

Reaching a Verdict: Serving on a Jury in Virginia

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Introduction

One of the most valuable services that a citizen can perform is to be a juror. Because the U.S. Constitution guarantees the right to a jury trial in criminal and civil cases, citizen participation in juries is a critical part of our justice system. The discussions at the LWVFA June Unit Meetings raised many questions about how jury systems in Virginia actually work. Therefore, this follow-up program focuses on the operation of the Virginia jury system, particularly in the Fairfax County and Prince William County Circuit Courts, and in the Federal District Court for the Eastern District of Virginia.

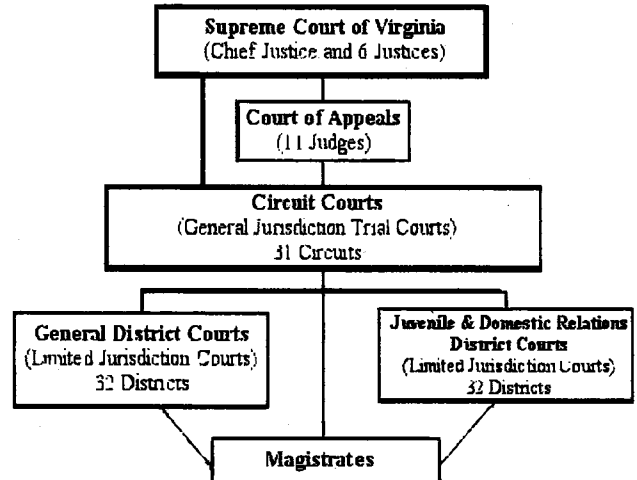
The Court System in Brief

There are two judicial systems in the United States. One is the federal system created by Congress under the authority of the U.S. Constitution. The other, for the District of Columbia and the 50 states, is established under the authority of the various state governments. The authority of the federal courts is enumerated in the Constitution (Article III, § 2). It includes all cases arising under the Constitution and federal laws, such as cases in which the U.S. Government or one of its officers is being sued or is suing someone; controversies between states and between citizens of different states; and cases involving treaties and foreign governments. The state courts handle most criminal matters and the bulk of legal business, including commercial contracts, probate of estates, and marital matters.

In the federal court system, the Supreme Court is the top level. On the next level are the 12 (Circuit) Courts of Appeals and the U.S. Court for Military Appeals; Virginia is covered by the 4th Circuit Court. On the next level are the 94 Federal District Courts that are the trial courts of the federal court system. Fairfax and Prince William Counties are served by the Federal Court for the Eastern District of Virginia, located in the city of Alexandria. There are four other court locations in the Eastern District of Virginia, Norfolk, Fredericksburg, Newport News, and Richmond.

The structure of the Virginia court system is reflected in the following diagram. Jury trials are heard only in the circuit courts.

The Virginia Court System



Fairfax County and Fairfax City comprise the 19th circuit; Prince William County and the cities of Manassas and Manassas Park comprise the 31st circuit. Although the circuit court judges are Virginia employees, the circuit court staff are county employees, and their salaries and other administrative costs of running the court and its jury management system are included in the county budgets. For example, the Fairfax County Advertised Budget for 2007 gave the average cost per juror as slightly less than \$50 in 2005.

Types of Cases

Criminal cases are those in which individuals or organizations are charged by the state or federal government with breaking criminal laws. Typical criminal charges in a federal court are those involving the violation of the federal income tax and narcotics laws, mail theft, and counterfeiting. In the state courts, typical charges are shoplifting and drunk driving, which are misdemeanors; and murders, rapes and robberies, which are felonies. Convictions result in jail time, fines, and/or restitution.

Criminal cases filed in 2005*:	
Fairfax (19th Circuit)	4,751
Prince William (31st Circuit)	3,451

Civil cases are suits between persons over their rights and duties; e.g., a dispute over a broken contract. Typical remedies include: enforcing contracts, issuing injunctions, and/or ordering monetary judgments. **Federal** courts have exclusive jurisdiction in specialized areas such as bankruptcy and maritime cases, among others; **state** courts handle divorce, disputes about wills, and controversies about property, among others.

Civil Cases filed in 2005*:

Fairfax (19 th Circuit)	13,828
Prince William (31 st Circuit)	3,859

Types of Juries

There are two types of juries: grand juries and petit juries. A grand jury decides if there is probable cause to indict (accuse) individuals or corporations on criminal charges for felonies (discussed later in this study). The focus of this program is petit (trial) juries, which participate in criminal and civil trials and render verdicts of guilty or not guilty.

The Right to a Jury Trial

Amendment VI to the U.S. Constitution guarantees all defendants in all criminal prosecutions the right to a jury trial in the state and district where the crime was committed. Amendment VII preserves the right of trial by jury for defendants in a civil trial. There is a presumption against waiving the fundamental right to a jury trial, which can only be done if the party knowingly, intentionally and voluntarily waives the right to a jury trial. Waiver may be requested either orally at arraignment (when a criminal defendant must plea either guilty or not guilty) or in writing.

