

**An Audit of the
Jury Selection Process
In the Milwaukee County
Circuit Court System**

July 2007

Committee on Finance and Audit

Richard D. Nyklewicz, Jr., Chairman
Elizabeth M. Coggs-Jones
Michael Mayo, Sr.
Willie Johnson, Jr.
Gerry P. Broderick
Peggy West

Milwaukee County Department of Audit

Jerome J. Heer, Director of Audits
Douglas C. Jenkins, Deputy Director of Audits

Audit Team
Lolita Davis-Spears

Review Team
Amos Owens
Jim Felde, CPA, CFE

Administrative Support Team
Cathy M. Remiszewski
Cheryl A. Hosp
Karen J. Martinson



Department of Audit

Milwaukee County

Jerome J. Heer

• Director of Audits

Douglas C. Jenkins

• Deputy Director of Audits

July 6, 2007

To the Honorable Chairman
of the Board of Supervisors
of the County of Milwaukee

We have completed an audit of the Jury Selection Process in the Milwaukee County Circuit Court System.

Recommendations contained in the audit report focus on strategies to improve the probability that jury pools assembled for the Milwaukee County Circuit Court are representative cross-sections of the community.

A response from the Chief Judge of the First Judicial District is included as **Exhibit 3**. We appreciate the cooperation extended by the Chief Judge, the Milwaukee County Clerk of Circuit Court, and their staff during the audit.

Please refer this report to the Committee on Finance and Audit.

Jerome J. Heer
Director of Audits

JJH/cah

Attachment

cc: Milwaukee County Board of Supervisors
Scott Walker, Milwaukee County Executive
Kitty Brennan, Chief Judge, First Judicial District of Wisconsin
John Barrett, Milwaukee County Clerk of Circuit Court
Rob Henken, Director, Department of Administrative Services
Terrence Cooley, Chief of Staff, County Board Staff
Steve Cady, Fiscal & Budget Analyst, County Board Staff
Delores Hervey, Chief Committee Clerk, County Board Staff

An Audit of the Jury Selection Process in the Milwaukee County Circuit Court System

Table of Contents

Summary.....	1
Background.....	7
Section 1: Jury Pool Management	10
Section 2: Jury Selection.....	38
Exhibit 1 - Audit Scope.....	43
Exhibit 2 -Detail of Department of Audit Analysis Reflected in Audit Report Table 8	44
Exhibit 3 –Response by the Chief Judge, Milwaukee County Circuit Court.....	47
Appendix 1 – Taylor v. Louisiana	50
Appendix 2 – Chapter 756, Wisconsin State Statutes.....	60
Appendix 3 – Race, Diversity, and Jury Composition: Battering and Bolstering Legitimacy (Chicago — Kent Law Review)	64
Appendix 4 – U.S. v. Green.....	91
Appendix 5 – Plan for the Random Selection of Grand and Petit Jurors, U.S. District Court, Eastern District of Wisconsin.....	110
Appendix 6 – Jury Selection and Service Act, Excerpts.....	120
Appendix 7 – Batson v. Kentucky.....	123

Summary

In March 2006, an all-White jury of 12 members heard the case of three former Milwaukee police officers. The officers, all White, were charged in the brutal beating of a biracial man in October 2004 outside a party attended by several off-duty police officers. The jury found the three defendants not guilty on four of five charges, and was deadlocked on the fifth charge, resulting in a mistrial for one defendant (a retrial is scheduled for August 2007).

Public outrage over the jury's decision in this high-profile case generated considerable media attention and prompted the Chairman of the Milwaukee County Board of Supervisors to call for a review of the jury selection process by the County Department of Audit.

Overview of Jury Selection Process

Selection of a jury in the State of Wisconsin generally entails two phases: assembling a pool of prospective jurors, and assigning selected prospective jurors to a jury. Prospective jurors are chosen at random by the Clerk of Circuit Court using specific source lists authorized by state statute.

Once in a courtroom the judge will instruct jurors on the selection process. General information about the case will be presented and the judge and attorneys ask a series of questions to determine each juror's ability to serve on the specific case before the court. The judge will decide if it is necessary to excuse a juror who is not, or who appears not to be, impartial. This is called a challenge for cause. Next the parties, usually through their attorney, have the opportunity to question individual jurors regarding their backgrounds, experiences and beliefs. Based on these questions, a party may ask that a juror be excused for cause, and the judge will then decide if the reason is legally sufficient. There is no limit on the number of challenges for cause.

A party may also ask the court to excuse a juror without giving any reason. This is called a peremptory challenge. By law, the number of these challenges is limited, generally between four and six for each side in felony cases.

Various provisions of the U.S. Constitution, Federal Statutes and Wisconsin State Statutes establish the following governing principles for assembling jury pools and empanelling juries:

- No person who is qualified and able to serve as a juror may be excluded from that service on the basis of race or a number of other characteristics.
- All persons summoned for jury duty shall be selected at random from a representative cross-section of the community.
- A defendant has no legal right to a jury composed, in whole or in part, of persons of his or her own race.

Racial Composition of Milwaukee County Juries

Following is a comparison of the racial composition of Milwaukee County juries empanelled in 2006 to the estimated racial composition of Milwaukee County residents that are 18 years of age or older and are U.S. citizens, two key qualifications for jury service.

	<u>2006 Sworn Jurors</u>	<u>Percent Total</u>	<u>2005 Voting- Age Citizens</u>	<u>Percent Total</u>
White	3,856	78.8%	411,017	66.4%
African American	798	16.3%	145,854	23.6%
Hispanic	158	3.2%	39,267	6.3%
Other Races	82	1.7%	22,954	3.7%
Total	4,894	100.0%	619,092	100.0%

Reasons for Disparity

There are several reasons that appear to contribute to the disparity between the racial compositions of sworn juries and the general population of qualified jurors in Milwaukee County. These include:

- Issues related to the use of a Department of Transportation (DOT) list as the sole source of information for generating jury summons.
- Problems with the delivery of jury summons.
- Variations in the rates at which prospective jury pool members are legally disqualified or excused from jury duty.
- Variations in the rates at which prospective jury pool members fail to respond to jury summons or report for jury duty.

We performed an analysis to demonstrate the relative impact of each of the above influences, described in greater detail in this report, on the racial composition of Milwaukee County jury pools assembled in 2006. We used the results of that analysis to identify the relative degree of improvement in racial representation that could potentially be achieved from the use of different strategic approaches, and incorporated the results in fashioning recommendations designed to improve the manner in which Milwaukee County assembles jury pools. The analysis shows that, by far, the greatest opportunity to improve the extent to which jury pools reflect the racial composition

of the community is to address the disparity in the rates at which different racial groups respond to jury summons or report for jury duty.

We also compiled the racial breakdown of strikes for cause and peremptory challenges in 33 criminal cases in 2006 that we either observed or for which we reviewed court records. The data from this limited number of trials either observed or reviewed does not indicate a pattern of peremptory strikes that disproportionately affect minorities. We also note that a defendant has legal recourse if a prosecutor ultimately uses peremptory strikes to eliminate a particular race for discriminatory reasons. In *Batson v. Kentucky*, [476 U.S. 79 (1986)], the U.S. Supreme Court greatly reduced the burden of proof required of a defendant to establish that a prosecutor has used his/her peremptory strikes in a racially discriminatory manner.

There is general agreement that protocols for the selection of individual juries are firmly established on defendants' constitutional rights and legal precedence. As such, there is little discussion of modifying current practices, as any attempt at substantive modification would likely be struck down by legal challenges. Therefore, potential solutions to address juries that do not reflect a representative cross-section of the communities from which they are drawn concentrate on the processes used to assemble the jury pools from which jurors are selected.

Potential Solutions

The Federal Government Approach

The United States District Court for the Eastern District of Wisconsin uses voter registration lists within the district as the sole source for generating federal jury summons. The district's Federal Jury Services staff assembles a 'Master Jury Wheel' from which a source list is randomly generated. Based on the racial compositions of jury pools assembled in the 1980s, in which African Americans were under-represented, the construction of the Master Jury Wheel was weighted more heavily from certain aldermanic districts in the City of Milwaukee such that, when randomly selected from the wheel, the resulting source list produced a more representative cross-section of the district's voting age population. According to local Federal Jury Services staff, this method of assembling federal jury pools in the Eastern District of Wisconsin has been used for approximately 15 years without legal challenge.

The Chief Judge of Milwaukee County Circuit Court indicates the Eastern District's approach is not permissible for the State Circuit Court system under the random selection provision of governing Wisconsin Statutes, and also cites federal case law that arguably challenges the validity of the

Eastern District's weighting procedure. We urge consideration of a different interpretation of both the statutory language and the case law cited by the Chief Judge, but acknowledge that efforts to modify the Milwaukee County Circuit Court's process for summoning prospective jurors in a manner similar to that employed by the Eastern District could potentially require statutory revisions and/or encounter legal challenge, and would also require considerable manual interventions and additional resources.

Current Efforts of the Milwaukee County Circuit Court

Given her views on the legality of applying the federal court system's approach to increasing minority representation in jury pools, and modest successes in dealing with similar problems in the 1980's by concentrating on response rates, in June of 2006, the Chief Judge ordered that letters be sent to individuals that had not responded or shown up for jury duty when summoned, beginning with no-shows from January of 2006. The letters remind recipients of their legal obligation to respond, and reference the potential fine for non-compliance of up to \$500. To date, the Chief Judge has been reluctant to follow through on the punitive measures described in the letter by referring non-responders to the District Attorney's Office for possible prosecution, citing the possibility of creating a bias against the prosecution if jury participation is, in effect, coerced. Recent data suggest that the current approach to increasing African American response rates to jury summons is having fluctuating, but generally positive, results.

In addition, the Chief Judge established a Judges' Jury Committee, which meets regularly with Jury Management staff to discuss and evaluate the integrity of the jury selection process.

Other Potential Solutions

Other approaches used by jurisdictions to increase minority representation in jury pools include legislation to reduce time commitments required to fulfill jury duty and to either increase jury pay, or mandate that employers pay the wages of employees on days that they report for jury duty.

Milwaukee County Circuit Court's jury pay of \$16 per day (the minimum allowed by Wisconsin State Statutes) is exceeded by 66% of the state court systems in the U.S. We have calculated the cost of increasing the current fee is approximately \$50,000 for each dollar increase in the current daily rate. For example, the cost of increasing the Milwaukee County Circuit Court daily jury pay to \$26, placing it in the middle of the national range, would cost approximately \$500,000. The County Board has the authority to set the Milwaukee County Circuit Court jury pay at or above the current minimum. According to a May 2006 report from the Wisconsin Supreme Court's Chief Judge Subcommittee on Juror Treatment and Selection, as of 2004, just seven Wisconsin counties (9.7%),

including Milwaukee County, paid the minimum daily jury rate; 40 (55.5%) paid between \$20 and \$29 per day; 16 (22.2%) paid between \$30 and \$39 per day; and nine (12.5%) paid \$40 to \$50 per day.

Our survey of jury pools assembled during the weeks of August 8th through 23rd, 2006 indicates that approximately 78% of those responding indicated they were employed on either a full or part time basis, and 57.9% of prospective jurors identifying themselves as employed responded that they receive full or partial pay from their employers when they appear for jury duty. This response was fairly consistent for Whites (58.5%) and African Americans (55.7%). Survey information from the National Center for State Courts shows that four states mandate that employers pay wages to employees reporting for jury duty on work time, while two additional states require employers to pay under certain circumstances.

Recommendations

Recommendations contained in the audit report focus on strategies to improve the probability that jury pools assembled for the Milwaukee County Circuit Court are representative cross-sections of the community. Specifically, recommendations are made to:

- Continue the Chief Judge's current efforts to bolster prospective juror response rates. This approach, if successful, would appear to require the smallest commitment of additional resources to reduce the current disparity in the racial compositions of Milwaukee County jury pools and the voting age population of U.S. citizens in the County.
- Convene the Ad Hoc Committee on Increasing Minority Participation in the Jury System in Milwaukee County on a regular basis. The Chief Judge created the committee, comprised of minority community advocates, in the aftermath of the March 2006 public outrage that precipitated this audit. However, the committee has met only one time since its inception.
- Ensure that the Milwaukee County Clerk of Circuit Court maintain statistics identified in this report on a regular basis. This includes statistics on the racial composition of the key measures such as undeliverable summonses, disqualification/excusal rates, failure to respond/appear rates, and sworn juries, among others. While working to improve the accuracy of data from the Consolidated Court Automation Programs (CCAP) system should be pursued, lack of exact precision or ability to use standard CCAP reports should not preclude the regular tracking of critical measurements necessary to improve minority representation in Milwaukee County Circuit Court jury pools. Implementation of this recommendation may require an additional staff person.

Close monitoring of the various statistics noted in this report will assist the Court in evaluating the success of its current efforts to improve African American response rates to jury summons. However, if the event additional measures are needed, we included recommendations to:

- Adopt a procedure to supplement the current DOT list (used as the sole source for generating jury summons) with the voter registration lists of selected City of Milwaukee aldermanic wards to establish a Master List that is a more representative cross-section of Milwaukee County as a whole. It is our belief that such a process, similar to that used by the federal court system's Eastern District of Wisconsin, can be developed within the parameters of current statutory provisions. If this is not possible, we recommend the Milwaukee County Board of Supervisors lead the effort to amend Wisconsin State Statutes to clearly permit such a process.
- Consider additional measures such as increased jury pay, stricter enforcement of fines for failure to respond to jury summons, or others as dictated by results.

