

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF MICHIGAN
814 THEODORE LEVIN UNITED STATES COURTHOUSE

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June 1, 2012

Re: Review of the Court's Jury Selection Plan
Executive Summary - Jury Consultant's Final Report

In March 2010, the United States District Court for the Eastern District of Michigan created the Ad Hoc Jury Committee. The primary goal of the Committee is to seek and implement solutions that will increase minority representation in the Court's jury pools. Jury Consultant Paula Hannaford-Agor of the National Center of State Courts was hired to assist the Committee in reaching its goal.

Attached is the executive summary of Ms. Hannaford-Agor's Final Report dated December 20, 2010. For a copy of the complete report, please contact the Court Administrator's Office at 313-234-5051. The complete report may be delivered in electronic format upon request.



Review of the Jury Selection Plan for the U.S. District Court, Eastern District of Michigan

Executive Summary

December 20, 2010

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Executive Summary

The U.S. Constitution guarantees defendants in criminal trials the right to be tried by an impartial jury selected from a fair cross section of the community. Although the time has long passed since courts intentionally excluded racial and ethnic minorities from participating in the jury system, many courts experience difficulty securing a representative jury pool due to a variety of procedural, technological, and socioeconomic factors. The U.S. District Court, Eastern District of Michigan, has struggled with this problem for more than a decade. To address it, the Eastern District of Michigan requested that the National Center for State Courts (NCSC) advise the Court on possible strategies to reduce undeliverable and non-response rates for African-Americans, suggest improvements to the Jury Selection Plan in advance of the creation of the 2010-2012 Master Jury Wheel, and reach out to other racial and ethnic communities in the Detroit metropolitan area, especially Hispanics and Arab-Americans/Chaldeans, that may also be underrepresented in the Court's jury pool. This assistance was provided by Paula Hannaford-Agor, Director of the NCSC Center for Jury Studies, who visited the Eastern District of Michigan in July 2010 to identify the principal areas of concern related to the jury system and to review documentation for the Jury Selection Plan and operational data from the jury automation system.

Key Findings

The findings from this review suggest that the underrepresentation of African-Americans in the Court's divisional jury pools results primarily from a combination of two factors: (1) undeliverable qualification questionnaires due to inaccurate or stale addresses on the master jury wheel; and (2) disproportionately high non-response rates in Wayne County, which has the largest concentration of African-Americans within the Detroit, Ann Arbor, and Port Huron Divisions. As discussed below, a substantial portion of the non-response rate since September 2009 may consist of undeliverable questionnaires that have not been returned by the U.S. Postal Service.

Undeliverable Rates

The Eastern District of Michigan applied NCOA address updates and verification to the 2008-2010 master jury wheels during the wheel compilation process. Nine percent of the records were found to have out-of-date or inaccurate addresses or the person was deceased. By August 2010, the NCOA match rate had increased to 25% due to normal migration rates during the pendency of the master jury wheels and to the disproportionate impact of the economic crisis in the Detroit metropolitan area. Cumulatively, more than one-third of the records on the 2008-2010 master jury wheels are now out-of-date. Curiously, the actual proportion of qualification questionnaires that are returned by the U.S. Postal Service marked "undeliverable as addressed" has remained fairly constant over the past two years; however, the non-response rate has increased precipitously during the same period. The increase is much too high to attribute solely to citizens' intentional failure to respond to a juror questionnaire. The most likely explanation is that a substantial proportion of these qualification questionnaires are actually undeliverable, but are not marked as such and may have been delivered to now-vacant addresses.

Non-Response Rates

Citizen non-response to the qualification questionnaire has been a chronic problem for the Eastern District of Michigan for at least a decade. Overall, the average non-response rates for the judicial divisions are 2.5 to 5 times higher than the national average. The non-response rate in Wayne County is more than double that of the other counties that make up the Detroit Division. The Eastern District of Michigan has occasionally followed up on non-responders, but not on a consistent or timely basis, which are the key characteristics of an effective follow-up program. The single follow-up effort undertaken by the Eastern District of Michigan during the pendency of the review period resulted in considerably reduced qualification rates, largely due to non-response. This is in marked contrast to the experience of other urban courts, for which the qualification rate on follow-up tends to be similar to that of the original mailing. Another significant characteristic of the non-response rate for the Eastern District of Michigan is the dramatic increase that took place between the July 23 and September 21, 2009 mailings. The combination of these three factors—the dramatic increase in the non-response rate, the lack of movement in the corresponding undeliverable rates, and the marked change in non-response rate between the first and the follow-up mailings—suggest that a large portion of the non-response rate for the past year is actually undeliverable questionnaires that have not been returned by the U.S. Postal Service.

