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ONE DAY/ONE TRIAL OR A ONE WEEK TERM OF JURY SERVICE: THE MISLEADING MARKETING OF MODERN JURY MANAGEMENT SYSTEMS

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Virtually any citizen who has been called for jury duty would agree that courts have, for far too long, uncritically accepted and relied upon woefully antiquated systems of jury management. As instigators and managers of such systems, courts have burdened jurors' schedules with terms of service ranging from weeks to months.¹ As a result, the general public tends to view jury service as a frustrating waste of time.² Wasted time and resources burden court budgets as well, particularly during the litigation explosion of contemporary times.

It is not surprising that advocates for modernizing archaic systems of jury management³ have moved from backstage to limelight in recent

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1. *E.g.*, two weeks in Illinois, ILL. REV. STAT. ch. 78, § 10 (1977); until 1978, one year in California, CAL. CIV. PROC. Code § 210 (West 1954), now for such time as established by local rule. *Id.* (West Cum. Supp. 1978). One study found that most courts averaged about 10 days of service. NATIONAL CENTER FOR STATE COURTS, FACETS OF THE JURY SYSTEM: A SURVEY 32-33 (1976).

2. Every year thousands of citizens are summoned for jury duty, many of them expecting that the world of the courtroom furnishes the excitement and gratification which flows from participating in the dispensing of justice. The sad fact, however, is that an unconscionable amount of the average juror's time is wasted waiting to be called for service in a particular case. Indeed, sometimes a prospective juror is never selected to participate in a single case during his several weeks of duty.

Kaufman, *Courts in Crisis: Progress Versus Intransigence*, 52 A.B.A.J. 1026, 1028 (1966).

3. We venerate medieval England as the originator of trial by jury. Antiquity contains not only the inscrutable origins of the jury as a legal institution, but also venerable examples of the jury system in operation. Such examples can make telling points on the state of jury management today. Consider the following description of an old English court beginning its new term:

When the justices begin their session they have before them the sheriff, the coroners, and the bailiffs of the hundreds and liberties. They have before them what is in theory 'the whole country,' that is to say, all the suitors of the county court who have neither sent excuse nor failed in their duty. They have before them a jury of twelve men representing

years. The primary rubric for this welcome reform movement has become known as "one day/one trial." This system limits an individual's jury duty to either a single trial or, if the attorneys involved do not select the juror to hear a trial, to no more than one day in the courthouse for voir dire. One day/one trial systems also invariably adopt a host of modern jury management techniques as part of the plan reducing a juror's term of service.

Advocates for one day/one trial herald the system as a valuable device to increase public satisfaction with jury service while at the same time providing substantial cost savings to courts. They maintain that these savings inhere in the most carefully tailored, efficient juror usage that one day/one trial produces.⁴ Encouraged by publicity and grants from the Law Enforcement Assistance Administration (LEAA) of the United States Department of Justice, court after court in recent years has adopted one day/one trial as the cornerstone of a reformed jury management procedure.⁵

In a commendable attempt to modernize jury management nationwide, the LEAA and other reformers have mistakenly advanced one day/one trial as the most desirable, if not the exclusive, system of jury management

each hundred; the boroughs, and some privileged manors, also send juries. The process whereby these juries were selected was this: the bailiff of the hundred chose two or four knights who chose the twelve. . . . Thereupon the juries of the various hundreds are sworn. The oath that they take obliges them to say the truth in answer to such questions as shall be addressed to them on the king's behalf and to obey orders. Then . . . days are given them for bringing in their verdicts. The justices are opening what will be a prolonged session; it may well last for a month and more. Some of these juries will not be wanted again for many days.

2 F. POLLOCK & F. MATTLAND, *THE HISTORY OF ENGLISH LAW BEFORE THE TIME OF EDWARD I* 645-46 (2d ed. 1898).

The example shows both how far we have traveled and how little we have progressed in various aspects of jury administration. With evolution away from "key-man" systems of jury selection, American jurisdictions less frequently place the selection of jurors in the hands of modern aristocrats, guided solely by their own standards. They do, however, often follow the practice of having the court schedule many litigants to have their claims tried at the same time, and then summoning as many jurors as those litigants might possibly need over the next two weeks or month it actually takes to try the scheduled cases. If not selected for trial on any given day during their term of service, the court might send fortunate jurors home, with instructions to return on a certain date. Less fortunate jurors remain in the courthouse at the disposal of litigants and judge each day of their jury term, a practice grossly inefficient of juror time and of court resources.

4. Canham, *One Day One Trial*, 16 *JUDGES' J.* 34 (Summer 1977); "One day/one trial" ends long jury terms, 65 *A.B.A.J.* 894 (1979); *Making Jury Duty Less of a Trial*, *MCCALLS*, April 1979, at 53.

5. The National Institute of Law Enforcement and Criminal Justice, an arm of the LEAA, designated the Wayne County (Detroit) program an "exemplary project," thereby officially encouraging its adoption by other courts. K. CARLSON, A. HALPER & D. WHITCOMB, *ONE DAY/ONE TRIAL: AN EXEMPLARY PROJECT* iii (NILECJ ed. 1977) [hereinafter cited as *One Day/One Trial*]. The LEAA will also provide incentive grants to courts willing to adopt one day/one trial. Center for Jury Studies Newsletter, No. 1, at 1 (Jan. 1979).

reform. However, as its name suggests, one day/one trial actually addresses only one aspect of reform: the length of time that jurors serve. No inherent contribution to cost savings inures from the adoption of one day/one trial systems. Savings accrue instead from the implementation of several other modern techniques which are not directly related to the term of trial service. In fact, one day/one trial systems tend to reduce potential savings because summoning and processing costs are increased. Moreover, one day/one trial systems may actually make the term of juror service *too short*, producing jurors more dissatisfied overall with their experience than they would be if their time of service were longer. In this context, this article explores the merits of a one week term of jury service as an alternative superior to a one day/one trial service term.

I. PROBLEMS OF OUTMODED JURY MANAGEMENT

A growing demand for jury trials, coupled with antiquated inflexibility in jury administration, is steadily increasing the costs of jury service for the courts, for individual jurors, for litigants, and for society. Growing demand for jurors means courts must spend more on jury administration, no matter what system they use. Antiquated procedures in many contemporary systems, however, ensure that many extra dollars are wasted. Streamlined methods of jury administration promise cuts in expenditures, and at the same time reduce or eliminate many of the unnecessary financial and psychological burdens an inflexible system imposes upon members of the public called to perform jury service.

A. *Problems for Court Systems*

The major burden that inefficient jury administration imposes on court systems is financial. Inefficiency increases cost because courts use more resources than necessary to maintain an adequate supply of jurors for the demands of normal trial schedules. Of course trial delay, a perennial problem for both litigants and the courts, is not directly amenable to solution through jury administration. However, improvements may have an indirect effect of reducing trial delay.⁶ An efficient system could permit courts to use savings to hire more judges.

The financial cost of inefficient use of jurors' time is considerable. One study found that in a nine-judge city court, the system used less than 40% of jurors' time productively for voir dire and trial during a week.⁷ A system of identical efficiency, which pays 100 jurors \$10 a day for 250 days, would waste \$150,000 a year. While perfect efficiency is impossible,

6. Wayne County found that its annual number of trials increased 24%, from 428 to 530, after adopting its one day/one trial system. *One Day/One Trial*, *supra* note 5, at 52.