We appreciate the cooperation of the Chief Judge and the Milwaukee County Clerk of Circuit Court, as well as their staff, during the course of this audit. Management responses to audit recommendations are included as **Exhibit 3**.

Background

In March 2006, an all-White jury of 12 members plus three alternates was selected from a pool of 33 prospective jurors to hear the case of three former Milwaukee police officers. The officers, all White, were charged in the brutal beating of a biracial man in October 2004 outside a party attended by several off-duty police officers. The pool of 33 prospective jurors included two African-American women. Upon conclusion of the trial, and after 25 hours of deliberation, the jury found the three defendants not guilty on four of five charges, and was deadlocked on the fifth charge, resulting in a mistrial for one defendant (a retrial is scheduled for August 2007).

Public outrage over the jury's decision in this high-profile case generated considerable media attention and prompted the Chairman of the Milwaukee County Board of Supervisors to call for a review of the jury selection process by the County Department of Audit. In 1975, the U.S. Supreme Court ruled that the 6th and 14th Amendments to the U.S. Constitution provide individuals tried in state courts a federal constitutional right to a jury drawn from a fair cross-section of the community [*Taylor v. Louisiana*, 419 U.S. 522 (1975) (see **Appendix 1**)]. This audit was designed to determine whether or not the Milwaukee County Clerk of Circuit Court uses every legal means available to ensure that the jury selection process in Milwaukee County is fair and that it produces jury pools that are representative of the community at large. The **Audit Scope** section of this report provides a detailed description of the procedures used in the conduct of the audit (see **Exhibit 1**).

Overview of Jury Selection Process

Selection of a jury in the State of Wisconsin generally entails two phases: assembling a pool of prospective jurors, and assigning selected prospective jurors to a jury. Chapter 756 of the Wisconsin State Statutes governs this process (see **Appendix 2**).

Prospective Jury Pools

Prospective jurors are chosen at random by the Clerk of Circuit Court (CCC) using specific source lists authorized by state statute. The CCC sends prospective jurors a qualification questionnaire and jury summons.

The questionnaire is used to determine legal eligibility to sit as a juror. According to § 756.02, Wis. Stats.,

“Every resident of the area served by a circuit court who is at least 18 years of age, a U.S. citizen and able to understand the English language is qualified to serve as a juror in that circuit unless that resident has been convicted of a felony and has not had his or her civil rights restored.”

The jury summons is an order from the court containing instruction on where and when to report for jury duty.

Jury Selection

Once in a courtroom the judge will instruct jurors on the selection process. General information about the case will be presented and the judge and attorneys ask a series of questions to determine each juror’s ability to serve on the specific case before the court. The questioning is called ‘voir dire,’ and means literally ‘to speak the truth.’ Potential jurors are placed under oath and are legally obligated to answer all questions honestly.

The judge will outline the circumstances of the case, identify the attorneys and parties, and possibly some of the witnesses. The judge will ask the jurors questions to learn if there are legal reasons to excuse a particular person from service as a juror for the specific trial. Typical questions might address the following issues:

- Prior knowledge of any of the people involved in the case.
- Prior knowledge of anything about the case from personal observation or from media coverage.
- Any reasons the juror believes he or she would not be a fair and impartial juror.

Challenges for Cause

The judge will decide if it is necessary to excuse a juror who is not, or who appears not to be, impartial. This is called a challenge for cause.

Next the parties, usually through their attorney, have the opportunity to question individual jurors regarding their backgrounds, experiences and beliefs. Many courts also use a written questionnaire to help in the selection process. Based on these questions, a party may ask that a juror be excused for cause, and the judge will then decide if the reason is legally sufficient. There is no limit on the number of challenges for cause.

Peremptory Challenges

A party may also ask the court to excuse a juror without giving any reason. This is called a peremptory challenge, or peremptory strike. By law, the number of these challenges is limited,

generally between four and six for each side in felony cases, with additional peremptory challenges granted for circumstances such as the choosing of alternate jurors or the trying of multiple defendants. Once all these challenges are exhausted and there is a sufficient number of jurors to form a jury, any extra jurors will be excused. Juries usually consist of six or 12 jurors (depending on the case type), often with one or two alternate jurors.

The right to challenge potential jurors is rooted in law and tradition. It is the method used to determine which jurors will decide each case. When the required number of jurors has been chosen, the jury panel is sworn to fairly and impartially decide the case at hand.

Section 1: Jury Pool Management

As stated in § 756.001(5), Wis. Stats.:

“The presiding judge of each circuit court...shall be responsible for administering the jury system in that court....The clerk of circuit court, if delegated by and under the supervision of the judge responsible for administering the jury system, may select and manage juries under policies and rules established by the judges in that circuit court.”

The Clerk of Circuit Court (CCC) is responsible for summoning persons eligible to perform jury service as prescribed in Wisconsin Statutes.

Clerk of Circuit Court (CCC) is responsible for summoning persons eligible to perform jury service as prescribed in Wisconsin Statutes. The Jury Management section of the CCC’s office performs the necessary tasks to assemble a pool of qualified prospective jurors from which trial juries are empanelled.

Two important statutory provisions provide specific guidance for assembling jury pools.

§ 756.001(3), Wis. Stats. states:

“No person who is qualified and able to serve as a juror may be excluded from that service in any court of this state on the basis of sex, race, color, sexual orientation as defined in s. 11132(13m), disability, religion, national origin, marital status, family status, lawful source of income, age or ancestry or because of a physical condition.”

§ 756.001(4), Wis. Stats. states:

“All persons selected for jury service shall be selected at random from the population of the area served by the circuit court. All qualified persons shall have an equal opportunity to be considered for jury service in this state and the obligation to serve as jurors when summoned under this chapter for that purpose. Any manual or automated method of selection that provides each qualified person with an equal probability of selection for jury service or that provides each prospective juror with an equal opportunity for assignment to a particular trial may be used.”

Master List for Jury Summons

§ 756.04 of the State Statutes adds greater specificity to the method for compiling prospective juror lists, mandating that all state circuit courts use a 'department list' supplied by the Department of Transportation (DOT). The department list is created by randomly selecting names from DOT records of all persons within the circuit court area, at or near age 18 or older, that have been issued either a driver's license or a state identification card. The department list for each circuit court is loaded into the Consolidated Court Automation Programs (CCAP) system annually. Loading the department lists into CCAP provides easy access for each circuit court, as well as a means of generating smaller random lists for each batch of jury summons to be distributed.

Additional statutory provisions permit circuit courts to either use the department list as the sole source for randomly selecting prospective jurors, or to create a master list using the departmental list and any of the following:

- Voter registration lists.
- Telephone and municipal directories.
- Utility company lists.
- Lists of payers of real property taxes.
- Lists of high school graduates who are 18 years of age or older.
- Lists of persons who are receiving aid to families with dependent children under subchapter III of chapter 49, Wisconsin Statutes.

If one or more of the above sources are used, the following process must be followed, as detailed in § 756.04(5)b:

"To create a master list, the clerk of circuit court shall select randomly a sample of names from each source used. The same percentage of names shall be selected from each source used. The department list shall be the primary source, and the names selected from the

department list shall be compared with the names from the 2nd source. Duplicate names shall be removed from the 2nd source sample and the remaining names shall be combined with the names selected from the department list to create the master list. If more than 2 source lists are used, this process shall be repeated, using the previously compiled master list for comparison with any additional source list.”

In Milwaukee County, the DOT list is used as the sole source for generating random names to assemble jury pools.

Milwaukee County Practice

In Milwaukee County, the departmental list loaded into CCAP by DOT is used as the sole source for generating random names to assemble jury pools. In a memo dated April 6, 2006, the Clerk of Circuit Court provided the following rationale for using the department list provided by DOT:

“The Department of Transportation list is the most comprehensive list which includes name, address, sex, race and other identifying characteristics. They update their lists regularly as opposed to voter lists which are irregular in the frequency with which they are updated and may include a large amount of duplicate or different addresses. The cost to manually compare the lists would require additional personnel or the redirecting of personnel in our office. This may or may not result in an improved database. Currently the Department of Transportation master list consists of 19% African Americans. According to the State of Wisconsin Blue Book, Milwaukee County’s population is comprised of 20% African Americans of voting age.” *[Note: The current Wisconsin Blue Book uses 2000 U.S. Census Data as well as a 2004 Estimate from the State Department of Administration.]*

Jury Management staff provided the following information concerning the department list used by the Milwaukee County Clerk of Circuit Court in 2006.

Table 1
Racial Composition of Source List
Used to Generate Milwaukee County Jury Summons
2006

	<u>DOT Database</u>	<u>Percent Total</u>	<u>CCAP Download</u>	<u>Percent Total</u>	<u>Summons Generated</u>	<u>Percent Total</u>
White	419,008	69.8%	121,963	69.7%	55,387	68.0%
African American	114,177	19.0%	33,302	19.0%	16,450	20.2%
Hispanic	44,792	7.5%	13,116	7.5%	6,168	7.6%
Other Races	22,402	3.7%	6,619	3.8%	3,411	4.2%
Total	600,379	100.0%	175,000	100.0%	81,416	100.0%

Source: Clerk of Circuit Court – Jury Management 2006 statistics.

As shown in **Table 1**, the data provided by Jury Management indicates a close correlation between the racial compositions of the DOT database of 600,379, the random sample of 175,000 loaded into CCAP by DOT for use by the Milwaukee County Circuit Court (the department list), and the cumulative total of 81,416 jury summons sent by the Clerk of Circuit Court in 2006.

Racial Composition of Sworn Juries

The 6th Amendment to the U.S. Constitution guarantees each citizen the right to a trial by an impartial jury. In addition, the 14th Amendment to the U.S. Constitution, as well as the Jury Selection and Service Act of 1968 (*USC Title 28, Part V, Chapter 121*) and Wisconsin State Statutes (§ 756.001(3), *Wis. Stats.*), prohibit the act of excluding potential jurors on the basis of race, gender, creed or several other protected class designations.

Several legal protections prohibit the act of excluding potential jurors on the basis of race.

There is, however, no specific constitutional or legal guarantee that a sworn jury must be ‘balanced’ or diverse.

There is, however, no specific parallel constitutional or legal guarantee that a sworn jury must be ‘balanced’ or diverse, either racially or in any other way, to meet the test of impartiality. Consequently, there is no inherent right to a trial decided by a jury of any particular racial composition. Yet, there exists a very real public perception that equates impartiality with juries that reflect the racial composition of the communities from which they are drawn. The importance of addressing this perception is

discussed in a law review article by Ellis and Diamond [*Leslie Ellis and Shari Seidman Diamond, Race, Diversity, and Jury Composition: Battering and Bolstering Legitimacy, 78 Chicago-Kent L. Rev. 1033 (2003)*] (see **Appendix 3**):

“Both courts and legal scholars have recognized the potential dangers for the legitimacy of the jury system in the face of juries that appear to be unrepresentative. While not equating a heterogeneous jury with the constitutionally mandated impartial jury, courts have acknowledged the value of a diversity of perspectives for both justice and the appearance of justice.”

Milwaukee County Experience

The 2006 trial of three former Milwaukee police officers, all White, accused of brutally beating a biracial man, before an all-White jury, prompted questions about the typical racial composition of juries in Milwaukee County Circuit Court. Based on conversations with Jury Management staff, prior to the interest generated by the 2006 trial in question, the racial composition of juries was not routinely tracked. While the information can be extracted from court records on a trial-by-trial basis, there is no practical means of assembling such data prior to 2006. Records compiled on an ongoing basis by Jury Management for 2006 provide an overall picture of the diversity of Milwaukee County juries for that year, as shown in **Table 2**.

	<u>Sworn Jurors</u>	<u>Percent Total</u>
White	3,856	78.8%
African American	798	16.3%
Hispanic	158	3.2%
Other Races	82	1.7%
Total	4,894	100.0%

Source: Clerk of Circuit Court – Jury Management 2006 statistics.

African-Americans comprised 16.3% of the jurors selected from prospective jury pools in Milwaukee County during 2006.

As shown in **Table 2**, overall, African-Americans comprised 16.3 percent of the jurors selected from prospective jury pools in Milwaukee County during 2006. Based on the Wisconsin Blue Book data cited by the Clerk of Circuit Court, this figure suggests that African-Americans are under-represented on Milwaukee County juries in comparison to their numbers in the voting age population (20%). While the 16.3 percent overall figure for African-American composition of juries appears large enough to suggest that an all-White jury of 12 members and three alternates is not likely a typical jury, we note that of 43 jury trials we evaluated during the course of our audit, five (12%) had no African Americans on the jury, including four (9%) that included no minority jurors.

Updated U.S. Census Data

Our review of updated U.S. Census data for 2005, including Census Bureau adjustments for both voting age and U.S. citizenship (two requisite characteristics for jury duty eligibility), show a wider disparity between either the 2006 percentage of African-American jurors, the DOT list used by the Clerk of Circuit Court to assemble jury pools, and the percentage of voting age, U.S. citizens residing in Milwaukee County that are African-American. This information is summarized in **Table 3**.

