

Jury News

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Suppression Files: Valuable Tools or Traps for the Unwary?

Every jury manager who has been in the position for more than six months can recount at least one instance of receiving an irate or distressed telephone call from someone complaining that their spouse or parent or child or sibling, who died some time ago, was summonsed for jury duty — again! The jury manager apologetically explains that the person must still be listed as “alive” on the list of registered voters or licensed drivers or state taxpayers or some other source list used to create the master jury list. Oh, and so sorry for your loss.

It is precisely this type of situation that led to the development of “suppression files”¹ — that is, lists of individuals who are ineligible for jury service, at least for some defined period of time — as a way to keep them from being summonsed.

Some courts maintain the suppression file as a separate reference list and either manually or mechanically check it against the list of individuals whose names have been selected before printing and mailing the summonses. In other courts, the suppression file is actually incorporated as a “status field” on the master jury list. If the person’s status is listed as deceased, or having recently served, or being permanently excused due to a medical condition, or some other reason, the jury automation system “suppresses” the record so it will not be selected — hence, the name.


Using a suppression file prevents these types of embarrassing situations — or at least their endless repetition over time. They can also improve the jury yield by minimizing the number of summonses that would otherwise be sent to persons whom the court knows are unqualified or exempt from jury service. But if the criteria for suppressing a record is not carefully defined, the actual suppression file monitored, and its impact on the master jury list periodically assessed, suppression files can introduce all sorts of non-random errors in the jury selection process. In some jurisdictions, suppression files have even been cited as the major cause of “systematic exclusion” of minorities in recent jury challenges.

SOME EXAMPLES OF SUPPRESSION FILE ERRORS

In Santa Barbara County, California, for example, the court routinely suppressed the records of individuals who had failed to appear for jury service, intending to follow up on these names at a later date. During a challenge to the jury system in which the defendant claimed Hispanic citizens were under-represented in jury pool, the court discovered that a disproportionate number of records that had been suppressed for failure-to-appear for jury service had Hispanic surnames, preventing them from being summonsed.²

The Third Judicial District Court of Michigan, in Wayne County, experienced a similar problem with respect to African American representation in its jury pool. Beginning in 2002, individuals who had been sent a qualification questionnaire were listed as “active” on the master jury list, a status that served to suppress the record from being selected again and sent a second questionnaire. A program to follow up on non-responders was tried and abandoned because staff felt that the program was not worth the time and effort. The result was that those who never responded to the questionnaire remained in that status indefinitely, effectively removing them forever from consideration for jury service.³

In the District of Columbia, persons convicted of felonies are ineligible for jury service for 10 years following completion of their criminal sentence. The practice for a long period of time in the D.C. Superior Court, however, was to suppress for 10 years the record of any person who reported having a felony conviction on




the qualification questionnaire, regardless of when they completed their criminal sentence. The effect was to hold out jury-eligible citizens from service for periods of time far longer than the statute required, which one defendant challenging the jury system argued was a violation of random selection.

BEST PRACTICES AND THINGS TO WATCH OUT FOR

Suppression files can be extraordinarily useful tools for managing the master jury list. Carefully adhering to some best practices with respect to suppression files will help avoid common pitfalls.

1. **Narrowly define the criteria for suppressing a name from being selected.** Only suppress the records of those persons whose status as ineligible for jury service will not change during the applicable period of time. For example, people who have died do not typically come back to life just to fulfill their jury service. People who have previously served as jurors have done their duty for the statutorily proscribed time. However, people who were previously disqualified because they were not U.S. citizens can become citizens in the future. Persons who previously were excused from jury service due to a temporary medical condition can regain their health and serve in the future. Individuals who were previously exempt from jury service due to their occupational or political status can retire or change jobs in the future, losing the right to claim the exemption. The records for individuals in these types of situations should not be added to the suppression file. Instead, it is a better policy to summon a person who may be temporarily ineligible for jury service than to permanently disenfranchise that person from jury service.
2. **To suppress records of persons to whom previous summonses have been returned by the U.S. Postal Service as undeliverable, make sure that the suppression is only activated for the individual *at that address*.** Some courts will add the names of individuals who were previously summoned, but whose summonses were returned as undeliverable, to the suppression file. This practice reduces the undeliverable rate, improving the overall jury yield. However, when matching the suppression records against the names of individuals newly selected to receive a summons, it is important to match not only the name, but also the mailing address. Otherwise, if that person subsequently appears on the master jury list at different (ostensibly current) address, he or she would continue to be excluded from summoning.
3. **Always verify and document the legitimacy of the exclusion before adding a record to a suppression file.** Although it may come as a surprise, a very small handful of citizens do fraudulently send the summons back unopened with “no longer at this address” or “person deceased” written across the front of the envelope, hoping to avoid jury service. The easiest course of action may be to take the information at face value with respect to the current summons, but that does not mean that informal information should be used to permanently exclude the person from jury selection. Before adding a record to the suppression file, jury staff should acquire documentation from a reliable source such as an official stamp by the U.S. Postal Service or verification from a state or local department of vital records. The suppression file should always specify the basis for the exclusion (e.g., deceased, permanent medical excuse, previous jury service) as well as the identity of the jury staff who added the name.
4. **Periodically monitor the size of the suppression file and its impact on the master jury list overall.** Without appropriate supervision, suppression files have been known to become quite large. An extremely large suppression file, or one that substantially reduces the number of available names on the master jury list, is often a sign that some records are being suppressed in error. Jury staff should examine the size of the suppression file and its impact on the master jury list at least annually and always when a new master jury list is compiled. Be particularly alert for steady but significant increases or large variations over time in the number of records that are actually suppressed through the application of the suppression file.