7. BIRD ENGINEERING-RESEARCH ASSOCIATES, INC., A GUIDE TO JUROR USAGE 2-4 (GPO ed. 1974) [hereinafter cited as *Juror Usage*].

and may even be undesirable,⁸ experience has shown that court systems may nevertheless save substantial sums when they make concerted efforts to reduce wasted juror time. For example, the hypothetical court above would save \$62,500 if it reduced full time equivalent summoning by 25%. In real life, the Wayne County (Detroit), Michigan, courts reported payroll savings of almost \$330,000 in a single year after improving juror use.⁹ DuPage County, Illinois, courts, which are using a one week term of service, have reported a payroll savings of \$20,000 per year, or about 10% of their annual juror payroll.¹⁰

Oversummoning jurors also increases court administrative costs. The court system must pay for extra notices of service, extra evaluation of juror qualifications, extra considerations of excuse or deferral, extra mileage fees, and extra paychecks. If the court system has decided to provide more juror amenities, such as free parking, coffee, or lunches, it must also absorb these expenses.¹¹

Finally, if the system of jury administration produces dissatisfied jurors, they will leave the courtroom carrying a poor image of the judicial system back into society. The image may or may not be justified, but its existence weakens society's consensus about the legitimacy of judicial authority, on which judicial power ultimately depends.¹²

B. Problems for Individual Jurors

The greatest problem facing many prospective jurors is surely the fact that jury service will cost them a substantial amount in lost wages. Illinois courts, for example, generally use a two-week term for jury service¹³ and generally pay their jurors about \$10 a day downstate,¹⁴ and \$15 a day in Chicago. This amounts to \$100 to \$150 in gross pay for a two-

8. "[T]here is no simple standard for identifying what is wasted and what is useful juror time. The pressure of a waiting jury which forces litigants to a settlement of a case disposes of the case just as surely and completely as if the jury had rendered a verdict." F. MERRILL & L. SCHRAGE, *A PILOT STUDY OF UTILIZATION OF JURORS* 4 (A.B.A. ed. 1970).

9. *One Day/One Trial*, *supra* note 5, at 54.

10. Telephone interview with Edward Ludwig, Project Director, DuPage County Jury Management Study Project (Oct. 16, 1978).

11. Courts are beginning to provide such amenities as one method of easing the burdens of jury service.

12. See Kaufman, *Helping the Public Understand and Accept Judicial Decisions*, 63 A.B.A.J. 1567, 1567 (1977).

13. Effective October 1, 1977, for single-county circuits, the statutory requirements of a two week term for petit jurors was amended to allow terms of service set by judicial directions. ILL. REV. STAT. ch. 78, § 10.1 (1977). This amendment in practice retains the two-week requirement for most of the state because only Cook and DuPage counties, consisting of Chicago and some suburbs, are single-county circuits. See ILL. REV. STAT. ch. 37, § 72.1 (1977).

14. Based on telephone interviews conducted in October, 1978, with various circuit court offices. Per diem rates for jurors were: Cook County, \$15; DuPage County, \$10; Winnebago County, \$12; Peoria County, \$7.50; Champaign County, \$10; McLean County, \$12; Macon County, \$10; Sangamon County, \$10; and Madison County, \$10.

week period. To a person whose employer does not absorb the cost of lost pay, the financial hardship may be substantial.

Jury duty is also a serious, though temporary, infringement on personal freedom. Although jury duty is an undisputed obligation of citizenship, courts should not impose unnecessary burdens on the persons government exists to serve.

Another problem is the boredom and frustration that await jurors who arrive at the courthouse ready and eager to serve. Although studies give varying weights to the correlation between wasted time and juror dissatisfaction, they all indicate that a substantial number of jurors share a dislike of wasted time.¹⁵ These studies also indicate that jurors leave service with more positive feelings about the court system if they have heard a trial.¹⁶ A system that requires jurors to spend an inordinate amount of time doing nothing but waiting adds the insult of institutional insensitivity to financial injury.

C. Problems for Litigants

Logic and common sense, rather than empirically tested fact, indicate the problems inefficient jury administration poses for litigants. The personal hardship jury duty imposes inevitably leads to a high excusal rate when voters receive their summons.¹⁷ This high excusal rate indicates that the general composition of juries could change, quite possibly for the better, if courts reduced hardships and thereby the rate of excusal. The quality of jury decisionmaking also could suffer from inefficient jury administration. Some experts believe that lengthy terms of service may lead to jurors hearing too many trials. Under this view, jurors could begin to accord less weight to the evidence placed before them, and more weight to extraneous matters, such as the personal style of an attorney.¹⁸ Additionally, there is some concern that the time demands and many minor irritations of jury service could produce secret hostility toward the system which could adversely affect a juror's ideal propensity toward neutral, detached decisionmaking.¹⁹ Finally, inefficiency in jury administration results in an important indirect burden on litigants. If a court system could use savings from increased efficiency to hire more judges to hear jury trials, the delay facing litigants who demand a jury trial could be shortened.

15. A Wayne County survey found that 35 to 45% of jurors named "sitting and waiting" as a disappointment of jury service. JURY REORGANIZATION PROJECT, CASE STUDY: ONE DAY/ONE TRIAL JURY SYSTEM 20 (Third Judicial Circuit Court, 1207 City-County Building, Detroit, Michigan 48226 (1976)) [hereinafter cited as *Case Study*].

16. Allen, *Attitude Change Following Jury Duty*, 2-3 JUST. SYS. J. 246, 246 (1977); Pabst, Munsterman & Mount, *The Myth of the Unwilling Juror*, 60 JUD. 164, 164-65 (1976).

17. This effect is demonstrated by the dramatically higher yield rates court systems generate when they reduce the term of jury service. See note 74 *infra*.

18. See Canham, *One Day One Trial*, 16 JUDGES' J. 34, 51 (Summer 1977).

19. *Id.*

D. Problems for Society

Inefficient jury administration imposes unnecessary financial costs not only on the court system, but also on society's economic productivity. Whether or not employers keep employee jurors at full pay and pass on the cost to consumers, they must regard the employee's service as an absence of productivity. A person sitting in a jury box is not building bridges, serving customers, manufacturing products, or moving paperwork.

Society also loses when too few persons bear too large a share of the obligations of jury duty. When jurors leave jury duty substantially dissatisfied, society loses the benefits of a positive democratic experience. The same holds true when society fails to call a person as a juror.²⁰ A system that reduces the length of service for individual jurors must necessarily call more total jurors in a year. It would be a serious mistake to pass over the fact that more members of the community would experience personal involvement with the judicial system. The stability of a democratic society based on legal order depends on a continuing consensus between government and governed.²¹ The jury system provides an exercise in democracy at its most fundamental level and is the prime instrument for consensually resolving specific ills arising in society. As Tocqueville observed more than 150 years ago, jury service fortifies not only judicial, but all political institutions in a democracy.²²

II. MODERN MANAGEMENT MEETS THE JURY

A. One Day/One Trial: One Solution

The roots of one day/one trial extend to the watershed year of 1971 when Harris County (Houston), Texas adopted its "firecracker" system of juror usage. In adopting this plan, a major metropolitan court system ended its reliance on traditional lengthy terms of jury service and instituted a

20. See G. MUNSTERMAN & W. PABST, A GUIDE TO JURY SYSTEM MANAGEMENT 1-5 (GPO ed. 1975) [hereinafter cited as *Jury Management*] (indicating that most individuals regard actual service on a jury as a rewarding experience).

21. A BICKEL, THE MORALITY OF CONSENT 100-02 (1975).

22. The jury contributes most powerfully to form the judgment, and to increase the natural intelligence of a people; and this is, in my opinion, its greatest advantage. It may be regarded as a gratuitous public school ever open, in which every juror learns to exercise his rights, enters into daily communication with the most learned and enlightened members of the upper classes, and becomes practically acquainted with the laws of his country, which are brought within his capacity by the efforts of the bar, the advice of the judge, and even by the passions of the parties. I think that the practical intelligence and political good sense of the Americans are mainly attributable to the long use which they have made of the jury. . . . It is . . . by means of the Jury . . . that the American magistrates imbue the classes of society with the spirit of their profession. Thus the Jury, which is the most energetic means of making the people rule, is also the most efficacious means of teaching it to rule well.

