

APPEARANCE RATES OF POTENTIAL JURORS
WHO CONFIRM, POSTPONE, OR FAIL TO
RESPOND TO THE JURY SUMMONS: ARE
POSTPONED JURORS SAYING “NO” OR “NOT
NOW”?

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I. INTRODUCTION

It is a well-known fact among court managers that the summons for jury service often arrives at the worst possible time in a potential juror’s life. The ubiquitous notices have a knack for coinciding with such major life occasions as the first day of a new job, a wedding, extended travel abroad, or major surgical procedures, to name but a few. Also, while it is neither permissible nor practical to outright excuse every potential juror with a conflict, requiring all jurors to report when they are summoned is burdensome and even unfair to many. To balance the competing interests of the courts and jurors, many court locations throughout the United States allow postponement or deferral of jury service to another, more convenient

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date. Although not universal, the practice of allowing jurors to postpone service to a future date is among the various tools and techniques employed by jury managers.

Postponements of service, or “deferrals,” may serve two extremely important goals: first, increasing the overall number of people serving, which adds to the representativeness and inclusiveness of the jury pool, and second, decreasing the hardship of jury service.¹ While the benefit of this simple juror management technique may seem obvious, little attention has been paid to its larger implication for the judicial system as a whole. Specifically, how likely is it someone who puts off serving to a future date will appear for jury service, and does the practice find any support in caselaw? The courts, not surprisingly, are concerned with the overall reliability of jurors who opt to not serve on their original summons date.²

Jurors who postpone their service have been of special interest to the Connecticut trial court because a notable percentage of jurors summoned—slightly more than 20% each year—take advantage of the postponement option.³ A longitudinal study of the behavior of postponed jurors in the State of Connecticut commenced in September 2003.⁴ Evidence from the study has shown most postponed or deferred jurors do appear for jury service in a reliable fashion.⁵ Furthermore, literature and caselaw both acknowledge and support a jury management scheme that allows jurors to delay their service to a more convenient date.⁶

1. G. THOMAS MUNSTERMAN, *JURY SYSTEM MANAGEMENT* 49 (1996) (“The underlying rationale for allowing postponements is to increase the number serving by giving citizens the opportunity to serve on jury duty at a later time . . .”).

2. See, e.g., Susan Carol Losh, Adina W. Wasserman & Michael A. Wasserman, “*Reluctant Jurors*”: *What Summons Responses Reveal About Jury Duty Attitudes*, 83 *JUDICATURE* 304, 309–10 (2000) (detailing the efforts of a Florida district court to monitor and enforce postponed service by reluctant jurors).

3. KAREN A. BERRIS, *CONN. JUDICIAL BRANCH ADMIN., ANALYSIS OF FIRST DAY/POSTPONED JUROR DATA STATEWIDE FINDINGS (Draft)* 1 (2004).

4. The Connecticut Judicial Branch Jury Administration, which the author is involved with, developed a computer program to measure juror appearance rates that has run without interruption since September 2003. This program has yielded hard data on potential reliability based on recorded appearance rates of jurors who confirm they will appear on their original summons date, postpone their service to a future date, and fail to respond to the summons before their appearance date.

5. See BERRIS, *supra* note 3, at 2.

6. See, e.g., *United States v. Carmichael*, 560 F.3d 1270, 1278 (11th Cir. 2009) (holding the jury administrator’s policy of granting nearly all deferrals was not a violation of the Jury Selection and Service Act); Victor E. Schwartz, Mark A. Behrens & Cary Silverman, *The Jury Patriotism Act: Making Jury Service More Appealing and*

II. BACKGROUND

Connecticut has a single, unified trial court of original, general jurisdiction called the Connecticut Superior Court.⁷ For administrative purposes, the state is divided into thirteen “judicial districts,”⁸ though jurors are summoned for service at nineteen different locations statewide.⁹ Within the centralized office of Jury Administration, the Jury Administrator has specified statutory duties.¹⁰ Connecticut has used a “one-day–one-trial” system of service since 1986.¹¹

In Court Year 2010,¹² the Connecticut Judicial Branch Jury Administration issued 552,387 summonses¹³ to furnish the courts with the estimated 289,989 jurors needed to ensure the ability to process jury cases in a timely fashion. Of those who were scheduled to appear, 101,065 served at least one day, 145,639 were canceled by the court, and 37,619 missed an appearance.¹⁴ According to the jury statistics maintained by the Connecticut Judicial Branch, 46% of jurors summoned were disqualified or excused from serving pursuant to Connecticut General Statutes section 51-217(a) and (b)¹⁵ in Court Year 2010.¹⁶ The remaining potential jurors were

Rewarding to Citizens, ST. FACTOR, Apr. 2003, at 2, available at <http://www.alec.org/am/pdf/ALEC-state-factor-jury-patriotism.pdf> (promoting the Jury Patriotism Act, which provides jurors one automatic postponement in their call to jury duty).

7. CONN. GEN. STAT. ANN. § 51-164s (West 2005 & Supp. 2010).

8. *Id.* § 51-344(1)–(13).