Table 3		
Milwaukee 2005 Census Data Adjusted for Voting Age and U.S. Citizenship		
	<u>2005 Voting-Age Citizens</u>	<u>Percent Total</u>
White	411,017	66.4%
African American	145,854	23.6%
Hispanic	39,267	6.3%
Other Races	22,954	3.7%
Total	619,092	100.0%

Source: Department of Audit calculations using 2005 Census Bureau estimates.

African-Americans comprised 23.6% of the estimated 2005 Milwaukee County population adjusted for voting age and U.S.citizenship.

As shown in **Table 3**, when adjusted for both voting age and U.S. citizenship, African-Americans comprised 23.6 percent of the estimated 2005 Milwaukee County population, indicating a considerable disparity between both the 2006 DOT list (19.0%) and the 2006 jury composition figure (16.3%).

Reasons for Disparity

There are several reasons that appear to contribute to the disparity between the racial compositions of sworn juries and the general population of qualified jurors in Milwaukee County. These include:

- Issues related to the use of the DOT list to generate jury summons.
- Problems with the delivery of jury summons.
- Variations in the rates at which prospective jury pool members are legally disqualified or excused from jury duty.
- Variations in the rates at which prospective jury pool members fail to respond to jury summons or report for jury duty.

Use of DOT List

The DOT list used by the Milwaukee County Circuit Court as the sole source for generating jury summons under-represents the African American community. One theory advanced by African American community leaders for this discrepancy is that poorer, more urban members of society are more reliant on public transportation and are less likely to obtain drivers' licenses than are more affluent, suburban residents. A study conducted by the Employment and Training Institute of the University of Wisconsin—Milwaukee in June 2005 lends support to this theory.

Another reason for disparities between the DOT list and U.S. Census Bureau data is a fundamental difference in the manner in which the two agencies account for individuals of Hispanic

ethnicity. According to a March 2001 brief by the U.S. Census Bureau entitled *Overview of Race and Hispanic Origin*:

“The federal government considers race and Hispanic origin to be two separate and distinct concepts. For Census 2000, the questions on race and Hispanic origin were asked of every individual living in the United States. The question on Hispanic origin asked respondents if they were Spanish, Hispanic, or Latino. The question on race asked respondents to report the race or races they considered themselves to be. Both questions are based on self-identification.”

As a result, unadjusted U.S. Census data sub-totals for seven categories of race (White, Black or African American, American Indian and Alaska Native, Asian, Native Hawaiian and Other Pacific Islander, Some Other Race, and Two or More Races), when combined with data on place of origin (Hispanic or Latino), yield a grand total greater than the actual population. Therefore, adjustments must be made to compensate for ‘double-counting’ individuals that select one of the seven racial categories, and also consider themselves to be Hispanic or Latino. Similarly, raw U.S. Census Data counts all residents, regardless of U.S. citizenship status. Additional adjustments must be made to identify that portion of the population that meet this criteria for serving on a jury.

However, Wisconsin residents obtaining a driver’s license or state ID card are not categorized in the dual manner of race/Hispanic origin, nor is proof of U.S. citizenship required. *[Note: Effective April 1, 2007, the Wisconsin DOT must require applicants for both drivers’ licenses and identification cards to prove they are in the country legally. Legal residence does not equate to U.S. citizenship, as individuals may reside in the U.S. under a variety of temporary visas.]* As result, the DOT list used as a master list for distributing jury summons cannot be compared to unadjusted U.S. Census Bureau data to measure the degree to which it represents the universe of potential qualified jurors in Milwaukee County.

Table 4 shows the impact of adjustments for dual reporting and U.S. citizenship on Milwaukee County's estimated voting-age population. All data used is derived from U.S. Census Bureau 2005 estimates.

	From Individual Tables	Percent	Adjusted for Dual Reporting	Adjusted %	Adjusted for U.S. Citizenship	Total Adjusted %	Relative % Change
White	443,946	62.0%	417,929	63.5%	411,017	66.4%	7.1%
African American	148,115	20.7%	146,470	22.3%	145,854	23.6%	14.0%
Hispanic or Latino	62,519	8.7%	62,519	9.5%	39,267	6.3%	-27.6%
Some Other Race	36,366	5.1%	10,036	1.5%	4,789	0.8%	-84.3%
Asian	18,465	2.6%	18,280	2.8%	15,186	2.4%	-7.7%
Two or More Races	6,757	0.9%	2,980	0.4%	2,980	0.5%	-44.4%
Native American/Alaska Native	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Hawaiian or Pacific Islander	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Total	716,168	100.0%	658,214	100.0%	619,093	100.0%	
Per 2005 U.S. Census Bureau Estimate							
Milwaukee County Population			897,972				
Milwaukee County Population 18+			658,214				
Milwaukee County Population 18+ Not a U.S. Citizen			39,121				
Milwaukee County Population 18+ U.S. Citizen			619,093				

Source: U.S. Census Bureau American Fact Finder, 2005 American Community Survey.

African Americans in Milwaukee County that are of voting age and are U.S. citizens are under-represented on the DOT list at approximately twice the rate of Whites.

As shown in **Table 4**, adjusting for both dual reporting race/place of origin and U.S. citizenship has relatively larger impacts on the minority communities in Milwaukee County than for the White community. In addition, the data in **Table 4** shows that African Americans in Milwaukee County that are of voting age and are U.S. citizens are under-represented on the DOT list at approximately twice the rate of Whites. Thus, the initial comparison of the DOT list by the Milwaukee County Clerk of Circuit Court to raw U.S. Census Bureau data understates the degree of disparity between the DOT list and the actual potential jury pool for minority populations in Milwaukee County.

Other States' Reliance on DOT Lists

According to information compiled by the U.S. Department of Justice, Bureau of Justice Statistics, 32 states use other sources, either exclusively or in conjunction with driver's license or other lists, to generate jury summons. Twelve states do not use driver's license lists at all in generating jury summons.

Undeliverable Summons

The U.S. Postal Service returns as 'undeliverable' a disproportionate share of the summons generated by the Milwaukee County Clerk of Circuit Court for African Americans and Hispanics, as shown in **Table 5**.

	Summons <u>Sent</u>	Returned <u>Undeliverable</u>	Percent <u>Undeliverable</u>
White	55,387	4,311	7.8%
African American	16,450	2,162	13.1%
Hispanic	6,168	1,114	18.1%
All Other	3,411	650	19.1%
Total	81,416	8,237	10.1%

Source: Milwaukee County Clerk of Circuit Court, Jury Management 2006 statistics drawn from CCAP.

In 2006, 7.8% of the jury summons sent to Whites were returned as undeliverable, while 13.1% of summons sent to African Americans were undeliverable.

According to data compiled by Jury Management staff for 2006, 7.8% of the jury summons sent to Whites were returned as undeliverable, while 13.1% of summons sent to African Americans were undeliverable. For Hispanics, the rate of undeliverable summons sent was 18.1%.

Legally Disqualified/Excused from Jury Duty

There are several reasons a resident of Milwaukee County might legally be disqualified or excused from jury duty. Two fundamental requirements for serving, residence within the circuit court jurisdiction and 18 years of age or older, are essentially pre-screened in the creation of the DOT list used by

the Clerk of Circuit Court as a master list for randomly generating jury summons. Additional screening takes place when prospective jurors complete and return a questionnaire sent by the Clerk of Circuit Court along with the summons. Typical reasons for disqualification or excusal from jury duty include an inability to speak the English language; current status as a convicted felon whose civil rights have not been restored (i.e., either incarcerated or serving probation or parole); or lack of U.S. citizenship. Additional reasons for excusal include deferrals for medical conditions or other undue hardships, or having fulfilled jury duty responsibilities within the past four years. Once prospective jurors reach the age of 75, they are permanently excused from jury duty upon request.

In addition to these typical reasons for disqualification or excusal from jury duty, a small number of summons each year are unknowingly sent to addresses of deceased individuals.

There were disparities among racial groups in the rates of disqualification from jury duty.

Data compiled by Jury Management for 2006 shows disparities among racial groups in the rates of disqualification/excusal from jury duty, as shown in **Table 6**.

	<u>White</u>	<u>African American</u>	<u>Hispanic</u>	<u>All Other</u>	<u>Total</u>
Summons Received	51,076	14,288	5,054	2,761	73,179
Deceased	180	30	5	3	218
Disqualified	5,223	850	1,373	1,054	8,500
Excused or Postponed	12,377	3,778	769	529	17,453
Subtotal	17,780	4,658	2,147	1,586	26,171
Subtotal as Percent of Summons Received	34.8%	32.6%	42.5%	57.4%	35.8%

Source: Milwaukee County Clerk of Circuit Court Jury Management 2006 statistics drawn from CCAP.

As shown in **Table 6**, the overall rates of disqualification/excusal from jury duty varied somewhat by racial group. Whites (34.8%) and African Americans (32.6%) had similar rates for disqualification or excusal, while Hispanics (42.5%) and Other Races (57.4%) were more likely to be disqualified or excused.

Failure to Respond or Report for Jury Duty

As described in the preceding subsections, up to this point in the process, the racial composition of Milwaukee County’s prospective jury pool is filtered through the above-described influences of:

- Use of the DOT list as the exclusive source for generating summons;
- Undeliverable summons; and
- Legal disqualification/excusal from jury duty.

The rate at which different racial groups fail to respond or report for jury duty varies widely.

A final factor affecting the racial composition of the jury pool is the rate at which various racial groups fail to respond or report for jury duty. **Table 7** presents data compiled by Jury Management for failure to respond/report for 2006.

	<u>White</u>	<u>African American</u>	<u>Hispanic</u>	<u>All Other</u>	<u>Total</u>
Received and Eligible	33,296	9,630	2,907	1,175	47,008
No Response	3,168	3,411	1,837	462	8,878
Initial Response, FTA	1,233	921	148	105	2,407
Total Non-Report	4,401	4,332	1,985	567	11,285
Non-Report as Percent Received and Eligible	13.2%	45.0%	68.3%	48.3%	24.0%

Source: Milwaukee County Clerk of Circuit Court Jury Management 2006 statistics drawn from CCAP.

As shown in **Table 7**, the rate at which individuals fail to respond to jury summons, or initially respond but ultimately fail to appear for jury duty, varies widely by racial category, ranging from 13.2% for Whites to 68.3% for Hispanics. Thus, the racial composition of jury pools that are assembled, and from which sworn juries are selected, is further skewed toward the White race.

During the course of this audit, we noted some discrepancies in statistics maintained by Jury Management and those generated by CCAP.

A Note About Statistics Used for this Analysis

Jury Management staff indicated that while the CCAP system is useful for day-to-day jury selection, much of the detailed information is flawed for Milwaukee County reporting purposes. During the course of this audit, we noted some discrepancies in statistics maintained by Jury Management and those generated by CCAP.

In discussing the discrepancies with the Clerk of Circuit Court and Jury Management staff, it was acknowledged that some of the discrepancies were due to inconsistencies in the coding used by Milwaukee County and that established for certain statistical categories for standard CCAP reports. Other problems were attributed by the CCC to CCAP's inability to serve Milwaukee County's unique needs as the only major urban player in the statewide court system.

Ultimately, we worked with Jury Management staff to resolve significant statistical discrepancies with additional manual data retrieval efforts to obtain the best data available. While acknowledging that coding issues and lack of conformity to standard reporting categories affect the precision of some of the data used in the preceding analyses, we are comfortable that our additional efforts were sufficient to support the conclusions drawn.

Relative Impacts of Various Factors Affecting Racial Composition of Milwaukee County Jury Pools

Using the limited amount of available data, we performed an analysis to demonstrate the relative impact of each influence, identified and described in this report, on the racial composition of Milwaukee County jury pools assembled in 2006. The results of such analysis will be useful in identifying the relative degree of improvement in racial representation that could potentially be achieved from the use of different strategic approaches.

Table 8 shows the results of our analysis. Details of the component parts of our analysis are provided as **Exhibit 2**.

Table 8 Estimated Magnitude of Issues Affecting African American Representation Milwaukee County Circuit Court 2006		
	Additional Prospective Jurors*	Percent Additional Prospective Jurors*
Failure to Respond/Appear	3,059	58.2%
Under-Representation on Master List	1,283	24.2%
Undeliverable Summons	879	6.2%
* Estimated number and percentage of additional prospective African American jurors if each issue affecting under-representation were addressed in isolation.		
Source: Data from U.S. Census Bureau, Jury Management 2006 statistics, CCAP Analysis by Department of Audit.		

The greatest opportunity for improvement is to address the issue of variable rates at which individuals of different racial groups fail to report for jury duty.

Failure to Respond/Report for Jury Duty

As shown in **Table 8**, the greatest opportunity for increasing the number of prospective African American jurors that report for jury duty when summoned is to address the issue of variable rates at which individuals of different racial groups who are eligible for jury duty and receive jury summons fail to respond or report for jury duty. For example, we calculated that failure to respond/report rates for 2006 were 13.2% for Whites, 45% for African Americans and 68.3% for Hispanics.

