



## COVID-19 Response Perspectives

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### Multnomah County Began Jury Trials Last Week

Ramping up operations within the justice system after a worldwide pandemic is a new passage for everyone. As courts around the country are reopening or planning to reopen, those who lead the way can provide important insight.

Oregon remains under a stay-home order, but on May 7, Governor Kate Brown [announced](#) the plan for a phased reopening beginning on May 15. As for the courts around the state, on April 27, the Oregon Supreme Court [extended the order](#) postponing trials until at least June 1, unless an earlier trial is required by statute, the constitution, or a case-specific court order. Oregon's Chief Justice ordered a level three restriction dictating which types of cases are prioritized for jury trials during this time. Because of Oregon's unique statute, rather than a speedy trial rule, the state has to take in-custody defendants to trial within 60 days, unless waived by the defendant or good cause extension. While it was determined that COVID-19 does qualify as a good cause extension, 180 days is the maximum extension. One remedy for this time limitation is to release the defendant, which Multnomah County has done for a number of cases determined to qualify for release. The most serious cases, however, have defendants who remain in custody and nearing the deadline for a trial.

Because of these limitations determined by Oregon statute, Multnomah had to begin two jury trials last week. The court also restarted its grand jury on April 20. The Justice Management Institute (JMI) had the opportunity to speak with Multnomah Chief Criminal Court Judge Cheryl Albrecht about the court resuming grand jury and jury trials last week. Judge Albrecht explained the effort they put toward preparing the courthouse, staff, and jury trial process in a very short amount of time. As she explained in our interview, Judge Albrecht is hopeful that "these jury trials are rare because it takes an enormous number of resources."

## *How did Multnomah prepare the courthouse and design safe parameters for jurors?*

Multnomah's planning team tasked with preparing the existing courthouse for jurors consisted of a facilities manager, the deputy trial court administrator, and a jury room supervisor. As Judge Albrecht put it though, it took a "cast of thousands." The team went through every courtroom (of which there are 40 of varying size and configuration) and every seat in the hallway, using tape to identify six feet of separation with signage to indicate where to sit.

### Courtrooms

From there, the group determined how many individuals are allowable within each courtroom. The biggest courtroom could safely hold 16-18 people, including counsel and the defendant. With a 12-person jury, juror alternates, and everyone else required for the trial, they found the largest courtrooms would accommodate a jury trial.

Only three jurors can safely fit within the regular jury box. Therefore, spaces are identified in the public viewing area of the courtroom and comfortable chairs are brought in for jurors to use in place of the wood benches.

### Jury Assembly

For the two trials going on last week, there were 85 potential jurors on Monday and another 85 on Wednesday. This number of jurors required the use of various courtrooms to assemble jurors in addition to the large jury assembly room that is typically used. The court worked with the Sheriff's Office to facilitate ease of entry through security and checking jurors into the new jury rooms.

For grand jury selection, the jury assembly room was used, which required an additional seven courtrooms to assemble the jurors.

### Voir Dire

This limited space, however, posed a problem for voir dire. Instead of group voir dire, they decided to assemble small groups for voir dire. This meant the process would take considerably more time.

### Defense Counsel

As six feet of separation is required, defense counsel and the defendant are unable to speak confidentially during the trial. If they need to have confidential conversation, the judge is alerted, and defense counsel and the defendant can move to a confidential space to talk where physical distancing is ensured.

### Public Viewing

Oregon has an open courts provision and, therefore, must provide public access to criminal trials. Since the largest courtrooms just barely fit the individuals required for a trial, the public is able to view the trial from a separate courtroom via video technology.

At this time, video streaming is accessible only from the courthouse and not remotely. However, Multnomah will be live streaming a limited number of proceedings in the coming weeks.

## Jury Deliberation

Since jury deliberation usually occurs in small rooms that do not allow for physical distancing, Multnomah had to instead utilize an additional courtroom for deliberation. While clerks are not present for deliberation, they did have to be assigned to each courtroom, requiring not only additional courtrooms but also additional staff.