1 A. DE TOCQUEVILLE, DEMOCRACY IN AMERICA 337-39 (Schocken ed. 1970).

program of modern jury management techniques. Harris County built these techniques around computerized juror summoning and a term of juror service defined by participation in a single voir dire panel. If screening lawyers select the juror for a trial, the juror's term of service ends immediately after that trial has ended. If, on the other hand, lawyers do not select an impaneled juror during voir dire, the juror's term of service ends immediately after the voir dire examination with the juror free to go home.²³

Houston's "firecracker" system in 1975 begat a close variant in Wayne County, Michigan, courts. The Wayne County system has become widely known in court-administration circles as exemplifying one day/one trial.²⁴ Like Houston's "firecracker" system, if lawyers select a juror for a trial, one day/one trial ends the juror's term of service after that trial. Unlike the "firecracker" system, however, one day/one trial dismisses a juror who has not been selected for a trial only after a full day of impanelment proceedings. This distinguishing feature allows for a prospective juror to have more than one opportunity to be seated on a panel to hear a trial before the day ends.²⁵ In addition to Houston and Detroit, jurisdictions that have adopted one day/one trial include: Buncombe County (Asheville), North Carolina; Allegheny County (Pittsburgh), Pennsylvania; Middlesex County (Cambridge), Massachusetts; Montgomery County (Rockville), Maryland; the Maybrook facility of Cook County (Chicago), Illinois; Dallas County (Dallas), Texas; Anchorage, Alaska; East Lansing, Michigan; and Colorado Springs, Colorado. Six large Michigan counties intend to convert to one day/one trial by 1981, and the United States District Court for the Eastern District of New York has announced its intended adoption.²⁶

23. TEX. REV. CIV. STAT. art. 6, §§ 2094a, 2100 (Vernon Cum. Supp. 1978-79). Judge Thomas J. Stovall coined the term "firecracker jury" to illustrate the one time use of jurors. J. STEVENS & G. MUNSTERMAN, *JUROR USAGE IN HOUSTON, HARRIS COUNTY, TEXAS* 1 (NILECJ ed. 1974).

24. *One Day/One Trial*, *supra* note 5, at 3.

25. A Michigan statute defines one day/one trial as:

A system of jury selection whereby:

(i) Jury service is completed when the first trial to which the juror is sworn is concluded regardless of the length of the trial or the manner in which the case is disposed.

(ii) A juror who is challenged shall be returned to the jury pool and shall be subject to voir dire examination in other cases for the remainder of that day.

(iii) A juror who remains unseated and unchallenged at voir dire examination shall be excused at the end of that day. A juror may be held over for another day for continuation of voir dire examination at the discretion of the trial judge.

MICH. COMP. LAWS ANN. § 600.1371 (Cum. Supp. 1979).

26. 65 A.B.A.J. 894 (1979). See also "Suggestions for Improving Juror Utilization in the United States District Court for the Eastern District of New York," INSTITUTE OF JUDICIAL ADMINISTRATION 1 (1971):

The total number of jurors called into the court on a given day is almost always larger than the number actually needed for voir dire. Many scheduled jury trials do not take place due to postponements,

Any term of jury service must balance the interest of the courts in having a readily available supply of jurors against the interest of individual jurors in having as short a term of service as possible. A one day/one trial system, like any program of jury modernization, seeks to make jury administration more economical for courts and less onerous and more satisfying for individual jurors, as well as more sensitive to the needs of litigants. The one day/one trial system, with its emphasis on improving the lot of individual jurors, tips the scale substantially in favor of short terms of service. Thus the major concern of such systems, at least in the publicity, is the plight of the juror on whom "lengthy terms of service impose a tremendous inconvenience or economic hardship" and for whom "[t]he commitment of a two-week, 30-day, or longer, service causes disruption in domestic schedules, personal plans and business activities."²⁷

Another feature, paradoxical at first, undoubtedly proves to be a stronger motivation for adopting one day/one trial than does concern for jurors: it is beyond dispute that one day/one trial systems experience a large reduction in juror payrolls. To illustrate, in Wayne County, Michigan, when annual juror usage under its one day/one trial system rose from 2,800 to 24,000, an increase obviously followed with respect to the total impanelment costs for the system. Nevertheless, Wayne County found that these costs were more than offset by a carefully planned decrease in juror summoning.²⁸ Thus, while the system used more individual jurors, it also used them more efficiently than before. The net result was a significant decrease in juror payrolls.

This seemingly paradoxical result is explained as follows: Annual juror payrolls depend on the number of per diem payments a system makes, not the number of individual jurors that receive the payments. A juror payroll therefore depends on the number of jurors per day over a given time span, or juror days, the system consumes. For example, 100 jurors paid \$10 a day for serving 5 days each produces a payroll of \$5,000—

waivers of juries, or settlements and guilty pleas. Guidelines based on the predictability of these factors have been developed to aid the jury staff in deciding how many jurors to call in to fill the judges' needs. Under the guidelines the number of jurors called in could be reduced by almost 40% without disrupting the supply of jurors for voir dres. The guidelines would make possible savings of 11,000 juror-days and \$250,000 in jurors' fees each year in the Eastern District of New York.

Savings could be vastly increased if judges would agree to cut down the number of days on which jurors would be available for voir dire. If only two days each week were designated as "jury days" and if judges would schedule several voir dres in succession on such jury days, the calling of jurors could be cut to less than one-half present size. Total annual savings could then be 16,390 juror-days and \$380,000.

27. Canham, *One Day One Trial*, 16 *JUDGES' J.* 34, 36 (Summer 1977). A secondary concern is that the longer jurors serve, the harder it is for them to devote detached and undivided attention to litigants. This concern motivated the Houston courts to excuse jurors, with credit for fulfilling their service obligation, after only one voir dire. *Id.* at 36-37.

28. *One Day/One Trial*, *supra* note 5, at 30.

the same amount produced by 50 jurors paid \$10 a day for serving 10 days each. Wayne County's one day/one trial system, which summoned over eight times as many jurors as its old system, saved the equivalent of \$288,000 by reducing its total number of juror days—even after subtracting increased administrative expenses.²⁹

One day/one trial systems generally report no inability to provide jurors on schedule for voir dire every day.³⁰ In Dallas and Detroit, jurors report at 8:30 a.m. and are ready for voir dire by 9 a.m. In Asheville, North Carolina, jurors report at 9 a.m. and are ready by 9:30 a.m. Pittsburgh reports a similar preparation time. East Lansing, Michigan, puts all its jurors on telephone standby and directs jurors to call the courthouse at 9:15 a.m. to see if they should come in that morning. If they must, they are at the courthouse by 9:45 and prepared by 10:15. At the Maybrook facility in Cook County, Illinois, jurors reporting at 9:30 are available by 10:15, although frequently jurors are not requested to report to a courtroom until the afternoon. With respect to each of the foregoing systems, jurors are summoned directly to the court complex in which they sit. While overall these reported times may very well be shorter than what actually occurs, it seems that orientation time, if begun early enough, is not a serious impediment to a one day/one trial system.

Pittsburgh has developed a unique way to reduce start-up time on its busiest days, which are the Mondays beginning a new jury term. It summons its Monday jurors to court on the preceding Friday for voir dire. Those jurors not selected for trial complete their service as usual in a one day/one trial system, while jurors selected for trial go home and report the next Monday, ready to begin hearing the case. A similar system is employed in the District Court for the Central District of California.³¹

29. *Id.* at 54-55.

30. This information, together with ensuing unattributed information in this section on techniques employed by specific court systems, was obtained by telephone interviews on April 19-20, 1979, with the following persons: Harry Campen, Trial Court Administrator, Buncombe County, North Carolina (704) 255-5107; Brian J. Matter, District Court Administrator, 54B Judicial District, East Lansing, Michigan (517) 351-7000; Conny Drake, Director of Jury Services, Dallas County, Texas (214) 749-8217; Agnes Mattern, Administrative Assistant, Harris County District Clerk (713) 221-5754; Charles Starrett, Court Administrator, Allegheny County Court of Common Pleas (412) 355-5410; Pat Jacobs, Circuit Court Administrator, Third Judicial Circuit, Wayne County, Michigan (313) 224-5260; and Mel Martin, Manager of Technical Operations, Alaska State Court System, Anchorage, Alaska (907) 274-8611.