Quality of the Master Jury Wheels

The three key characteristics of an effective master jury wheel are representativeness, inclusiveness, and accuracy. Pursuant to the JSSA and the Jury Selection Plan, the master jury wheels for the Eastern District of Michigan are created by merging the lists of registered voters, licensed drivers, and state identification card holders, identifying and removing duplicate records, and randomly selecting a small sample of records in proportion to the geographic composition of the list of registered voters. An analysis of the merged lists of registered voters, licensed drivers, and state identification card holders, from which the master jury wheels are created, indicate that the underlying juror source lists are geographically representative of the judicial divisions, but the merged lists are approximately 10% over-inclusive. This strongly suggests that some portion of the master jury wheels contain records for persons who are ineligible for jury service because they have died or have moved out-of-district. The percent of over-inclusiveness corresponds closely to the NCOA match rate during the creation of the master jury wheel, which is a direct measure of list accuracy. As noted above, the accuracy of the master jury wheels have degraded over time due to normal migration rates and the impact of the economic crisis on the Detroit metropolitan area. Additional juror source lists are unlikely to improve the overall representativeness or inclusiveness of the master jury wheels and may greatly complicate the process of identifying and removing duplicates. The only justification for adding more juror source lists would be to improve the accuracy of the address records with more frequently maintained juror source lists. Although the analysis of the 2008-2010 master jury wheels did not indicate skewed representation of individual counties, the practice of using very small subsamples of the complete merged lists runs the risk of introducing sampling bias into the master jury wheels, making it increasingly less likely that subsequent random samples of qualification questionnaires will accurately reflect the desired characteristics of the merged source lists.

Hispanic and Arab-American/Chaldean Representation in the Jury Pool

African-Americans are the single largest minority group in the Detroit metropolitan area and the group whose historical underrepresentation in the divisional jury pools has received the most attention. Nevertheless, the Eastern District of Michigan is equally concerned about the possible underrepresentation of other minority populations, especially Hispanics and Arab-Americans/Chaldeans. Part of this review included efforts to determine for baseline purposes the expected proportion of the divisional jury pools comprised by these populations. The task was complicated by several factors. For Hispanics, the primary difficulty is estimating the proportion of the population that is jury-eligible, particularly with respect to citizenship and English fluency. Because Hispanics represent a very small proportion of the total population, estimates based on annual surveys conducted by the U.S. Census Bureau are unavailable. The 2000 Decennial Census provides the most recent reliable estimates: 2% or less in all judicial divisions. For Arab-Americans/Chaldeans, the estimates are necessarily more tentative. Although the Detroit metropolitan region boasts the largest concentration of persons of Arab/Persian descent outside of the Middle East, the U.S. Census Bureau does not collect information about ancestry or national origin as part of the decennial census. An open-ended question on ancestry is included in the U.S. Census Bureau's annual survey (the American Community Survey), but due to the potential for sampling bias for small populations and for non-response rates by this population, the U.S. Census Bureau estimates are believed to substantially undercount Arab-Americans/Chaldeans. Local community groups serving these populations provide alternative estimates about these populations, but without sufficient precision concerning the eligible criteria for jury service to make firm predictions about the expected proportion of the divisional jury pools in the Eastern District of Michigan. The best "guestimate" that the NCSC is able to provide is 4.7% to 7.7% of the jury-eligible population, depending on whether the U.S. Census Bureau or local Arab/Persian community organization estimates is used as the starting point for the calculations.

Recommendations

Based on the findings of this review, the NCSC advises the Eastern District of Michigan to undertake several efforts to improve the demographic composition of the division jury pools. The first three recommendations should be implemented immediately. They are intended to directly address the two most significant causes of underrepresentation and provide information on which to assess their impact. The remaining recommendations focus on longer term improvements in jury operations. These are less likely to have an immediate impact on the demographic composition of the divisional jury pools and may require substantial administrative and logistical support to implement, but will ultimately strengthen the integrity of the jury system and provide opportunities for public outreach and education.

Recommendation 1: Confirm and quantify the proportion of the non-response rate that is comprised of unreturned undeliverable questionnaires.

The underrepresentation of African-Americans in the divisional jury pools is most likely caused by both disproportionately high non-response rates for Wayne County and undeliverable questionnaires throughout the Eastern District of Michigan. A substantial portion of the non-response rate in all of the

judicial divisions, especially since September 2009, may reflect undeliverable questionnaires that have not been returned by the U.S. Postal Service. Until this is confirmed and quantified, it is not possible to determine whether non-response or undeliverable questionnaires is the more significant factor in African-American underrepresentation and hence which strategies offer the most promise for improved representation in the divisional jury pools. This information would also provide a more reliable baseline for assessing the impact of efforts to address non-response and undeliverable rates. This information can be determined by conducting a controlled experiment to measure the difference in non-response and undeliverable rates using two different methods to deliver follow-up qualification questionnaires: first-class mail and certified mail/return receipt requested. The NCSC recommends that the Court randomly select 200 to 250 persons who have previously failed to respond to their qualification questionnaire and send a second questionnaire by certified mail/return receipt requested. The remaining follow-up questionnaires should be sent by first-class mail. Certified mail provides a tracking number with which to confirm the ultimate disposition of the qualification questionnaire, which is a more accurate measure of non-response and undeliverable rates.