9. See *Jury Administration: Directions to Court Facilities, Juror Parking and Phone Numbers*, ST. OF CONN. JUD. BRANCH, <http://www.jud.ct.gov/jury/Parking/default.htm> (last visited May 7, 2011) (providing directions to the six geographical area courts, in addition to the thirteen judicial district courts).

10. CONN. GEN. STAT. ANN. § 51-219a.

11. *Id.* § 51-238a.

12. The 2010 Court Year commenced on September 1, 2009, and ended on August 31, 2010. *Judicial Branch Statistics*, ST. OF CONN. JUD. BRANCH, <http://www.jud.ct.gov/statistics/jury/default.htm> (last visited May 7, 2011).

13. STATE OF CONN. JUDICIAL BRANCH, JURY STATISTICS (2010) [HEREINAFTER 2010 STATISTICS], available at http://www.jud.ct.gov/statistics/jury/Jury_09-10.pdf.

14. *Id.* Jurors who initially fail to appear but later provide proof of disqualification, or who postpone and either serve or are canceled by the court, have their status changed from delinquent to disqualified, served, or canceled. Thus, day-to-day no-show rates are significantly higher than those reported at the close of the year. Similarly, the actual number of jurors who had failed to serve or provide proof of disqualification at the end of thirteen months after the original summons date was adjusted to 29,493.

15. CONN. GEN. STAT. ANN. § 51-217(a)–(b). This section provides, in

scheduled to appear for jury service and appeared on their originally scheduled day, postponed to a new date, failed to appear as scheduled, or were canceled by the court.¹⁷

Failure to appear for juror service is a matter of great concern to courts and the judicial system as a whole because shortages of jurors hinder the ability of courts to move cases along. The Center for Jury Studies at the National Center for State Courts (NCSC) has estimated 9% of all summonses issued throughout the country will result in a “failure to appear” (FTA).¹⁸ Furthermore, FTA rates as high as 50% have been recorded in some jurisdictions.¹⁹ In Connecticut, the FTA or no-show rate recorded at the end of the court year is considerably lower than the daily

relevant part:

(a) All jurors shall be electors, or citizens of the United States who are residents of this state having a permanent place of abode in this state and appear on the list compiled by the Jury Administrator under subsection (b) of section 51-222a, who have reached the age of eighteen. A person shall be disqualified to serve as a juror if such person (1) is found by a judge of the Superior Court to exhibit any quality which will impair the capacity of such person to serve as a juror, except that no person shall be disqualified on the basis of deafness or hearing impairment; (2) has been convicted of a felony within the past seven years or is a defendant in a pending felony case or is in the custody of the Commissioner of Correction; (3) is not able to speak and understand the English language; (4) is the Governor, Lieutenant Governor, Secretary of the State, Treasurer, Comptroller or Attorney General; (5) is a judge of the Probate Court, Superior Court, Appellate Court, or Supreme Court, is a family support magistrate or is a federal court judge; (6) is a member of the General Assembly, provided such disqualification shall apply only while the General Assembly is in session; (7) is seventy years of age or older and chooses not to perform juror service; or (8) is incapable, by reason of a physical or mental disability, of rendering satisfactory jury service. . . .

(b) The Jury Administrator may determine, in such manner and at such times as the Jury Administrator deems feasible, whether any person is qualified to serve as juror under this section and whether any person may be excused for extreme hardship.

Id.

16. See 2010 STATISTICS, *supra* note 13. The sum of the number disqualified, 250,902, and the number excused, 4,664, is 46% of the total summoned—552,387. See *id.*

17. *Id.*

18. Paula Hannaford-Agor, *Jury News: Tales of “Tales” Juries*, 23 CT. MANAGER, no. 2, 2008 at 28.

19. *Id.*

no-show rate in certain locations.²⁰ The recorded disparity between daily and annual FTA or no-show rates is a result of current Connecticut juror management practice.²¹

Connecticut’s current summoning practices require a significant percentage of jurors appearing on any given day to be made up of first-day jurors, namely those who have not previously postponed their service. This summoning scheme was determined more than twenty years ago by the programmers who developed the current one-day–one-trial jury computer system utilized by the Connecticut Judicial Branch. This system is consistent with practices advocated by the NCSC, in which a mathematical formula is employed to calculate the number of summonses to be mailed to prospective jurors, taking into account a certain percentage of jurors will fail to respond to the notice, not have a deliverable mailing address, or postpone their service to a future date.²²

III. POSTPONEMENT IN CONNECTICUT

In an effort to make jury service as convenient as possible, the state of Connecticut—similar to Massachusetts,²³ Rhode Island,²⁴ New York,²⁵ and other jurisdictions throughout the United States²⁶—offers potential jurors

20. For example, the annual rate for missing an appearance, or no-show rate, for Court Year 2010 was nearly 7% when taken as a percentage of summonses issued. *See* 2010 STATISTICS, *supra* note 13. However, daily appearance rate data shows jurors who miss an appearance account for as many as 56% or more of the scheduled jurors on any given day in urban locations such as Hartford and Bridgeport.

