



Jury News

BY PAULA HANNAFORD-AGOR AND NICOLE WATERS

Tripping over our own feet: In jury operations, two steps are one too many

According to the *State-of-the-States Survey of Jury Improvement Efforts*, approximately 60 percent of state courts operate as two-step jury systems. In a two-step system, the court first sends qualification questionnaires to prospective jurors to determine their eligibility to serve based on the statutory qualification criteria. The names of people who meet those criteria are then placed on a “qualified list” from which the court summonses jurors for service. One-step jury systems, in contrast, combine the qualification and summoning steps by sending the qualification questionnaire and the jury summons in the same mailing with instructions for jurors to return the qualification questionnaire for processing before reporting for service. If the court determines that the prospective juror is ineligible for service, it sends the juror a notice excusing him or her from reporting. And, as the *State-of-the-States Survey* discovered, the two-step system is a considerably less efficient and more expensive system to operate than the one-step system. While the two-step jury system once served a noble function in our nation’s history, the unique evolution of the jury system over the past century has rendered its previous utility obsolete. The time is long overdue for courts to transition from a two-step to a one-step jury system.

Some historical background

Through the mid-twentieth century, virtually all courts used a two-step system to qualify and summons jurors. The task of creating a list of jury-qualified citizens (Step 1) was traditionally conducted by the jury commissioner, a locally appointed or elected official. The qualified list was then turned over to the court, which would use it to summons jurors for trial (Step 2). This two-step process had an explicitly political purpose — namely, as a local check against the potential for an overreaching or abusive judiciary. This system of checks

and balances was intentionally built into the jury system after the colonists’ experience with royally appointed judges, who tended to place the interests of the crown above the interests of the colonists. Even after the American Revolution, most judges “rode circuit” to preside in trials in the outlying courts. The judges were not necessarily selected from or familiar with the local community and thus could not be relied upon to decide cases in a way that reflected local notions of justice.

The jury commissioner’s job was to identify “key men” who would represent the interests and values of the community when deciding cases. This is the origin of the term “key-man system.” A convenient starting place for many jury commissioners was the local list of registered voters because the qualifications for jury service were usually the same as the voting qualifications (citizenship, residency, age, criminal history, etc.). They would then interview individuals or seek nominations from high-ranking businessmen, local government officials, and clergy for names of people “of fair character, of approved integrity, well-informed, and of sound judgment” to add to the qualified juror list.

Key-man systems came under a great deal of criticism during the civil rights era because they tended to discriminate against racial and ethnic minorities, either intentionally or simply because socio-economic divisions in most communities prevented jury commissioners from becoming sufficiently acquainted with minorities to include them on the qualified juror list. Because of these concerns, courts gradually abandoned the key-man system in favor of procedures that randomly selected names from a list of local citizens and then vetted them according to a series of objective qualification criteria. As a result of this change, virtually all of the jury commissioners’ discretionary power disappeared, as did the underlying rationale for separate qualification and summoning procedures.

One-step and two-step jury systems compared

The most striking evidence of the inefficiency of two-step jury systems is the proportion of jurors summonsed from the qualified list who are subsequently found to be ineligible or unavailable for jury service. In Table 1, for example, we see that an average of 7.5 percent of summonsed jurors in two-step courts were found to be disqualified for service, even

though they were initially deemed qualified for jury service after completing and returning the qualification questionnaire. Another 9.2 percent of summonses were returned by the U.S. Postal Service marked “undeliverable as addressed” although those qualification questionnaires obviously reached those jurors at those addresses at some point in the past. Six percent of previously qualified jurors failed to appear for service on

TABLE 1
Average Undeliverable, Disqualification, Exemption, Excusal, and Non-Response/FTA Rates for Jury Summons, by Population Size