We estimate that addressing this issue could potentially have added an additional 3,059 African Americans ultimately reporting for jury duty in 2006, an increase of 58.2%.

The second greatest opportunity for increasing the number of prospective African American jurors that report for jury duty is to address the issue of under-representation of African Americans on the DOT list.

Use of DOT List as Exclusive Source for Master List

Our analysis further shows that the second greatest opportunity for increasing the number of prospective African American jurors that report for jury duty when summoned is to address the issue of under-representation of African Americans on the DOT list, used by the Milwaukee County Circuit Court as the sole source for generating jury summons. As previously described, this includes acknowledging the effects of necessary adjustments to raw U.S. Census data used to gauge the degree to which the DOT list represents a fair cross-section of Milwaukee County resident eligible for jury duty.

We estimate that addressing this issue could potentially have added an additional 1,283 African Americans ultimately reporting for jury duty in 2006, an increase of 24.2%.

Undeliverable Summons

As indicated in **Table 8**, our analysis also shows that the third greatest opportunity for increasing the number of prospective African American jurors that report for jury duty when summoned is to address the issue of variable rates at which individuals of different racial groups who receive jury summons are disqualified or excused from jury duty. Data from Jury Management shows that for jury summons sent in 2006, undeliverable rates varied widely by racial group. For instance, the undeliverable summons rate for Whites was 7.8%, while the undeliverable summons rate for African Americans was 13.1%. The undeliverable summons rate for Hispanics was more than double that of Whites, at 18.1%.

The undeliverable summons rate for Hispanics was more than double that of Whites.

We estimate that addressing this issue could potentially have added an additional 879 African Americans ultimately reporting for jury duty in 2006, an increase of 6.2%.

Potential Solutions

In their *Chicago-Kent Law Review* article, Ellis and Diamond note the challenges of crafting solutions to address the problem of empanelling juries that are not representative cross-sections of the jurisdictions from which they are selected:

“Arguably, the most direct way to create representative juries would be to allocate slots based on juror characteristics. A jury would have to include, for example, one African-American male, one Hispanic female, etc., with the precise quota for each category to be determined by the racial and ethnic make-up of the community where the case was being tried. Most commentators agree that such a system would violate the U.S. constitution, as well as the Jury Selection and Service Act of 1968, on the grounds that a potential juror cannot be systematically or intentionally excluded from serving on a jury on the basis of race or gender. Racial and gender quotients can therefore be attacked on the ground that an otherwise eligible juror was not selected because he or she failed to fit the racial profile required to occupy the next seat on the jury.”

There is general agreement that the allocation of jury ‘slots,’ based on the race of prospective jurors, would not stand legal muster.

The Chief Judge for Milwaukee County Circuit Court indicated to us that she agrees that the allocation of jury ‘slots,’ based on the race of prospective jurors, would not stand legal muster.

The Federal Government Approach

The United States District Court for the Eastern District of Wisconsin uses voter registration lists within the district as the sole source for generating federal jury summons. The district’s Federal Jury Services staff assembles a ‘Master Jury Wheel’ from which a source list is randomly generated. At this point in the process, the race and gender of individuals on the source list are unknown. Jury summons, along with questionnaires, are generated for all names on the source list. The questionnaires

The federal court in the Eastern District of Wisconsin constructs its database for generating summons in a manner that produces a more representative cross-section of the district's voting age population.

ask prospective jurors to identify their race. Based on the racial compositions of jury pools assembled in the 1980s, in which African Americans were under-represented, the construction of the Master Jury Wheel was weighted more heavily from certain aldermanic districts in the City of Milwaukee such that, when randomly selected from the wheel, the resulting source list produced a more representative cross-section of the district's voting age population (see **Appendix 5** for complete Eastern District Plan). According to local Federal Jury Services staff, this method of assembling federal jury pools in the Eastern District of Wisconsin has been used for approximately 15 years without legal challenge.

The Chief Judge of Milwaukee County Circuit Court indicates the Eastern District's approach is not permissible for the State Circuit Court system.

The Chief Judge of Milwaukee County Circuit Court indicates the Eastern District's approach is not permissible for the State Circuit Court system under the random selection provision of governing Wisconsin Statutes, and also cites the appellate case of *United States v. Green* [No. 05-2358, 2005 U.S. App. (1st Cir. Oct. 7, 2005) (see **Appendix 4**)]. In its decision, the Appeals Court overruled a U.S. District Court's order to a lower court "...requiring the mailing of a second round of summons to specific geographic areas when a juror questionnaire was not returned from those areas..." A second order of the district court required a similar process of generating additional summons to areas from which there were a disproportionate number of disqualifications based on juror questionnaire responses. The Appeals Court also overruled that order.

The Jury Selection and Service Act of 1968 (JSSA) includes two policy declarations (see **Appendix 6**):

"§ 1861. Declaration of policy

It is the policy of the United States that all litigants in Federal courts entitled to trial by jury shall have the right to grand and petit juries selected at random from a fair cross section of the community in the district or division wherein the court convenes. It is further the policy of the United States that all

citizens shall have the opportunity to be considered for service on grand and petit juries in the district courts of the United States, and shall have an obligation to serve as jurors when summoned for that purpose.”

“§ 1862. Discrimination prohibited

No citizen shall be excluded from service as a grand or petit juror in the district courts of the United States or in the Court of International Trade on account of race, color, religion, sex, national origin, or economic status.”

The opinion of the Appeals Court was based, in part, on its determination that “The [district] court’s supervisory power does not license it to ignore an otherwise valid existing jury plan or to bypass the mechanism provided by the Jury Selection and Service Act (JSSA) to alter such plan...” The Appeals Court also noted that the “...supplemental draw process created by district court, constrained by preference to those individuals living in certain zip codes, did not give equal odds of selection to every name in master wheel.”

The JSSA establishes a process whereby all the judges in a district vote on a jury selection plan, which must then be approved by a special review panel and a designated judge of the district court in question. In its ruling, the Appeals Court notes that the lower court’s jury selection plan was premised on the supposition that the source used to create a Master Jury Wheel—the state’s local resident lists—comprised a fair cross-section of the Eastern District of Massachusetts, and that in this case, the district court’s order to depart from the plan violated the provision that each name on the Master Jury Wheel have equal odds of selection. In its decision, the Court of Appeals noted that jury selection plans for the various federal district courts are not required to be identical, but they all must be in harmony with the JSSA.

Because the Eastern District of Wisconsin is in the 7th Circuit, decisions rendered by the 1st Circuit Court of Appeals are not

binding. They can, however, be influential in the absence of cases directly on point within the 7th Circuit. In a discussion of the legality of the Eastern District of Wisconsin's jury selection process, the relevance of the 1st Circuit Court of Appeals decision in *United States v. Green* can be questioned. Unlike the overturned remedies in *United States v. Green*, which altered the chances of selecting prospective jurors from the Master Jury Wheel **after** its creation, the Eastern District's approved plan makes adjustments **prior to** creation of a Master Jury Wheel to ensure that the wheel represents a fair cross-section of the community.

Applicability of Federal Approach to State Courts

As previously noted, in 1975, the U.S. Supreme Court ruled that the 6th and 14th Amendments to the U.S. Constitution provide individuals tried in state courts a federal constitutional right to a jury drawn from a fair cross-section of the community [*Taylor v. Louisiana*, 419 U.S. 522 (1975)]. In that decision, the Court cited numerous prior decisions from the U.S. Supreme Court, beginning with *Smith v. Texas*, [311 U.S. 128, 130 (1940)], and noted the policy declaration of the JSSA in opining that "We accept the fair cross-section requirement as fundamental to the jury trial guaranteed by the Sixth Amendment, and are convinced that the requirement has solid foundation."

Taylor v. Louisiana specifically establishes the applicability of the fair cross-section requirement in the assembly of jury pools in state court systems.

"Our holding does not augur or authorize the fashioning of detailed jury selection codes by federal courts. The [p538] fair cross-section principle must have much leeway in application. The States remain free to prescribe relevant qualifications for their jurors and to provide reasonable exemptions so long as it may be fairly said that the jury lists or panels are representative of the community."

The Court goes on to say, however,

“It should also be emphasized that, in holding that petit juries must be drawn from a source fairly representative of the community, we impose no requirement that petit juries actually chosen must mirror the community and reflect the various distinctive groups in the population.”

The Court also confirmed in *Batson v. Kentucky* [476 U.S. 79 (1986) (see **Appendix 7**)] the right of all citizens, regardless of race, to serve as jurors, and re-affirmed a century-old recognition by the Court “...that a defendant has no right to a ‘petit jury composed in whole or in part of persons of his own race.’” [Strauder v. West Virginia, 100 U.S. 303 (1880)]

It appears that constraining efforts to improve the diversity of sworn juries in Milwaukee County Circuit Court to the jury pool management stage, as is done under the federal system, rather than the jury selection phase, is more likely to stand legal muster.

Therefore, it appears that constraining efforts to improve the diversity of sworn juries in Milwaukee County Circuit Court to the jury pool management stage, as is done under the federal system, rather than the jury selection phase, is more likely to stand legal muster.

In addition, § 756.04(5)(a), Wis. Stats., which authorizes state Circuit Courts to use voter registration lists to supplement the required DOT list for purposes of generating jury summons, does not specify that **all** voter registration lists within a Circuit Court’s jurisdiction be utilized. As a result, the statute does not appear to preclude the selective use of voter registration lists from specific areas within a Circuit Court’s jurisdiction to assist the Court in constructing a master list that is more likely to produce a randomly-selected jury pool that represents a fair cross-section of the community. We fully acknowledge that supplementing the DOT list with selected voter registration lists in the manner prescribed by current state statutes would require considerable manual intervention and thus would require additional resources such as temporary help for data entry, additional court staff time and/or staff, and possible assistance from information technology professionals.

We also acknowledge that the lack of a legal challenge to the Eastern District of Wisconsin's jury pool assembly process does not guarantee that a modification of the Milwaukee County approach, similarly patterned, would withstand legal challenge.

Current Efforts of the Milwaukee County Circuit Court

The Chief Judge has indicated that the DOT list represents the most accurate and practical source to approximate a fair cross-section of the voting age population in Milwaukee County.

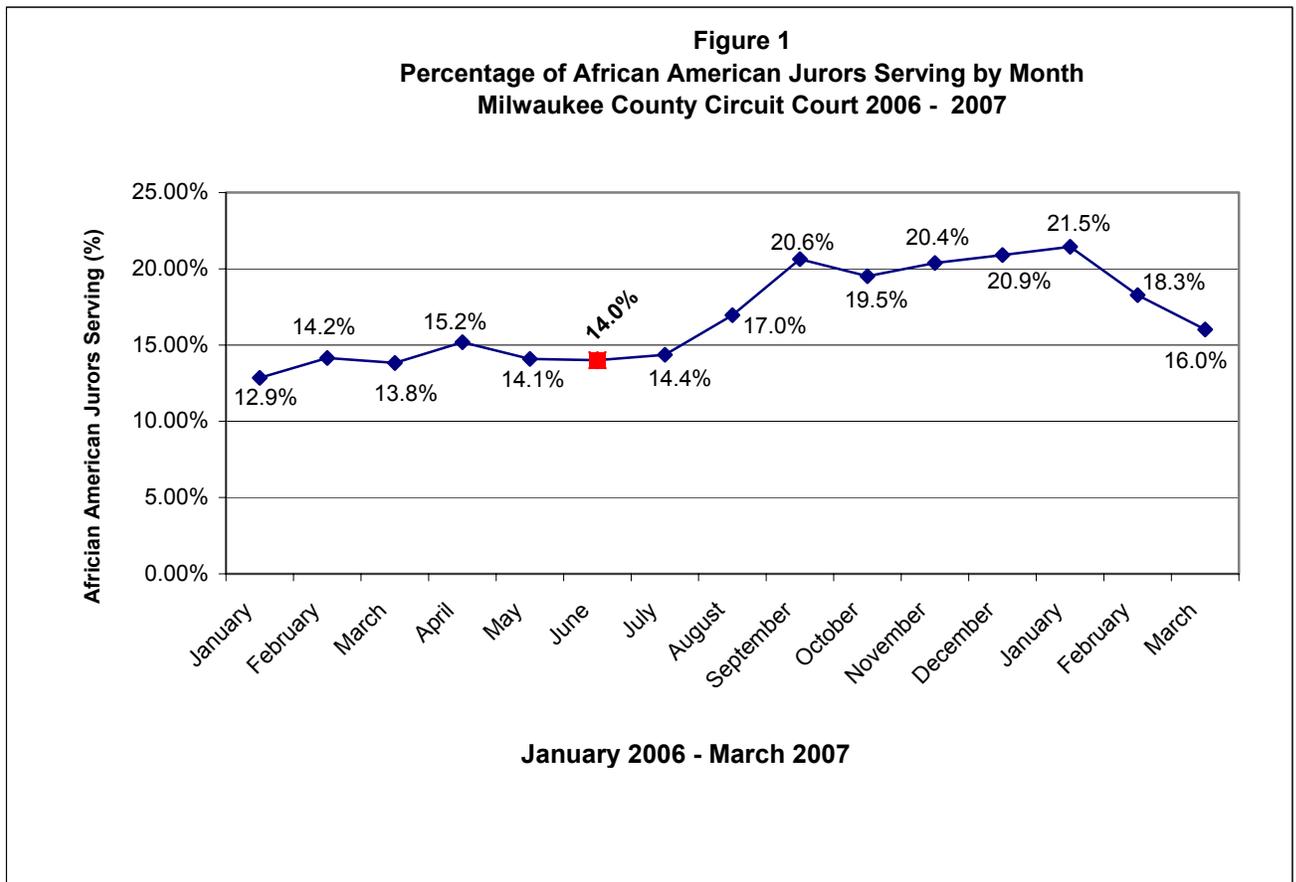
The Chief Judge of Milwaukee County Circuit Court has strong reservations about the use of alternative sources permitted by Wisconsin State Statutes to supplement the DOT list presently used as the sole source for generating jury summons. She has indicated that the DOT list represents the most accurate and practical source to approximate a fair cross-section of the voting age population in Milwaukee County.

