

**NATIONAL CENTER FOR STATE COURTS**  
**Court Services Division**

**YORK COUNTY COURT OF COMMON PLEAS,  
JURY UTILIZATION AND REPRESENTATION  
ASSESSMENT**

**Final Report**  
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## I. INTRODUCTION

In May 2006, the York County Office of Court Administration requested that the National Center for State Courts (NCSC) assess its jury management and utilization practices and make recommendations for improvement. The impetus for this request came from concerns both within the Office of Court Administration and from the Administrative Office of the Pennsylvania Courts that existing jury management practices make inefficient use of jurors, imposing excessive and unnecessary costs on the court and on the citizens who report for jury service. The York County Office of Court Administration also expressed concern that its jury pool may not adequately reflect a fair cross section of the community and requested that the NCSC provide recommendations about how to improve juror diversity.

Courts have focused greater attention on juror utilization issues in recent years for several reasons. Certainly, the state budget crises during the late 1990s had a significant impact as courts became more cognizant of the costs associated with poor juror utilization practices. Courts, as stewards of public resources, have become more accountable for how effectively and efficiently they manage their operations.<sup>1</sup>

Simultaneously, there was increased recognition of the relationship between jury service and public trust and confidence in the courts. This awareness has led to practices that treat jurors like the valuable resource in the justice system that they really are. The justice system demands a great deal of citizens as they fulfill their civic obligation as jurors – that they report for service when summonsed, that they respond candidly to questions posed to them during voir dire, that they pay careful attention to the evidence presented at trial, and that they deliberate fairly and impartially. Conversely, courts have a reciprocal obligation to treat jurors respectfully, to use their time responsibly, and to be honest with jurors that their presence in the courthouse is really necessary to try cases.<sup>2</sup>

This report describes current jury operations in the York County Court of Common Pleas, summarizes the findings of the NCSC assessment of juror utilization and representation, and makes recommendations to improve jury management practices to conform to contemporary standards of responsible juror utilization.

## II. DESCRIPTION OF CURRENT JURY OPERATIONS

The York County Court of Common Pleas is one of 11 counties in Pennsylvania characterized as a Class III county based on county population. It conducts a moderate number of jury trials each year, which requires it to summons a correspondingly moderate number of its citizens for jury service. In 2005, for example, the court disposed 105 cases by jury trial, summoning jurors for 8,686 days of jury service. In 2004, the most recent year for which comparable data are available, its Class III peers tried an

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<sup>1</sup> TRIAL COURT PERFORMANCE STANDARDS, Standard 4.2 Accountability for Public Resources (“The trial court responsibly seeks, uses and accounts for its public resources.”).

<sup>2</sup> Paula L. Hannaford-Agor & G. Thomas Munsterman, *Ethical Reciprocity: The Obligations of Citizens and Courts to Promote Participation in Jury Service*, in JOHN KLEINIG & JAMES P. LEVINE eds., *JURY ETHICS: JUROR CONDUCT AND JURY DYNAMICS* 21-34 (2006).

average of 120 jury trials and summonsed jurors for an average of 7,271 days of jury service.

To ensure that it has a sufficient number of citizens available to serve as jurors, the York County Court of Common Pleas engages in a two-step qualification and summoning process. Each year, the court mails approximately 25,000 qualification questionnaires to individuals randomly selected from the master jury list.<sup>3</sup> Of those qualification questionnaires, approximately 9,000 are returned by the recipients and deemed to be qualified and available for jury service. The remainder are returned by the U.S. Postal Service as undeliverable, are not responded to by the intended recipients, or are deemed unqualified for jury service.<sup>4</sup>

Until recently, the Court alternated each month between a three-week criminal trial term and a one-week civil trial term. In August 2006, the Court combined its criminal and civil trial terms and changed to a two-week trial term each month. For each week of the trial term, the Court summonses approximately 300 qualified jurors for jury service. Typically, up to half are routinely excused for medical or financial hardship or are deferred to a new term. Jurors whose employers do not pay wages or salaries for employees summonsed to jury service are routinely excused.

Jurors report on Monday morning for the one-week term of service at the Jury Assembly Room on the fourth floor of the new county courthouse facility, built in 2004. The jury facilities are spacious, clean, well-lit, comfortable, and offer reasonable access to diversions (e.g., puzzles and games) and refreshments. These facilities reportedly are a great improvement over the jury facilities in the old county courthouse.

Throughout the week, as judicial officers dispose of cases on their calendars during the trial term and no longer require jurors for jury trials, the Court routinely releases citizens from jury service. The court does not currently have a call-in system or other means to inform jurors not to report if their service is not needed.

Jurors receive \$9 per day for the first three days of service and \$25 per day beginning on the fourth day of service.<sup>5</sup> They also receive mileage at a rate of \$.375 per mile. Juror fees and mileage totaled \$238,054 in 2005.<sup>6</sup> In addition, administrative and staffing expenses for jury operations were budgeted at approximately \$141,386 for 2006.<sup>7</sup>

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<sup>3</sup> The master jury list is comprised of names and mailing addresses of licensed drivers, registered voters, and local income tax filers. Those lists are merged by the Court's jury software vendor, who also identifies and removes duplicate records.

