middlesex Superior Court

## Phase 1 Jury Trial COVID-19 Judicial Questionnaire

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The lawyers had sight line issues with one juror, which was fixed during trial by moving a monitor. The lawyers did not like doing their opening and closings from the podium because of where it was located in the courtroom. We can add a second podium for that purpose.

### 6. Juror Lunch

**Score:** N/A

**Comment:** N/A While we ordered lunch, the verdict came before lunches arrived. The jurors took the lunches with them. We had arranged for jurors to spread out in different rooms to eat and they were told that they could not deliberate during lunch.

### 7. COVID-19 Specific Trial Procedures

**Score:** 10

**Comment:** None

### 8. Public Access

**Score:** 10

**Comment:** None

### 9. Model Voir Dire and Jury Instructions, if Available

**Score:** 10

**Comment:** None

### 10. Jury Deliberations

**Score:** 9

**Comment:** Jurors commented that it was a bit difficult to hear each other but they understood why they had to be so far apart and they were able to make due.

### Please share details and impressions about the conduct of the trial and the experience of the participants.

Overall I thought it went well and everyone worked together to make things safe. It was a lot of work and a lot of coordination but the court staff all seemed to be on the same page.

We did learn that 4 days after the trial, one of the individuals in the courtroom during trial tested positive for COVID-19.



# Plymouth Trial Court

## Phase 1 Jury Trial COVID-19 Judicial Questionnaire

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**Name of Judge:** Judge James Sullivan

**Jury Service Date:** January 12, 2021

All scores are rated on a scale from 1-10 with 1 being Least Effective/Successful and 10 being Most Effective/Successful.

### 1. Overall Compliance with Risk Reduction Protocols

**Score:** 9

**Comment:** Mass compliance was excellent across the board. We had masks available, but they were not needed. Witnesses were surrounded by plexiglass in mask removal was not permitted. Jurors had individual copies of pre-marked exhibits. Attorneys were receptive and appreciative of safety precautions. Cleaners and hand sanitizers were readily available.

### 2. Juror Movement within the Courthouse

**Score:** 9

**Comment:** Juror entrance was staggered. distance was not a problem. We had more jurors (47) than we expected. (30) Would likely be ideal. Juror movement was not problematic they were effectively directed by the court officers. By impaneling in the jury pool room, it kept number of people in the courtroom to what was necessary. There were no issues with juror movement.

### 3. Juror Impanelment Procedure

**Score:** 10

**Comment:** There were no space issues with the juror check-in process we did not ask any COVID-19 questions individual voir doir was conducted in a hallway adjacent to the pool room and a partitioned section inside of the pool room. FTR Rover and zoom recorder used for Impanelment virtual impediment would be ineffective. Surplus jurors could wait in their cars.

### 4. Courtroom and Courthouse Cleaning

**Score:** 8

**Comment:** Facilities did a fine job of cleaning during the proceedings. Impaneling of more complex case utilizing multiple jurors and witnesses would be best served by having several cleaners assigned to facilitate a quick transition from one person or group to another.

### 5. Courtroom Set-Up

**Score:** 8

**Comment:** We used the large courtroom and a minimal number of jurors it worked well but we utilized part of the public gallery and sat 4 jurors in a box designated for 12. We were able to create sufficient space to keep the jurors apart from 1 other participants. More jurors or participants would prove challenging. We did have to adjust the shades as the sunlight reflected off plexiglass. The sight lines and acoustics were good.



## Plymouth Trial Court

### Phase 1 Jury Trial COVID-19 Judicial Questionnaire

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#### 6. Juror Lunch

**Score:** N/A

**Comment:** We did not break for lunch or order lunch for the jurors.

#### 7. COVID-19 Specific Trial Procedures

**Score:** no response

**Comment:** We had sufficient room at sidebar to conduct them normally. Counsel made oral objections. We did not have the attorneys approach the witnesses. Evidence was pre marked in individual copies were provided to the jurors. Anything needed for the witness was provided to the clerk who provided it to the judge who provided it to the witness. The defendant sat with his attorney at counsel table. The jurors did not take notes.

#### 8. Public Access

**Score:** no response

**Comment:** The defendant's wife and one observer were present in the courtroom during the trial. We could have accommodated more people. The court ran a zoom and public access line as well.

#### 9. Model Voir Dire and Jury Instructions, if Available

**Score:** no response

**Comment:** We did not use any COVID-19 questions with the jury. I believe the room set up in safety precautions spoke for themselves. I think allowing jurors to opt out due to COVID-19 concerns is very effective. All the jurors we utilized were very willing to serve.

#### 10. Jury Deliberations

**Score:** 10

**Comment:** Our jury deliberation room is immediately adjacent to the jury box in the courtroom. It is rated for 11 people. It is equipped with two bathrooms as well as the kitchen sink there was a hand sanitizer dispenser in the room. The room is on the third floor with two walls of glass which overlooks the country farm. It may be the nicest one in the Commonwealth. Deliberations and the return of the verdict was flawless.