21. A juror who misses any appearance is marked absent by the court and issued a “warning” advising the individual to contact the Jury Administration Office immediately. The individual then has the option of scheduling a new appearance date, provided sufficient time remains before the expiration of one year from the original summons date. The individual may also provide proof of disqualification as enumerated in section 51-217(a) of the Connecticut General Statutes. CONN. GEN. STAT. ANN. § 51-217(a) (West 2005 & Supp. 2010). As each no-show juror cures his or her delinquent status by either disqualification or postponement, the computer system tabulating utilization data adjusts the FTA or no-show rate until thirty-one days after the expiration of the court year, which always ends August 31.

22. *See* NAT’L CTR. FOR STATE COURTS, COURTOOLS TRIAL COURT PERFORMANCE MEASURES: EFFECTIVE USE OF JURORS: MEASURE 8 (2005) [hereinafter COURTOOLS], *available at* http://www.ncsconline.org/d_research/CourTools/Images/courtools_measure8.pdf.

23. MASS. GEN. LAWS ANN. ch. 234A, § 34 (West 2000).

24. R.I. GEN. LAWS § 9-10-9 (1997).

25. N.Y. JUD. LAW § 517 (McKinney 2003 & Supp. 2011).

26. *See, e.g.*, COLO. REV. STAT. § 13-71-116 (2010).

the option of postponing service to a new date.²⁷ In Connecticut, one postponement is a right conferred upon all jurors pursuant to statute.²⁸ The statute does not require a potential juror to provide a valid reason for the postponement; therefore, a summoned juror may theoretically request a new appearance date for any reason whatsoever.²⁹ The requested date of postponement will be granted, provided court is in session on the date requested and jurors will be needed on the requested date.³⁰ The only restriction placed on the postponement is the new date must be within ten months of the original summons date.³¹ The Jury Administrator may grant an extension of up to two additional months upon a finding of extreme hardship but may not grant any extension beyond twelve months from the original summons date.³²

Before issuing notices to report for jury service on a particular date, Connecticut's system factors in the number of individuals who were previously summoned and, by way of a postponement request, asked to appear on that date. However, the system's formula reflects a bias that postponed jurors are unreliable. After factoring in the number of individuals expected to be disqualified, have invalid addresses, or have not responded to the notice, the calculation does not swap into each date an equal number of individuals who have postponed in order to allow for a proper number of summonses to be mailed. For example, if a court needs one hundred jurors, and fifty jurors have already postponed service to that particular date, it would seem logical the number of summonses to be issued be reduced by half. The system, however, treats postponed jurors as unreliable and issues notices effectively ignoring, or at least substantially discounting, the fact many individuals are already scheduled to serve on the particular date. On days for which court locations have reached their limit for the number of jurors who may postpone to that date, the system issues summonses up to 2.5 times the number of jurors requested by the courts. On days for which court locations have not received any postponements, the system may issue summonses up to four times the number of jurors requested. This trend has resulted in high cancellation rates in many court locations. High juror cancellation rates can create inconvenience and dissatisfaction for potential jurors, while also wasting

27. CONN. GEN. STAT. ANN. § 51-232(b) (West 2005 & Supp. 2010).

28. *Id.*

29. *See id.*

30. *See id.*

31. *Id.*

32. *Id.*

finite public resources.

Oversummoning jurors is a longstanding issue for court locations throughout the country. In his 1972 article titled *The Wasted Juror*, Judge Irving R. Kaufman of the United States Court of Appeals for the Second Circuit described the impact of oversummoning and underutilizing jurors: “Each juror who does not serve represents approximately \$23 wasted (per diem plus mileage) as well as a frustrated citizen who has become disillusioned with our justice system.”³³

While Connecticut’s summoning practices were developed with a seemingly pessimistic view toward the reliability of postponed jurors, veteran court staff believe this decision was partly based on anecdotal information portraying these individuals as unreliable sorts who were more likely than not attempting to dodge juror service. Far from an uncommon perception, this view of postponed jurors is shared by states and localities elsewhere in the country.³⁴

For example, jurors who postpone their service were termed “reluctant jurors” in an article by the same name appearing in the May–June 2000 issue of *Judicature*.³⁵ In discussing the reasons for assessing juror attitudes, the authors of the article studied postponed jurors along with those who attempted to avoid juror service altogether.³⁶ The article explored the attitudes of jurors who attempted to avoid a juror summons, in an effort to gain insight into reasons for jurors’ failure to appear.³⁷ In doing this, the article analyzed “a recent survey of nearly 1,100 citizens who reported for service at a North Florida urban court.”³⁸ Interestingly, 71% of the postponed jurors in the survey agreed jury duty is an important civic duty, and 78% of postponed jurors did not believe jury duty wastes time.³⁹ While no similar study of juror attitudes among postponed jurors has been undertaken in Connecticut, these findings offer intriguing potential for future research in this area.

33. Irving R. Kaufman, *The Wasted Juror*, 56 JUDICATURE 72, 72–73 (1972).

34. See, e.g., Losh, Wasserman & Wasserman *supra* note 2, at 306–07.

35. *Id.* at 305.

36. *Id.* at 304 (“To gain such insight, it is important to study people who have tried to evade, excuse or postpone service, as well as those who come to serve.”).