	ALL COURTS	500,000 OR MORE	100,000 TO 500,000	25,000 TO 100,000	LESS THAN 25,000
One-Step Courts					
Undeliverable	14.6%	15.1%	14.4%	16.0%	13.5%
Disqualified	8.4%	12.4%	10.1%	7.5%	7.4%
Exempted	7.3%	4.0%	6.7%	8.4%	7.6%
Excused	9.2%	9.4%	9.5%	9.1%	9.1%
Non-Response/FTA	8.9%	15.0%	10.9%	8.6%	6.7%
Qualified	51.6%	44.1%	48.4%	50.4%	55.7%
Two-Step Courts					
Undeliverable	9.2%	6.6%	10.2%	8.2%	10.0%
Disqualified	7.5%	6.5%	9.6%	7.8%	6.6%
Exempted	5.1%	2.9%	3.4%	4.7%	6.3%
Excused	5.9%	4.4%	6.4%	5.2%	6.5%
Non-Response/FTA	6.0%	13.1%	6.2%	5.9%	5.4%
Qualified	66.3%	66.5%	64.2%	68.2%	65.2%

the date summonsed. Depending on the size of the local community, an additional 18 to 23 percent of jurors are lost in the second step of the two-step jury process that would have been retained under a one-step process. Two-step courts, in other words, have to expend comparatively more effort to summons and qualify jurors to obtain the same number of jurors as one-step courts. At the same time, two-step courts spend 55 to 65 percent more in printing, postage, and administrative cost compared to one-step courts.

The only comparative advantage of the two-step system is a moderate decrease in day-to-day variability in the jury yield because under a two-step system the court has already removed some, but obviously not all, of the uncertainty about whether a prospective juror is qualified and available for service. Figure 1 illustrates the overall jury yield for two hypothetical courts — one employing a one-step jury process and the other a two-step jury process. On average, the yield for the one-step jury operation is 52 percent over a two-week period, but the rate fluctuates between a high of 58 percent and a low of 46 percent. The two-step jury yield is approximately 10 percentage points lower due to the additional loss in jurors between the qualification and summoning steps, but the day-to-day yield fluctuates less dramatically between 38 and 41 percent. Because of the greater variation in the daily jury yield, courts converting to a one-step jury process *initially* often must increase the number of people summonsed for any given day until the jury manager has a better sense of the degree of daily variation to expect.

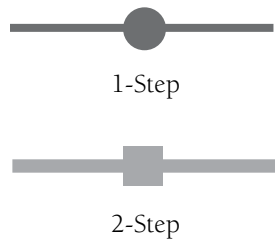
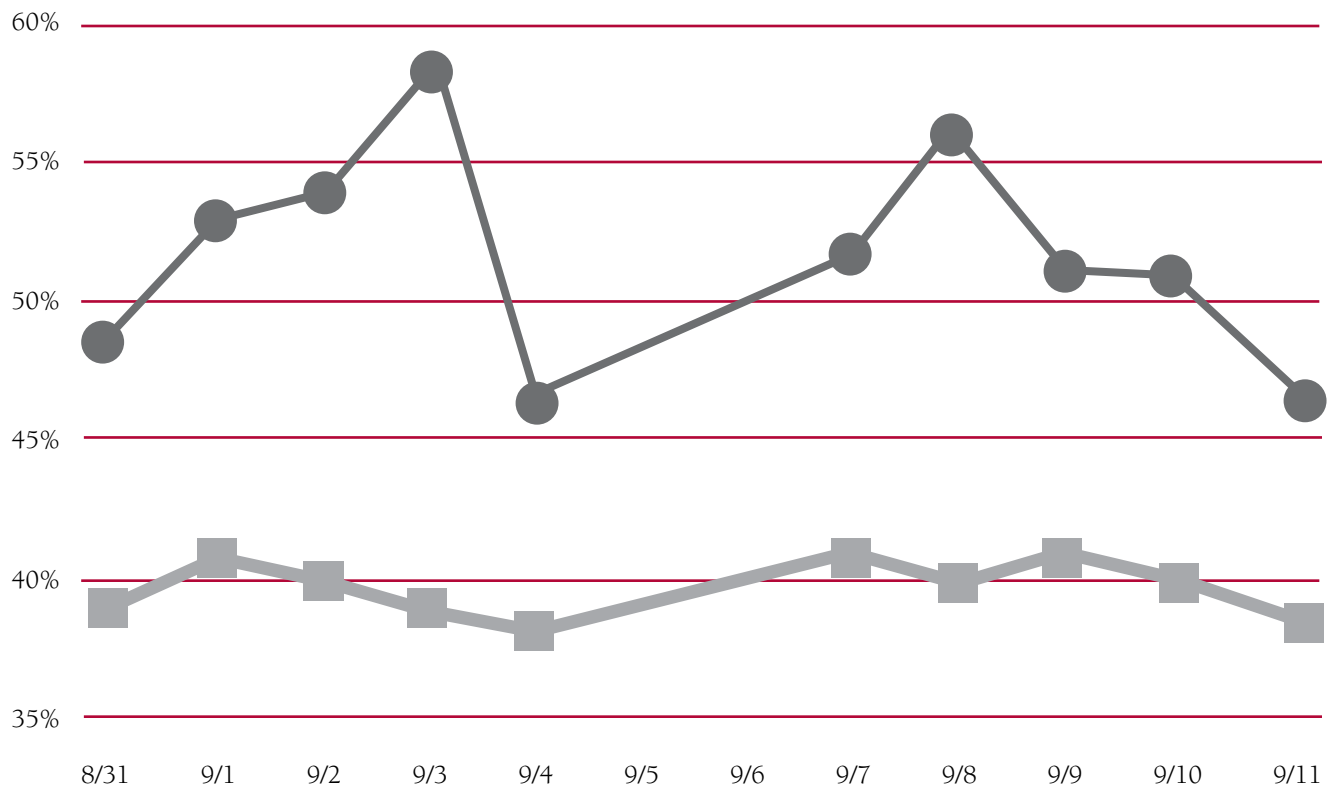
Converting from a two-step to a one-step jury process