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5. **Under normal circumstances, persons who have recently served or been summonsed for service in the near future should be the single biggest category of suppressed records.** Of the 15 percent of the adult American population that is summonsed each year, approximately half (53 percent) is found to be qualified and available for jury service. The other 47 percent are disqualified, exempt or excused from service, deferred to a future date, fail-to-appear for service, or the summons is returned as undeliverable. If the annual review of the impact of the suppression file shows that one of these subcategories comprises a larger proportion of the total records suppressed than previous or current jury service, the jury manager should investigate further, as it is likely that some of these records are being suppressed in error.

Note that if the court maintains the suppression file as a separate reference table (rather than as a status field on the master jury list), the important measure is the *actual impact of the suppression file on the master jury list*, not the size or makeup of the suppression file itself. Many of the records that are permanently excluded based on the suppression file will eventually cease to appear on the source lists used to create the master jury list as the controlling agencies (voter registrar, state motor vehicle division, state revenue office, etc.) purge those lists of out-of-date records. Separately maintained suppression files, however, will keep those records indefinitely. In contrast, if the suppression is accomplished through a status field on the master jury list, the status is only carried over to the new master jury list in the event of matching records between the old and new lists.

6. **Estimate the expected impact of suppression subcategories using basic information about court's jury operations and legal infrastructure.** As mentioned in # 5 above, approximately 8 percent of the adult American population is summonsed and found to be qualified and available for jury service. That rate, however, varies from virtually none in some jurisdictions to 25 percent or more in others depending on local conditions (e.g., rate of jury trials, number of prospective jurors needed to impanel a jury, etc.). During the periodic assessment of the suppression file, the jury manager should estimate the approximate number of records that should be suppressed for previous and current jury service and use that to evaluate the number of records that is actually suppressed. A basic formula for calculating this estimate is as follows:

$$\begin{aligned} & \text{Summoning Rate (expressed as a proportion of the master jury list)} \\ & \quad \times \text{Jury Yield} \\ & \quad \times \text{the Length of the Statutory Exemption Period} = \\ & \text{Estimated Proportion of Master Jury List Suppressed for Previous Jury Service} \end{aligned}$$

For example, a jurisdiction that routinely exhausts 12 percent of its master jury list each year to summons jurors, that has a 42 percent summoning yield (that is, 42 percent of the summonsed jurors are ultimately qualified and available for jury service), and that has a two-year statutory exemption for jury service should expect that approximately 10 percent of its master list will be suppressed for previous jury service ($12\% \times 42\% \times 2 = 10.1\%$). Depending on how far in advance the court summonses for jury service (typically six to 12 weeks before the scheduled reporting date) and whether the court applies the suppression for previous jury service on a rolling basis or applies it to the entire year (see # 7 below), it would be appropriate to add a margin of 3 to 5 percent to the estimate. Thus, if the actual proportion of records on the master jury list suppressed for previous or current jury service falls between 10 and 15 percent, the jury manager can safely conclude that this criterion is being correctly



applied. But if the suppression rate greatly exceeds 15 percent, the jury manager should investigate to see if jurors are being held out past the statutory exemption period or if jurors who did not actually serve (e.g., they were summonsed but were disqualified, exempted, or excused, failed to appear, etc.) have mistakenly been suppressed from future jury service.

Estimates for other suppression subcategories can be similarly calculated based on knowledge of community trends related to migration (the proportion of local residents that moves to a new address each year), mortality (the proportion of citizens that dies each year), and conviction rates (the proportion of citizens who become ineligible for jury service due to criminal background).

7. **For previous jury service, apply the suppression on a rolling basis based on the actual date of service.** Consider, for example, two jurors who live in a state that provides a two-year statutory exemption for previous jury service — one who served in February 2006 and another who served in November 2006. If the court applies the suppression for previous jury service on a rolling basis, the first would be eligible to be summonsed again in March 2008 and the second in December 2008. If the court simply excludes all of the records of persons who served in 2006 from the 2007 and 2008 master jury lists (a common practice), the suppression applied to both of the hypothetical jurors would stay in place until the court begins to use the 2009 master jury list. The first juror, therefore, would have enjoyed an effective exemption of 33 months while the second juror was exempted for only 25 months. The discrepancy is based solely on when during the calendar year each was randomly selected and told to report for service. Applying the suppression on a rolling basis — that is, each juror becomes eligible for jury service 24 months after completing their previous service — is a more equitable approach. For courts in jurisdictions with very high per capita trial rates, this approach also prevents the potential for exhausting the master jury list. Most contemporary jury automation systems can accommodate this level of complexity in the application of the suppression criteria.

NOTES

1. Suppression files are called “exception files” by some courts.
2. *Blair v. Superior Court*, 114 Cal. App. 4th 532 (2d Cal. App. 2004). At that time, the court did not routinely follow-up on FTA jurors.
3. *State v. Robinson and Jackson* (No. 06 009711-01 and 00 000792), Mich. 3d Cir. (Nov. 12, 2007).

ABOUT THE AUTHOR

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