

Jury Managers' Toolbox

Characteristics of an Effective Master Jury List

Overview

For most courts, the creation of the master jury list is the first critical step in the jury selection process. The primary objective of this step is to create a master jury list that is broadly inclusive of the jury-eligible population, geographically and demographically representative of the community, and accurate with respect to the names and addresses of potential jurors. The more inclusive the master jury list, the more likely that it will be geographically and demographically representative of the community. Moreover, a more inclusive master jury list distributes the burden of jury service more equitably across the jury-eligible population. The NCSC recommends that the master jury list include 85% or more of the jury-eligible population.¹

The term “jury-eligible” generally refers to individuals who meet the basic qualification criteria for jury service with respect to citizenship, residency in the community, age (18 and older), English proficiency, and the absence of a criminal history or mental incompetency. Historically, the popularity of voter registration lists in many jurisdictions was due to identical

or nearly identical qualification criteria for both voting and jury service; however, exclusive reliance on the voter registration list as the juror source list has since waned as courts became increasingly aware that many of these lists were neither inclusive nor representative of their communities. Juror source lists other than the voter registration list are likely to include individuals who do not meet the statutory qualifications for jury service and, with the exception of age, generally cannot identify those ineligible individuals based on the source list information. Consequently, the 85% standard has gradually evolved to mean that the master jury list should encompass 85% of the total adult population.

Inclusiveness

To ensure that the master jury list is broadly inclusive of the jury-eligible population, the vast majority of states require courts to use multiple source lists to compile the master jury list. Eleven states mandate the use of a combined list of registered voters and licensed drivers²; Connecticut, New York, and the District of Columbia supplement those lists with lists of income tax filers, persons receiving unemployment compensation, and persons receiving public welfare benefits (New York

¹ G. Thomas Munsterman, *Jury System Management* 4-5 (1996). The American Bar Association does not specify a numerical standard, but recommends that “the jury source list and the assembled jury pool should be representative and inclusive of the eligible population in the jurisdiction. *American Bar Association, Principles for Juries and Jury Trials*, Principle 10.A.2. (2005).

² Gregory E. Mize, Paula Hannaford-Agor & Nicole L. Waters, *The State-of-the-States Survey of Jury Improvement Efforts* 13-14 (2007).

State only). Most states also permit local courts to supplement the required source lists with additional lists. Only eight states rely exclusively on a single source list: the list of registered voters in Mississippi and Montana; the list of licensed drivers in Florida, Michigan, Nevada and Oklahoma; an annual census conducted by each locality in Massachusetts³; and recipients of Permanent Fund Income in Alaska.⁴

Duplicate Removal

Courts using multiple source lists to compile the master jury list have established general “merge and purge” procedures to identify and remove duplicate records after two or more source lists have been combined. The accuracy of the duplicate removal process is extremely important. Failing to identify duplicate records undermines the principle of random selection insofar that individuals who have more than one record on the master jury list (e.g., people who both vote and drive) have a greater probability of being selected than individuals with only one record. On the other hand, incorrectly removing a record on the mistaken belief that it duplicates an existing record disenfranchises a potentially eligible individual and decreases the inclusivity of the master jury list.⁵ Of the two possible errors, the conventional belief is that disenfranchising a potentially eligible individual is worse than leaving an unrecognized duplicate on the master jury list,⁶ although the NCSC recommends that the proportion of

unrecognized duplicates not exceed 5% of the total list.⁷

The NCSC has studied the effectiveness of duplicate removal techniques for courts using combined registered voter and licensed driver lists. When the matching criteria are exact matches on the surname, first name, middle initial, birth month and day, and street number or post office box number, the probability of a duplicate record being missed is approximately 6% and the probability of mistakenly removing a unique record is less than 1%.⁸ Missing information as well as the existence of extraneous spaces, punctuation, or non-standardized formatting in any of the fields used for matching can result in an unrecognized duplicate being left on the master jury list while the use of fewer matching criteria (e.g., surname, first initial, and date of birth only) will result in fewer unrecognized duplicates. Commercial jury automation software generally employs more sophisticated (trademark protected) matching criteria, which typically results in 2% to 3% unrecognized duplicates left on the master jury list.