# Plymouth Trial Court

## Phase 1 Jury Trial COVID-19 Judicial Questionnaire

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**Please share details and impressions about the conduct of the trial and the experience of the participants.**

On its face the trial went remarkably smoothly. This was possible in large part due to the extensive preparations by facilities, security, court staff, the Jury Commissioner's Office, and the trial participants. Communication was excellent and potential problems were identified in corrected promptly. All involved were encouraged to make suggestions or raise concerns if any issue arose that compromise safety of anyone involved, we were prepared to abandon the proceedings immediately. Even with all the dedication and hard work that went into this trial it would not have been possible without the exceptional physical plant at the Plymouth court complex. The size and layout of the building was crucial but even with that said a six-person jury trial is about all that could be accommodated. Larger juries and more complex trials would be extremely difficult to manage safely.



# Plymouth Trial Court

## Phase 1 Jury Trial COVID-19 Judicial Questionnaire

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**Name of Judge:** Michael A. Vitali

**Jury Service Date:** February 23-24, 2021

All scores are rated on a scale from 1-10 with 1 being Least Effective/Successful and 10 being Most Effective/Successful.

### 1. Overall Compliance with Risk Reduction Protocols

**Score:** 10

**Comment:** The Plymouth Trial Court was the safest I have felt in a courthouse since the start of the pandemic. The cleanliness, physical distancing, safety protocols, hand sanitizer stations, plexiglass dividers made for a relaxed, comfortable safe environment in which to try a case. Additionally, the courthouse staff from Court Officers to clerks to maintenance seem devoted to the trial court protocols and their enforcement. A+

### 2. Juror Movement within the Courthouse

**Score:** 10

**Comment:** Two court officers and the Chief Court Officer participated in the set up and empanelment. In person jurors congregated in the jury pool room before empanelment. They were moved to a courtroom adjacent to Courtroom E where the trial was held. They were always able to maintain physical distance of at least 6 feet. During empanelment they were brought into the courtroom and seated in designated marked spaces in the gallery. They were appropriately socially distanced and within the occupancy limits of the courtroom. The in-person jurors returned to the adjacent courtroom and were brought in one at a time for individual voir dire when their number was called. They stood at the podium and answered questions out of the hearing of other jurors and spaced appropriately from the litigants and the court officials.

### 3. Juror Impanelment Procedure

**Score:** 8

**Comment:** But for the technological shortfall of PolyCom, the empanelment was efficient and seamless. The virtual waiting room made it easy to bring jurors "in" to the courtroom and "out of the courtroom" to allow for sidebar conversations without compromising social distancing. Lawyers could make challenges and objections out of the hearing of the virtual juror in question and out of the hearing of all jurors while stationed at their respective tables. For in person jurors, they waited outside the door of the courtroom if "sidebar" conversations were necessary. The process was able to be conducted with two court officers as they did not need to attend to virtual jurors.

### 4. Courtroom and Courthouse Cleaning

**Score:** 10

**Comment:** I commented to the jurors and am repeating here that the first thing one smells when walking into the Plymouth Trial Court is disinfectant. The public areas are continuously cleaned. The courtroom was cleaned after each use. The elevators, stairwells, and restrooms were cleaned multiple times daily.



# Plymouth Trial Court

## Phase 1 Jury Trial COVID-19 Judicial Questionnaire

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### 5. Courtroom Set-Up

**Score:** 8

**Comment:** The use of plexiglass between the juror seats and around the witness stand made everyone feel safe and comfortable. There was an additional air filter running throughout the trial. The placement of microphones allowed for amplification of voices as well as recording, although on occasion I had to remind the litigants to angle the microphones toward the speaker. The occasional glare from the plexiglass was ameliorated by closing the blinds in the courtroom. Plymouth Trial Court facilities and court officers should be commended for the setup.

### 6. Juror Lunch

**Score:** N/A

**Comment:**

### 7. COVID-19 Specific Trial Procedures

**Score:** 8

**Comment:** On one occasion a face mask was removed. Introducing the defendant, he was allowed to remove his mask for a few seconds and was properly distanced at the time. I had instructed the jurors that there might be an occasion where this removal would occur.

The witness (an MSP Trooper) was allowed to keep his report on the witness stand so that documents would not need to be handed back and forth for memory refreshment or impeachment. Copies of the jury box diagram that I had created for me and the clerk were provided to the attorneys and the court officers so that confusion about seat numbering and juror placement could be avoided. When completed the clerk photocopied his final diagram for the parties and the court officers for consistency.

When in-person jurors were questioned, they stood at the podium. Hand sanitizer was placed on the podium and each counsel table. Counsel questioned the juror or addressed the court from their tables.

### 8. Public Access

**Score:** 7

**Comment:** During the remote/in-person empanelment, the public access bridge was open and operational. Members of the Administrative Office of the District Court were present in the courtroom, as were several members of the Plymouth District Court at various times.

A live broadcast of the zoom was made available to the District Court members of the JMAC and District Court

### 9. Model Voir Dire and Jury Instructions, if Available

**Score:** 10

**Comment:** I used a combination of the model instructions from Sarah Ellis, William Mazanec, and my own based on the Model Instructions. I have attached the greeting and preliminary instructions to this report.