31. *Suggestions for Improving Juror Utilization in the United States District Court for the Eastern District of New York*, INSTITUTE OF JUDICIAL ADMINISTRATION 42, 43 (1971):

In the Central District of California most voir dices take place on Tuesday, which is called "empanelment day." (Since Monday is "Law and Motion Day," there are no trials that day.) Each judge normally schedules several voir dices on Tuesday. . . . If a judge has a single voir dire scheduled, the jury clerk calls in a panel of 35 prospective jurors to report to his courtroom. If he has two or more voir dices scheduled, the clerk calls in a panel of 45. The clerk calls in no more jurors for three

B. Modern Techniques: An Arsenal of Solutions

Although one day/one trial systems embody many of the latest techniques in modern jury management, these techniques are not dependent for their effectiveness on use with a one day/one trial term of service. Any court may benefit from implementing any one of what the LEAA has described as the "Seven Rules of Good Juror Usage"³² or by following one of LEAA's eight guidelines for good jury management.³³

The techniques of modern jury management are best understood when

scheduled voir dres than for two because she assumes at least one of the three voir dres will not take place. If the judge needs extra jurors they are supplied from the balances left over after other judges have completed their voir dres.

Generally the judge conducts his criminal voir dres first, since they usually have more challenges and since this gives the lawyers for the civil cases a chance to discuss settlements. The first jury (12 to 14 jurors) is selected from the panel of 45, and immediately thereafter the second jury is selected from the balance of the panel (now 31 to 33 prospective jurors). Even a third voir dire may be conducted after the second is finished. Some judges delay starting their voir dres until they can use the leftover jurors from voir dres completed by other judges. Thus prospective jurors who are not selected the first round may attend a second and even a third voir dire and may appear before two different judges.

32. The rules are:

- (1) Adapt panel size to jurors needed.
- (2) Do not call panels prematurely or unnecessarily.
- (3) Make special arrangements for exceptionally large panels.
- (4) Stagger trial starts.
- (5) Maintain continuous operation over the week.
- (6) Do not overcall jurors to the pool.
- (7) Dismiss and excuse jurors whenever possible.

Juror Usage, supra note 7, at 3-1.

33. The eight guidelines are:

- (1) Develop a written and comprehensive jury system plan to ensure compliance with the statutes.
- (2) Summon prospective jurors directly and randomly from the master list (voter list or other source), to minimize paper work and unnecessary citizen activity.
- (3) Maintain random order of names as selected from the master list, to give every prospective juror a chance to serve and to maximize cross-section representation.
- (4) Monitor yield of jurors from selection and utilization of jurors during service, to ensure their full involvement with the jury system.
- (5) Make orientation brief (an hour or less), in order to use jurors for trial activity on the same day and to save juror time and court costs.
- (6) Eliminate unnecessary typing and paper work in the jury lounge by using preprinted forms, rapid check-in methods, and photocopy reproduction.
- (7) Maintain communication between the court and jurors by use of the Jury Service Exit Questionnaire, to provide information for corrective adjustments in the jury system and to utilize this source of good will for the courts.
- (8) Adjust term of jury service to ten reporting days or less, to minimize burden on citizens and to reduce the necessity for exemptions and hardship excuses.

Jury Management, supra note 20, at 1-2.

considered in the context of the three stages associated with jury administration. The first stage, juror selection, begins with courts compiling raw data on names and addresses of potential jurors, and ends with jurors arriving at the courthouse to hear trials. The second stage, juror utilization, involves managing jurors during their term of service. The final stage, juror termination, ends the citizen's status as a juror.

1. Juror Selection

Juror selection, the first stage of jury administration, may be further divided into three steps. The first step involves creating an initial, unrefined list of persons who might be available for jury duty. Jury administrators call this list the "master wheel." The second step involves selecting persons from the master wheel and evaluating their fitness for jury duty. The list of persons adjudged fit comprise the "qualified wheel." Some courts do not use this middle step. The final step involves summoning jurors from the qualified (or master) wheel into court for actual jury duty.

a. Multiple source lists for jurors

The report of the 1977 Chief Justice Earl Warren Conference on Advocacy in the United States recommended that courts attempt to impanel juries which are more representative of their communities. The report suggested that, in addition to voter registration lists, court systems use city directories, motor vehicle registrations, driver's license records, tax rolls, telephone directories, and welfare rolls as sources from which to summon potential jurors.³⁴ While this technique promotes fairness in the juror selection process more than efficiency, it also tends to increase the pool of qualified jurors in a community. This factor takes on additional importance as more jurors are summoned in a system that adopts a reduced term of service. As of 1975, statutes in seventeen states, including Missouri,³⁵ directed that courts use multiple source lists. Five of these statutes substantially comply with the Uniform Jury Selection and Service Act which provides for multiple sources. In addition, as of 1975, three states allowed multiple source lists to supplement use of a primary source, usually a voter registration list.³⁶

A system relying solely on voter registration lists excludes from consideration for jury duty a large number of persons who do not register to vote. Indeed, some persons fail to register to vote in order to escape jury service.³⁷ A census survey conducted after the 1974 congressional elections indicated that only about 62% of the nation's eligible voters registered

34. ANNUAL CHIEF JUSTICE EARL WARREN CONFERENCE ON ADVOCACY IN THE UNITED STATES, THE AMERICAN JURY SYSTEM: FINAL REPORT 22 (1977).

35. RSMo § 494.240 (1978).

36. NATIONAL CENTER FOR STATE COURTS, *supra* note 1, at 12-13.

37. *Jury Management*, *supra* note 20, at 2-3.

to vote. The survey also pointed to some broad disparities in proportionate voter registration among various demographic groups.³⁸

The greatest disadvantage to using multiple source lists is the cost of combining multiple lists into one master wheel and then eliminating as many duplications as possible. Some problems also arise with use of automobile-related records, as the minimum legal age for driving is often below the minimum age for jury service. Multiple source systems combine and eliminate duplications either by hand, by computer, or by both, but this is obviously an area where computerization is quite helpful.³⁹

Courts surmounting this difficulty have produced vast increases in the number of persons comprising their master wheel.⁴⁰ In Colorado, for example, the number of names on 1974 state master wheels, roughly 2.4 million, was 96% greater than the 1.2 million names on state voter registration lists.⁴¹ Courts in North Dakota, Idaho, California, Alaska, and Kansas experienced similar results when they began to use multiple source lists.⁴²

No study has shown conclusively that use of multiple source lists produces a more representative cross section of the community sitting on juries.⁴³ As a general proposition, however, lack of balance would seem to decrease as inclusiveness increases. Moreover, one study indicates that Denver, Colorado, which has a long history of multiple source use, produced the best proportion of young persons for jury service of all jurisdictions studied.⁴⁴

b. Qualification by questionnaire

Jury commissioners have traditionally determined whether a person selected from the master wheel is qualified to serve as a juror. At one time, they relied on summoning citizens for personal interviews about their qualifications. Now, however, courts have found that mailing questionnaires for return by prospective jurors is a far more efficient method to determine minimum qualifications. The questionnaires may be computer-generated. While most questionnaires are relatively brief, some include

38. For example, 73% of persons aged 45 to 64 registered to vote, while only 48% of persons aged 18 to 34 registered. Sixty-four percent of whites registered, compared to 35% Hispanic and 55% black. Seventy-six percent of college graduates, 78% of those making more than \$25,000 annually, and 78% of professional and technical workers registered to vote; while 52% of those with four years or less of formal education, 52% of those making less than \$5,000 annually, and 48% of laborers, registered. Men and women followed the national average at 63% and 62%, respectively. G. MUNSTERMAN, C. MOUNT & W. PABST, MULTIPLE LISTS FOR JUROR SELECTION: A CASE STUDY FOR SAN DIEGO SUPERIOR COURT, app. C. (1978).

39. See *Jury Management*, *supra* note 20, at 2-5.

40. G. MUNSTERMAN, C. MOUNT & W. PABST, *supra* note 38, app. A, at 13.

41. A sample evaluation of the combined list indicated that nine percent of the names were duplications. *Jury Management*, *supra* note 20, at 2-6.

42. G. MUNSTERMAN, C. MOUNT & W. PABST, *supra* note 38, app. A, at 7-12.

43. *Id.* at 7-13.

