Jury News

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Tales of "Tales" Juries

Earlier this year we saw a spate of news stories about courts that were forced to send the local sheriff out in search of random citizens from various government offices and public businesses because too few people appeared for jury service that day. These "tales" (pronounced "tay-less") juries occurred in places as varied as St. Johnsbury, Vermont; Greeley, Colorado; Sanford, North Carolina; and Allen County, Ohio. Corralling citizens from the streets of town and pressing them into jury service on a moment's notice sounds draconian — and make no mistake — it is. Fortunately, today the practice of impaneling a tales jury is much rarer than one might guess from the number of recent media stories.

A tales jury is one that is composed at least partially of persons summonsed "from among the bystanders in the court." The practice dates back to colonial times when jurors had to travel great distances, sometimes for days, to get to court. Often many of them would decide against making the trip, reasonably confident that the court wouldn't attempt to enforce the summons because it would take too long to send the sheriff into the hinterlands to do it. Most states still have statutes that permit a court to impanel a tales jury if needed in an emergency.

In most instances, the need for a tales jury is simply a matter of too few jurors appearing for service on the day they were summonsed. In very lengthy or high-profile trials, it can also occur when more jurors are excused or removed for cause than anticipated, leaving too few qualified jurors on the venire to impanel a full jury. On extremely rare occasions, courts might also seek minority "talesmen" from the local community to forestall a jury challenge based on under-representation.

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In almost every instance, the need to impanel a tales jury involves a "perfect storm" combination of a trial that cannot be continued or postponed, usually due to speedy trial requirements, and an excessive failure-to-appear (FTA) rate that often has been ignored for far too long. Although the tales jury remedy might appear to be effective in the short term, the practice does raise legitimate concerns about the validity of the resulting jury pool. For example, does a "random selection" of Wal-Mart shoppers reflect a fair cross section of the community? For that matter, has the sheriff actually picked people randomly? Or has he intentionally or unintentionally selected people who appear less likely to raise a commotion at having their day disrupted with an unexpected jury summons? In the long run, impaneling a tales jury can also greatly undermine public trust and confidence in the court by treating local citizens in such an unfair and undignified way.

SPEEDY TRIAL AND UNCHECKED FTA RATES

The right to a "speedy and public trial," enshrined in the Sixth Amendment of the U.S. Constitution, ensures that the government cannot hold the threat of criminal charges and their attendant consequences (e.g., incarceration, excessive bonds, credit difficulties, personal and professional effects) over a defendant's head

indefinitely. The U.S. Supreme Court has never specified exactly when the speedy trial requirement begins or the timeframe in which the trial must take place, but state and federal statutes enacted in the 1960s and 1970s have clarified these issues by setting out precise time limits for each jurisdiction.

Most constitutional violations (e.g., violation of due process, violation of equal protection) can be "cured" with a new trial. For the speedy trial requirement, however, a new trial actually exacerbates the violation by prolonging the threat of criminal sanctions. Thus, the sole legal remedy for violating a defendant's right to a speedy trial is complete and permanent dismissal of the charges. Although the court is technically the neutral arbiter of the defendant's fate, it is also an instrumentality of the state. Under the law, therefore, the failure to summons a sufficient number of jurors for trial, or to ensure that those summonsed actually appear for trial, is no justification for delaying a defendant's trial past the statutorily proscribed deadline. It is time to either "fish or cut bait," as the saying goes.

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Dismissing charges might be a reasonable option against a relatively low-level, nonviolent offender. But one can only imagine the public outcry that would result from the release of an alleged murderer, rapist, drug kingpin, or gang leader. Loud and angry editorials would be the least of it. More likely would be replacement of the judge, clerk of court, and district attorney at the next public election or reappointment hearing. Little wonder, then, that a judge would view a tales jury as the lesser of two evils.

So what about the problem of FTA jurors? Nationally, we know that FTA jurors account for an average of 9 percent of all summonses, but FTA rates can range from less than 1 percent to more than 50 percent in some jurisdictions. About four out of every five courts conduct some type of follow-up on FTA jurors, but the only approaches found to produce measurable reductions in FTA rates are those that issue a second summons to the offending juror. Controlling for jurisdiction size, courts that had implemented a second summons program had FTA rates that were 24 to 46 percent lower than those that had not done so. Robert Boatright found in his seminal study of FTA jurors that the single biggest predictor of whether a juror would report for service on the date summonsed was that juror's expectation about whether he or she would face any significant consequences for not appearing. The practical effect of a second summons program is to make FTA jurors aware that the court really notices when jurors fail to appear and is prepared to enforce the summons as it would any other court order.

Absent some really unusual circumstances — a freak snowstorm or other weather-related catastrophe, road conditions that make it impossible for jurors to get to the courthouse, or a mistake on the summons as to the date or location of the trial — FTA rates generally do not vary substantially from day to day. So a court that

is forced to impanel a tales jury as a result of an excessive FTA rate on the day of trial is most likely one that has had an FTA problem for a significant period of time and has simply ignored it until it has finally grown to the point of disrupting court operations across the board. The unfortunate irony of a tales jury is that the individuals who are "punished" for the court's failure to engage in consistent enforcement efforts are not the scofflaw jurors, but rather those unfortunate souls who are enlisted as reluctant jurors without notice and the hapless defendant who now faces an understandably hostile jury panel.

LESSONS TO LEARN FROM A TALES JURY

So what should the experience of impaneling a tales jury mean to the jury manager? First and foremost, the jury manager should view the experience as a wake-up call that something is seriously amiss in the court's routine jury operations and investigate immediately. In addition, the court should give consideration to the following approaches to prevent future emergencies requiring a tales jury.

1. When requesting a jury panel, the courtroom staff should indicate if the trial is subject to speedy trial requirements so the jury manager has adequate notice that there is no room for error in the event of a too-small jury pool and make adjustments to the number of summonses if necessary.
2. If jury yields have been unusually variable, the jury manager should ascertain if there is a pattern to the variability (e.g., by day of the week, by day of the month) and make appropriate changes to the number of summons mailed for upcoming service dates.
3. If FTA rates are higher than national rates for courts of similar size and jurisdictional characteristics, or if FTA rates have risen measurably over the past six to 12 months, the jury manager should implement an aggressive follow-up program if one is not already in place. If there is a follow-up program in place, the jury manager should review its effectiveness to determine how it might be improved (e.g., more timely follow-up on FTA jurors, more public outreach about the importance of jury service and consequences of failing to appear).

ABOUT THE AUTHOR

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