# Plymouth Trial Court

## Phase 1 Jury Trial COVID-19 Judicial Questionnaire

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### 10. Jury Deliberations

**Score:** 9

**Comment:** The Plymouth Trial Court has a jury deliberation room with 3 six foot long tables each with a chair on the end. They are spaced more than six feet apart. My only concern would be if they were eating in that room which did not occur as my trial ended around 11:45 a.m.

**Please share details and impressions about the conduct of the trial and the experience of the participants.**

The empanelment and trial were successful and, more importantly, safe. The jurors who appeared in person and were not seated both commented on how communicative the court and court officers were and how safe they felt. Two seated jurors also praised the court officers and the safety precautions in Plymouth.

No juror had a complaint or question for me, but several did say that they preferred this manner of jury selection and hoped that we would continue in this manner.

Overall, I empaneled 8 jurors on the 23rd. I went through 22 of the 26 and excused four without reaching them. One member of the pool was excused for hardship prior to empanelment and another was excused for COVID exposure and an inability to come to the courthouse.

Of the empaneled jurors, four appeared in person for jury selection and four appeared by zoom. The jurors were all present at approximately 8:50 and were sworn shortly after 9:00 on the 24th. The jury selection occurred in the order of the numbers assigned by OJC, whether the juror was in person or virtual.

The trial was uneventful, but for me it was remarkable. The efforts of everyone working to ensure due process and the ability to try a case fills me with optimism as we move toward more jury trials. Thank you for the opportunity.



# Salem District Court

## Phase 1 Jury Trial COVID-19 Judicial Questionnaire

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**Name of Judge:** Robert Brennan

**Jury Service Date:** 1/19/2021

All scores are rated on a scale from 1-10 with 1 being Least Effective/Successful and 10 being Most Effective/Successful.

### 1. Overall Compliance with Risk Reduction Protocols

**Score:** 9

**Comment:** After consultation with the parties, witnesses removed masks during testimony (jurors reported no health/safety concerns and agreed it was important to credibility assessment. Court forgot to have witness stand cleaned between first and second witnesses. No hand sanitizer on bench or counsel tables.

### 2. Juror Movement within the Courthouse

**Score:** 9

**Comment:** Jurors moved easily between pool room, initial courtroom for general questions to venire, and trial courtroom (where jurors also deliberated). The coordination among court officers was exceptional.

### 3. Juror Impanelment Procedure

**Score:** 9

**Comment:** Initial questions asked of venire in one courtroom and individual voir dire conducted in an adjacent (trial) courtroom. Zoom sound muted for individual voir dire, attorneys required to challenge or accept juror after individual voir dire (attorneys also permitted to question juror at that time), and jurors excused or, if seated, returned to original location until full jury seated. No alternate juror impaneled. Diverse pool (and seated jury) - racially, ethnically, and socio-economically. 1 juror excused for cause, and 2 jurors peremptorily challenged.

### 4. Courtroom and Courthouse Cleaning

**Score:** 9

**Comment:** Did not clean witness stand between first and second witness.

### 5. Courtroom Set-Up

**Score:** 7

**Comment:** Presence of plexiglass caused some awkwardness. 14 person jury box fit 6 jurors well. Difficult to position parties so that attorney able to have a front angle to all participants (lectern in fixed location due to FTR connection). Generally good, but sight lines not ideal due to health and safety precautions.

### 6. Juror Lunch

**Score:** N/A

**Comment:** Verdict before noon - not applicable.



# Salem District Court

## Phase 1 Jury Trial COVID-19 Judicial Questionnaire

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### 7. COVID-19 Specific Trial Procedures

**Score:** 9

**Comment:** Witnesses unmasked for testimony, otherwise all masked for entire proceeding. Social distancing of juror/counsel seating reasonably effective. 2 exhibits, both documents, were copied so that each juror had his/her own; however, process of delivering exhibits to jurors a bit awkward. COVID-19 instructions to jurors straightforward and simple - model jury pool address for district court very helpful.

### 8. Public Access

**Score:** 9

**Comment:** Courthouse and courtroom open to public. One member of the public in courtroom for part of the trial, two witnesses came into the courtroom for closing arguments. The trial was also available on zoom - several lawyers apparently watched/listened. Due to the fixed location of the camera, the zoom view was of the bench; preferably it would provide a view of the witness stand.

### 9. Model Voir Dire and Jury Instructions, if Available

**Score:** N/A

**Comment:** Did not use a model voir dire nor jury instructions (other than standard district court model jury instructions).

### 10. Jury Deliberations

**Score:** 9

**Comment:** Jurors deliberated in courtroom. The public was asked to leave, the record was turned off, and the doors were locked. A court officer was located outside the door on the interior side of the courtroom. After the verdict, one juror commented that it would be preferable to have a large table around which all jurors could sit, but he understood why that was likely not feasible. Otherwise, jurors reported that they were comfortable with the set-up.