Representativeness

As a general rule, as the master jury list becomes more inclusive, it also becomes more representative. By definition, a list that is 100% inclusive of the jury-eligible population will be perfectly representative. For the purpose of fair cross section jurisprudence, demographic representation is the most important criteria. As the Supreme Court of California noted in *People v. Wheeler*, “if [the source] list is not

³ Mass. Gen. Laws ch. 234A §4 (2009).

⁴ Ala. Stat. § 09.20.050 (2009)

⁵ G. Thomas Munsterman & Paula L. Hannaford-Agor, *The Promise and Challenges of Jury System Technology* 17-18 (2003).

⁶ *Id.*

⁷ *Munsterman, supra*, note 1.

⁸ *Munsterman, supra*, note 1, at 18-20.

representative of a cross-section of the community, the process is constitutionally defective ab initio.”⁹ However, few source lists include gender, race or ethnicity in the information provided for the master jury list; that information is collected, if at all, during the qualification stage of the jury selection process or when the juror reports to the courthouse for service. The actual demographic representation of the master jury list is difficult to ascertain due to the inability to reliably determine whether under-representation of cognizable groups on the qualified list or in the jury pool originated with the master jury list or is the result of intermediate steps in the qualification process (e.g., summonses returned undeliverable, non-response/failure to appear rates, disqualification, exemption, and excusal rates). Consequently, most courts review only the geographic representation of the master jury list on a routine basis to ensure that all eligible localities or sub-localities are included on the master jury list in reasonable proportion to their population.

It is possible to use Census information about each locality to model the demographic representation of the master jury list. Due to the tendency of minority populations to cluster together in neighborhoods, this information can often serve as an indicator of demographic representation. However, any analysis of geographic and demographic representation necessarily involves a tradeoff between the size of the geographic jurisdiction and the likely proportion of identifiable minority populations. As the geographic jurisdiction under analysis becomes smaller (e.g., from township to zip code to census tract), the proportion of

identifiable minority populations living within the geographic jurisdiction tends to become larger. This makes it possible to estimate the degree of demographic representation more accurately, but decreases the accuracy of estimates related to geographic representation as a result of the greater number of geographic units included in the analyses.

Accuracy

The final measure of the master jury list is the accuracy of the name and address records in the file. It should go without saying that perfect inclusiveness and representation on the master jury list is meaningless if the court lacks accurate and up-to-date information with which to deliver the jury summonses. Courts do not generally have authority over the executive agencies that provide the source lists for jury selection to demand maintenance of those lists beyond that needed for the agencies’ own working use; therefore, it is incumbent on courts to employ other techniques to improve the accuracy of the master jury list. These techniques can include renewing the master jury list more frequently than the maximum allowable period prescribed by law. Increasingly, courts are moving away from periodic recreation of the master jury list to a system in which the master jury list is continually updated. Under this approach, the court periodically (every month to 6 months) receives an electronic file containing new, updated, and purged records from the source list agencies. This information is used to supplement (in the case of new records), amend (in the case of updated records), and remove (in the case of purged records) records from the master jury list. As a result, the court is

⁹ *People v. Wheeler*, 503 P. 2d 748, 759 (Cal. 1978).

able to maintain accurate status fields for existing jurors in the master jury list without having to create and monitor parallel systems to manage jurors in intermediate status (e.g., summonsed, follow-up for non-response/failure to appear, excuse pending, exempt due to previous service, etc.) during the list creation process.

