



2011 Forum for State Appellate Court Judges

The Jury Trial Implosion: The Decline of Trial by Jury and Its Significance for Appellate Courts

FEDERAL COURTS NURTURING DEMOCRACY

The Honorable William G. Young

Together with voting, service on America's juries is among the central rights and privileges of every citizen. De Toqueville viewed America's juries as a stunning experiment in direct democracy. Indeed, when a citizen deliberates with her neighbors to find the facts in a civil or criminal case, she is functioning as a constitutional officer of the United States. Under our Constitution, there are only six types of Constitutional officers: senators and representatives in the Congress (Article I), president and vice-president in the executive (Article II), and judges and juries in the judiciary (Article III).

Our nation relies on citizen juries more than any other government in the history of the world. Ninety percent of the jury trials on the planet take place in the United States. Absent plea or waiver, it is the jury that assesses guilt in every criminal case. In civil cases, juries routinely evaluate the duties and standards of care required of individuals and businesses. It decides what products are merchantable, what patents are infringed, and what conduct violates our civil rights. In fact, it is the surest guarantee of judicial independence that we enjoy as a people. Governments and large corporate entities fear juries because the jury's direct democratic nature nullifies the resource advantage such large entities commonly enjoy. As Jefferson said, "A jury is the greatest engine ever devised for holding a government to the principles of its constitution."

Moreover, sound scholarship demonstrates that jury service and democracy are inextricably intertwined. Citizens who once have served upon a jury are thereafter more likely to vote and participate in our civic life. In any particular year, the average citizen has a little over one-tenth of one percent chance of service on a federal court jury. Most of the nation's 94 federal district courts fit comfortably within one standard statistical deviation from this average. There are, however, outliers. The accompanying chart lists America's top 25 federal district courts in nurturing democracy through jury service. The top 13 exceed one standard statistical deviation from this average; the top 6 exceed two standard statistical deviations, evidencing a statistically demonstrable disparate impact on the privilege of jury service for our citizens.

Why? In part, this disparity reflects nothing more than a disparity in the distribution of judges authorized to sit in the nation's 94 federal judicial districts. After all, more judges means more jury trials and more citizen participation in our justice system.

But this is not the entire picture. While other factors are at play, it is significant that the vast bulk of the top 25 courts in nurturing democracy via jury service are also especially productive on the recognized standards of actual court productivity (trial time, on bench time, number of civil and criminal trials). This is no coincidence. But consider: a citizen living in the Southern District of New York (Manhattan and its environs) is twenty-five times more likely to be permitted to serve on a federal court jury than her counterpart in the midwest district with the lowest percentage of jury participation. Roughly speaking, this means the New Yorker has an influence on those policy decisions mentioned above that is twenty-five times the influence of the Midwesterner. If we truly equated jury service with the right to vote, this would be totally unacceptable (not to mention unconstitutional).

The remedy is clear: more judges for those areas where population shifts indicate the need for more jury trials and efforts to get those underperforming courts back out on the bench trying their jury cases.



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FEDERAL COURTS NURTURING DEMOCRACY
AMERICA'S TOP 25
(Percentage of Juror Service to District Populations)

District	Circuit	*2000 Census Citizen Total Population-Over 18 Years and Older	Number of Jurors Present for Jury Selection or Orientation for the Period Ending December 31, 2010	Percentage Chance of Sitting as a Juror	Ranking
District of Columbia	DC	411,045	2,702	0.657%	1st
New York-Southern	2nd	3,090,465	15,682	0.507%	2nd
California-Southern	9th	1,862,525	6,438	0.346%	3rd
Pennsylvania-Eastern	3rd	3,803,260	13,025	0.342%	4th
South Dakota	8th	545,575	1,818	0.333%	5th
Delaware	3rd	567,740	1,762	0.310%	6th
Louisiana-Eastern	5th	1,212,370	3,648	0.301%	7th
New York-Eastern	2nd	4,805,140	13,565	0.282%	8th
Alabama-Southern	11th	570,055	1,564	0.274%	9th
Florida-Southern	11th	3,481,135	9,359	0.269%	10th
New Mexico	10th	1,230,735	2,805	0.228%	11th
Wyoming	10th	360,315	816	0.226%	12th
Texas-Southern	5th	4,127,105	9,323	0.226%	13th
Texas-Western	5th	3,342,695	7,280	0.218%	14th
Montana	9th	666,230	1,422	0.213%	15th
Nevada	9th	1,317,915	2,705	0.205%	16th
Alaska	9th	421,985	849	0.201%	17th
Tennessee-Western	6th	1,080,570	2,050	0.190%	18th
Arizona	9th	3,387,550	6,424	0.190%	19th
Mississippi-Southern	5th	1,278,760	2,360	0.185%	20th
Mississippi-Northern	5th	770,625	1,393	0.181%	21st
Oklahoma-Northern	10th	676,975	1,208	0.178%	22nd
Arkansas-Eastern	8th	1,117,925	1,972	0.176%	23rd
Connecticut	2nd	2,401,240	4,211	0.175%	24th
Texas-Eastern	5th	2,027,865	3,527	0.174%	25th
TOTAL: ALL 94 DISTRICTS		196,040,480	259,228	0.132%	

*2010 Census Citizenship population data not available until October 2011.