### Please share details and impressions about the conduct of the trial and the experience of the participants.

Overall, the trial went smoothly. It was a very simple, straightforward case with experienced and low-maintenance attorneys. The court staff - clerks, court officers, and facilities - was terrific and should receive a tremendous credit for their efforts and the result. The attorneys reported positive experiences. Other than the suggestion noted above, the jurors indicated that they found the process smooth and relatively easy. Two jurors specifically expressed that they found it to be a surprisingly valuable experience. All jurors reported that it was their first time sitting on a jury. We were fortunate to have the cooperation of the housing court, who switched courtrooms with us so that we could take advantage of their 14 person jury box. Although not ideal conditions, all involved court staff indicated that they feel ready and able to conduct jury trials at the Salem District Court, and that our missteps would be resolved after a few trials. It remains to be seen how the process will work with a more complex case with physical evidence, multiple witnesses, or a defendant in custody. There was minor confusion as a result of communication



## Salem District Court

### Phase 1 Jury Trial COVID-19 Judicial Questionnaire

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from JMAC that jurors would be notified for 9 AM, which the jury pool officer put on the recording, versus juror summonses that required jurors to appear at 8 AM. In addition, 39 jurors appeared - many apparently did not receive the communication that they were not needed - which was far more than was necessary. After our jury pool room filled (capacity 25), the remaining jurors were checked in and directed to an empty courtroom. I excused them after addressing the jury pool at approximately 9:20 AM.



# Worcester Trial Court

## Phase 1 Jury Trial COVID-19 Judicial Questionnaire

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**Name of Judge:** Jennifer Ginsburg

**Jury Service Date:** January 19, 2021

All scores are rated on a scale from 1-10 with 1 being Least Effective/Successful and 10 being Most Effective/Successful.

### 1. Overall Compliance with Risk Reduction Protocols

**Score:** 9

**Comment:** All jurors appeared with masks. During empanelment, a few jurors needed to be reminded to keep mask over nose. After that, ok. I reminded all participants of mask requirement in preliminary instructions and in final instructions. Maintenance department installed hand sanitizer at jury box and entrance to courtroom.

### 2. Juror Movement within the Courthouse

**Score:** 9

**Comment:** Court officers at courthouse door sought out jurors and brought them inside asap. All jurors used stairways, not elevators. Court officers report that while moving jurors between jury pool room and courtroom difficult to keep jurors in a line (as they report it often is) since people move at different speeds, but 6 feet distance ok. It was suggested that the jurors be lined up in order outside the courtroom so they do not have to pass by each other to get up to side bar for questioning. Total of 4 court offices used--1 in jury pool room, 1 in overflow room used for unconfirmed jurors who showed up, 2 in courtroom. That seemed sufficient for way we conducted voir dire, but would need more if voir dire modified as suggested below. Also, other supervising court officers working behind the scenes to address questions that came up. Court officer staffing raised by court officers as potential issue going forward. Court officers did excellent job escorting jurors in and out of room. Occupancy limits in courtroom limited number of jurors we could use for panel to 14. We did need to use a second panel of jurors to seat jury, which could repeat itself so we should anticipate needing to do that in future. Juror movement during this worked well. Seated jurors put in large deliberation room to wait.

### 3. Juror Impanelment Procedure

**Score:** 6

**Comment:** We did not use staggered schedule for juror check in as it did not seem necessary for empaneling 1 jury of 6. Jury pool room has occupancy limit of 30 (?) and we used an overflow room for 18 unconfirmed walk-ins. We anticipated walk-ins (based on grand jury empanelment here and other recent impanelments) and had large courtroom available for overflow. While anticipated, this was challenge for court officers. Also, there was a push by court officers to rush it and use unconfirmed jurors before later arriving confirmed jurors. In the end, we only needed to use confirmed jurors. It was helpful to be on look out for this as obviously preferable to be dealing with jurors who have had some level of screening by OJC. Juror check in was fine. After questioning the entire panel with general voir dire questions and a few case-specific (OUI) questions, I called each juror to side bar and asked, "Do you have any COVID-19 related concerns about sitting as a juror in this case?" All jurors except one said no to that question.



# Worcester Trial Court

## Phase 1 Jury Trial COVID-19 Judicial Questionnaire

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One (OJC pre-screened) juror who had NOT raised her hand to any group question including, "Is there any reason for example personal concerns.....physical or medical concerns ...which might make it difficult for you to be a juror?" did respond to my question saying basically, "I want to do my duty but I would rather not because I care for my elderly mother-in-law who was just released yesterday from hospital after having a stroke." She was excused. So, I think question worked well and should be asked individually. In terms of voir dire procedure, we spent HOURS more like DAYS going over and over best process including input from many sources, trying to accommodate juror privacy, court officer resources, recording, and public access. In the end, we decided to do individual voir dire questioning at side bar with plexiglass with hole near recording microphone, with markings on floor indicating where lawyers/juror should stand for 6 feet distancing. I had attorneys exercise peremptory challenges as jurors were addressed individually to limit time we were huddled together and lawyers agreed to it. Although our practice rounds went ok, during real trial many jurors had a hard time hearing me through hole and lawyers struggled to hear also. As a result, I had to get very close to hole in plexiglass and so did juror and lawyers. That did NOT feel good. In debrief after trial, we have discussed other options. Although it would require use of more court officers and additional courtrooms, I think best way is to have individual questioning of jurors while juror at microphone at bar, while other jurors are in separate room. Some have suggested individual check-in could be skipped if no hand raised to questions to the group, but I disagree with that, as we know that individual check-in results in discovering significant issues with jurors, such as covid-related concern that had not been discovered and also we uncovered a juror at side bar who had comprehension issues that prevented him from sitting as a juror that we never would have known about. Lawyers participating in this trial are not interested in doing virtual empanelment. They both felt they wanted to see potential juror in person to be able to assess.