There are two typical approaches to converting from a two-step to a one-step jury system. The first is a phased-in approach in which the court retains the two-step process while the one-step process is introduced at a low volume. For example, the court continues to summon 90 percent of those reporting under the two-step system (pre-qualified) and 10 percent under the new one-step system. It then gradually increases the proportion of jurors summonsed under the one-step process until the one-step system is fully operational. The theory behind a phased-in approach is to provide sufficient time for the trial court leadership and jury administration to gain necessary experience and confidence in the new summoning system without risking a disruption in the pool of available jurors.

It is important for the court to decide on a reasonable timeframe for the phased-in approach. The National Center for State Courts (NCSC) recommends that the transition phase be no longer than six months or until the jury staff adjusts and feels comfortable with the one-step process. Higher volume courts that bring jurors in most, if not every, day can make the transition more quickly (e.g., two to three months) than lower volume courts. Lower volume courts may only have a couple of days each month to become acclimated to the new system.

Under the phased-in approach, jury staff must be able to differentiate on the jury automation system between jurors summonsed under the one-step process from those

FIGURE 1
Daily Fluctuation in Jury Yield



summonsed under the two-step process. This can be accomplished by creating separate “jury pools” that are summonsed for the same day and tracking jurors through the pool number. An alternative method is to use different computer codes to indicate which jurors were summonsed under which process — e.g., SMND1 to indicate one-step jurors and SMND2 to indicate two-step jurors. This provides the necessary documentation on which to determine the expected jury yield for one-step jurors. To calculate the number of people to summons for jury service, the court should divide the number of jurors needed by the one-step jury yield. See Figure 2. For example, if the court determines during its transition period that the one-step jury yield is 45 percent, and the court requires a pool of 60 jurors to report for service, it would need to mail summonses to 133 names from the master jury list (60 jurors ÷ 0.45 jury yield = 133 summonses mailed).

FIGURE 2

**Formula to Estimate Number of Summonses:
Based on One-Step Jury Yield**

$$\frac{\# \text{ jurors needed}}{\text{1-step jury yield}} = \# \text{ summonses mailed}$$

A second approach is to implement the new process fully at a specified date. Based on NCSC experience assisting courts with this transition, we recommend against starting the first day after a holiday or vacation (e.g., the first of the year). Instead, choose a start date that coincides with a known low-volume period, such as during the summer or winter holidays. If the court is considering installing new or upgraded commercial software, it can be an ideal time to begin the conversion, as the vendor will be able to offer assistance during the transition. Other procedural changes, such as implementing a one-day-one-trial system or adding a call-in system, can easily be timed with a conversion to a one-step process.