## More Space is Required to Do a Lot Less

Multnomah's planning process shows the large amount of space one single jury trial can require providing safe physical distancing. Judge Albrecht explained that, as an example, a single trial had to utilize six courtrooms to have a physically distant jury trial, and that does not include the jury assembly rooms. After jury selection is complete, each trial requires three courtrooms.

## Jury Notification

The jurors assigned last week received a summons prior to the pandemic and were asked to report last week. The court is providing jurors with information on the [court's website](#) and will be updating the website and sending additional information to those contacted with future summons.

Multnomah has revised excusal and deferral policies for jurors, allowing for those who are ill or at high risk to be excused.

The court's website summarizes the need for jurors:

*"The courts are considered essential under Governor Brown's 'Stay Home, Save Lives' Order. In order to reduce the number of people coming to the courthouse, Oregon's Chief Justice has moved the court to 'Level 3 operations.' Under that order, we are continuing to hold only the most essential proceedings. Jury trials are among the most important work of the court. Simply put, trials can't occur without jurors and the constitutional right to a jury trial doesn't end during a pandemic. You play a critical role in ensuring that the court can continue its obligation under the law to allow individuals to exercise their constitutional right to a trial. We know things have changed dramatically under the COVID-19 virus and those changes may affect your ability to serve. If you have not already been deferred or excused, you are not ill, you do not have high risk conditions, and you would possibly be able to serve on a trial jury, please appear as directed in your summons."*

## Juror and Staff Safety Precautions

Multnomah has taken extra measures to protect everyone when coming to the courthouse. Outside the courthouse, signage is used on the sidewalks indicating safe physical spacing. Court staff are assigned to monitor jurors and the public to ensure people are physically distancing from one another. Inside, every room being utilized is sanitized between each use.

Judge Albrecht explained that masks are made available for jurors as they arrive, if they choose to wear them, and an informational handout is provided explaining the precautions the court is taking. Staff are required to wear masks except for circumstances where it is safe to remove.

In the jury assembly rooms, hand sanitizer is made available and protocols are in place to sanitize materials that are dispersed and collected.

### *Operations Plan*

Multnomah's planning team has created a plan for this limited capacity of jury trials. The plan is being formalized and will be shared on JMI's website once it is finalized.

### *How Is It Going So Far?*

Grand jury selection began on April 20 and jury trials began on Monday, May 4. Judge Albrecht explained that grand jury selection on April 20 went very well and acted as a test run for the jury trial process. Without the involvement of lawyers and cause challenges, the grand jury process allowed the court to see how the process would work and the juror turnout they would receive. The court spent considerable time planning for grand jury selection and worried that individuals would not respond to the summons. Earlier, Marion County was one of the first in the state to have a jury trial and ran into the issue of having a very low turnout. Multnomah, however, ended up with a good turnout after identifying a pool of 100 for the grand jury for the month.

### *Unexpected Issues*

When asked about issues after the first few days of conducting a jury trial during the pandemic, Judge Albrecht described two unforeseen problems the court had to tackle.

Defense counsel raised the concern over using masks on jurors during voir dire, inhibiting counsel to observe juror demeanor. Likewise, the same concern was raised with witnesses when taking the stand. As a result, Multnomah County Circuit Judge Thomas Ryan granted a motion requiring jurors and witnesses not to use masks in those instances.

Judge Albrecht also noted the unexpected amount of time required for sanitizing, including cleaning the witness stand after each witness, cleaning the seats between jury panels, handing out juror notebooks, etc.

### *Reopening is Far from Business as Usual*

As the world gets used to conducting business with the new parameters of a pandemic, it is becoming obvious that there is no business as usual and every process will take a lot more time, considerably more space, and the flexibility to learn as we go. Those who take the lead to test the waters have a lot to share and we at JMI are eager to learn and share with all of you.