44. *Jury Management*, *supra* note 20, at 2-4 n.2.

up to fifty questions. Many courts provide copies of the completed questionnaires to attorneys for use during voir dire.⁴⁵ The jury questionnaires are also sometimes used to keep track of jurors as they are assigned to panels and dispatched throughout the local courthouse. Many systems that qualify by questionnaire grant personal interviews only to hear requests for hardship excuses.

Some systems, including those in Houston, Dallas, and Anchorage, summon jurors directly from a master wheel without creating an interim qualified wheel. Elimination of this extra step saves money and finds justification in the general trend of jury modernization to grant fewer excuses and do away with blanket categories of exemptions.

c. Precision summoning

A court can cut juror payrolls if it reduces its margin for error in summoning jurors. For example, an efficient court may reduce the number of jurors it needs on a given day from 100 to 90. If it allows roughly a 10% margin for error, it then summons 100 jurors instead of 110. If it reduces the margin for error to about 5%, however, it need summon only 95 jurors, a total savings of 15 jurors per day. If each juror is paid \$10 a day, this amounts to a savings of \$750 per week or \$39,000 per year.

A jury management system can achieve savings by summoning fewer jurors, but only at some risk of trial delay if the system fails to summon an adequate number of jurors. The prerequisite to more precise summoning, therefore, is gathering and analyzing data on juror use over a period of time. In this way, courts can develop a more accurate picture of the pattern of juror demand. Additionally, modernized jury management systems must keep a continual watch on current juror usage, based on information provided by jury clerks, in order to spot short-term trends. Jury administrators have developed forms for this purpose from which they can calculate standard indices of juror usage.⁴⁶ In order for precise summoning to be effective, it must be coordinated with other modern techniques, including the use of strict scheduling and standby jurors.⁴⁷

d. Computerized selection

Many jurisdictions use computers in creating their master and qualified wheels of prospective jurors. A computerized court system builds its master wheel on a computer tape instead of recording names on paper and keeping them in a revolving drum. A court utilizing this system will choose names for the jury commission to evaluate and qualify by random electronic mathematical selection, rather than by hand selection.⁴⁸ The

45. *Id.* at 2-10.

46. *One Day/One Trial*, *supra* note 5, at 65-71; *Jury Management*, *supra* note 20, at 3-8 to 3-12.

47. With respect to strict scheduling, see text accompanying notes 56-57 *infra*. With respect to standby jurors, see text accompanying note 64 *infra*.

48. *Jury Management*, *supra* note 20, at 2-12.

computerized system also generates and mails papers (such as summonses and questionnaires) the court routinely sends to prospective jurors selected from the master wheel for possible inclusion in the qualified wheel. The system provides the same features for summoning jurors from the qualified wheel,⁴⁹ thereby eliminating much time-consuming paperwork.

Computerization enables courts to monitor the status of their qualified wheel and juror use with accuracy and frequency. Wayne County, Michigan, uses a computer to provide updated information on summons responses, to produce a daily check-in list and payroll tape, to print secondary summonses for jurors who deferred their service, and to process jury trial impanelments and daily case activity.⁵⁰ A computerized system is thus a ready source of information of the probable yield of qualified jurors from a master wheel selection, as well as of the system's demand for jurors over time. This information helps courts tailor more precisely their supply of qualified jurors and summoned jurors, with resulting savings in administration and payrolls. The speed of computerization permits frequent rounds of qualification close to the time when the system will summon the qualified jurors. This procedure produces the highest yield of jurors responding to summons since juror return rates drop as the qualified wheel grows older.⁵¹ At the Maybrook facility in Chicago, the computer prints the checks for jury service, making it possible for every juror to be paid each day before leaving the courthouse.

One day/one trial systems operated on a smaller scale, however, may well do without extensive computerization. The East Lansing, Michigan, municipal court, which runs a total of thirty-six jury trials a year, has its county government generate random questionnaires for mailing to residents. The court develops its qualified list from these computerized mailings, but summons jurors—fifteen a day for eight days a month—manually.

e. Post card summoning

In Illinois, McLean and Peoria counties summon qualified jurors by post card rather than by certified mail, a procedure that reduces mailing costs.⁵² Upon receiving the post card summons, jurors detach a second card, preprinted with postage prepaid, and mail it back to the court. This procedure, known as "double" post card summoning, gives the court an indication of how many jurors will probably show up on the day summoned. It also provides evidence that the juror received a summons in case he fails to appear and becomes subject to penalties. Courts traditionally have relied on far more expensive certified mailing, or even personal service, to serve this function.

Asheville, North Carolina, abandoned its double post card summon-

49. *One Day/One Trial*, *supra* note 5, at 39.

50. *Id.* at 39-40.

51. *Jury Management*, *supra* note 20, at 2-13.

52. The procedure is authorized by ILL. REV. STAT. ch. 78, §§ 10, 10.1 (1977).

ing procedure in favor of a single post card summons, thus saving the cost of postage for the returned postcard. The Asheville system found it could predict juror show-up rates just as accurately by studying past data. It deems the response card of only slight value as evidence of receipt by jurors because a resisting juror is not likely to mail back the second post card. A procedure considered by the Anchorage, Alaska, court system seems a good way to solve the proof of receipt problem. Under its procedure the court will mail a certified summons only to those prospective jurors who did not respond to a post card summons. This procedure allows most summoning through much cheaper mailings, and uses more expensive certified mailings only when absolutely necessary.

Follow-up efforts against nonresponsive jurors vary with the court system. Dallas has no follow-up program, while Asheville follows up on all of its relatively few nonresponsive jurors, either informally by the jury clerk or formally by the sheriff. Pittsburgh increased its response rate significantly by a widely publicized, selective crackdown on nonresponsive jurors.

f. Liberal deferrals but few excusals

Systems that reduce the term of juror service tend to grant far fewer hardship excuses than did their previous systems. This tendency manifests a conscious policy decision to increase the percentage of jurors who are both qualified and available to serve, a policy which is technically known as improving juror yield.⁵³ Such a policy also could increase the representativeness of juries. In DuPage County, Illinois, for example, the courts have eliminated financial hardship as a ground for excuse.⁵⁴ Some jurisdictions have even repealed statutory exemptions for occupational classes, including students, lawyers, doctors, and reporters.⁵⁵ These systems generally take the view that reduced terms for jury service eliminate the hardship from jury duty, and leave only inconvenience. The systems then mitigate inconvenience by liberal deferrals from service.

Some systems, such as those in Anchorage and Houston, allow jurors to request excuses by checking a box on the questionnaire they must return to the court. Others, such as those in Pittsburgh and the Maybrook court facility in Chicago, make no mention of excuses or deferrals in any mailings to jurors. Asheville, North Carolina, runs an "excuse court" which grants about half the systems excuses, and before which citizens must appear personally. It grants the other half of excuses, primarily medical, by letter or telephone. Citizens rarely will request excuses or deferrals when they show up at court on the day of their summons. In the typical situation the jury commissioner, jury clerk, or presiding

53. *One Day/One Trial*, *supra* note 5, at 71-72.

54. Telephone interview with Edward Ludwig, Project Director, DuPage County Jury Management Study Project (Sept. 19, 1978).

55. *Jury Management*, *supra* note 20, at 2-12.

judge will pressure those summoned to serve, but jurors may be deferred or excused if the demand for jurors is low that day.

2. Juror Utilization

a. Strict trial scheduling

A conscious policy of trial scheduling can reduce payroll costs through either of two approaches. One approach attempts to schedule trials continuously so that a second trial begins almost as soon as the first is finished. Continuous operation tends to level the peak demand for jurors, and thus reduce the number of jurors who must be called in order to meet peak demand. Under this approach:

[T]he number of jury trial starts is about the same on each day of the week. Bench trials, motions, pretrial conferences, and other judicial activities seem to fill in the voids rather than to dominate the scheduling of jury trials. This continuous operation spreads out trial starts and automatically provides staggering starts. Panel selection is randomly intermeshed with trials, and juror usage is maintained at reasonably high levels throughout the period. With continuous operation, the theoretical maximum use of juror time—about 70%—can be attained.⁵⁶

A second, less rigorous approach also can achieve significant savings. This approach eliminates some of the large blocks of wasted juror time that arise in almost all systems because most trials commence at the beginning of the week. A court system can save a substantial sum simply by scheduling all trials to commence at the beginning of the week. For example, a series of trials all scheduled to begin on Monday of a given week would start trial as reached on Monday, Tuesday, or Wednesday. If no trials are allowed to begin on Thursday or Friday, the only jurors required on those days are jurors hearing trials previously begun. DuPage County, Illinois, generally follows this approach. Trials are permitted to begin on Fridays only in rare circumstances, and then only with the express permission of the chief judge.⁵⁷ Additional savings would accrue if DuPage County decided to prohibit beginning jury trials on Thursdays as well. By not starting trials at the end of the week, the system eliminates payments to jurors who must be kept available in case a trial should start on an "off" day.