The court will still need to estimate the number of summonses to mail under this approach using information about both the qualification yield and the summonsing yield under the existing two-step system. See Figure 3. For example, if the same court still needs 50 jurors to report for service, but planned to implement the conversion to a one-step system directly rather than with a phased-in approach, it would need to examine both its qualification yield (58 percent) and its

summonsing yield under the existing two-step process (66 percent) to determine the number of summonses to mail without pre-qualifying jurors. In this case, the court would need to mail 157 summonses (60 jurors ÷ (0.58 x .66) = 157 summonses mailed).

FIGURE 3

**Formula to Estimate Number of Summonses:
Based on 2-Step Jury Yield**

$$\frac{\# \text{ jurors needed}}{(\text{Qualification yield} \times \text{Summonsing yield})} = \# \text{ summonses mailed}$$

In addition to deciding on the conversion approach, the court will need to adapt the current questionnaire and summons information into a combined document. There are three principle parts to the new combined form.

1. *Jury Summons* — This is the legal document that requires the prospective juror to appear for jury duty at a specific location on a specified date and time. Some courts have designed the summons to include a juror badge that includes a bar coded identification number, which can be separated along a perforated line.
2. *Juror Information* — This portion of the document includes the qualification questionnaire to determine the person’s eligibility for jury service as well as any additional information the court needs to obtain from jurors before they report for jury service. Examples of additional information may include the person’s intent to seek an exemption, hardship excusal, or deferral; name or address changes; contact information such as home or work telephone number or email address; and demographic information (race, gender, and ethnicity).

The *Juror Information* section should be designed to separate easily from the *Jury Summons* (Part 1) and the *General Information* (Part 3). This makes it easier for the juror to complete and send back to the court for data entry. Designing the form to segregate the different types of information (e.g., qualification, administrative, demographic) can facilitate the data entry process, especially for automated systems that employ imaging software. It can also facilitate the court’s ability to protect confidential juror information. The form should provide clear instructions about when and how to complete the information, including directions for sending information online or via an interactive voice response (IVR) telephone system, if available.

To save on printing and postage costs, many courts limit the amount of information printed on the jury summons itself and instead provide a link to the court's website that jurors may visit to learn more about what to expect during jury service.

3. General information — A frequent complaint from jurors is the lack of practical information about jury service provided with the jury summons. Information that jurors find especially helpful includes instructions about how to request an exemption, a hardship excusal, or a deferral; call-in instructions before reporting; a map to orient jurors to the courthouse and parking facilities (if available); and answers to frequently asked questions, including the amount of juror compensation and the maximum term of service.

To save on printing and postage costs, many courts limit the amount of information printed on the jury summons itself and instead provide a link to the court's website that jurors may visit to learn more about what to expect during jury service. The website can also provide background information about jury service as well as information for employers. Another technique employed by courts to save postage and processing costs is to omit a pre-paid or stamped envelope. Instead, jurors must provide the postage themselves, respond using interactive voice response (IVR) systems, or enter data into the court's secure website listed on the summons.

Variations in juror summonses are endless. However, during a conversion to a one-step summoning process, some courts lament the difficulty of combining all of the information from the juror questionnaire and the summons into one relatively manageable document. The NCSC recommends that the court review each element contained on the current forms to determine whether it is a unique and essential element. Some elements may be duplicative, and hence amenable to consolidation. Other elements may be more appropriately referenced on the court's website than in the mailed document.

Calming the waters

Senior court administration and the jury management staff recognize changes in the process. Judges and lawyers, on the other hand, rarely notice the difference, if at all. Nevertheless, it is advisable to provide adequate notice to the trial bench and bar with information about the pending conversion to a one-step jury process so that the information does not unduly provoke anxiety or alarm. It is not necessary to inform jurors of the change, although a press release to local media describing the successful implementation of the new one-step jury process may be appropriate after the fact. Then you can crow about how much more efficient your jury system has become!

ABOUT THE AUTHORS

Paula Hannaford-Agor is director of the Center for Jury Studies at the National Center for State Courts.

Nicole Waters is a senior research associate at NCSC whose work includes examining the policy and social implications of jury procedures. For more information on the Center for Jury Studies and its work, visit www.ncsc-jurystudies.org.

NOTES

1. Figure 1 is based on hypothetical data. The average jury yield information reflects the national average reported in the NCSC *State-of-the-States Survey of Jury Improvement Efforts* (April 2007). Actual day-to-day yield variation depends on local court conditions, especially non-response and failure-to-appear rates.