37. See *id.* at 305–06.

38. *Id.* at 305.

39. *Id.* at 308.

IV. CONNECTICUT'S STUDY

Connecticut has undertaken efforts in recent years to better understand the postponing juror because such a significant percentage—20%—of summoned jurors in Connecticut opt to postpone.⁴⁰ Knowing more about this cohort will help the Connecticut Judicial Branch take steps toward mailing jury summonses only in numbers absolutely necessary to ensure the court can conduct its business on any given day.⁴¹ Beginning in September 2003, data has been collected allowing the Jury Administration Office to look at the reliability of jurors who postpone, confirm, or fail to respond to the summons.⁴² With respect to the reliability of appearance, findings based upon this data strongly suggest that jurors who postpone their service to a future date should be categorized with jurors who confirm they will appear on their original summons date.⁴³ The data shows a fitting term for these jurors might be “committed to serving”—far from “reluctant.”

Two studies have been conducted in Connecticut.⁴⁴ The most recent

40. BERRIS, *supra* note 3, at 1.

41. JURY COMMITTEE, PUB. SERV. & TRUST COMM'N, REPORT AND RECOMMENDATIONS 20 (2009) [hereinafter JURY COMMITTEE REPORT], available at <http://www.jud.ct.gov/committees/pst/jury/JuryReport.pdf>.

42. The 2010 Court Year statistics are available on the Jury Administration website. See 2010 STATISTICS, *supra* note 13.

43. BERRIS, *supra* note 3, at 2 (noting postponed jurors are consistently more reliable than unconfirmed jurors).

44. The methodology used is as follows:

In an effort to determine the likelihood jurors will appear as scheduled, the Connecticut Judicial Branch Jury Administration's Technical Solutions Unit created a program to record the following data on a daily basis:

1. Court location.
2. Total original, first-day jurors: potential jurors scheduled to appear.
3. Total of all original, first-day jurors who actually appeared.
4. Total confirmed jurors: total potential jurors scheduled who confirmed their original appearance date.
5. Total postponed jurors: total potential jurors scheduled who postponed their service up to one year from a prior court date.
6. Total unconfirmed jurors: total potential jurors who neither confirmed previous service nor postponed from a prior court date.

study looked at juror appearance rates from September 1, 2006, through December 30, 2010, in the nineteen court locations where summon jurors were analyzed. The findings from this most recent time period were compared to a previous study undertaken by the Connecticut Jury Administration in 2004.

Predictably, jurors who confirmed they would attend on their original summons date had the highest average appearance rate at 94%, while jurors who postponed were the second most reliable category at 76% on average. Unsurprisingly, jurors who did not respond to the summonses were the least reliable, at 31% on average. While the actual percentages varied from court location to court location, the reliability trends were the same for each type of juror across each location—confirmed jurors demonstrated the highest reliability, followed by postponed jurors, and unconfirmed jurors proved the least reliable. Statewide and independent court location results are portrayed in Table 1 below.

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7. Confirmed first-day jurors who appeared as scheduled.
 8. Postponed jurors who appeared as scheduled.
 9. Unconfirmed jurors who appeared as scheduled.
 10. Confirmed jurors who failed to appear as scheduled.
 11. Postponed jurors who failed to appear as scheduled.
 12. Unconfirmed jurors who failed to appear as scheduled.
 13. Walk-in jurors: individuals who were summoned earlier in the court year but were unable to serve on at least two previously scheduled appearance dates. Such individuals are allowed to walk in and serve prior to the expiration of one year from the original summons date, provided jurors are needed on the date they choose to appear.

All percentages portrayed in the reports generated by this program are calculated as a percentage of jurors scheduled to appear. Data from this daily report are compiled and reported periodically in a comprehensive report, and this data has been continuously gathered and maintained since September 2003.

Table 1: Average Appearance Rates of Jurors Who Confirmed, Postponed, or Failed to Respond to a Jury Summons from September 1, 2006 through December 30, 2010

<i>Court Location</i>	<i>Confirmed</i>	<i>Postponed</i>	<i>Unconfirmed</i>
Statewide	94%	76%	31%
Milford	94%	82%	41%
Derby	94%	80%	40%
Bristol	95%	88%	39%
New Britain	95%	79%	36%
Danbury	96%	85%	38%
Bridgeport	93%	71%	25%
Hartford	94%	76%	29%
Manchester	95%	84%	36%
Enfield	93%	82%	33%
New London	95%	80%	40%
Litchfield	96%	84%	43%
Middlesex	96%	83%	44%
New Haven	93%	73%	29%
Meriden	96%	78%	29%
Norwalk ⁴⁵	91%	80%	27%
Stamford	94%	79%	30%
Tolland	96%	85%	42%
Waterbury	93%	74%	31%
Windham	94%	76%	31%

The first study from 2004 also found the same reliability trend—confirmed jurors were the most reliable, followed second by postponed jurors, and unconfirmed jurors were the least reliable.⁴⁶ Besides two exceptions, this trend held for all locations in the state.⁴⁷

While the significant reliability of confirmed jurors comes as no surprise to experienced individuals in juror management, the overall reliability of jurors who postpone their service is quite impressive.