Recommendation 2: Improve the accuracy of address records on the master jury wheels by (1) updating the master jury wheels annually; (2) changing the default parameters for the merge/purge procedures; (3) using NCOA to update all qualification questionnaire mailings; and (4) implementing limited use of suppression files.

This recommendation addresses problems related to undeliverable questionnaires through improved maintenance of the master jury wheels. Under normal conditions, the migration rate in the Eastern District of Michigan is sufficiently high to justify renewing the master jury wheels on an annual basis. The impact of the current economic crisis on migration patterns within the Detroit metropolitan area makes this step even more essential. When creating the master jury wheels, the Court should use name, gender, and date of birth as the duplicate matching criteria (rather than name, gender, and street address), and retain only the most recently updated record or the record from the most frequently maintained source list. This will reduce the number of unrecognized duplicate records and out-of-date addresses on the merged source lists. Using NCOA to update record addresses before mailing the batch qualification questionnaires will help to maintain the accuracy of the address records between renewals of the master jury wheels. Suppression files, if used carefully and judiciously, can also improve the efficiency of the jury selection process by ensuring that persons who are known to be ineligible for jury service from being selected to receive a qualification questionnaires, especially from one master jury wheel to the next.

Recommendation 3: Implement a rigorous follow-up on non-respondents.

Follow-up programs are an old and proven method of improving response rates, but their effectiveness depends on timely and consistent application. The NCSC recommends that the Eastern District of Michigan send a second qualification questionnaire with a strongly worded cover letter to non-respondents within a very short time after the expected return date—ideally within a week, but no later than three weeks of the expected return date for optimal effect. It should also consider holding OSC

hearings for jurors who fail to respond to the second questionnaire. Such hearings generally have little long-term impact on non-response rates, but can provide a very effective public education opportunity on the importance of jury service and the consequences of failing to respond to a qualification questionnaire or jury summons.

Recommendation 4: Supplement the existing juror source lists with state income tax filers, newly naturalized citizens, and volunteers.

The existing juror source lists provide a sufficiently representative, but overly inclusive, merged list to create the master jury wheels. Additional supplemental lists are unlikely to substantially increase the number of jury-eligible persons and would greatly complicate the list creation process. The only justification for adding other supplemental source lists is to obtain access to more accurate address records through the use of more frequently maintained source lists. If the Michigan legislature enacts SB 0656 to permit courts to use the list of state income tax filers as a juror source list, the Eastern District of Michigan should amend its Jury Selection Plan to use this list as a supplemental source list and retain records from this list during the duplicate identification and removal process. Other potential source lists that the Court may consider are the list of newly naturalized citizens and a specially created list of “volunteers” (persons who volunteer to be considered for jury service, but who are not already included on the merged list as registered voters, licensed drivers, or state identification card holders). Again, these lists are unlikely to have a profound effect on the overall demographic composition of the master jury wheels, but will have more current address records. With respect to the list of “volunteers,” it will also provide judges, lawyers, and court personnel with a concrete step to encourage citizens to take during public outreach and education meetings.

Recommendation 5: Use the complete merged juror source lists as the master jury wheel and reinstitute the proportionality requirement at the summoning stage of the jury selection process.

The use of small subsamples of the merged juror source lists to create the master jury wheels introduces the potential for sampling bias that would be perpetuated into subsequent stages of the jury selection process. Using the entire merged list as the master jury wheel would eliminate this risk entirely. Due to the overlapping geographic jurisdiction of the Ann Arbor, Detroit, and Port Huron Divisions, implementation of this recommendation would require an amendment to the Jury Selection Plan to develop a different process for allocating qualified jurors to the respective judicial divisions for jury service. Specifically, the recommendation calls for the Eastern District to create a single qualified wheel on which all jurors who are statutorily qualified for jury service are placed. When jurors are needed for service, they are randomly selected from the qualified wheel and allocated to the respective divisions according to the proportionality criteria determined by the list of registered voters. The effect of this approach is to reintroduce the proportionality requirement at the summoning stage of jury selection to compensate for the unequal qualification rates across the various counties in each of the judicial divisions.

Recommendation 6: Approach the Michigan Administrative Office of the Courts concerning a coordinated community education and outreach effort.

State trial courts in Michigan face similar problems concerning underrepresentation of minorities in their jury pools. Many of the Michigan Circuit Courts have a long history of public outreach and education for the purpose of improving jury diversity and public trust and confidence in the jury system. Given the similarity in the nature of the problem and the desire to find effective remedies, it would be useful to both the federal and state courts to join forces, combine resources, and present a unified, coherent message to their shared audience of prospective jurors. For purposes of logistical ease in facilitating the discussions, this recommendation suggests that the Eastern District of Michigan contact the Michigan Administrative Office of the Courts for assistance and support in coordinating these efforts.