Given her views on the legality of applying the federal court system's approach to increasing minority representation in jury pools, and modest successes in dealing with similar problems in the 1980's by concentrating on response rates, in June of 2006, the Chief Judge ordered that letters be sent to individuals that had not responded or shown up for jury duty when summoned, beginning with no-shows from January of 2006. The letters state:

“Section §§ 756.04 (6), Stats. requires every prospective juror to complete and return the Questionnaire within ten (10) days after its receipt, even if you believe that you are not eligible to serve. Further, Wisconsin law provides that failure to return a completed juror questionnaire may result in an order to appear in court and the issuance of a forfeiture in an amount not more than \$500.”

To date, the Chief Judge has been reluctant to follow through on the punitive measures described in the letter by referring non-responders to the District Attorney's Office for possible prosecution, citing the possibility of creating a bias against the prosecution if jury participation is, in effect, coerced.

As shown in **Figure 1**, we have compiled data from daily statistics maintained by Jury Management staff from the Milwaukee County Clerk of Circuit Court's Office suggesting that the current approach to increasing African American response rates to jury summons is having fluctuating, but generally positive, results.



As shown in **Figure 1**, the data provided by Jury Management indicates an increase during the past 15 months in the percentage of prospective jurors reporting for jury duty that are African American. In January 2006, 12.9% of the Milwaukee County Circuit Court jury pool was comprised of African Americans. In June 2006, when the Chief Judge began sending follow-up letters to individuals failing to respond to jury summons, the rate was 14.0%. In September, after three months of the follow-up letter initiative, African American participation increased to 20.6%. January 2007 represents the

high point of African American participation during the period, at 21.5%, while participation slipped to 16.0% in March 2007.

In addition, the Chief Judge established a Judges' Jury Committee, which meets regularly with Jury Management staff to discuss and evaluate the integrity of the jury selection process.

In response to concerns raised in the aftermath of the high-profile case that led to the initiation of this audit, as described in the **Background** section of this report, the Chief Judge also formed an Ad Hoc Committee to Increase Minority Participation in the Jury System of Milwaukee County. The expressed purpose of the Committee was to obtain input from the community on ways to improve jury participation among minorities. The Ad Hoc Committee was comprised of several judges, the Clerk of Circuit Court and Jury Management staff, a State Assemblyman, and minority advocates. At its lone meeting on November 15, 2006, we observed constructive dialogue between the Milwaukee County Circuit Court and advocates for the African American, Hispanic and Hmong communities. Discussion included topics such as additional minority community outreach and advertising. However, the Ad Hoc Committee has not met since this initial discussion.

Other Potential Solutions

Other approaches used by jurisdictions to increase minority representation in jury pools include legislation to reduce time commitments required to fulfill jury duty and to either increase jury pay, or mandate that employers pay the wages of employees on days that they report for jury duty.

- Reducing the length of time required to fulfill jury duty obligations has worked in other jurisdictions. For instance, a former Milwaukee County Clerk of Circuit Court attributed the reduction in jury duty time commitments from two weeks to one week in 1987 as a primary factor in nearly doubling the response rates of prospective jurors to summons. Currently, Milwaukee County Circuit Court summons prospective jurors

A jury pay increase in El Paso County was credited with doubling juror participation rates and increasing the diversity of jury pools.

for a two-day reporting obligation. Several jurisdictions, including Jefferson Parish, Louisiana; the State of Massachusetts, and the District of Columbia, report positive results in reducing requests for excusals and increasing reporting percentages when each instituted one day/one trial jury selection processes.

- In 2005, the Texas Legislature passed an increase in jury pay from \$6 a day to \$40 a day after the first day of service, after a similar increase in El Paso County was credited with doubling juror participation rates and increasing the diversity of jury pools.

Table 9 shows the ranges of daily juror pay for the 50 states.

<u>Range</u>	<u>Number of States</u>	<u>Percentage</u>
\$5-\$10	9	18.0%
\$11-\$16	8	16.0%
\$17-\$22	6	12.0%
\$23-\$28	5	10.0%
\$29-\$34	4	8.0%
\$35-\$40	11	22.0%
\$41-\$50	7	14.0%

Milwaukee County Circuit Court = \$16 per day.

Source: National Center for State Courts.

Based on the data in **Table 9**, Milwaukee County Circuit Court's (the minimum, allowed by Wisconsin State Statutes) jury pay of \$16 per day is exceeded by 66% of the state court systems in the U.S. We have calculated the cost of increasing the current fee is approximately \$50,000 for each dollar increase in the current daily rate. For example, the cost of increasing the Milwaukee County Circuit Court daily jury pay to \$26, placing it in the middle of the national range, would cost approximately \$500,000.

Under § 756.25(1), Wis. Stats., the County Board has the authority to set the Milwaukee County Circuit Court jury pay at or above the current minimum. According to a May 2006 report from the Wisconsin Supreme Court's Chief Judge Subcommittee on Juror Treatment and Selection, as of 2004, just seven Wisconsin counties (9.7%), including Milwaukee County, paid the minimum daily jury rate; 40 (55.5%) paid

between \$20 and \$29 per day; 16 (22.2%) paid between \$30 and \$39 per day; and nine (12.5%) paid \$40 to \$50 per day.

- Our survey of jury pools assembled during the weeks of August 8th through 23rd, 2006 indicates that approximately 78% of those responding indicated they were employed on either a full or part time basis, and 57.9% of 382 prospective jurors identifying themselves as employed responded that they receive full or partial pay from their employers when they appear for jury duty. This response was fairly consistent for Whites (58.5%) and African Americans (55.7%). Survey information from the National Center for State Courts shows that four states mandate that employers pay wages to employees reporting for jury duty on work time, while two additional states require employers to pay under certain circumstances.

Recommendations

Limited data we compiled from Jury Management statistics suggest that efforts instituted by the Chief Judge in June 2006, directed at improving citizen response rates to jury summons, is achieving some degree of success. Therefore, we recommend the Milwaukee County Circuit Court:

- 1. Continue current efforts to bolster prospective juror response rates to jury summons by sending follow-up letters to those individuals that fail to respond/report for jury duty.*

To continue constructive dialogue among key stakeholders and to facilitate continued community input and monitoring progress toward its stated goals, we recommend the Milwaukee County Circuit Court:

- 2. Continue convening the Ad Hoc Committee on Increasing Minority Participation in the Jury System in Milwaukee County on a regular basis.*

Due to the dynamic nature of Milwaukee County's demographics and other factors described in this report that affect the degree to which jury pools assembled by the Milwaukee County Circuit Court represent a fair cross-section of the voting age population of U.S. citizens, it is critical that Jury Management maintain accurate statistics on the racial composition of the Master List and other key measures such as undeliverable summons,

It is critical that Jury Management maintain accurate statistics on the racial composition of the Master List and other key measures.

disqualification/excusal rates, failure to respond/appear rates, and sworn juries, among others. It is particularly important to establish accurate baselines as soon as possible, as Milwaukee County's racial composition is rapidly evolving, particularly in reference to a fast-growing Hispanic population.

This is information that should be maintained on a routine basis, in compliance with Wisconsin Supreme Court Rule 73.01, Monitoring the Jury System, which states:

"Each judicial circuit shall analyze at least annually the performance of the jury system in the circuit to determine all of the following: (1) If the department list or master list under section 756.04 of the statutes is representative and inclusive of the population of the circuit. (2) The effectiveness of the summoning and qualification procedures. (3) The responsiveness of prospective jurors to their summonses for jury duty. (4) If jurors and prospective jurors are used efficiently. (5) The cost – effectiveness of the jury system."

Jury Management staff indicated that written reports are not a formal requirement of the rule, and provided an e-mail from the Director of State Courts' office supporting that statement. Staff also indicated that Jury Management does monitoring throughout the year, but does not prepare a written report. In lieu of written reports, Jury Management staff cited varied approaches to meeting the intent of SCR 73.01, including verbal meetings and discussions with the Judges Jury Committee to exchange important information and regular monitoring of the demographic information for the population of Milwaukee County to ensure consistency with the makeup of Milwaukee County jury pools remain representative of the County as a whole.

We question whether the less formal approach used by Milwaukee County Circuit Court meets the intent of SCR 73.01 for annual analysis of jury management practices. Failure to provide written analysis has limited the Court's ability to document, highlight, compare and formulate opinions on the

implications of various data trends. Also, there is no written document evidencing the analysis required by SCR 73.01, and no historical record to reflect changes in Jury Management practices.

In any event, a recently adopted provision of the Rules of Trial Court Administration for Wisconsin Circuit Courts (TCA Rule 17) clarifies that written reports in compliance with SCR 73.01 will be mandatory for all Wisconsin Circuit Court effective April 1, 2009.

Compliance with TCA Rule 17 will require working closely with the CCAP Design Committee to train Jury Management staff on the proper use of the CCAP system, to improve the usefulness of current data fields, and to rectify problems that may hinder Milwaukee County's ability to use standard CCAP reports due to circumstances unique to the state's largest county. We concur with the Milwaukee County Clerk of Circuit Court that such efforts may require an additional staff person.

In the meantime, to address Milwaukee County Circuit Court's ongoing issues related to under-representation of African Americans in jury pools, we recommend the Court:

- 3. Ensure that the Milwaukee County Clerk of Circuit Court maintain statistics identified in this report on a regular basis. This includes statistics on the racial composition of the Master List and other key measures such as undeliverable summonses, disqualification/excusal rates, failure to respond/appear rates, and sworn juries, among others. While working to improve the accuracy of data from CCAP should be pursued, lack of exact precision or ability to use standard CCAP reports should not preclude the regular tracking of critical measurements necessary to improve minority representation in Milwaukee County Circuit Court jury pools. Implementation of this recommendation may require the addition of one additional staff person.*

Close monitoring of the various statistics noted in this report will assist the Court in evaluating the success of its current efforts to improve African - American response rates to jury summons.

Close monitoring of the various statistics noted in this report will assist the Court in evaluating the success of its current efforts to improve African-American response rates to jury summons. This approach, if successful, would appear to require the smallest

commitment of additional resources to reduce the current disparity in the racial compositions of Milwaukee County jury pools and the voting age population of U.S. citizens in the County. If additional measures are needed, however, we recommend the Milwaukee County Circuit Court:

4. *Adopt a procedure, similar to that used by the federal court system's Eastern District of Wisconsin, to supplement the current DOT list with the voter registration lists of selected City of Milwaukee aldermanic wards to establish a Master List that is a more representative cross-section of Milwaukee County as a whole.*

It is our belief that such a process can be developed to meet the requirements of § 756.04(5)b, Wisconsin State Statutes. In the event that such a process cannot be developed within the parameters of current statutory provisions, we recommend the Milwaukee County Board of Supervisors:

5. *Lead the effort to amend Wisconsin State Statutes to clearly permit a process, similar to that used by the federal court system's Eastern District of Wisconsin, to ensure that Milwaukee County jury pools represent a fair cross-section of the County as a whole.*
6. *Consider increasing jury pay.*

Additionally, we recommend the Milwaukee County Circuit Court:

7. *Consider additional measures such as stricter enforcement of fines for failure to respond to jury summons, or others as dictated by results.*

Section 2: Jury Selection

Jury selection in Milwaukee County begins with the annual downloading of 175,000 names from the state DOT list into the County CCAP system.

The Jury Selection Process in Milwaukee County

Wisconsin Statutes 756 regulates the jury selection process in Milwaukee County. The statutes outline the procedures that the Circuit Court must abide by during the jury selection process. Jury selection in Milwaukee County begins with the annual downloading of 175,000 names from the state DOT list into the County CCAP system. The Jury Management section of the Milwaukee County Clerk of Circuit Court's Office is responsible for every phase of the jury selection process under the direction of the Clerk of Circuit Court. Two pools of regular jurors are summoned each week; one group reports on Mondays and Tuesdays and the other reports Wednesdays and Thursdays, using approximately 25,000 individuals a year. The Division also summons approximately 750 reserve jurors to be available to report, if needed, each week.

Courtroom Observations

During June and July of 2006, we observed the jury selection process for 11 cases in the courtrooms of ten judges. The proceedings observed included nine criminal cases, one civil case and one inquiry trial for the death of an inmate. The following descriptions are based on our observations, as well as interviews with Jury Management staff.