45. Information taken from December 3, 2007, through December 30, 2010.

46. BERRIS, *supra* note 3, at 2.

47. *Id.* at 2–3.

Additionally, it is important to note around one-third of unconfirmed jurors, individuals who do not respond at all to their summons, do in fact appear.⁴⁸

The findings demonstrate room for improvement exists with regard to juror appearance rates for every juror category. A study of the various reasons for missed appearances may help identify initiatives that could be taken to possibly increase the likelihood of jurors appearing when scheduled. Furthermore, because it has been demonstrated confirmed jurors are the most reliable, continuing efforts to encourage confirmation should be a priority.

Because more than three-quarters of all postponed jurors statewide may be relied upon to be present when scheduled,⁴⁹ there are many opportunities for planning and management. As a result, Connecticut no longer considers the postponed juror to be unreliable. The study's data, particularly the 76% reliability rate for postponed jurors on average, is now taken into account when calculating the number of summonses to be issued.⁵⁰ A new computer system being introduced at the time of this Article's publication will allow Connecticut to more closely calculate the actual number of summonses needed. These practices will continue to bring Connecticut closer to Judge Kaufman's recommendation that "the emphasis should be on the number of jurors *probably* needed rather than the number *possibly* needed."⁵¹

Furthermore, taking postponed jurors' high appearance rate into account to eliminate unnecessary summonses results in measurable cost savings for the state, reduces the potential for oversummoning, and results in greater convenience for potential members of the jury pool. Mailing fewer summonses reduces the need for courts to cancel jurors the night before they are scheduled to appear.⁵² Jurors understandably must make travel, childcare, or business arrangements in order to serve, and it is well-known a last minute cancellation can cause great frustration for jurors who made these prior arrangements.⁵³ This may be particularly distressing to a potential juror who has asked to postpone service for the specific date and fails to understand how the court manages jury service. In Connecticut, a

48. *See supra* Table 1.

49. *See id.*

50. JURY COMMITTEE REPORT, *supra* note 41, at 20.

51. Kaufman, *supra* note 33, at 73 (emphasis in original).

52. *See* JURY COMMITTEE REPORT, *supra* note 41, at 20.

53. *See id.*

last-minute cancellation also exposes the juror to the possibility the same individual could be randomly selected for service during the next court year, at which time the individual has the possibility of being subjected yet again to a last-minute cancellation if oversummoning takes place.⁵⁴

V. JURY SERVICE IMPROVEMENT AND POSTPONEMENT

Jury reform efforts undertaken in recent years have focused on many aspects of the jury process, with the objectives of improving juror turnout, enhancing the juror experience, and modernizing the system so it will continue to be viable for future generations.⁵⁵ Central to these efforts is a commitment to this principle: Jurors should be permitted, to the greatest extent possible, to serve at a time convenient for them.

Allowing jurors to postpone also supports judicial efficiency. Connecticut Supreme Court Chief Justice Chase T. Rogers established the Public Service and Trust Commission in 2007 to enhance public trust and confidence in the Connecticut Judicial Branch by improving services, accessibility, and accountability.⁵⁶ At the recommendation of the Commission, a jury committee was established and charged with the following task: “To determine whether the Judicial Branch uses best practices for summoning, notification, management and utilization of jurors and to recommend new approaches and initiatives.”⁵⁷ The Connecticut Jury Committee examined the entire jury process—from the creation of the file from which jurors are randomly selected through the postverdict phase—and made thirty-five separate recommendations, including improvement of Connecticut’s juror utilization to a rate of 60%.⁵⁸ In Connecticut, the juror utilization rate is defined as the percentage of jurors summoned and scheduled to appear who actually serve one day or more.⁵⁹ This measure is also referred to as the “juror yield.”⁶⁰ The NCSC

54. See CONN. GEN. STAT. ANN. § 51-219a(c) (West 2005 & 2010) (noting the Jury Administrator may cancel service when there is a reduced need for jurors).

55. See generally JURY COMMITTEE REPORT, *supra* note 41, at 11–99 (detailing recommendations from particularized subcommittees to modernize and continually improve each phase of the jury process).

56. See PUB. SERV. & TRUST COMM’N, STRATEGIC PLAN FOR THE JUDICIAL BRANCH 5 [hereinafter STRATEGIC PLAN], available at <http://www.jud.ct.gov/committees/pst/StrategicPlan.pdf>.

57. See JURY COMMITTEE REPORT, *supra* note 41, at 4.

58. *Id.* at 12–16, 21.

59. *Id.* at 104.

60. COURTOOLS, *supra* note 22, at 1.

has recommended a minimum juror yield of 40% of summoned jurors.⁶¹ Using the data from 2007 and 2008 court year studies on juror appearance rates,⁶² individualized utilization and summoning recommendations have been made for all jury trial locations and have been presented to decision makers and staff in all these judicial districts.⁶³ These recommendations propose considering the reliability of postponed jurors as a factor that may allow the courts to summon fewer jurors, thus enabling more jurors to serve.