In **Virginia**, Article I, § 8 of the Virginia Constitution guarantees the right to a jury trial in criminal cases. Article I, § 11 of the Virginia Constitution states that trial by jury is preferable in civil cases and the right should be held sacred. Under Virginia law (§ 8.01-336), the case may be heard and the judgment given by the court (judge) if both parties and the court agree.

Obviously, if a criminal defendant pleads guilty or agrees to a plea bargain agreement, or if a civil defendant agrees to a civil settlement, there will be no jury trial. Also, if a person charged with a crime fails to

appear for trial, he/she shall be deemed to have waived trial by jury and the case will be heard in his absence as if he/she had pled not guilty.

In 2005, 104 criminal cases went to jury trial in Fairfax Circuit Court, while 70 went to jury trial in Prince William Circuit Court. In that same year, 143 civil cases went to jury trial in Fairfax, while only 26 went to jury trial in Prince William.

The Jury Pool

Jury Pool Source Lists: The Jury Selection and Service Act (Jury Act), 28 U.S.C. Sec. 1861 et seq., provides the judicial structure for the selection of **federal** juries and establishes two important general principles: random selection of potential jurors from a fair cross section of the community; and opportunity for all qualified citizens to be considered for jury service. The list of prospective jurors summoned for a particular term of a court is called the venire. In the **Federal District Court for the Eastern District of Virginia**, the venire is chosen from a jury pool generated by a random selection of citizen's names from lists of registered voters, or combined lists of voters and people with driver's licenses.

In **Virginia** courts, the venire is randomly selected using lists designated by the courts. Fairfax and Prince William currently use only voter registration lists, which are updated annually. Fairfax previously tried to use lists from the Department of Motor Vehicles as well but found that the number of inaccurate addresses was an impediment.

Jury Pool Creation: Before potential **federal** jurors are summoned for service, they receive questionnaires to complete and return to the clerk's office, which then screens them to determine eligibility for jury service. The Clerk's Office uses a statistical process to establish certain percentages of each county or city represented in the jury pool to try to ensure that the jury pool is representative.

In **Virginia**, also, questionnaires are sent to prospective jurors. In 2005, Fairfax sent 44,408 and Prince William sent 11,000 questionnaires to prospective jurors. In Fairfax, they can be completed on-line. The completed questionnaires are reviewed by jury commissioners to determine which citizens will serve as jurors during the coming year.

Role of the Jury Commission in Virginia

Under the Virginia Code (§ 8.01-343), the judge of each circuit court appoints, by July 1 of each year, between two and fifteen persons to serve as jury commissioners for the following year. Those appointed must be competent to serve as jurors and "shall be citizens of intelligence, morality, and integrity." No practicing attorney-at-law can serve as a jury commissioner, and no jury commissioner can be reappointed for at least three years after the expiration of the year for which he was appointed. Using random selection techniques—either manual, mechanical or electronic—the jury commissioners select the persons whose names will be placed on the master jury list. Then, the list is reviewed and the names of those who, according to statute, cannot serve are removed.

Jury Commissions are not used in federal court.

Eligibility for Jury Service:

To be legally qualified for **federal** jury service, an individual must:

- be a United States citizen;
- be at least 18 years of age;
- reside primarily in the judicial district for one year;
- be able to read, write and speak the English language with sufficient mastery;
- be physically and mentally capable of service;
- not be currently subject to felony charges;
- and never have been convicted of a felony unless civil rights have been legally restored.

The following three groups are exempt from **federal** jury service: (1) members of the armed forces on active duty; (2) members of professional fire and police departments; and (3) "public officers" of federal, state or local governments, who are actively engaged full-time in the performance of public duties. Persons belonging to these groups may not serve on **federal** juries, even if they so desire. Also, under **federal** law, a person cannot be required to serve on jury duty more often than once every two years.

In **Virginia**, a juror must meet the federal qualifications and be a resident of Virginia and the locality for at least 6 months, and not be incompetent or incapacitated. The Virginia Code exempts the following from

jury service: the President and Vice President of the United States; the Governor, Lieutenant Governor and Attorney General of Virginia; members of both houses of Congress; members of the General Assembly while in session or entitled to a legislative continuance; licensed practicing attorneys; judges and members of several state commissions; magistrates; sheriffs, police and other law enforcement officers; penitentiary and jail officers. Persons who have been called and reported to any state court for jury duty during the previous three years are also exempt.