While these two approaches differ greatly in the amount of administrative sophistication necessary to implement them, they both require a certain level of centralized scheduling authority. From the standpoint of efficiency, the worst procedure is to allow individual trial judges unfettered control of jury trial starts. While some independent judges may oppose centralized scheduling in principle, the hard fact is that this is the area

56. *Juror Usage*, *supra* note 7, at 3-7.

57. Telephone interview with Edward Ludwig, Project Director, DuPage County Jury Management Study Project (Sept. 19, 1978).

with the best potential for reducing juror payrolls. Court administrators in Asheville and Pittsburgh, however, note that a major consequence of the adoption of a one day/one trial system is to make judges much more aware of and concerned about efficient juror use. In any event, the adoption of a conscious, centrally administered scheduling plan is crucial to achieving substantial cost savings, and consequently is too important to be defeated by the predilections of individual judges.

b. Standardized enrollment and orientation

Modernized court systems adopt several methods to inform jurors of court procedures and to orient them to their duties as jurors. Such methods reduce repetitive and time-consuming duties for judges who conduct many jury trials. Sending a juror questionnaire with the qualification mailing or with the summons eliminates time wasted when jurors provide such information at the courthouse. Many courts send in advance of service a juror information sheet which provides the location and a diagram of the courthouse, as well as practical information on available facilities, parking, and duration of service.⁵⁸ Many states publish a juror handbook, customarily included with the summons to service, which describes the role of the juror. Finally, some systems use a slide show or movie to orient jurors on the responsibilities of jury duty once they arrive at the courthouse. Such systems precede the film with personal remarks by a judge or other court official. The purpose of such remarks is primarily to emphasize the importance of the jurors in the court system.⁵⁹

c. Flexible impanelment procedures

Smaller panel sizes give courts added flexibility in calling jurors for voir dire examination, thereby enabling a judge to order a number of jurors that more closely approximates the number that will actually be needed for voir dire. This reduces the system's total demand for jurors. For example, assume a court uses panels of 40 veniremen and the daily peak demand is for 3 panels. The court thus has a total daily demand for 120 jurors. If the court can reduce its panel size to 30, it can reduce its daily demand for jurors to only 90.⁶⁰ The panel size generally must allow for 12 jurors, 2 alternates, a full number of peremptory challenges, and a safe number of challenges for cause. Courts that keep records on panel sizes and numbers of challenges have an informed basis for judging optimum size for panels.⁶¹

Larger courts may recycle jurors as an easy method to increase the

58. *Juror Usage*, *supra* note 7, at 6-12.

59. *One Day/One Trial*, *supra* note 5, at 32-34; *Jury Management*, *supra* note 20, at 3-2 to 3-3.

60. *See Juror Usage*, *supra* note 7, at 3-2.

61. An optimum panel size should provide the necessary number of jurors in at least 95% of voir dire examinations. *Id.* at 3-3. Wayne County has an average panel size of 15 and Harris County an average panel size of 25. NATIONAL CENTER FOR STATE COURTS, CALIFORNIA JURY SELECTION AND MANAGEMENT SURVEY 36 (1976).

size of the jury pool from which panels are taken. As instituted in Wayne County, Michigan, every juror excused by the judge immediately returns to the jury pool rather than waiting for impanelment of the full jury.⁶² Smaller courts may achieve the same goal by staggering their trial starts on a given day so that the remainder of the panel from the first voir dire makes up a portion of the panel for the second voir dire, and so on.⁶³

Dallas and Asheville built flexibility and speed into their impanelment procedures as a byproduct of computerized summoning. The computer selects names at random and numbers each summons sequentially. Then, when the jurors are in the jury room ready for panel assignments, the system puts together a panel simply by proceeding in numerical order. Panels can be as large as an individual judge wants, and the pre-assigned computer randomization eliminates the time needed for a random drawing to build jury panels.

d. Standby jurors

A technique whereby the court calls a certain number of citizens as standby jurors is the linchpin to cost savings in any modern system. Standby jurors are instructed, on their summons, to call the courthouse on a certain evening instead of reporting to the court for service the next day. When they do so, they listen to a prerecorded message telling them whether they must come in to serve the next day. Standby jurors do not receive pay for the days they are on call but not summoned for actual service. In Wayne County, Michigan, standbys who are not summoned for actual service are resummoned in fifty-six days as regular jurors.⁶⁴ Standby jurors ensure that the court will have a sufficient number of jurors, based on its best estimate the afternoon before the next working day, without the payroll and mileage costs that accrue if the extra jurors are summoned to the courthouse.

e. Dismissals without pay

In all court systems, the greatest demand for jurors falls in the early part of the week, particularly Monday. If the majority of trials began on Monday, there would be a reduced demand for jurors on Tuesday to fill the few panels required. The need for jurors on Wednesday would once again increase as the Monday trials were completed. When the term of jury service is one week or more, a court could dismiss the unused jurors on Monday, directing them to report on Wednesday; the system would save the cost of Tuesday's payments to jurors. While this raises a potential problem of juror resentment, dismissing jurors when they are not needed may indicate to the juror that the court believes juror time to be valuable, and thus could increase juror respect for court management.⁶⁵

62. *One Day/One Trial*, *supra* note 5, at 35.

63. *Jury Management*, *supra* note 20, at 3-8.

64. *One Day/One Trial*, *supra* note 5, at 103.

65. *Juror Usage*, *supra* note 7, at 3-11.

3. Juror Termination—Exit Questionnaire

Upon completion of a juror's time of service, Wayne County, Michigan, administers both a detailed survey designed to measure jurors' attitudes toward jury duty, and a short questionnaire on how efficiently the system used the juror. Jurors are asked their opinion on various administrative techniques and how they might be improved.⁶⁶ The questionnaire helps administrators gauge how effectively they are implementing management objectives.

III. ONE DAY/ONE TRIAL VERSUS A ONE WEEK TERM

Jury management reform assumes that administrators should work to achieve several distinct but often complementary goals: to make managing the jury system more economical for courts; to make jury duty less onerous and more satisfying for individual jurors; and to promote administrative convenience. A term of service of reasonable length is essential to any program of reform designed to achieve these goals.⁶⁷ Thus, the question to be answered is not whether the term of juror service should be reduced but whether achievement of the goals outlined above can best be achieved with a one day/one trial program or a one week term of service, each incorporating modern jury management techniques.

A. Reducing the Term of Service: A Critical Requirement

Reducing the term of jury service produces distinct benefits to individual jurors, to litigants, to courts, and to society. The benefit to the individual is obvious: a decreased term of service reduces the unpleasantness, inconvenience, and hardship of service.⁶⁸ For litigants, a reduced term of service decreases the possibility that some jurors, having served on a previous trial, will let extraneous considerations unduly influence their

66. *One Day/One Trial*, *supra* note 5, at 151-55; see *Jury Management*, *supra* note 20, at 3-20 to 3-22.

67. The most common terms of reduced service would appear to be either one day/one trial, or one week. One group of experts calls for a term "not to exceed five days unless this would prevent a juror from fulfilling his obligation to a trial to which he has been selected." *Jury Management*, *supra* note 20, app. A, at 3. The model code of the National Conference of Metropolitan Courts recommends a one week term. *Juror Usage*, *supra* note 7, at 6-7.