### 4. Courtroom and Courthouse Cleaning

**Score:** 7

**Comment:** Upon request, facilities department did some cleaning of the courtroom prior to trial day. Lawyers commented that some areas of courtroom such as desks and podium were very dusty and were cleaned by lawyers before trial. The Worcester courthouse is big and there are many high touch areas throughout building. It seems unlikely if not impossible that with the number of people employed here in building who have as part of their job description cleaning (my understanding is not many) high touch areas are consistently cleaned. During this trial, a facilities worker came and cleaned the witness stand with a disinfectant wipe after one witness testified. That was done in front of jury and I think it was good. No cleaning of juror seats but we only put jurors in box once they were selected so only one person sat in chair during day. We also asked jurors to pick one seat in deliberation room and stick to it throughout the day. Hand sanitizer dispensers were installed outside of courtroom and next to jury box which were and looked good.



# Worcester Trial Court

## Phase 1 Jury Trial COVID-19 Judicial Questionnaire

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### 5. Courtroom Set-Up

**Score:** 7

**Comment:** Jurors were seated in jury box that was designed for 12 member jury and we removed seats so 6 seats in jury box and one seat to side for alternate. We have two rows with 3 seats in each row. There was 6 feet of distance between jurors side to side, but not between the rows front to back, so we have plexiglass between the two rows. We did not seat alternate as we anticipated one day trial and worried about sight line for juror seated in extra seat to side. Plexiglass is good for safety, not as good for sightlines. Lawyer said difficult to see witness sometimes through all the plexiglass. I could not see at least one juror well due to plexiglass. Lawyers had to stay near microphones so as to be heard through masks and multiple layers of plexiglass, which they reported, and I observed, was a challenge. We made multiple adjustments before and during trial to accomplish best scenario.

### 6. Juror Lunch

**Score:** no response

**Comment:** We had court officers take lunch orders from jurors as soon as they were seated. Evidence, arguments and instructions were done at 1:00 so we had jury eat lunch first, then deliberate with masks on. They were in a large deliberation room where we had set up tables and chairs apart from each other and put plexiglass up and air purifier in room. Overall, I was not thrilled with this arrangement because they were eating and drinking in a room that was not huge with each other. Health experts discourage us from eating and drinking with people who are not in our households so this does not seem good to me. Next time, we should find a bigger space for lunch, which involves possibly another courtroom?

### 7. COVID-19 Specific Trial Procedures

**Score:** no response

**Comment:** I had witness and defendant briefly remove mask during beginning of empanelment when they were introduced so jury panel could see them, making sure they remained 6 feet away from everyone at that time. Witness removed mask during testimony and wore a face shield and was behind plexiglass. All worked fine. While not an issue in this case, communication between defense counsel and defendant will be issue going forward. Even if defense counsel and defendant don't mind huddling together to talk, this does not appear to be safe and does not look good for jurors. We put plexiglass between counsel and defendant, so not sure they could really hear each other through that. I told defense counsel to ask for break if he wanted to talk to his client at length. Also, as mentioned above during voir dire, side bar was a problem here. Despite our efforts, lawyers and I had a hard time hearing each other at side bar through tiny hole in plexiglass which resulted in us having to be too close together. This was not a huge issue in this case as there were not many contested issues at all, but in a contested case it could be big problem. We are exploring alternatives for side bar conferences. We put cut out in plexiglass surrounding witness box so lawyer could show witness document if necessary. That did not happen in this case. Lawyers reported they were worried about how it would work if they needed to confront a witness with document, especially since there is no microphone near witness stand to pick up lawyer and also, lawyer would be too close to jury box if he/she stayed in that area. We did not send any physical evidence to jury. Stipulation and video stayed in



# Worcester Trial Court

## Phase 1 Jury Trial COVID-19 Judicial Questionnaire

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courtroom during deliberations. We put verdict slip in plastic covering and tried to avoid passing it back in forth in front of jury.

### 8. Public Access

**Score:** 10

**Comment:** We put a lot of time into considering public access, and then to our surprise nobody in the public appeared to be interested! Defendant's family chose to stay home for safety reasons. No press appeared or any curious spectators. Trial was on zoom audio and video and information was posted on District Court website. Door to room was open. Court officers were aware of occupancy limit in room and were ready to let anybody in until we got to that number. Only time when courtroom full to capacity was during beginning of empanelment. I put on record all we had done to assure access in case anybody wanted to come in.

### 9. Model Voir Dire and Jury Instructions, if Available

**Score:** 9

**Comment:** District Court Criminal committee has a draft a model welcome for jury pool that is very similar to one issued by Superior Court model. I used that as a base for my welcome and it was helpful.

### 10. Jury Deliberations

**Score:** 10

**Comment:** Jury deliberated in large Superior Court deliberation room where we had moved furniture spacing out chairs and desks with plexiglass down middle of tables. This worked well for 6 people.