While it is too soon to measure the impact of adjustments made as a result of these recommendations, the Stamford Judicial District has improved utilization significantly by consistently applying these recommendations for more than one year. In Court Year 2008, Stamford Superior Court had a juror utilization rate of 25%. During the second half of Court Year 2009, Stamford summoned fewer jurors for days in which large numbers of previously summoned jurors had been postponed. As a result, the utilization rate increased to 36% for Court Year 2009. By consistently following the new procedure, Stamford's utilization rate rose to 56% for Court Year 2010, exceeding the 40% utilization rate recommended by the NCSC and nearing the 60% goal set by the Public Service and Trust Commission Jury Committee.

Similar national efforts include an initiative undertaken by the American Legislative Exchange Council called the Jury Patriotism Act.⁶⁴ This effort culminated in the development of model rules for courts, including improved juror pay, limiting or eliminating occupational exemptions, reducing the term of juror service, and allowing jurors to reschedule jury service when needed.⁶⁵ The importance of allowing jurors to postpone jury service was underscored in a 1999 article by American Judicature Society research associate Robert G. Boatright that explored the possible reasons a juror does not respond to the summons. Study results cited showed 54% of participants, all of whom received jury summons, were unaware they could reschedule their summons to a more convenient date in event of a conflict.⁶⁶ Boatright recommended outreach

61. *Id.* at 2.

62. *See* JURY COMMITTEE REPORT, *supra* note 41, at 104 (providing the statistics these recommendations were based upon).

63. *See id.* at 20–23, 28–30.

64. *See* Schwartz, Behrens & Silverman, *supra* note 6, at 1–2.

65. *See id.* at 2–8.

66. Robert G. Boatright, *Why Citizens Don't Respond to Jury Summonses and What Courts Can Do About It*, 82 JUDICATURE 156, 162 (1999).

efforts focus on informing jurors about factors of importance to them, specifically including the deferral and excuse policy of the court.⁶⁷

The American Bar Association (ABA) has also supported allowing jurors to conveniently postpone jury duty, either via telephone, postal mail, in person, or electronically.⁶⁸ At the same time, the ABA cautioned against defeating “the [p]rinciple’s purpose of increasing representativeness and inclusiveness . . . through abuse of the deferment policy.”⁶⁹ This admonition to approach postponements with caution is forwarded by the NCSC, which has posited monitoring deferral rates is necessary, as high deferral rates may skew the jury pool.⁷⁰ While the NCSC stopped short of offering data to support this occurrence, the group offered one possibility: high deferral rates could result in “all ‘snowbirds’ showing up for jury service during summer months.”⁷¹

VI. LEGAL AUTHORITY FOR JUROR POSTPONEMENT

Knowing the impact of juror postponements—the benefits and potential drawbacks—is a critical, yet often overlooked piece of any jury improvement initiative. Any court seeking to establish or evaluate an existing postponement policy, in addition to determining whether postponed jurors may be relied upon, also must consider whether allowing jurors to postpone is a barrier to a fair and representative jury. As famously envisioned by the United States Supreme Court in *Taylor v. Louisiana*: “Both in the course of exercising its supervisory powers over trials in federal courts and in the constitutional context, the Court has unambiguously declared that the American concept of the jury trial contemplates a jury drawn from a fair cross section of the community.”⁷² Because rescheduling is a practical alternative to excusing jurors who may have a hardship only temporary in nature, a jury management plan including provisions for jurors to re-schedule to a more convenient date promotes juries consisting of a fair cross section of the community. This benefit of postponement is described by the ABA: “Permitting jury service to be deferred and rescheduled increases the overall representativeness and inclusiveness of the jury pool while decreasing the hardship of jury

67. *Id.* at 163.

68. AM. JURY PROJECT, AM. BAR ASS’N, PRINCIPLES FOR JURIES AND JURY TRIALS, Principle 10(C)(3), at 54 (2005) [hereinafter ABA PRINCIPLES].

69. *Id.* at 63.

70. COURTOOLS, *supra* note 22, at 3.

71. *Id.*

72. *Taylor v. Louisiana*, 419 U.S. 522, 526–27 (1975).

service.”⁷³

Excusing jurors before they serve may then have the opposite effect, causing courts to risk the inclusiveness of the jury pool. In *Duren v. Missouri*, the Missouri Supreme Court established a three-prong test for determining whether the fair cross section requirement has been violated.⁷⁴ The test, when applied in challenges to the array, requires

the defendant [to] show (1) that the group alleged to be excluded is a “distinctive” group within the community; (2) that the representation of this group in venues from which juries are selected is not fair and reasonable in relation to the number of such persons in the community; and (3) that this underrepresentation is due to systematic exclusion of the group in the jury-selection process.⁷⁵

A policy allowing jurors to opt out of serving through the use of excuses may run afoul of *Duren* and *Taylor* if it operates to systematically exclude members of specific, cognizable groups within the community.⁷⁶ For this reason, the ABA has recommended utilizing strict guidelines for hardship excuses in combination with a deferment option.⁷⁷ At the same time, a postponement policy must be applied equally to all potential jurors without regard to who asks to be rescheduled or why.⁷⁸ Recall the caution in the NCSC materials about “snowbirds” filling all of the summer postponement slots.⁷⁹ Without discussing whether migrating snowbirds actually have a detrimental impact on the representativeness of jury arrays, it is important to bear in mind this type of speculation about the potential impact of rescheduling jurors exists; therefore, guidelines for postponing should also limit the use of deferrals to ensure the system is not subject to abuse.