68. A recent study of juror attitudes toward service in New Jersey, which had a four week term, found that:

[T]he majority of the citizens selected for jury service did not wish to serve for a variety of reasons. Some were prosaic and dealt with, for example, financial and personal hardship. Other excuses were based on loftier motives such as philosophical or religious objections. . . . Jury duty was often described as an obstacle in the daily routine of individuals and an interference in their life. Some jurors viewed the entire process as an ordeal. The intensity of jurors' oppositions to their selection is further revealed by the fact that jurors devised strategies to escape serving.

Richert, *Jurors' Attitudes Toward Jury Service*, 2-3 JUST. SYS. J. 233, 243 (1977).

decisions. Additionally, decreased strain and increased juror satisfaction may lead to more attentive and issue-oriented juries. Finally, the broader base for juror selection that inheres in reducing the term of service could produce juries more representative of their communities.

For courts, a reduced term of service allows greater flexibility for tailoring juror supply to demand. Courts must call enough jurors to meet the peak demand during a specific term of service. The longer the term, the greater the opportunity for wasted juror time due to oversupply in non-peak periods of demand. Conversely, the shorter the time, the more quickly courts can respond to fluctuations in demand for jurors, and thereby reduce wasted time and inflated payrolls. While it is true that standby jurors and dismissal of jurors without pay can grant courts administrative flexibility even in a lengthy, standard term of service, it must be remembered that these procedures constrain the personal freedom of jurors.

For society, a reduced term of service also would increase the number of positive democratic experiences produced by jury duty as courts would need more persons for the same number of trials. A reduced term conceivably would decrease economic losses to society as shorter absences could have a smaller impact on individual economic productivity.

B. Cost Savings

Jury administrators achieve cost savings in two main areas: juror payroll, consisting of per diem payments to jurors; and administration, consisting of all other expenses. The juror payroll offers the best opportunities for large cost savings. Because the amount of the juror payroll depends on total juror-days and not total jurors, any system can reduce its juror payroll simply by calling and using jurors more efficiently.⁶⁹ Since the effectiveness of modern techniques for efficiency do not depend on the term of service, a system can realize juror payroll savings whether its term of service is one day/one trial, one week, one month, or one year.

A policy of disciplined trial scheduling, coupled with the use of telephone standby jurors who do not come into court unless they are told to come by a recorded message the night before,⁷⁰ provides the most significant juror payroll savings. Standby jurors do not receive pay unless they come to court. Advance scheduling⁷¹ allows certainty in decision-making, while standby jurors provide a flexible cushion that allows a court to tailor the number of jurors it will need on any particular day. This technique allows the court to obtain the financial benefits of precision summoning without much of its data-gathering cost. One day/one

69. See text accompanying note 29 *supra*.

70. See text accompanying note 64 *supra*.

71. Scheduling techniques include staggering trial starts during the week in a one week term court in order to level peak demand for jurors. They also include the flexible aspect of one day/one trial itself, which can tailor jurors summoned to the historic daily need for jurors.

trial systems make extensive use of standby jurors, although the technique is obviously suitable for any court system.

Courts with a service term of a week or more can also reduce unnecessary payments by dismissing without pay those jurors who will not be needed until later in the week.⁷² A court also can generate savings by following an elemental DuPage County technique of not beginning trials on Fridays and thus calling in to serve only those jurors already hearing an ongoing trial. If a court adopts such a policy, it can cut its per diem payments, and its juror payroll, by almost twenty percent.

A court can realize some savings in its juror payroll by using the jurors it calls more efficiently, thereby requiring the calling of fewer jurors per day. A court can do this by staggering voir dire starting times and by recycling unused veniremen from one panel to another. This technique is particularly effective if the court sets many voir dire examinations on one day, and delays the ensuing trials until successive days.⁷³ A court can experiment with panel sizes until it finds the smallest size necessary to give it the jurors it needs in the vast majority of voir dire examinations.

Reducing the term of service produces conflicting effects on the economy of jury administration. The first effect makes jury administration less economical because processing greater numbers of persons increases costs of administration. More summonses must be mailed, more returns examined, more paychecks issued, and more citizens instructed on the requirements of jury service. The other effect, however, makes jury administration more economical. Reducing the burdens of service allows a system to eliminate most hardship excuses, thus increasing total juror yield when the system transfers names from the master wheel to the qualified wheel, and then summons qualified persons.⁷⁴ Both one day/one trial and one week terms can eliminate most hardship excuses.

72. See text accompanying note 65 *supra*.

73. See text accompanying notes 62-63 *supra*.

74. Wayne County courts, under their old system, generated a yield of 29% when transferring jurors from the master wheel to the qualified wheel, and a yield of 45% when summoning from the qualified wheel. This produced a combined yield of 45% of 29%, or 13%. Under one day/one trial, however, the combined yield for Wayne County courts rose dramatically to 31%. This breaks down to a 42% yield for transfers from the master wheel to the qualified wheel, and a 75% yield when summoning from the qualified wheel. *One Day/One Trial, supra* note 5, at 57. Thus, for a system that follows the Wayne County experience, reducing the term of service more than doubles the efficiency of juror summoning. Under Wayne County's old yields, a system that needed 100 jurors a term would have to generate 769 evaluations from the master wheel in order to produce 223 names for the qualified wheel. It would then have to summon those 223 persons in order to produce 100 jurors for the court. This means the system must engage in 992 transactions to produce 100 jurors. Under Wayne County's new yields, however, the system need generate only 322 evaluations from the master wheel to produce 135 names for the qualified wheel, which the system would summon to produce 100 jurors for the court. This means the system must engage in only 457 transactions to produce 100 jurors. It also indicates that the new system can

Because of the large increase in the number of jurors summoned, the net cost effect of the one day/one trial system compared to a one week or longer term of service is to increase costs.⁷⁵

C. Juror Satisfaction

A recent study by the jury research team of William Pabst, G. Thomas Munsterman, and Chester H. Mount concluded that the three features of jury service that jurors most disliked were wasted time, long terms of jury service, and failure to hear at least one trial.⁷⁶ One week terms of service appear to relieve the first two sources of juror dissatisfaction just as effectively as a one day/one trial term of service. Moreover, they allow a higher percentage of jurors to hear a trial than will one day/one trial terms of service. Based on these effects, one week terms of service should produce more satisfied jurors.

The fact that jurors resent spending an inordinate amount of time sitting and waiting comes as no surprise, and finds confirmation in both statistical and impressionistic studies.⁷⁷ A reduction in daily waiting time depends, however, not on a shorter term of service but rather on more efficient juror utilization. As juror utilization becomes more efficient, courts need not summon as many jurors as before, and jurors spend less time waiting and more time serving.⁷⁸ Because efficient juror utilization has no necessary relation to the length of jury duty, it would seem that juror dissatisfaction with wasted time should succumb just as readily to an efficient one week court as to an efficient one day/one trial court. One study even suggests that jurors may be less tolerant of wasted time in a one day/one trial term than in a lengthier term, perhaps because of greater emphasis on juror convenience.⁷⁹

Pabst, Munsterman, and Mount found that a long term of service was the factor most likely to induce negative juror attitudes.⁸⁰ Several other

produce roughly double the amount of jurors for the same cost as the old system. (However, since 24,000 instead of 2,800 jurors had to be summoned, a four-fold increase in transactions was actually experienced.)

DuPage County, which reduced its term from two weeks to one week instead of one day, thus consuming twice as many jurors as before, has actually decreased its summoning costs by about \$7,000 over the old system. Telephone interview with Edward Ludwig, Project Director, DuPage County Jury Management Study Project (Oct. 16, 1978).

75. In Wayne County, costs of administration rose from \$6,200 to \$47,200 annually after implementation of one day/one trial. *One Day/One Trial*, *supra* note 5, at 55. In East Lansing, Michigan, annual costs of administration rose from \$1,650 to \$5,250 after full implementation of one day/one trial. Letter to Professor Michael Graham from Brian J. Matter, Court Administrator (May 21, 1979).

76. Pabst, Munsterman & Mount, *supra* note 16, at 164-65.

77. *Id.* at 167-68; *Case Study*, *supra* note 15, at 18; Kaufman, *The Wasted Juror*, 56 *Jud.* 72, 73-74 (1972).