**Please share details and impressions about the conduct of the trial and the experience of the participants.**

Overall, with lots of work done by lots of people, the trial went smoothly. The court officers reported that the jurors seemed happy. The seated jurors did not appear reluctant to be here. The lawyers, both very experienced trial lawyers, were satisfied, but both said that was due in large part to the relatively simple straightforward nature of the case--one witness Operating Under the Influence case. The court officers are due a lot of credit for working well with jurors, and being very flexible and responsive. We tried to make it safe for jurors, but there is a limit to what a courthouse can do in terms of cleanliness. This is not a hospital. This was a good experiment for future planning. It is hard to imagine how this is going to work for jury of 12 and/or more complicated case with incarcerated defendant. The trial participants, myself included, greatly enjoyed the experiment. More work needs to be done on side bars. Maybe technology can help. During this nasty peak of the pandemic, where so many members of our community are sick and contagious, I do not think we should be doing it right now.

# Appendix 4



Office of Jury Commissioner  
for the Commonwealth

**Bristol, Essex, Franklin,  
Middlesex, Plymouth,  
Suffolk, & Worcester  
Counties**

## Demographic Survey - Calendar Year 2019, All COVID-19, and Phase 1

Demographic Category	Federal Census 2010		Trial/Grand Jurors Who Appeared for Juror Service: CY19		Trial/Grand Jurors Who Appeared for Juror Service: COVID-19 3/16/20-2/24/21		Trial Jurors Who Appeared for Juror Service: Phase 1 1/12/21-2/24/21	
	Population	%	Population	%	Population	%	Population	%
Black/African American	249,079	6.5%	11,497	7.2%	90	6.9%	17	5.8%
White	3,098,469	81.1%	128,917	80.7%	1,074	82.1%	244	83.6%
Native Hawaiian/Pacific Islander	1,304	0.0%	131	0.1%	0	0.0%	0	0.0%
Asian*	210,657	5.5%	6,531	4.1%	65	5.0%	13	4.5%
American Indian/Alaskan Native	9,977	0.3%	221	0.1%	1	0.1%	0	0.0%
Other	249,923	6.5%	12,508	7.8%	78	6.0%	18	6.2%
<b>TOTALS</b>	<b>3,819,409</b>	<b>100.0%</b>	<b>159,805</b>	<b>100.0%</b>	<b>1,308</b>	<b>100.0%</b>	<b>292</b>	<b>100.0%</b>

Demographic Category	Federal Census 2010		Trial/Grand Jurors Who Appeared for Juror Service: CY19		Trial/Grand Jurors Who Appeared for Juror Service: COVID-19 3/16/20-2/24/21		Trial Jurors Who Appeared for Juror Service: Phase 1 1/12/21-2/24/21	
	Population	%	Population	%	Population	%	Population	%
Yes, Hispanic/Latino*	329,463	8.6%	11,149	5.3%	91	7.5%	17	6.2%
No, Not Hispanic/Latino	3,489,946	91.4%	145,019	93.6%	1,100	90.5%	258	93.8%
No Response His./Lat.	0	0.0%	1,778	1.0%	24	2.0%	0	0.0%

\*Asians and Hispanic/Latinos appear underrepresented as compared to the Federal Census population because the census figures include persons who are not qualified to serve as jurors due to lack of citizenship or ability to speak and understand English, as required by c.234A sec. 4.



## Demographic Survey - District Court Remote Impanelment Pilot

Demographic Category	Federal Census 2010		Jurors Who Appeared for Juror Service-CY19		Jurors Appearing Remotely		Jurors Appearing In Person	
	Population	%	Population	%	Population	%	Population	%
Black/African American	25,291	5.8%	1,317	5.4%	1	3.8%	0	0.0%
White	381,557	88.2%	21,668	88.2%	25	96.2%	20	95.2%
Native Hawaiian/Pacific Islander	113	0.0%	9	0.0%	0	0.0%	0	0.0%
Asian	5,081	1.2%	240	1.0%	0	0.0%	0	0.0%
American Indian/Alaskan Native	1,063	0.2%	33	0.1%	0	0.0%	0	0.0%
Other	19,643	4.5%	1,291	5.3%	0	0.0%	1	4.8%
<b>TOTALS</b>	<b>432,748</b>	<b>100.0%</b>	<b>24,558</b>	<b>100.0%</b>	<b>26</b>	<b>100.0%</b>	<b>21</b>	<b>100.0%</b>

Demographic Category	Federal Census 2010		Jurors Who Appeared for Juror Service-CY19		Jurors Appearing Remotely		Jurors Appearing In Person	
	Population	%	Population	%	Population	%	Population	%
Yes, Hispanic/Latino	11,348	2.6%	558	2.3%	0	0.0%	1	4.8%
No, Not Hispanic/Latino	421,400	97.4%	23,726	96.6%	26	100.0%	20	95.2%
No Response His./Lat.	0	0.0%	274	1.1%	0	0.0%	0	0.0%

\*Asians and Hispanic/Latinos appear underrepresented as compared to the Federal Census population because the census figures include persons who are not qualified to serve as jurors due to lack of citizenship or ability to speak and understand English, as required by c.234A sec. 4.

