

Jury News

PAULA HANNAFORD-AGOR



A NEW LOOK AT TERM OF SERVICE

For the past three years, the National Center for State Courts Center for Jury Studies has been conducting the State-of-the-States Survey of Jury Improvement Efforts, a national study of jury operations and trial practices in state and local courts. A total of 1,396 local courts encompassing approximately 70 percent of the total U.S. population completed surveys about jury management practices. Many of the study participants are regular *Jury News* readers, and for that, I can only say “thank you, thank you, thank you!” In this column, and periodically over the next year or so, I want to highlight some of the key findings from the study, beginning with what we’ve learned about how long citizens are required to make themselves available for jury service.

Principle 2(C) of the new American Bar Association Principles for Juries and Jury Trials specifies that the term of service “should be the shortest period consistent with the needs of justice” — ideally one day or one trial but at the very least not

longer than two weeks. Term of service is an important concept in contemporary jury management for several reasons. First and foremost among these considerations is citizen convenience. Although public opinion reports document that trial by jury is the single most popular aspect of the American justice system, jury service itself is rarely a convenient event in most citizens’ lives. The term of availability and the term of service are concepts that are often confused. Jurors may be on call for long periods of time but are only required to report to the courthouse once or twice.

By definition, the term of service defines just how inconvenienced each citizen will be, which can range from as little as a single day in many jurisdictions to as long as a year or more in others. Shorter terms of service reduce the burden of jury service imposed on any one citizen and distribute that burden more equitably among the jury-eligible population of the community. The burden on individual employers is likewise reduced, an often forgotten aspect of the term of service.

Term of service is also related to jury yield insofar that longer terms of service result in a larger number of citizens requesting to be excused for financial or other hardship. Citizens who are not paid by their employers, or who are self-employed, may not be able to afford to serve for longer periods of time. Work-related hardships can also occur insofar that employers cannot operate effectively when professional or managerial employees are summonsed for extended periods. Even those for whom lost income is not a major issue may find that longer terms of service interfere with significant personal commitments (care giving responsibilities, family events, vacations, etc.).

Of course, there are also logistical and fiscal implications to shorter terms of service. Using jurors over and over again for longer periods of time obviously reduces the number of people who need to be qualified and summonsed. Consequently, reducing the term of service may require courts to summon more citizens for service, which would result in increased printing, postal, and administrative costs. The amount of juror fees is usually unaffected by a change in the term of service because the number of people reporting on any given day doesn’t change, only the identity of those people (e.g., new faces every day instead of the same people over and over). Although in jurisdictions with a graduated juror fee system (e.g., reduced or no fee on first day(s) of service, increased fee if sworn or serving for additional days), courts may see a marginal decrease in juror fees because the only citizens qualifying for the graduated rate would be those who are impaneled as trial jurors.

So what does the State-of-the-States Survey tell us about term of service in state courts? To begin, we see that just over one-third of all of the participating courts have a one day or one trial term of service. See Table 1, below. Most of these courts (62 percent) are located in the nine states and the District of Columbia that mandate one day/one trial as the term of service by law — Arizona, California, Colorado, Connecticut, District


of Columbia, Florida, Hawaii, Indiana, Massachusetts, and Oklahoma. Indiana and Oklahoma are the two most recent states to make this change.

TABLE 1: TERM OF SERVICE	# OF COURTS	% OF COURTS	ESTIMATED % OF U.S. POPULATION
One Day or One Trial	490	35.1	63.4
Two to five days (one week)	213	15.3	17.8
Six days to 1 month	327	23.4	11.7
Greater than 1 month to 6 months	283	20.3	5.9
Longer than 6 months	82	5.9	0.2
	1,395		

It is clear from the table that shorter terms of service are more prevalent in urban areas than in rural areas. For example, courts with one day/one trial terms of service comprise 35.1 percent of the courts participating in the State-of-the-States Survey but encompass an estimated 63.4 percent of the U.S. population. In contrast, just over one-quarter (26.26 percent) of the participating courts had terms of service longer than one month, but these courts encompass only 6.1 percent of the U.S. population. The average county population for jurisdictions with a one day/one trial term of service was approximately 266,000 compared to 33,600 for jurisdictions with terms of service longer than one month.