78. Draheim, *Efficient Juror Utilization Techniques . . . or Proposition 12*, 28 *DRAKE L. REV.* 21 (1978); Richert, *supra* note 68, at 233-53; Stoeber, *The Expendable Resource: Studies to Improve Juror Utilization*, 1 *JUST. Sys. J.* 39 (1974).

79. *Case Study*, *supra* note 15, at 18.

80. Pabst, Munsterman & Mount, *supra* note 16, at 166.

studies reinforce this finding.⁸¹ While one day/one trial furnishes the shortest term of jury duty possible, the studies do not indicate that, as service terms shorten, juror satisfaction rises to a proportionate degree. The studies instead show that juror dissatisfaction with service terms of as much as twenty-one to thirty days or more was significantly greater than when service terms shortened anywhere from one day/one trial to one week. It thus appears that at a point somewhere beyond one week, perhaps two or three weeks, juror dissatisfaction begins to increase significantly. One day/one trial and one week terms appear to produce approximately equivalent degrees of juror satisfaction with the term of service.

Finally, and most importantly, one week terms of service may actually tend overall to produce stronger levels of satisfaction in more jurors than a one day/one trial term. The proof for this statement rests on two simple facts. First, jurors who sit on one or more trials leave jury duty highly satisfied and impressed with the justice system.⁸² Satisfaction is higher when a juror has heard two trials rather than one.⁸³ Conversely, jurors who never sit on a trial tend to leave jury duty either without strong feelings, or resentful about their service.⁸⁴ Second, in two otherwise identical systems, the segment of jurors who never sit on a trial or sit on only one trial must necessarily be larger in a one day/one trial term than in a one week term. In a one week term a juror who is not selected for trial on the first day has several more chances at selection.⁸⁵ Furthermore, jurors can never hear more than one trial in a one day/one trial system, while they can in a one week system.

As anyone who has patiently waited in line for something desirable can appreciate, juror participation in deciding the merits of a case seems to cause jurors to overlook many of the inconveniences and irritations of jury service. It also produces positive feelings about the justice system. It is not clear whether one day/one trial jurors who do not participate in a trial leave the courthouse at the end of the day resenting their few hours of service, or whether they view the inconvenience as negligible.⁸⁶ It is plain, however, that these jurors at least do not take home with them the strong, positive feelings about jury service as do jurors who have participated in a trial.

81. Coe, *Juror Utilization in Three Selected Oklahoma District Courts*, 29 OKLA. L. REV. 65, 92 (1969); *Case Study*, *supra* note 15, at 21.

82. Allen, *supra* note 16, at 246; Broeder, *University of Chicago Jury Project*, 38 NEB. L. REV. 744, 751-52 (1959).

83. Allen, *supra* note 16, at 246-56.

84. *Id.*; Pabst, Munsterman & Mount, *supra* note 16, at 168-69.

85. In Harris County's "firecracker" system, which does not reuse jurors after voir dire, one-third of those called never hear a trial. Pabst, Munsterman & Mount, *supra* note 16, at 169.

86. One study found no difference in the level of negative attitudes between jurors selected and jurors not selected for trial in a one day/one trial system. *Id.* Another study, however, found that a significantly greater number of one day/one trial jurors said they would be displeased if called again to jury service than did jurors in the previous 30-day term. *Case Study*, *supra* note 15, at 17.

D. Court Convenience

One day/one trial systems report that they can adequately handle the new logistical problems attendant to summoning a fresh crop of jurors each day. They cannot, however, assert that these problems do not exist—rather, they contend that the benefits of one day/one trial are worth the inconvenience of the logistical problems.

Even the staunchest one day/one trial advocate must admit that a one week system is easier to administer. The court need orient jurors only once each week instead of once each day, making a personal orientation session more desirable to the judge. More importantly, administrators of one week systems worry about the adequacy of their juror summoning yield only once each week, rather than once every day. This consideration becomes even more important when a court attempts to summon jurors more precisely, increasing the risk that the number of jurors who actually appear ready to serve on a particular day will be insufficient to satisfy court needs without delay.⁸⁷ Finally, jurors beginning on the second day of a one week term not in need of orientation are ready earlier in the day with less personal inconvenience than new jurors requiring orientation each day.

One week terms of service clearly allow more convenient court administration. If one week terms are superior to one day/one trial terms, as argued above, then the added inconvenience of one day/one trial terms finds no justification.

E. Service Avoidance

One day/one trial terms of service give rise to a potential problem of easy juror avoidance of service. Although jurors who have served overwhelmingly report their experience as satisfying, many persons who have been called to jury duty for the first time express a reluctance to serve that can border on panic.⁸⁸ Such persons will no longer receive ready excuses from service in a one week or one day/one trial system that adopts a policy of liberal deferrals and rare excusals. Reluctant jurors in a one day/one trial system may still have a realistic incentive to escape service by displaying a negative attitude during voir dire examination. Once the one day/one trial system has been explained to them, reluctant jurors should have little difficulty realizing that only one negative performance

87. With a one week system, the number of jurors summoned actually appearing is learned each Monday. For the rest of the week, not only is the risk of insufficient jurors minimized, even finer accuracy in summoning can be attained. Once a juror has appeared there is a greater certainty of appearance on following days. With one day/one trial, the risk that a smaller percentage of jurors actually summoned will appear than was projected is faced each day. To illustrate, suppose a court experiences an insufficient juror yield one percent of the time. In a one week system, juror yield will be insufficient once every two years. In a one day/one trial system, juror yield will be insufficient once every four-and-one-half months.

88. Richert, *supra* note 68, at 233.

will virtually guarantee them a service term of only one day. Conversely, reluctant jurors in a one week system would have little or no incentive to adopt such a tactic when they know they will remain as prospective jurors for the remainder of the week.

IV. CONCLUSION

A commendable and long-awaited national movement to reform outmoded systems of jury management in recent years has made much progress toward alleviating the unnecessary burdens of jury duty. In addition to increasing the satisfaction of individual jurors with their term of service, this reform movement has implemented techniques that save the judicial system substantial time, energy, and money.

This reform movement has had an unfortunate tendency, however, to package and sell its product under a single label: one day/one trial. Existing one day/one trial systems are indisputably superior to traditional systems of jury management they replaced. One day/one trial advocates, however, in their rush to reform, have caused many persons to overlook the simple fact that the term of service is the only thing that distinguishes a modern, efficient one day/one trial court from a modern, efficient court employing a one week term of jury service.

Although one day/one trial systems report cost savings over their old systems, these cost savings do not depend on adopting the one day/one trial term of service. In fact, a one day/one trial term actually adds to the costs of a one week system of identical efficiency because more jurors must be summoned and processed. The cost savings that accrue to modern one day/one trial courts result directly from sensible new management techniques that any court, no matter how long its term of juror service, would do well to adopt.

The most commonly advanced argument for adopting a one day/one trial term of service is an appeal to the plight of individual jurors. There is little question that the American juror has suffered needlessly in the insensitive hands of trial courts for far too many years. Nevertheless, the appealing syllogism that if more is worse, less is better, does not hold true.

Jurors report that the three worst features of jury service are wasted time, service terms that are too long, and the failure to sit on a trial. Reducing wasted time means using jurors more efficiently and summoning fewer jurors than in the past, a course of conduct that does not depend for effectiveness on the term of jury service. While jurors report dislike for service terms that are too long, they refer not to terms of one week, but to terms of three weeks or more. Finally, jurors derive immense satisfaction from sitting on a trial, and jurors are more likely to hear at least one trial in a one week system than they are in a one day/one trial system. Overall juror satisfaction would thus appear to be less in a one day/one trial term than in a one week term.

A one week modernized court can be as effective in every way as a modernized one day/one trial court, and in fact appears superior with respect to juror satisfaction. It also avoids considerable processing costs while generating the same potential payroll savings as a one day/one trial system. Courts beginning to modernize their jury management system should seriously consider the superior benefits of one week as compared to one day/one trial terms of service for jurors.