

NEW YORK

Call *All* Jurors To Serve

IN 1992, NEW YORK CHIEF JUDGE

Judith S. Kaye charged 30 lawyers, judges, court administrators, academics, and citizens to find ways to improve the jury service experience for citizens who were summoned to serve.¹ Most of The Jury Project's recommendations were adopted within three years. And recently, when I was called upon to serve, my experience revealed that the resulting improvements we worked to implement have persisted for nearly three decades.

The most significant accomplishment of The Jury Project was to distribute the burden of jury service among citizens more evenly — making jury duty more palatable simply because the public perceived that the process was fairer.

How did we do that? Just four administrative changes allowed New York's jury commissioners to lengthen the period between juror recalls.

1. *Expand the Master Source Lists.*

A county's jury pool comprises every adult citizen whose name and correct address appears on something called a master jury source list. The more names on that list, the less often any individual will be called. But in many jurisdictions (including many federal courts), the list is made up only of registered voters. Only about 70 percent of eligible Americans are registered to vote,² so the list is by definition under-inclusive and also likely to underrepresent certain groups, notably younger citizens and minorities.³

New York was already ahead of the game: County master lists here have long been drawn from sources beyond just voters — including licensed drivers and everyone who filed a New York state income tax return (about 90 percent of the state's potential jurors). At



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our suggestion, New York added those receiving unemployment compensation or benefits from the Department of Social Services to every county's master list. This not only increased the capture rate to 95 percent of New York's potential jurors (the highest in the country), it also further diversified the pool, adding socio-disadvantaged individuals less likely to drive or have to pay taxes.

2. *Update Source Lists More Frequently.*

Of course, people move into and out of a county, and each new voter registration or driver's license or first tax filing adds a potential juror to the pool. Theoretically, all of that information should be communicated to county jury commissioners every year, so that the master lists can be kept current. The Jury Project learned, however, that commissioners were not getting updated information with sufficient frequency. As a result, lists were years out of date, and counties were wasting postage sending hundreds of summonses that were subsequently "returned to sender."

We recommended that commissioners retrieve information annually from voter registrations, postal forwarding lists, the Department of Motor Vehicles,

and the Department of Social Services. This was done to salubrious effect. Given the savings on postage, updating master lists likely paid for itself.

3. Eliminate Exemptions. When The Jury Project convened, New York had the most extensive list of occupational and related exemptions in the United States. The fact that doctors, lawyers, clergy, sole proprietors of business, police officers, firefighters (even volunteer firefighters), and others had a permanent exemption from jury duty did not sit well with those citizens who were not exempt. Moreover, it led to a particularly low return rate in counties where large populations of occupationally exempt people lived — which happened to be the very same counties in which there were many trials compared to available jurors.⁴

The Jury Project urged that all occupational exemptions, except for sitting judges, be eliminated. The Legislature did us one better: It even eliminated the exemption for judges. In counties with large populations of occupationally exempt persons, the number of potentially qualifiable jurors increased immediately and dramatically. Equally important, the perception of fairness skyrocketed now that no citizen could say, “Thanks, but no thanks” to jury service.⁵ New York also eliminated any upper limit on the age at which a citizen could be called to service.

Many predicted that those who had previously been occupationally exempt would still never be selected for juries under the new rules. But while I served as a New York state judge (1995–98), I had multiple lawyers on many juries, and doctors on several. Judges both state and federal also found themselves on juries. The world did not come to an end.

4. Eliminate Administrative Short-Cuts. Excessive exemptions forced

commissioners to “qualify” a much larger venire, and that process was more labor-intensive. Commissioners had therefore devised a shortcut: Every person found qualified for service was placed on a “permanent qualified list,” and venire panels were drawn from that list rather than directly from the master source list. Each year, the commissioners drew from their lists only enough names to replace those who had dropped off the permanent qualified list because they had become exempt, aged out, moved, or died. Otherwise, they used the same names over and over again.

Use of the permanent qualified list saved the jury commissioners a great deal of time and money. But it also meant that citizens who were called and qualified for jury service were summoned as frequently as the law allowed — in most counties, every four years. Use of the permanent list likely also increased citizen perception of bias, since baking people into “permanent qualified” status skewed venire panels both older and whiter than the local populace.⁶

So The Jury Project recommended abolishing permanent qualified lists. Despite some initial resistance, every county in New York did just that within five years. Eliminating exemptions for occupation or age made this change more administratively feasible. This meant venires could be called directly from the master list, thereby distributing the burden of jury service more evenly among citizens. Today, jurors in most counties in the state remain ineligible for recall for six years after serving; in some counties it is as long as ten years, but in no county is it less than four.⁷

There is nothing “sexy” about any of this; it is all back-office administrative stuff. But in my opinion, jury reform efforts should pay more attention to

exactly these kinds of administrative improvements. Other substantive changes discussed by my colleagues in these pages are important — but first, we have to get jurors in the door. To accomplish that, nothing beats calling people as infrequently as possible and giving them a sense that everyone is required to perform this vital civic function.



COLLEEN MCMAHON is a senior judge and former chief judge of the U.S. District Court for the Southern District of New York. She was an acting justice of the New York State Supreme Court from 1995 to 1998 and chaired The Jury Project in 1993.

¹ COMMITTEES OF THE JURY TRIAL PROJECT, FINAL REPORT OF THE COMMITTEES OF THE JURY TRIAL PROJECT 9 (1993).

² Jennifer Cheeseman Day & Thom File, *Most People Who Are Registered to Vote Actually Do Vote*, U. S. CENSUS BUREAU (Oct. 5, 2020), <https://www.census.gov/library/stories/2020/10/what-can-recent-elections-tell-us-about-the-american-voter-today.html>.

³ This was true at the time we wrote our report, and it remains true three decades later. Census data from the 2020 General Election reveals that 72.7% of Americans are registered to vote, but only 58.9% of the population aged 18–24 is registered. Additionally, while 76.5% of non-Hispanic white citizens are registered, while only 69% of Black citizens and 61.1% of Hispanic or Latino citizens are registered. *Voting and Registration in the Election of November 2020*, U.S. CENSUS BUREAU (April 2020), <https://www.census.gov/data/tables/time-series/demo/voting-and-registration/p20-585.html>.

⁴ See COMMITTEES OF THE JURY TRIAL PROJECT, *supra* note 1, at 93–95.

⁵ Randy Moonan, *Jury Representativeness: It’s No Joke in the State of New York*, CORNELL J.L. & PUB. POL’Y: THE ISSUE SPOTTER (Jan. 20, 2012), <http://jppp.org/blogzine/jury-representativeness-its-no-joke-in-the-state-of-new-york/>.

⁶ This meant that venires were being drawn from a source list that looked less and less like “a fair cross-section of the community,” while denying “all eligible citizens . . . the opportunity to serve on grand and petits juries” — both of which are required by New York’s Judiciary Law. N.Y. Jud. L. § 500.

⁷ Interestingly, New York County is the only large county that still gives jurors only four years off before they become eligible for recall. Other trial-intensive counties are up to six or even eight years.