## Appendix 6



Office of Jury Commissioner  
for the Commonwealth

**Bristol, Essex, Franklin, Middlesex,  
Plymouth, Suffolk & Worcester  
Counties**

### Demographic Survey Results - Phase 1, Confirmed v. Walk-Ins

Demographic Category	Federal Census 2010		ALL Jurors Who Appeared for Juror Service: Phase 1 1/12/21-2/24/21		CONFIRMED Jurors Who Appeared for Service: Phase 1 1/12/21-2/24/21		WALK-IN Jurors Who Appeared for Service: Phase 1 1/12/21-2/24/21	
	Population	%	Population	%	Population	%	Population	%
Black/African American	120,096	4.4%	17	5.1%	11	5.0%	6	8.1%
White	2,303,888	84.1%	244	84.3%	182	83.5%	62	83.8%
Native Hawaiian/Pacific Islander	894	0.0%	0	0.0%	0	0.0%	0	0.0%
Asian*	151,326	5.5%	13	4.5%	13	6.0%	0	0.0%
American Indian/Alaskan Native	6,024	0.2%	0	0.0%	0	0.0%	0	0.0%
Other	158,253	5.8%	18	6.2%	12	5.5%	6	8.1%
<b>TOTALS</b>	<b>2,740,481</b>	<b>100.0%</b>	<b>292</b>	<b>100.0%</b>	<b>218</b>	<b>100.0%</b>	<b>74</b>	<b>100.0%</b>

Demographic Category	Federal Census 2010		ALL Jurors Who Appeared for Juror Service: Phase 1 1/12/21-2/24/21		CONFIRMED Jurors Who Appeared for Service: Phase 1 1/12/21-2/24/21		WALK-IN Jurors Who Appeared for Service: Phase 1 1/12/21-2/24/21	
	Population	%	Population	%	Population	%	Population	%
Yes, Hispanic/Latino*	206,551	7.5%	18	5.5%	13	6.0%	5	6.8%
No, Not Hispanic/Latino	2,533,930	92.5%	274	94.5%	205	94.0%	69	93.2%
No Response His./Lat.	0	0.0%	0	0.0%	0	0.0%	0	0.0%

\*Asians and Hispanic/Latinos appear underrepresented as compared to the Federal Census population because the census figures include persons who are not qualified to serve as jurors due to lack of citizenship or ability to speak and understand English, as required by c.234A sec. 4.

March 11, 2021

## Appendix 7

### Jury Service Survey - Juror Feedback

Jury Service Start Comment

#### Lowell Justice Center

- 1/12/2021 Great experience, felt very safe considering Covid going on
- 1/12/2021 Very welcoming court officers!
- 1/12/2021 My experience was A+ . I was concerned about covid safety and it was superb
- 1/12/2021 Juror pool offices were great!!
- 1/12/2021 Officers were courteous and thoughtful, and took every precaution to maintain safety
- 1/12/2021 There were staggered arrival times of jurors due to COVID restrictions. The jurors impaneled were chosen from an early arriving pool. Those with later arrival times did not have the opportunity to serve on a jury. Also, my group was sent to the jury room to watch the introductory film. The film was stopped when the judge arrived and then we were dismissed. We were not able to watch the remainder of the film. The facilities were very clean and great effort was made to keep jurors separated.
- 1/12/2021 Felt very safe and well organized
- 1/12/2021 Thus was my second time being picked and this was a wonderful experience. In a time with Covid running rampid your court personnel did an unbelievable job with making sure everyone felt comfortable and was at ease being there. Unbelievable job. Thank you!

#### Middlesex Superior Courthouse

- 1/25/2021 I found it to be an enlightening experience
- 1/25/2021 The personnel were incredibly polite and welcoming to the whole process - made us feel that we were performing an important role.
- 1/25/2021 We were the first jury in almost a year, and I was very comfortable with the excellent COVID protocols in place. Nice job by everyone involved!

#### Plymouth Trial Court

- 1/12/2021 I kept receiving messages to confirm my service several times after I had already confirmed. It made me concerned I hadn't properly confirmed.
- 1/12/2021 Most impressed by the Covid protocol and protection. All very organized. We were very well informed
- 1/12/2021 From my understanding, I was on the first jury panel since the Plymouth courthouse was closed. I found everything to go very smoothly. CDC guidelines were met both in the waiting room and in the court room.
- 1/12/2021 The guards were all extremely friendly and appreciative of our service.

#### Salem Trial Court

- 1/19/2021 I hope to serve on a jury one day. Hate taking the day off work to be released at 1030am. Seems like a waste of time. Less people should be summoned in the future.
- 1/19/2021 Given the COVID 19 pandemic I was hesitated and hoping my called to jury duty would cancel but it's not the case and to find out the next day that one of the individual was in the courthouse on the same day has tested positive for COVID 19.

## Salem Trial Court

1/19/2021 I was surprised to have jury duty given the grim picture that our governor has painted regarding the pandemic. I still showed up and low and behold, we found out the next day that someone in the courthouse tested positive for Covid. The courthouse which has only been open for a short time has been shutdown again as a result. Calling jury duty during these times was clearly reckless by the courthouses own admission.