At the point at which the Court determines a jury trial is required, Jury Management receives a call from the Court requesting a jury panel, identifying the number of potential jurors needed. Individuals are assigned to a case by random selection through the CCAP system. Lists containing the numerical order in which jurors were randomly selected are supplied to the courts. Race and gender are not identified on the lists. Jurors are asked to line up according to their assigned numbers when their names are called, and deputy sheriffs or court staff escort them to the

courtroom. In the cases observed, the jury panels that reported to the courtrooms ranged from 14 to 42 individuals.

As stated in § 756.06 (1), Wisconsin State Statutes:

“Whenever an issue is to be tried before a jury, the clerk of circuit court shall randomly select names from the prospective juror list until the desired number is obtained.”

Once inside the courtroom, jurors are asked to line up according to the numbers they were assigned by Jury Management. The judges give further instructions about the process, the cases, and introduce the parties involved. Jurors are asked to answer a series of questions that were posted in the courtrooms about their occupation, spouse’s occupation, number and age of children, previous jury experience, etc. In one courtroom we observed, the judge used Juror Information slips, which were completed by the jurors prior to entering the courtroom, to obtain written responses to the same questions posted in the courtroom.

The judges conduct the voir dire process (see **Background** section of this report for a description of voir dire), allowing the plaintiffs and defendants an opportunity to clarify answers given by potential jurors and to ask specific questions to identify any biases towards anyone involved in the trial or the crime in question. For example, in one case we observed, a young man was charged with rape and the jurors were asked specific questions on whether or not they knew anyone that had been raped or if they felt that they could not be fair in judging this type of crime. In another courtroom we observed, on two separate occasions and two separate trials, the judge dismissed the entire jury panels, in one case because of biased remarks made during the voir dire process, and in the other because of negative behaviors displayed by jurors once selected for trial.

We found the judges, although unique in their styles, were all polite and friendly towards the jurors and appreciative of their civic duty to serve.

Prospective jurors are given the option of answering sensitive questions in the judges' chambers, which was utilized by some jurors in the cases we observed.

In the cases we observed, we found the judges, although unique in their styles, were all polite and friendly towards the jurors and appreciative of their civic duty to serve. After the voir dire process is completed, the judge and attorneys discuss any strikes for cause at the judge's bench or in the judge's chambers including the number of jurors they will choose from. For example, in one case we observed, 28 jurors were selected for the voir dire process. The judge struck two jurors for cause and gave the plaintiff and defendant five peremptory challenges, or strikes, each to further reduce the panel. The judge and parties involved agreed to limit their selections to jurors between numbers one through 25, returning three individuals to the jury pool without cause or challenge. Of the 11 cases observed, three African Americans and 17 Whites were struck for cause by the judges. In one courtroom, eleven prospective jurors were randomly withdrawn, by lot, prior to the peremptory challenges phase, to reduce the panel.

During the peremptory challenges phase, which is the right of the parties to excuse a limited number of prospective jurors without stating a reason, the defendants and plaintiffs were given a certain number of peremptory challenges. In the criminal cases observed, the peremptory challenges were usually four or five for each side and three for civil cases. Both sides took turns identifying their strikes until the limits were reached. The Court Clerks would either read the numbers or names of those jurors selected, asking them to stay, while the remaining jurors were asked to immediately return to Jury Management to be placed back into the available pool. The number of jurors selected was based on the type of trials. As stated in § 756.06 (2)(a), (b) and (c), Wisconsin State Statutes:

“(a) A jury in a misdemeanor case shall consist of 6 persons unless both parties agree on a lesser number as provided in s. 972.02...(b) Except as provided in par. (c), a jury in a civil case shall consist of 6 persons unless a party requests a greater number, not to exceed 12. The court, on its own motion, may require a greater number, not to exceed 12...(c) A jury in a case involving an offense for which a forfeiture may be imposed or in an inquest under s. 979.05 shall consist of 6 persons.”

Racial Breakdown of Strikes for Cause and Peremptory Challenges

Table 10 shows the racial breakdown of strikes for cause and peremptory challenges in 33 criminal cases in 2006 that we either observed or for which we reviewed court records.

<u>Race</u>	<u>Voir Dire</u>	<u>Percent Total</u>	<u>Strikes for Cause</u>	<u>Percent Total</u>	<u>Peremptory Prosecution</u>	<u>Percent Total</u>	<u>Peremptory Defense</u>	<u>Percent Total</u>	<u>Sworn Jurors</u>	<u>Percent Total</u>
White	793	81.1%	53	72.6%	113	81.9%	130	90.9%	338	78.2%
African American	132	13.5%	15	20.6%	15	10.9%	7	4.9%	71	16.4%
Hispanic	28	2.9%	2	2.7%	6	4.3%	2	1.4%	15	3.5%
Other	25	2.5%	3	4.1%	4	2.9%	4	2.8%	8	1.9%
Total	978	100.0%	73	100.0%	138	100.0%	143	100.0%	432	100.0%

Source: Clerk of Circuit Court – Court Records.

As shown in **Table 10**, a total of 978 potential jurors reported to the courts for voir dire, including 793 Whites (81.1%), 132 African Americans (13.5%), 28 Hispanics (2.9%) and 25 ‘Other Races’ (2.5%).

Combined, judges removed 73 individuals on strikes for cause, including 53 Whites (72.6%), 15 African Americans (20.6%), two Hispanics (2.7%) and three ‘Other Races’ (4.1%).

The record was unclear regarding 38 of the peremptory strikes, so those instances were removed from our analysis. The

remaining combined peremptory challenges for which the record was clear removed 281 individuals. The racial breakdown of the 138 plaintiffs' (prosecutions') strikes was 113 Whites (81.9%), 15 African Americans (10.9%), six Hispanics (4.3%) and four 'Other Races' (2.6%). The racial breakdown of the 143 defendants' peremptory strikes was 130 Whites (90.9%), seven African Americans (4.9%), two Hispanics (1.4%) and four 'Other Races' (2.8%).

In the 33 criminal cases observed/reviewed, 432 individuals were sworn to a jury panel, including 338 Whites (78.2%), 71 African Americans (16.4%), 15 Hispanics (3.5%) and eight 'Other Races' (1.9%).

Conclusions

The data does not indicate a pattern of peremptory strikes that disproportionately affect minorities.

The data from this limited number of trials either observed or reviewed does not indicate a pattern of peremptory strikes that disproportionately affect minorities. We also note that a defendant has legal recourse if a prosecutor ultimately uses peremptory strikes to eliminate a particular race for discriminatory reasons. In *Batson v. Kentucky*, [476 U.S. 79 (1986)], the U.S. Supreme Court greatly reduced the burden of proof required of a defendant to establish that a prosecutor has used his/her peremptory strikes in a racially discriminatory manner.

There is little discussion of modifying current practices, as any attempt at substantive modification would likely be struck down by legal challenges.

As noted in the previous section of this report, the legal community searches for ways to assemble prospective juror pools that are truly representative cross-sections of the communities from which they are drawn. There is general agreement that protocols for the selection of individual juries are firmly established on defendants' constitutional rights and legal precedence. As such, there is little discussion of modifying current practices, as any attempt at substantive modification would likely be struck down by legal challenges.

Audit Scope

An Audit of the Jury Selection Process in the Milwaukee County Circuit Court System was conducted under standards set forth in the United States Government Accountability Office *Government Auditing Standards (2003 Revision)*, with the exception of the standard related to periodic peer review. Limited resources have resulted in a temporary postponement of the Milwaukee County Department of Audit's procurement of a peer review within the required three-year cycle. However, because the department's internal policies and procedures are established in accordance with Government Auditing Standards, and because this audit was performed in compliance with those policies and procedures, the absence of a peer review did not affect the results of this audit.

We limited our review to the areas specified in this Scope Section. During the course of the audit, we

- Researched relevant federal, state and local laws, regulations, policies and administrative procedures, as well as relevant legal decisions, affecting the jury selection process;
- Interviewed and reviewed correspondence from individuals involved in the federal, state, and local court systems, including the Chief Judge and Clerk of Circuit Courts for Milwaukee County;
- Observed the jury selection process in 11 cases, and reviewed court files for an additional 32 cases convened in Milwaukee County Circuit Courts in 2006;
- Reviewed and tested juror statistics obtained from the Jury Management section of the Clerk of Circuit Courts Office;
- Analyzed the racial composition of jurors summoned, jurors reporting for duty and jurors selected for empanelment in Milwaukee County Circuit Court;
- Analyzed data from the U.S. Census Bureau for 2000 and 2005;
- Evaluated the extent to which the Department of Transportation list used to generate jury summons in Milwaukee County Circuit Court represents a fair cross-section of Milwaukee County residents eligible for jury duty;
- Quantified the relative potential impacts of addressing various issues identified as obstacles to the Milwaukee County Circuit Court achieving prospective jury pools that represent fair cross-sections of the community;
- Researched data from authoritative sources including the American Bar Association, National Center for State Courts, various State Supreme Courts and the U.S. Department of Justice, to gather information and best practices regarding the jury selection process; and
- Surveyed potential jurors for the month of August 2006 regarding employer compensation and transportation issues.

Detail of Department of Audit Analysis Reflected in
Audit Report Table 8

White						
	<u>Summoned</u>	If	If	<u>Difference</u>	<u>Percent Variance</u>	
2006	81,416	69.7%*	66.4%**	-2,687	-4.7%	1
African American						
	<u>Summoned</u>	If	If	<u>Difference</u>	<u>Percent Variance</u>	
2006	81,416	19.0%	23.6%	3,745	24.2%	1
Hispanic						
	<u>Summoned</u>	If	If	<u>Difference</u>	<u>Percent Variance</u>	
2006	81,416	7.5%	6.3%	-977	-16.0%	1

	White	African American			Hispanic		
	Actual	Actual	Adjusted	Change	Actual	Adjusted	Change
Summons Sent	55,387	16,450	16,450		6,168	6,168	
Undeliverable	4,311	2,162	1,283	879	1,114	481	633
% Undeliverable	7.8%	13.1%	7.8%		18.1%	7.8%	
Summons Received	51,076	14,288	15,167	879	5,054	5,687	633
Deceased	180	30			5		
Disqualified	5,223	850			1,373		
Excused or Postponed	12,377	3,778			769		
Subtotal	17,780	4,658			2,147		
Subtotal as % of Sum. Rec.	34.8%	32.6%			42.5%		
Received & Presumed Eligible	33,296	9,630	9,630		2,907	2,907	
No Response	3,168	3,411			1,837		
Initial Response, FTA	1,233	921			148		
Total Recorded Non-Report	4,401	4,332	1,273	3,059	1,985	384	1,601
Non-Report as % Rec. & Eligible	13.2%	45.0%	13.2%		68.3%	13.2%	
Assumed Reported	28,895	5,298	8,357	3,059	922	2,523	1,601
Total Recorded as Reported	26,389	5,253			1,067		
Unreconciled Variance	2,506	45			-145		
Variance as % of Rec. & Eligible	7.5%	0.5%			-5.0%		
Report as % of Rec. & Eligible	79.3%	54.5%			36.7%		
Report as % of Summons Rec.	51.7%	36.8%			21.1%		

Additional Report if Master List Reflective

Magnitude of issues Affecting Minority Representation:	African American	Hispanic
1. Under-representation on Master List	1,283 24.2%	-148 -13.8%
2. Undeliverable Summons	879 6.2%	633 12.5%
3. Failure to Respond/Appear	3,059 58.2%	1,601 150.0%

* CCAP

** Adjusted Census

(See following page for explanatory narrative.)

Under-Representation of African Americans on Master List

In the preceding table, the effect of the disparity between the racial composition of the DOT list used as the sole source for generating summons in Milwaukee County Circuit Court and the actual racial composition of the voting age population in Milwaukee County with U.S. citizenship status is shown in percentage of 2006 summons sent to the top three racial groups: White, African American and Hispanic. Because other factors influence the actual number of prospective jurors that ultimately appear for jury duty, to determine the impact of the disparity between the DOT list and the actual population holding these other factors constant, we multiplied the percentage variance for each racial group by the actual number of summons sent to that racial group in 2006, reduced that number by the percentage of undeliverable summons for the group, and multiplied the result by the rate at which each racial group ultimately reports for jury duty (see bottom portion of preceding table). This process isolates the potential impact of addressing the DOT list/actual population disparity without influencing the other factors affecting the racial composition of Milwaukee County jury pools. The results of this analysis indicate that correcting the under-representation of African Americans due to use of the DOT list as the exclusive source for generating jury summons could increase African American jury pool composition by 24.2%.

Undeliverable Summons

We calculated the impact of undeliverable summons on each racial group by assigning the smallest rate of undeliverable summons achieved by any racial group—that of Whites—to each of the minority groups. The resulting increase in summons received from improved delivery was then multiplied by the rate at which each minority group reports for jury duty, thus isolating the potential impact of addressing the undeliverable summons issue while holding report-for-duty factors constant. As indicated at the bottom of the preceding table, the results of this analysis indicate that correcting for the disproportionately large percentage of undeliverable summons in the African American community could increase African American jury pool composition by 6.2%.