Even courts using a continually updated master jury list must still contend with undeliverable summonses for individuals who have not yet notified the source list agencies of a recent relocation. To address this issue, many courts also conduct National Change of Address (NCOA) updates before printing and posting summonses.¹⁰ Another technique employed in conjunction with the removal of duplicate names is to retain records from the source list with the most reliable addresses (e.g., more frequent maintenance requirements) or, if the source list agency provides a “last updated” field, the record indicating the date of the most recent change.

Before selecting individual records to receive a jury summons, many courts also apply one or more “suppression files” to the master jury list, which prevents the selection of records for individuals who are known to be ineligible for jury service (e.g., deceased persons, persons who have recently completed jury service, and other defined disqualification and exemption criteria). While some courts maintain files as separate datasets, others incorporate the

suppression designation as a discrete field in the master jury list. Although suppression files can be useful management tools to prevent the summoning of persons who are known to be ineligible for jury service, the NCSC recommends that the suppression files only be used cautiously and under close supervision. A number of recent jury challenges originated with unanticipated effects of suppression files.¹¹

For example:

- In Santa Barbara County, California, the court routinely suppressed the records of individuals who had failed to appear for jury service, intending to follow up on these names at a later date. During a challenge to the jury system in which the defendant claimed that Hispanic citizens were under-represented in jury pool, the court discovered that a disproportionate number of records that had been suppressed for failing to appear for jury service had Hispanic surnames, preventing them from being summonsed.¹²
- The Third Judicial District Court of Michigan, in Wayne County, experienced a similar problem with respect to African-American representation in its jury pool. Beginning in 2002, individuals who had been sent a qualification questionnaire were listed as “active” on the master jury list, a status which served to suppress the record from being reselected and sent a second questionnaire. A program to follow up on

¹⁰ NCOA services are available from vendors licensed by the U.S. Postal Service. *Munsterman & Hannaford-Agor, supra* note 5, at 20-21. The U.S. Postal Service recently implemented rules requiring customers using bulk mail rates to update mailing lists with NCOA within 90 days of the post date.

¹¹ See Paula L. Hannaford-Agor, “Jury News: Suppression Files – Useful Tools or Traps for the Unwary?” 23(3) *Ct. Mgr.* 75 (2008).

¹² *Blair v. Superior Court*, 114 Cal. App. 4th 532 (2d Cal. App. 2004). At that time, the court did not routinely follow-up on FTA jurors.

non-responders was tried and abandoned because staff felt that the program was not worth the time and effort. The result was that those who never responded to the questionnaire – the vast majority of which lived in the city of Detroit, coincidentally where 80% of the county’s African-American residents lived – remained in that status indefinitely, effectively removing them from consideration for jury service.¹³

- In the District of Columbia, persons convicted of felonies are ineligible for jury service for ten years following completion of their criminal sentence. The practice for a long period of time in the D.C. Superior Court was to suppress for 10 years the record of any person who reported having a felony conviction on the qualification questionnaire, regardless of when they completed their criminal sentence. The effect was to hold out jury-eligible citizens from service for a period of time far longer than the statute required, which one defendant challenging the jury system argued was a violation of random selection.¹⁴

Randomization

For most courts, the final step in the master jury list creation process is the randomization of the list. Some courts assign a random juror identification number to each record on the master jury list and sort the list on the randomly generated number; other courts maintain the list in a non-random order (often alphabetically by zip code or locality) and use computer software to randomly select names from the list.

Disclaimer: The guidelines discussed in this document have been prepared by the National Center for State Courts and are intended to reflect the best practices used by courts to create and maintain an effective master jury list.

¹³ *State v. Robinson and Jackson* (No. 06 009711-01 and 00 000792), Mich. 3d Cir. (Nov. 12, 2007).

¹⁴ *U.S. v. Powell*, (Criminal No. 06-CF-23645), Defendant’s Motion to Dismiss the Indictment or Alternative Stay the Proceedings Where the District of Columbia’s Jury Selection System Violates the Sixth Amendment of the Constitution and the D.C. Jury Act (Jan. 31, 2008), at pp. 20-22.