While postponed jurors are rarely the subject of appeals, a case in 2009 dealt with a claim regarding a jury administrator’s policy of dealing

73. ABA PRINCIPLES, *supra* note 68, at 62–63.

74. *Duren v. Missouri*, 439 U.S. 357, 364 (1979).

75. *Id.*

76. *See id.* at 359–60, 367, 370 (holding the automatic exemption of women from jury service upon request equates to a systematic exclusion of a distinctive group and violates the fair cross section requirement); *Taylor*, 419 U.S. at 538 (holding the method used to determine juries cannot “systematically exclude distinctive groups in the community”).

77. *See* ABA PRINCIPLES, *supra* note 68, at 60–63.

78. *See id.* at 63.

79. *See* COURTTOOLS, *supra* note 22, at 3.

with postponements. In *United States v. Carmichael*, the Eleventh Circuit Court of Appeals considered a federal district court's policy of granting virtually all deferral or postponement requests, which typically resulted in a disproportionately white jury pool.⁸⁰ The court examined the impact of a uniformly applied postponement scheme coupled with an error on the part of the Jury Administrator for the Middle District of Alabama.⁸¹ In evaluating this case, it looked back at a successful challenge to the juror array that took place in the jurisdiction in 2001.⁸²

The court examined *United States v. Clay*, a case in which the Jury Administrator, prior to the particular challenge at issue, habitually granted almost all requests for postponement and then placed those jurors into a pool to be preferentially resummoned as soon as their deferrals expired.⁸³ These deferred jurors were then included in the same summons list as individuals selected from the jurisdiction's qualified jury list at random.⁸⁴ White jurors entered requests for deferral at two times the rate of black jurors, making deferred-pool jurors disproportionately white; thus, the jurors summoned mimicked this disproportion.⁸⁵ The court in *Clay* found the process violative of the federal Jury Selection and Service Act of 1968 (JSSA).⁸⁶

After the *Clay* decision, the Jury Administrator amended the practice, limiting the number of jurors to be drawn from the deferred pool.⁸⁷ A new Jury Administrator took office in 2005, and he accidentally violated these remedial limits.⁸⁸ One of these violative jury pools was constructed for the trial of Leon Carmichael, Sr., who, in appealing his drug conviction, claimed the district court improperly denied his challenge before jury selection to the validity of the jury pool under the JSSA.⁸⁹

The Eleventh Circuit asserted "the JSSA provides remedies only for a 'substantial failure to comply,'" and a violation "is 'substantial' when it

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80. See *United States v. Carmichael*, 560 F.3d 1270, 1275–76 (11th Cir. 2009).
81. *Id.* at 1276–77.
82. *Id.* at 1276.
83. *United States v. Clay*, 159 F. Supp. 2d 1357, 1362 (M.D. Ala. 2001).
84. *Id.* at 1362–63.
85. See *id.*
86. *Id.* at 1370.
87. *United States v. Carmichael*, 560 F.3d 1270, 1276 (11th Cir. 2009).
88. *Id.* at 1276–77.
89. See *id.* at 1275, 1277.

frustrates one of the three principles underlying the Act.”⁹⁰ These principles require (1) juror names be randomly selected, (2) from a fair cross section of the community, and (3) objective criteria be used to determine “disqualifications, excuses, exemptions, and exclusions.”⁹¹ The Eleventh Circuit agreed with the ruling of the district court in finding the Jury Administrator’s errors did not constitute a substantial violation of the federal law.⁹² Carmichael’s claim that granting virtually all deferral requests introduced a nonrandom element to the jury selection process was ultimately rejected.⁹³ The court found no evidence existed to show the practice caused the jurors to consist of something other than a fair cross section or that the practice provided an opportunity to discriminate against any cognizable group of individuals.⁹⁴ Quoting the lower court ruling, the court asserted, “Indeed the Jury Administrator’s policy of granting almost all deferrals [was] almost definitionally objective, in that it [did] not favor one applicant over any other.”⁹⁵ “[I]nsisting upon a more rigorous review of deferral requests has the potential, paradoxically, to undermine objectivity in granting those requests.”⁹⁶

In Connecticut, four official source lists are gathered⁹⁷ from which the

90. *Id.* at 1277 (citations omitted).

91. *Id.* (citing *United States v. Gregory*, 730 F.2d 692, 699 (11th Cir. 1984)).

92. *Id.* at 1278.

93. *Id.*

94. *See id.* at 1279–80.

95. *Id.* at 1278 (alterations in original) (quoting *United States v. Carmichael*, 467 F. Supp. 2d 1282, 1294 (M.D. Ala. 2006)).

96. *Id.* (alteration in original) (quoting *Carmichael*, 467 F. Supp. 2d at 1295).