Failure to Respond/Report for Jury Duty

Our final calculation measured the potential improvement from increasing the rate at which minority racial groups report for jury duty. For purposes of this analysis, we assumed the rate at which each racial group failed to respond to jury summons, or that initially responded but failed to ultimately report, matched that of the lowest failure to appear rate—that of Whites. To isolate the potential impact of addressing the failure to respond/report factor from others discussed in this analysis, we applied the lower failure to appear rate to each group's actual number of summons received, net of legal disqualifications and excusals, for 2006. The result of this analysis indicates that improving the rate at which African Americans respond to jury summons could increase African American jury pool composition by 58.2%.

Intentionally Left Blank

KITTY K. BRENNAN
Chief Judge
Telephone: (414) 278-5116

MEL FLANAGAN
Deputy Chief Judge
Telephone: (414) 278-4474

JEFFREY A. KREMERS
Deputy Chief Judge
Telephone: (414) 278-4498

BRUCE M. HARVEY
District Court Administrator
Telephone: (414) 278-5115

BETH BISHOP PERRIGO
Deputy District Court Administrator
Telephone: (414) 278-5025

STATE OF WISCONSIN
FIRST JUDICIAL DISTRICT

MILWAUKEE COUNTY COURTHOUSE
901 NORTH NINTH STREET, ROOM 609
MILWAUKEE, WISCONSIN 53233-1425

TELEPHONE (414) 278-5112
FAX (414) 223-1264



June 20, 2007

Chairman Richard D. Nyklewicz, Jr.
Finance and Audit Committee
County Board of Supervisors
Room 201, Courthouse
Milwaukee, WI 53233

Re: Chief Judge's Response to Audit of the Jury Selection Process

Dear Chairman Nyklewicz:

I have reviewed the Audit of the Jury Selection Process in the Milwaukee County Circuit Court System and I agree with most of the recommendations.

However, as the representative of the Milwaukee Circuit Courts, I must object to the basic purpose behind this Audit. It invades the American Constitutional Separation of Powers. As stated in the Audit, the premise for the Audit is that "public outrage" over one jury verdict in one case requires the Legislative Branch of government to evaluate the Judicial Branch to see if it did something unlawful in its jury selection procedures. Under the American Constitution, the Legislative Branch has no legal right to review the jury selection procedures used by the Courts. Only the Judicial Branch of Government has control over the jury selection process.

Not only does the Audit challenge the Separation of Powers between branches of government, but it also renders legal decisions that it has no right to make. In Recommendation #4, the auditors make the following legal conclusion:

"It is our belief that such a process, similar to that used by the federal court system's Easter District of Wisconsin, can be developed within the parameters of current statutory provisions."

County auditors are not judges. Not only do they lack Constitutional authority to review Judicial Branch procedures, they are in no position to evaluate whether the Federal Court system's procedure for over-sampling jurors in certain districts is legally permissible. In legal terms, they lack legal competence to make legal determinations.

So I reject that part of Recommendation #4 which calls for the Milwaukee Circuit Court to adopt the Federal Court system of over-summoning certain districts where more minorities live. In my

opinion as Chief Judge it is not legally permissible under Wisconsin law and would violate Wisconsin's prohibition on excluding an individual from jury service due to his or her race. The fact that the Federal system does it is immaterial. They have different law and different facts.

Aside from the above-stated objections, in principle, to the Audit, I have no other significant objections. On the whole I believe the County Auditors have been fair and thorough. **I completely agree with their conclusion that the biggest issue is getting minorities to respond to their jury summons.** It is the minority community leaders that will have the greatest potential impact on minority juror levels in the future. They need to continue their efforts in the churches, in the media and in the schools to get the message out to their respective communities that citizens need to serve as jurors. That's the only lasting way to improve minority representation on juries. There needs to be a community commitment.

Each minority citizen has a responsibility and an opportunity on this issue of minority representation on juries. By simply signing up for a State of Wisconsin ID card, citizens can get themselves onto the DOT list which makes them eligible for jury duty. No legislative change or expensive computer lists are involved. It just takes an individual's commitment.

As to the recommendation that the Chief Judge refer more violators to the District Attorney for criminal prosecution, the Courts will continue to refer those appropriate to the District Attorney's office for criminal charges. But we prefer to solve the problem of under-representation of minorities on juries in a positive way as noted above.

The manner in which jurors are selected is set forth in Wisconsin law. Jurors must be chosen at random. While we want juries that are representative of the community at large, it is impermissible to exclude anyone from jury service on the basis of their race. Honoring all of these legal rules at once is not easily accomplished. Some will conflict with the others at times. And doing it in a way that is not unduly burdensome on the taxpayers is particularly difficult.

We in the Milwaukee Circuit Courts have done an admirable job in balancing legal requirements while being good stewards of the taxpayers' money. Without great expense and without costly legal challenges on the over sampling and additional lists issues, we have increased minority participation in our jurors to levels at or near the reported minority representation levels of voting age citizens. The following are some of the inexpensive, effective measures we have employed:

- Sending repeat reminder letters to those who fail to respond
- Strengthening the language in those letters about the criminal penalties for failing to report
- Putting the letter in a different, windowless envelope
- Calling together minority community leaders to a meeting to encourage them to spread the word to their communities about the need for reporting to jury duty
- Writing an editorial letter to the Milwaukee Journal/Sentinel about the importance of citizens reporting to jury duty
- Working with the state courts' computer system to collect better data for juror demographics in Milwaukee County
- Exploring the possibility of legislative initiatives such as increased juror pay and additional lists being added to the DOT list

We could not achieve these successes without the support of the minority community leaders. They have been and must continue to be our partners in getting the message out to the community that citizens need to answer the jury summons. The simple, cost-efficient measures we have already employed and the continued support of the minority community leaders are the only realistic and long-lasting solutions to the problem of under representation of minority citizens on juries.

As always, I will work with all aspects of the community to continue the progress we've made on ensuring fair, representative juries through all lawful means.

Sincerely,



Hon. Kitty K. Brennan
Chief Judge

KKB:bjs

c: Ryan McCue, Vice-Chairman, Finance and Audit Committee
Finance and Audit Committee
Jerome J. Heer, Director of Audits
Bruce M. Harvey, District Court Administrator
Beth Bishop Perrigo, Deputy District Administrator
John Barrett, Clerk of Circuit Court

APPENDIX 1

Taylor v. Louisiana

To view the contents of this appendix go to:

http://www.law.cornell.edu/supct/html/historics/USSC_CR_0419_0522_ZO.html

APPENDIX 2

Chapter 756, Wisconsin State Statutes

To view the contents of this appendix go to:

<http://www.legis.state.wi.us/rsb/stats.html>

(Search for Chapter 756.)

APPENDIX 3

Race, Diversity, and Jury Composition; Battering and Bolstering Legitimacy (Chicago — Kent Law Review)

To view the contents of this appendix go to:

http://lawreview.kentlaw.edu/articles/78-3/ellis_diamond.pdf

APPENDIX 4

U.S. v. Green

To view the contents of this appendix go to:

<http://www.ca1.uscourts.gov/>

(Search for opinion no. 05-2358.)

APPENDIX 5

**Plan for the Random Selection of Grand and
Petit Jurors, Eastern District of Wisconsin**

UNITED STATES DISTRICT COURT

FOR THE

EASTERN DISTRICT OF WISCONSIN

**PLAN FOR THE RANDOM SELECTION OF
GRAND AND PETIT JURORS**

(Amended Juror Selection Plan - 2001)

Pursuant to the Jury Selection and Service Act of 1968, as amended (28 U.S.C. 1861 et. seq.), the following plan is hereby adopted by this Court, subject to the approval by the reviewing panel for the Seventh Circuit and to such rules and regulations as may be adopted from time to time by the Judicial Conference of the United States.

1. APPLICABILITY OF THE PLAN

The Eastern District of Wisconsin is hereby divided into Divisions for jury selection purposes pursuant to 28 U.S.C., Sec. 1869(e) as follows:

Milwaukee Division Counties:

Kenosha, Milwaukee, Ozaukee, Racine, Walworth, Washington and Waukesha.

Green Bay Division Counties:

Brown, Calumet, Dodge, Door, Florence, Fond du Lac, Forest, Green Lake, Kewaunee, Langlade, Manitowoc, Marinette, Marquette, Menominee, Oconto, Outagamie, Shawano, Sheboygan, Waupaca, Waushara and Winnebago.

The provisions of this plan apply to all Divisions in this District, unless specifically indicated to the contrary.

2. POLICY

It is the policy of this Court that all litigants entitled to trial by jury shall have the right to juries selected at random from a fair cross section of the community in the Division where the Court convenes. The Court may, on its own motion or motion of the parties, select a petit jury venire from any other Division of the District. It is further a policy of this Court that all qualified citizens within the District shall have the opportunity to be considered for service on the juries of this Court, and shall have an obligation to serve as jurors when summoned for that purpose.

No citizens shall be excluded from service as a grand or petit juror in this Court on account of sex, race, color, national origin or economic status.

3. MANAGEMENT OF THE JURY SELECTION PROCEDURES

The Clerk of Court shall manage the jury selection process under the supervision and control of the Chief Judge of the District or the designee of the Chief Judge.

4. METHOD AND MANNER OF RANDOM SELECTION

4.1 Supplementation of the Master Jury Wheel

If the Court, pursuant to 28 U.S.C. Sec. 1863(b)(2), should find it necessary, it may authorize the Clerk to draw names of prospective jurors from supplementary lists in addition to voter lists, or to draw additional names from the voter lists for the Division. For example, the Court might find that when names for the Master Jury Wheel are drawn in equal percentages from each county and/or election district, it cannot, because of demographic distribution of population, obtain the names of certain racial minorities in substantially the same proportion as such persons are represented in the general population. When and if the Court determines such a condition exists, it may, in order to insure proportionate representation of such races in the Master Jury Wheel, authorize the Clerk to draw additional names for the Master Jury Wheel from the voter records of election districts known to contain greater numbers of such racial minorities than the general population.

This plan's reference to random selection shall mean that in any selection procedure only the name of the first person selected shall be chosen by a purely random method and subsequent names for that drawing may be systematically taken at regular intervals throughout the remainder of the source lists. This random selection procedure hereinafter described insures that:

- (a) names chosen will represent all parts of the source list from which drawn;
- (b) the mathematical odds of any single name being picked are substantially equalized;
and
- (c) the possibility of human discretion or choice affecting the selection of any individual's name is eliminated.

4.2 Selection of Names for the Master Jury Wheel

At the Clerk's option, and after consultation with the court, the selection of names from complete source list database in electronic media for the master jury wheel may be accomplished by a purely randomized process through a properly programmed electronic data processing system. Similarly, at the option of the Clerk and after consultation with the Court, a properly programmed electronic data processing system for pure randomized selection may be used to select names from the master jury wheel for the purpose of summoning persons to serve as grand or petit jurors. Such random selections of names from the source list for inclusion in the master wheel by data computer personnel must insure that each county within the jury division is substantially proportionally represented in the master jury wheel in accordance with 28 U.S.C. §1863(b)(3).

The Judges of the Court find that the initial selection of persons to be considered for service as grand or petit jurors from the voter or voter registration lists shall be made at

random in such a total number as is sufficient for a two (2) year period. The number of names selected from each county shall be substantially in the same proportion to the total number selected from the Division as the number of voters in the Division. For example, if 48,000 votes were cast in County "A" and 240,000 votes were cast in the entire Division, then the number of names selected from County "A" should be substantially 20 percent of the number of names selected from the entire Division, since 48,000 is 20 percent of 240,000.

For the purpose of calculating the total number of voters in the respective Divisions within the District, the Clerk will add the total votes cast in each county within the District as obtained by manual or mechanized count of the votes or as obtained from the County Clerk in each county, the officials of the Election Division of the Wisconsin Department of State, or any officials authorized to provide such information. The method of determining the total number of votes in the counties in the respective Divisions shall be at the option of the Clerk.

Having determined the total number of names needed for the Master Jury Wheel in each Division and the number of names to be selected from each county in each Division, the Clerk shall proceed either manually or through the use of a properly programmed data computer, or through a combination of manual and computer methods, to make the initial selection of names from the source lists described in Section 4.1.

The sequence in which the voters' lists and registration lists from the various counties are to be processed for the purposes of selecting names will, at the option of the Clerk, be any administratively convenient order such as the chronological order in which the lists are obtained, in alphabetical sequence by county name, or in a simple random sequence.

4.3 Determining a "Quotient"

For each of the two (2) Divisions, the Clerk will proceed as follows:

In those counties with uniform permanent registration, the Clerk shall make the random selection by taking the total number of registered voters in those counties and dividing that number of names by the number of names to be placed in the Master Jury Wheel as allocated pursuant to Section 4.2. The number obtained will be the quotient which is the ratio of selected to unselected names. In those counties which have a "mixed" system, i.e., some Districts with only voter lists and some with permanent registration, a separate quotient will be determined by taking the total number of actual voters in the last general election and dividing that number by the number of names to be placed in the Master Jury Wheel from those counties as allocated pursuant to Section 4.2. For example, if the Clerk has determined that 4,000 names are needed to supply the Court requirements for the Milwaukee Division for two years, 2,000 of those 4,000 names will be allocated from Milwaukee pursuant to Section 4.2. Since Milwaukee County is the only county in the Division with uniform permanent registration and the number of registered voters on the most current registration list is 400,000, the quotient will be 200 and the Clerk will select every 200th name to place in the Master Jury Wheel.