<sup>4</sup> The York County Court of Common Pleas does not routinely document the breakdown between undeliverable qualification questionnaires, non-responses to qualification questionnaires, and non-qualified recipients.

<sup>5</sup> Juror fees and mileage for the first three days of service are paid by the county. Beginning on the fourth day of service, these expenses are paid by the Commonwealth of Pennsylvania.

<sup>6</sup> Administrative Office of the Pennsylvania Courts, Jury Utilization Preliminary Report [for York County]: Part 2 (unpublished report provided to Paula L. Hannaford-Agor by Terry Baker, Deputy Court Administrator on Aug. 31, 2006).

<sup>7</sup> E-mail correspondence from Terry Baker (Aug. 30, 2006).

### III. METHODS AND DATA

To conduct this assessment, Paula L. Hannaford-Agor, Director of the NCSC Center for Jury Studies, reviewed the monthly Juror Utilization Worksheets submitted by the York County Office of Court Administration to the AOPC from May 2005 through May 2006 as well as the annual Juror Utilization Summaries published by the AOPC for the York County Court of Common Pleas and other Class III counties in Pennsylvania. She visited the Court on August 14-16, 2006 to observe jury operations during its August 2006 trial term and to meet with court administrators, judicial officers, and representatives of the York County District Attorney and Public Defender's Offices.

To investigate the effect of jury management practices on juror diversity, she also obtained information about the demographic profile of York County from the 2000 Decennial Census and the 2005 Annual Community Survey (ACS).<sup>8</sup> See Table 1. The 2000 Decennial Census not only provides countywide demographic information, but also information about subpopulations and geographic subdivisions within the county, making it possible to conduct more detailed diagnoses of the impact of jury management practices on jury operations. The 2005 ACS data provide reliable estimates of demographic trends since the 2000 Census as well as more detailed information about certain subpopulations (e.g., citizenship and English language fluency).

| <b>York County, Pennsylvania</b> | <b>2000 Decennial Census</b> |       | <b>2005 American Community Survey</b> |       |
|----------------------------------|------------------------------|-------|---------------------------------------|-------|
| Total Adult Population           | 287,768                      |       | 318,857                               |       |
| White                            | 270,978                      | 94.2% | 308,425                               | 96.7% |
| Black                            | 8,969                        | 3.1%  | 10,432                                | 3.3%  |
| American Indian / Native Alaskan | 483                          | 0.2%  | n/a                                   |       |
| Asian                            | 2,295                        | 0.8%  | n/a                                   |       |
| Hawaiian / Pacific Islander      | 92                           | 0.0%  | n/a                                   |       |
| Other Race                       | 3,100                        | 1.1%  | n/a                                   |       |
| Multiracial                      | 1,851                        | 0.6%  | n/a                                   |       |
| Hispanic (adj. for citizenship)  | 5,881                        | 2.0%  | 7,652                                 | 2.4%  |

<sup>8</sup> The American Community Survey is an annual survey that samples 1 out of every 6 households in every county, American Indian and Alaska Native Area, Hawaiian Home Land, and Puerto Rico. Testing for the American Community Survey began in 1996 and the survey is intended to provide critical economic, social, housing, and demographic information to federal, state, and community policymakers every year instead of once in 10 years. It will replace the Census Bureau "long form" in the 2010 Decennial Census. AMERICAN COMMUNITY SURVEY: QUESTIONS AND ANSWERS (January 2005) (available at [http://www.census.gov/acs/www/Sbasics/Congress\\_toolkit/Q&A.pdf](http://www.census.gov/acs/www/Sbasics/Congress_toolkit/Q&A.pdf)).

## IV. FINDINGS

### A. Utilization Practices

The most striking finding revealed by the review of Jury Utilization Worksheets was the relatively low and progressively declining voir dire attendance rates experienced by citizens reporting for jury service in York County since 2002.<sup>9</sup> See Table 2. From 2002 through May 2006, fewer than half (45.3%) of all jurors who reported for service were sent to a courtroom for jury selection. This rate has declined continuously from a high of 54.9% in 2002 to a low of 36.2% in 2005. The rate for the first five months of 2006 (36.9%) has not improved substantially. In essence, the York County Court of Common Pleas currently requires nearly three times the number of citizens to report for jury service than is actually needed to select juries. Those citizens that are not sent to a courtroom for voir dire wait in the Jury Assembly Room day after day for up to one week. The voir dire attendance rates in York County are substantially lower than those of the Court's peers in Class III counties, which average 70.3%. The NCSC and the AOPC suggest 90% as the optimal voir dire attendance rate.<sup>10</sup>