## Worcester Trial Court

1/19/2021 We weren't told about facilities because of COVID, so that was fine. The parking situation would be easier if you included an address for the parking garage. I don't know Worcester well and nowadays most people use a GPS, so an address instead of a map would be more useful. Otherwise everyone there was very helpful and polite.

1/19/2021 There were no signs directing jurors to the jury pool upstairs. The tables weren't clean either. Given the pandemic, I would have expected the tables and chairs to be thoroughly cleaned, or at least wiped down, but there were crumbs and smudges on most of them. 6ft of space between seats was a joke. The officers also weren't super great at giving clear instructions. E.g. When we went into the courtroom, they sort of just gestured around like we'd know where to sit, so there was some confusion.

1/19/2021 It was an honor to serve and I appreciate all the effort that went into the day to keep everyone safe from Covid. God Bless

1/19/2021 There was some confusion when I arrived. I was told that I didn't reconfirm (I did - and had the email), even though my card was there. We were kept in a separate room, and were told that we weren't needed, so I never met a judge. Otherwise - everyone I interacted with was kind.

1/19/2021 Maybe hearing assistance when one on one with Judgy Wudgy!

1/19/2021 I called the phone line the day before and the recording said to report at 8 AM. I also got an email that said to arrive at 9 AM. Which one was correct? Everyone in the jury pool room was masked so I was comfortable with that, but we were allowed to have food and drink with us. I did NOT feel comfortable with people around being able to unmask to consume food and drink. They should have been directed to the break area at the back of the room to do that. COVID-19 is way too hot right now.

1/19/2021 Not sure if the court officers were new, but they seemed disorganized. It took them over an hour to figure out that a few people had showed up that didn't call the day prior to listen to the message letting them know their duty was cancelled. Although we were told where the bathrooms etc were, we weren't told what we were waiting for, how long it might be, why we were in one room while others were in another, or what to expect that day.

1/19/2021 It would have been good if the court reimbursed for parking. There was no available free street parking and the two lots used for the trial court house cost \$15/\$20.

## Edward W. Brooke Courthouse

2/24/2021 I wish the jury room had tables along with the chairs. It was very uncomfortable sitting in the chairs.

2/24/2021 I was sent 5 different communications to re-confirm my service. I sent emails to the jury email to confirm but never got a response back. This is my only complaint.

2/24/2021 Please have signage by the courthouse entrance informing jurors that they can skip the line of people waiting outside (e.g. there to appear at court hearings, not for jury duty). Several jurors (incl. me) waited in line when it turned out you could just cut in front and enter the building. In the jury pool room, we were seated barely 6 feet apart. I think more people showed than expected but it was nerve-wracking to sit there for several hours with no ventilation/windows among 30 people.

2/24/2021 I know because of Covid it has changed, but there were too many confirmations that you had to do. It was overkill.

### **Edward W. Brooke Courthouse**

2/24/2021 The Court Officers ensured safe distancing and cleanliness for jurors and I appreciated that we were provided lunch if we were selected to serve on the jury. I felt very safe in the court room as everyone was distanced, wore a mask and there was plexiglass partitions. COVID safety measures were well thought out and effective.

### **Fall River Justice Center**

2/23/2021 In this unusual time, the process was very smooth and well organized.

2/23/2021 Best day of my life

2/23/2021 Parked in the parking garage wondered around to figure where to pay could not find signs "Pay Here" so ultimately got a ticket and went to Fall River City Hall dropped ticket off with \$60 told them to keep the change and walked away. Did not wait for receipt as I was so upset that I could not find adequate notices at parking garage on where to pay.

2/23/2021 I filled out the "confidential" jury questionnaire. I am not sure why it was necessary to ask the same questions again publicly. I felt a little uncomfortable sharing personal information about my family in front of all the other jurors.

### **Plymouth Trial Court**

2/23/2021 The communications that I received via postal mail and email ahead of my service were excessive and redundant. It would have been perceived a better experience if the communication and confirmation process was more streamlined. Remote jury selection however was excellent and conducting jury selection via Zoom video was easy, convenient and created a safe way to participate in the process without having to appear in court until I was confirmed to be selected as a juror.

2/23/2021 It was easy amid the pandemic and having a choice of virtual or in person went well.

2/23/2021 The Process was seamless and all aspects of the trial were clearly defined. Jurors were kept well informed and court officers helped jurors feel comfortable and safe. Thank you.

### **I did not appear at a courthouse**

2/16/2021 I participated in jury selection on Zoom - and was excused from service - so never went to the courthouse. Doing selection on Zoom worked well.

2/16/2021 I was one of the virtual jury candidates. Therefore several answers are blank. The process was very clear and easy - despite a few technical glitches which we were informed of throughout the selection process. I was empaneled to serve 2/17/21 but found out I had been exposed to an active COVID friend and let the court know the following day so I was excused from serving. I was very disappointed and contacted your office to see if I could be put back into an upcoming pool. Awaiting an answer

2/23/2021 I participated via Zoom and it had a few kinks but was very interesting