The other 6 counties have a "mixed" system and the number allocated from all 6 counties pursuant to Section 4.2 is 2,000. If the total number of actual votes from those 6 counties

is 200,000, then the quotient will be 100 and the Clerk will select every 100th name from those 6 counties to place in the Master Jury Wheel.

4.4 Determining a "Starting Number"

The Clerk shall establish (after determining the quotient, or quotients, if necessary) a starting number for each Division. This number will locate on the voter list(s), or on the data computer's tape, disc, or punched card record of such lists, the first name to be selected for the Master Jury Wheel. The starting number will be manually drawn by lot from numbered plastic chips placed in a jury wheel drum or box. The plastic chips used for this drawing should begin with the number one and end with the same number as the "quotient". In other words, the range of numbers from which a starting number is drawn is exactly the same as the range between number one and whatever the "quotient" number happens to be. As an example of how both the starting number and quotient are used, if we suppose the "quotient" to be 100 and the starting number drawn is 12, the first name chosen for each county would be the 12th name on the list of voters, the second name would be the 112th, the third, the 212th, etc., and continued to the end of the list.

4.5 Selecting Names by Manual Methods

When selection from any county's list of voters is made manually, the choosing of names shall be by counting names down the list, either in a numerical sequence if the names are numbered, or, if they are not numbered, in any other logical consistent sequence. For this counting and selecting process, the entire list must be covered and the specific names picked will be according to the established "quotient" and "starting number" formula described above. In lieu of making an actual physical count of names, a measuring device that expresses name intervals in terms of inches of space on a page may be used providing it substantially approximates the desired "quotient" intervals between selected names that an actual name count would produce.

4.6 Selecting Names by Machine Methods

The Judges of this Court find that electronic data processing methods can be advantageously used for selecting and copying names from voter lists of those larger counties that maintain these lists in machine readable forms such as punched cards, magnetic tapes, or magnetic discs. It is further found that in smaller counties currently maintaining their voter lists in handwritten or printed form, it may be advantageous to employ a combination of methods whereby names are initially selected from the voter lists manually and then recorded in punched cards and tapes for subsequent handling and copying of these names by electronic machine methods.

Therefore, a properly programmed electronic data processing system or a combination of systems employing both manual and electronic methods may, at the Clerk's option and after consulting with the Chief Judge, be used to select Master Jury Wheel names from voter lists of any or all counties in the District, provided that the required proportions of names from each county are maintained and the above described "quotient: and "starting number" formula is followed.

Similarly, the Judges of this Court find that an electronic and manual system may, at the option of the Clerk and the Chief Judge, be used to select names from the Qualified Jury Wheel of persons to be summoned to serve as grand or petit jurors, and for the recording of names of prospective jurors or any papers and records needed by the Court to administer the selection and payment of jurors.

If the Court elects to use electronic machine methods in connection with any or all of the District's voter records, source lists, Master Jury Wheels, or Qualified Jury Wheels, the name selection system shall be planned and programmed according to a "start number" and "quotient" formula.

5. MAINTAINING MASTER JURY WHEELS

The Clerk shall maintain a Master Jury Wheel for each of the Divisions within the District. The names and addresses of all persons randomly selected from the lists of voters at the last general election shall be placed in the Master Jury Wheel for the Division.

The minimum number of names to be deposited initially shall be 2,000 names for the Green Bay Division and 13,000 names for the Milwaukee Division. However, for the refilling of any Divisional Master Jury Wheel, the Court may determine that the Division's practical need for jurors requires either a smaller or larger number of names and the Court may by order specify such larger or smaller numbers than specified above for the refilling of any Master Jury Wheel.

The Chief Judge of this District or the designee of the Chief Judge may order additional names to be placed in any Master Jury Wheel from time to time as necessary.

Each Master Jury Wheel shall be emptied and refilled every two years, and the emptying and refilling task shall be completed no later than the 15th day of October of the year following the General Election held in the fall of even-numbered years.

The physical form of record on which names for the Master Jury Wheel are kept may include such electronic data storage devices as punched cards, magnetic tapes, or magnetic disc files. Pursuant to Section 1863(b)(4) of the Act, the minimum number of names to be placed in the Master Jury Wheel(s) shall be at least one half of one percent of the total number of names of all county voters and voter registration lists.

6. DRAWING OF NAMES FROM MASTER JURY WHEELS AND COMPLETION OF JUROR QUALIFICATION QUESTIONNAIRES

The Clerk, either all at one time or at periodic intervals, shall publicly draw at random from the Master Jury Wheels by electronic or manual methods the names of as many persons as may be required to maintain an adequate number of names in the Qualified Jury Wheels. The number of names to be drawn shall be determined by the Clerk based upon anticipated juror demands by the Court plus a margin of extra names sufficient to compensate for the estimated number that will turn out to be unavailable or ineligible.

The Clerk shall have prepared, by manual or automated means, alphabetized lists of names drawn. These lists shall not be exhibited to any person except as provided herein and in Sections 1867 and 1868 of the Act as amended. The Clerk shall, by manual or automated means, prepare

and have mailed to every person whose name is so drawn, a Juror Summons/Qualification Questionnaire. The Juror Summons/Qualification Questionnaire form must be returned, duly signed and sworn, to the Clerk by mail within ten days, in accordance with Section 1864(a) of the Act, as amended.

7. PERSONS QUALIFIED FOR JURY SERVICE

Any prospective juror shall be deemed qualified to serve on Grand and Petit juries in this District unless the person:

- (1) is not a citizen of the United States eighteen years old who has resided for a period of one year within the judicial District;
- (2) is unable to read, write and understand the English language with a degree of proficiency sufficient to fill out satisfactorily the Juror Qualification Questionnaire;
- (3) is unable to speak the English language;
- (4) is incapable, by reason of mental or physical infirmity, to render satisfactorily jury service; or
- (5) has a charge pending against him for the commission of, or has been convicted in a State or Federal Court of Record of a crime punishable by imprisonment for more than one year and his civil rights have not been restored.

8. EXCUSES OF INDIVIDUAL REQUEST

The District Court finds that jury service by the following groups of persons or occupational classes would entail undue hardship or extreme inconvenience to the members thereof, and that the excuse of members thereof would not be inconsistent with 28 U.S.C. Section 1861 and 1862. Accordingly, the Court shall grant excuses upon individual request from anyone who:

- (1) is over 70 years of age;
- (2) is an actively practicing attorney, medical doctor or dentist;
- (3) has active care and custody of a child or children under 10 years of age whose health and/or safety would be jeopardized by their absence for jury service, or a person who is essential to the care of aged or infirm persons;
- (4) has served as a grand or petit juror in State or Federal Court within the last two years;
- (5) any person whose services are so essential to the operation of a business, commercial, or agricultural enterprise that said enterprise must close if such person were required to perform jury duty; or
- (6) serves without compensation as a volunteer firefighter or a member of a rescue squad or ambulance crew for a federal, state or local government agency.

9. EXEMPTION FROM JURY SERVICE

The District Court finds that exemption from jury service of the following groups of persons or occupational classes is in the public interest and would not be inconsistent with 28 U.S.C. Section 1861 and 1862. Therefore, members of the following groups or classes shall be barred from jury service on the grounds that they are exempt:

- (1) members in active service in the Armed Forces of the United States;

- (2) members of the fire or police departments of any state, district, territory, possession or subdivision thereof; or
- (3) public officers in the executive, legislative, or judicial branches of the Government of the United States, or any state, district, territory or possession or subdivision thereof, who are actively engaged in the performance of official duties. "Public officer" shall mean a person who is directly appointed by a person elected to public office.

10. DETERMINATION OF QUALIFICATIONS, EXEMPTIONS AND EXCUSES

According to the Federal Courts Improvement Act of 2000, section 305 amends 28 U.S.C. § 1865 (a) and (b) of the Jury Act to permit the Chief Judge to authorize the Clerk of Court, under supervision of the Court, to determine whether persons are qualified, unqualified, exempt, or excused from jury service. Accordingly, the Jury Act now gives Clerks and Deputy Clerks the authority to make all status decisions of prospective jurors. This authority is similar to 28 U.S.C. §1866(c) which provides that Clerks and Deputy Clerks may grant temporary excuses or deferrals to jurors when necessary. Written requests for excuses on the grounds of undue hardship or extreme inconvenience will be reviewed by the Clerk of Court or Deputy Clerk for determination.

11. MAINTAINING QUALIFIED JURY WHEELS AND SUMMONING JURORS

11.1 Filling the Jury Wheel

The Clerk shall maintain separate Qualified Jury Wheels for each Division and shall place in such Qualified Jury Wheels the names of all persons, drawn from the Master Jury Wheel who are not disqualified, exempt, or excused pursuant to this plan.

Each Qualified Jury Wheel shall be emptied and refilled every two years no later than two months after the corresponding Master Jury Wheel is emptied and refilled, i.e. by the 15th of December.

11.2 Summoning Petit Jurors

The Clerk shall insure that at all times an adequate number of names are contained in each Qualified Jury Wheel. Whenever a Qualified Jury Wheel is maintained on an electronic data processing system, the persons to be summoned for a particular jury array will be selected by a random method.

From time to time, as jurors are required, the Clerk shall order the drawing at random from the appropriate Qualified Jury Wheel as many persons as may be required for petit jury arrays.

Completed summons forms may be mailed to jurors by the Clerk's Office at the option of the Clerk, by the computer center or by a commercial mailing service.

11.3 Terms of Service

Persons summoned to constitute the petit jury array shall serve on jury panels for such term of service as the Court may direct.

During the term of service, no person shall be required to serve or attend Court for prospective service as a petit juror for a total of more than 30 days except when necessary to complete service in a particular case.

11.4 Selection of Jury Panels for Trials

In selecting a jury panel from the array for trials, the Clerk or the designee of the Clerk shall proceed by using a random process through a properly programmed automated system. Requests in advance by a member of the array for excuse for good reason shall be honored by the Clerk. Requests for excuse by a member of the panel called for a scheduled trial may be granted by the Clerk for good reason, or referred to the presiding Judge.

11.5 Summoning Grand Jurors

From time to time, as Grand Jurors are required, the Clerk shall order the drawing from each Division's Qualified Jury Wheel a pro-rata share of the total number of Grand Jurors needed for the Grand Jury array.

11.6 Disclosure of Juror's Names and Questionnaires

The lists of current petit jury arrays and the Juror Questionnaires shall be available for inspection at the Clerk's Office to the parties and public, provided that the Court may order the names and addresses to be kept confidential in a case or cases when the interest of justice so requires.

11.7 Disclosure of Grand Juror's Names and Questionnaires

Lists of Grand Jurors and Grand Juror Questionnaires shall not be disclosed or made available for inspections at the Clerk's Office except upon special order of the presiding Judge per District Court Local Rule 21.

11.8 Communication with Jurors

No attorneys appearing in this Court, or any of their agents or employees, shall approach, interview, or communicate with any member of the jury except on leave of Court granted upon notice to opposing counsel and upon good cause shown. This rule applies to any communication before trial with members of the venire from which the jury will be selected, as well as any communication with members of the jury during trial, deliberations, and after the return of a verdict. Any juror contact permitted by the Court shall be subject to the control of the presiding Judge per District Court Local Rule 8.06.

12. PUBLIC ANNOUNCEMENT OF THE PLACE AND TIME OF AUTOMATED SELECTION OF NAMES BY COMPUTER CENTER

Random drawings of the starting number shall be publicly made in the Office of the Clerk of Court at times to be publicly announced on the Court bulletin board.

Drawing of names of prospective jurors by automated selection methods shall be publicly made at the designated computer center. The location and approximate time of such drawings shall be publicly announced in a public place, such as the Court's bulletin board.

The Office of the Clerk of Court shall retain and, when requested, provide public access to the following:

- (1) the Court's "Juror Selection Plan" including the Plan's verbatim description of the method used in determining the "quotient" and "starting number"; and
- (2) a verbal or graphically charted description of the procedure employed in the automated selection system.

13. DEFINITIONS

"Chief Judge" where used in this plan shall refer to the Chief Judge of this District Court or such District Judge as the Chief Judge designates to act in his stead.

"Clerk" where used in this plan shall refer to the Clerk of the District Court or such Deputy Clerk as the Clerk designates to act in his stead.

"Presiding Judge" where used in this plan shall refer to the District Judge, or United States Magistrate Judge designated by the District Judge, assigned to the civil or criminal case wherein the request for jury information has been made.

APPENDIX 6

Jury Selection and Service Act, Excerpters

To view the contents of this appendix go to:

http://www4.law.cornell.edu/uscode/html/uscode28/usc_sec_28_00001861----000-.html

http://www4.law.cornell.edu/uscode/html/uscode28/usc_sec_28_00001862----000-.html

APPENDIX 7

Batson v. Kentucky

To view the contents of this appendix go to:

http://www.law.cornell.edu/supct/html/historics/USSC_CR_0476_0079_ZO.html