The term of service does have a demonstrable effect on jury yields, especially on the proportion of the jury pool that is excused for hardship. In one day/one trial courts, the average excusal rate is 7.3 percent and 3.9 percent, respectively, for one-step and two-step courts. Longer terms of service increase the excusal rate by 3 percentage points to 10.3 percent in one-step courts and to 7.1 percent in two-step courts — a 42 percent and an 82 percent increase, respectively. This differential represents the average increase in excusal rates for all terms of service longer than one day/one trial. The increase is commensurately greater for courts with very long terms of service (e.g., more than one month) than for those with relatively shorter terms (e.g., one to two weeks). In all cases, this difference represents actual citizens who would be qualified and available to serve but for the hardship imposed by the lengthy term of service.

What is perhaps the most telling finding is how few jury trials actually take place in courts with comparatively longer terms of service. For example, the average number of juries impaneled in courts with terms of service longer than one month was only 20 — less than two per month! Half of those courts have fewer than eight jury trials per year. From the perspective of citizens, reporting for jury service twice a month for an extended period of time could potentially be very disruptive to their personal lives. But from a purely logistical perspective,



many of those courts are already functioning as one day or one trial courts or could be with very little effort or disruption to the court's daily operations. Essentially, those courts could adopt a variation of a one day/one trial policy by stating that prospective jurors must be "on call" for jury service for the existing period of time (e.g., six weeks, two months, six months), but they complete their jury service obligation upon reporting to the courthouse and being impaneled as a trial juror or dismissed after jury selection.

This would be a very easy transition in courts that employ a two-step qualification and summoning process, especially for those that use a telephone call-in system to inform citizens about whether they actually need to report the next day. Once the qualified jury list has been prepared, the court would summons prospective jurors for trials as needed. If the jurors are "waived off" before the reporting date (e.g., the case settles or pleas), the juror's name is put back on the qualified list for possible summoning for a future trial. If the trial does begin as scheduled, the names of jurors who report for service are removed from the qualified list. In courts with very low numbers of jury trials, it would not even be necessary to prepare a larger qualified juror list as very few courts exhaust the qualified list during the term of service.

One-step courts — that is, those that combine the qualification and summoning process into a single step — typically summons more people to compensate for those who are disqualified, exempted, excused, or fail to appear. But the basic policy concerning term of service would be same. The court summons jurors for a particular date, usually four to six weeks before they are needed for trial. If they call in and are told not to report because the case has already been disposed, they can be summonsed again for a future trial. But if they report for trial and are either impaneled or dismissed following jury selection, they have likewise fulfilled their jury service obligation. They would then be exempt from future summoning for the statutorily prescribed exemption period for previous jury service.

Another technique that courts can employ to limit the term of jury service is "multiple voir dire," in which sufficient numbers of jurors are told to report for jury service on a specified date, and all of the juries for the entire term (e.g., one month, two months) are impaneled. At the end of the day, jurors who have been selected leave the courthouse with instructions to return on a specified date for trial. The remaining veniremen are then released from service for the statutorily prescribed period. Thus, the impaneled jurors serve no more than the length of one trial, and the citizens who were not selected as trial jurors serve only for the day of jury selection — the very definition of a one day/one trial term of service.

Obviously, the policy becomes more complex in courts with greater numbers of jury trials and commensurately greater demand for prospective jurors. Yet the fact that courts with the greatest volume of jury trials can operate effectively with one day/one trial terms of service should demonstrate to the rest not only that it can be done, but also that it should be.

Note: For more information about the State-of-the-States Survey of Jury Improvement Efforts, including state-by-state comparisons on key jury operation measures, see the NCSC Center for Jury Studies Web pages at www.ncsconline.org/Juries/home.htm.