97. CONN. GEN. STAT. ANN. § 51-222a(a) (West 2005 & Supp. 2010).

Annually, upon the request of the Jury Administrator, the Commissioner of Motor Vehicles shall supply the Jury Administrator with the *latest updated file of licensed motor vehicle operators* for the state. Upon the request of the Jury Administrator, the Commissioner of Revenue Services shall supply the Jury Administrator with the *most recent updated list of residents of this state who have a permanent place of abode in this state and who filed a return on personal income* under chapter 229 in the last tax year, and the Labor Commissioner shall supply the Jury Administrator with the *most recent updated list of residents of this state who are recipients of unemployment compensation* under chapter 567. In addition, upon the request of the Jury Administrator, the registrars of voters of each town shall supply *a list of all electors from their town*, except that in lieu of such list from the registrars of voters, the Jury Administrator may obtain the list of all electors from a central repository

Id. (emphasis added).

Jury Administrator compiles a comprehensive updated list.⁹⁸ Summonses are then sent to randomly selected individuals from the compiled list.⁹⁹ From those summoned, postponements are considered only upon a juror's request¹⁰⁰ and are processed without acknowledging the juror's race or ethnicity.¹⁰¹ Although jurors may disclose information in the course of requesting a postponement such as employment status, economic hardship, illness, or other personal circumstances, the postponement is granted regardless of the reason cited or if no reason is given at all.

Juror summoning and qualification practices, including postponement, of the Connecticut Judicial Branch were stipulated to by both parties in a jury challenge decided by the Connecticut Supreme Court in 2000.¹⁰² While not specifically commenting on the state's postponement scheme, the court held there was no evidence Connecticut's jury selection system was capable of being manipulated to systematically exclude specific ethnic groups from jury arrays.¹⁰³

While Connecticut's practices have passed constitutional muster, the judicial branch continues its commitment to periodically reviewing the procedures and providing ongoing training to staff. This training looks to ensure all actions taken with regard to a juror, including postponements, are done with complete disregard for the juror's race, ethnicity, gender, or other inappropriate bases for decision-making. Through the ongoing work of the Public Service and Trust Commission Jury Committee, efforts are underway to continually increase effectiveness and efficiency by implementing recommendations, such as securing data about juror utilization in the courts, obtaining juror feedback regarding their experience, and determining the likelihood jurors will appear when scheduled.¹⁰⁴ In addition, Connecticut will continue to collect data on the reliability of jurors appearing when summoned or postponed. Connecticut currently provides a computer system to offer jurors the opportunity to

98. *Id.* § 51-222a(b).

99. *Id.* § 51-222a(d).

100. *See id.* § 51-232(b) (providing the Jury Administrator shall send jurors a summons stating a juror has a right to one postponement of juror service).

101. *See Jury Duty—Postponement Request*, ST. OF CONN. JUD. BRANCH, <https://www.jud2.ct.gov/juryforms/JA039postponement.aspx> (last visited May 7, 2011).

102. *State v. Gibbs*, 758 A.2d 327, 334 (Conn. 2000).

103. *Id.* at 340.

104. *See generally* JURY COMMITTEE REPORT, *supra* note 41, at 11–99 (discussing problems and recommending changes regarding the jury system in Connecticut).

postpone¹⁰⁵ and confirm their service on-line.¹⁰⁶ It is clear allowing jurors to postpone has been and will continue to be an essential element of a jury system seeking to maximize citizen participation, operate efficiently, and be responsive to the needs of jurors.¹⁰⁷ Postponements should be used in conjunction with other jury improvement initiatives.

VII. CONCLUSION

Initiatives to encourage more jurors to confirm their appearance dates or to postpone to a more convenient date are beneficial to a jury system striving for convenience and inclusiveness. Based on Connecticut's empirical data, both confirmed *and* postponed jurors can be deemed to be very reliable in reporting for service. Once a juror is confirmed or postponed, opportunities exist to encourage those individuals to appear when scheduled. By allowing postponements and taking steps to ensure the practice is administered consistently and fairly, courts have another tool to apply to meet the goals of making jury service inclusive, convenient, and efficient. Maximizing the number of committed jurors available for service each day serves the best interests of both the court and the constituency it serves.

105. See *Jury Duty—Postponement Request*, ST. OF CONN. JUD. BRANCH, <https://www.jud2.ct.gov/juryforms/JA039postponement.aspx> (last visited May 7, 2011).

106. See *Jury Duty—Confirmation*, ST. OF CONN. JUD. BRANCH, <https://www.jud2.ct.gov/juryforms/JA042confirmation.aspx> (last visited May 7, 2011).

107. While Connecticut is required by statute to include information about postponement on the summons, adding more information to jury outreach efforts may also inform potential jurors of this possibility. See Boatright, *supra* note 66, at 163. The Connecticut Judicial Branch has established a permanent committee to review all written materials—including notices, brochures and web content—for jurors to ensure the information is useful and includes information about jurors' responsibilities and rights, specifically the right to one postponement. This action was taken pursuant to the Public Service and Trust Commission Jury Committee's *Report and Recommendations*. See JURY COMMITTEE REPORT, *supra* note 41.