Excuses and Deferrals: In addition to exemptions, both **federal** and **Virginia** courts allow excuses from service, upon individual request, to designated groups of persons or occupational classes. Such groups include: persons over age 70; persons who have, within the past two years, served on a **federal** jury; and persons who serve as volunteer fire fighters or members of a rescue squad or ambulance crew. Individuals may also be excused if they are blind or have a medical condition that would impede jury service.

The Jury Act allows **federal** courts to permanently excuse or temporarily defer a juror from service at the time he or she is summoned on the grounds of "undue hardship or extreme inconvenience," among other reasons. Temporary deferrals for jurors are granted at the discretion of the court and cannot be reviewed or appealed to Congress or any other entity.

In **Virginia**, the list of persons who may be excused from jury service upon request is lengthy and includes those whose services are so essential to the operations of an enterprise that it must close or cease to function if the person is required to perform jury duty. The courts may defer any person from jury service for a particular term of a court, or limit that person's service to particular dates of that term, if serving on a jury would cause such person a particular occupational inconvenience. However, once the "occupational inconvenience" has ended, the deferral will end.

Failure to Appear: In **Virginia**, any juror who has been given due notice to appear in court and fails to do so without sufficient excuse will be fined between \$50 and \$200. In **federal** cases, a person could be escorted to the courthouse by a deputy U.S. marshal to explain to a judge why he/she did not report and could also be

fined up to \$100 or imprisoned for up to three days or both.

Length of Jury Service

Jurors in **federal** court are "on call" for two weeks, during which they call the recorded telephone message each day to learn whether they need to report to the courthouse the following day. They rarely need to report to the courthouse every day of their two-week term of service. Once selected for a jury, a juror must serve until the conclusion of the trial, even if it lasts longer than two weeks. If the trial ends before the conclusion of the two-week term of jury service, the juror is excused from further service. The average trial lasts one to three days.

In **Virginia**, the number of jury duty notices mailed to make up the jury pool for each term of the court depends on the anticipated need for jurors for that term. Each term in **Fairfax** normally lasts two weeks. Jurors are assigned to a particular day of the week and are asked to call a recorded message (or check the court website) on the evening before their assigned day to determine whether they are needed. A formula is used to ensure that a sufficient number of jurors are available for each case. The average number of jurors called each day for jury selection was 67.2 in 2005. Until 1992, jurors in **Fairfax** were on call one day a week for 8 weeks. This had a negative impact on jurors' employment and personal lives and was changed to the current two-week term. Normally, jurors are required to appear one time or for one trial during their term of service. The term and jury management process provide, in effect, a one day/one trial system.

In **Prince William**, a term of the court is a two-month period, beginning the first Monday of February, April, June, August, October, and December. Prior to each term of the court, 900 jurors are summoned to serve for a portion of the two-month term--for example, all Mondays of February. A juror is only asked to serve on a specific day of the week for one month. As in the other courts, jurors call the jury recording the evening before their assigned day to determine if they are needed the next day. On average, jurors will be required to come in for jury duty only two days out of the time period assigned.

Environment

At the present time in **Fairfax**, the jurors' assembly

room is next to the cafeteria in the Jennings Courthouse. In recent years, amenities such as a fax machine, free local telephone lines, wireless Internet access, a microwave and a refrigerator have been added to the existing tables and chairs. The **Prince William** jury assembly room has a fax machine, a television, a refrigerator, coffee, and a microwave, and will soon be adding tables to the existing room. After the jury is selected, a small room off the courtroom is made available to jurors to use for their deliberations and if/when sent from the court during special legal queries.

Both **federal** and **state** court facilities are accessible to those who are physically handicapped. In **Fairfax**, all courtrooms will be ADA accessible once the current renovation is complete; currently, if a juror requires special seating, the case is assigned to a compliant courtroom.

In **federal** court, no type of camera or cell phone is permitted in the courtroom. In **Fairfax** and **Prince William**, the public is not allowed to carry cell phones with cameras into the courthouse. Other cell phones must be turned off.

Juror Pay and Time Off From Work

In **federal** court, jurors are paid a taxable attendance fee of \$40 for each day they report to the courthouse. Employees of the **federal** government are not entitled to be paid for attendance in **federal** court unless they are in a non-pay status. All jurors are reimbursed for travel expenses. Jurors in **Virginia** are reimbursed \$30 for each day they report to the courthouse. The amount is set by the legislature and is considered reimbursement for travel and other expenses.

Federal and **Virginia** law protect all permanent employees who serve on juries from discharge or adverse action, as long as they have given reasonable notice of their court appearance or summons to their employer. They cannot be required to take sick leave or vacation time. Employers who fire, threaten to fire, intimidate or coerce an employee who wishes to serve his/her jury duty, may be prosecuted. In **Virginia**, any employer convicted of violating these provisions is guilty of a class 3 misdemeanor. While the private employer does not have to pay the employee while he serves, most do, either in full, or with the amount of juror pay deducted from the juror's regular wages.