| Year                                  | Juror Days | # Sent to Voir Dire | Voir Dire Attendance Rate | # Sworn Jurors | Juror Days per Voir Dire Starts | # Voir Dire Begun | Avg Panel Size | Juror Selection Rate | # Jury Trials Started | Pool Days | Zero Panel Days | Percent Zero Panel Days |
|---------------------------------------|------------|---------------------|---------------------------|----------------|---------------------------------|-------------------|----------------|----------------------|-----------------------|-----------|-----------------|-------------------------|
| 2002                                  | 8,122      | 4,457               | 54.9%                     | 1,992          | 50                              | 163               | 27             | 44.7%                | 163                   | 136       | 60              | 44.1%                   |
| 2003                                  | 9,054      | 4,518               | 49.9%                     | 1,971          | 57                              | 160               | 28             | 43.6%                | 160                   | 135       | 72              | 53.3%                   |
| 2004                                  | 8,353      | 3,752               | 44.9%                     | 1,661          | 63                              | 132               | 28             | 44.3%                | 132                   | 104       | 51              | 49.0%                   |
| 2005                                  | 8,686      | 3,142               | 36.2%                     | 1,299          | 83                              | 105               | 30             | 41.3%                | 105                   | 109       | 78              | 71.6%                   |
| Jan - May 2006                        | 4,563      | 1,684               | 36.9%                     | 746            | 75                              | 61                | 28             | 44.3%                | 60                    | 53        | 22              | 41.5%                   |
| York County 5-Year Average            | 8,780      | 3,974               | 45.3%                     | 1,736          | 62                              | 141               | 28             | 43.7%                | 140                   | 122       | 64              | 52.7%                   |
| Class III County Average (2002-2004)* | 7,220      | 5,073               | 70.3%                     | 2,067          | 58                              | 124               | 41             | 39.7%                | 117                   | 87        | 15              | 17.2%                   |
| NCSC/AOPC Stds                        |            |                     | 90.0%                     |                | 35                              |                   |                | 40.0%                |                       |           |                 | 10.0%                   |

\* Excludes York County statistics

As Table 3 illustrates, there is also a progressive decline in the voir dire attendance rate throughout the week. Mondays reflected the highest rates at 55% and 62% for criminal and civil terms, respectively. Criminal rates then declined from 37% on Tuesdays to 14% on Fridays. Tuesday was the only additional day of the week that had any civil jury voir dire activity (19% voir dire attendance rate); the rest of the civil trial term week no jurors left the Jury Assembly Room, even though an average of 26 jurors were told to report for service on eight occasions from May 2005 through May 2006.<sup>11</sup>

<sup>9</sup> The voir dire attendance rate is the proportion of jurors who report for service that is sent to a courtroom for jury selection.

<sup>10</sup> See COURTOOLS, MEASURE 8: EFFECTIVE USE OF JURORS (NCSC 2005) (available at [http://www.ncsonline.org/D\\_Research/CourTools/Images/courtools\\_measure8.pdf](http://www.ncsonline.org/D_Research/CourTools/Images/courtools_measure8.pdf)).

<sup>11</sup> During the NCSC visit, several individuals indicated that they try to avoid impaneling a jury later in the week due to their belief that jurors are more hostile, and thus more apt to render unfavorable verdicts, when



|           | Criminal Trial Terms         |                            |                             |                   | Civil Trial Terms            |                            |                             |                   |
|-----------|------------------------------|----------------------------|-----------------------------|-------------------|------------------------------|----------------------------|-----------------------------|-------------------|
|           | Average Voir Dire Attendance | Average # Voir Dire Starts | Maximum # Voir Dire Starts* | % Zero Panel Days | Average Voir Dire Attendance | Average # Voir Dire Starts | Maximum # Voir Dire Starts* | % Zero Panel Days |
| Monday    | 54.7%                        | 2                          | 4 (2/22)                    | 9.1%              | 61.7%                        | 3                          | 5 (1/6)                     | 0.0%              |
| Tuesday   | 37.3%                        | 1                          | 5 (1/21)                    | 33.3%             | 19.3%                        | 1                          | 2 (1/6)                     | 50.0%             |
| Wednesday | 28.2%                        | 1                          | 4 (1/21)                    | 42.9%             | 0.0%                         | 0                          | 0 (5/5)                     | 100.0%            |
| Thursday  | 23.3%                        | 1                          | 2 (4/9)                     | 52.6%             | 0.0%                         | 0                          | 0 (2/2)                     | 100.0%            |
| Friday    | 14.3%                        | 0                          | 1 (2/4)                     | 85.7%             | 0.0%                         | 0                          | 0 (1/1)                     | 100.0%            |

\* Numbers in parantheses reflect the number of times the maximum occurred and the number of days jurors reported for service.

A related indication of the Court’s poor juror utilization is reflected in the high proportion of “zero panel days” – that is, days on which citizens were told to report for jury service, but no jury selection activity occurred, which occurred slightly more than half the time (52.7%) during the period 2002 through May 2006. The average zero panel rate among Class III counties was 17.2%. Both the NCSC and the AOPC have established 10% as the maximum zero panel day rate as the optimal standard. This rate is inversely related to the voir dire attendance rate, and thus increases substantially throughout the week. During criminal trial terms, the zero panel day rate was 9% on Mondays and increased to 86% by Fridays. There were no zero panel days on Mondays during civil trial terms, but half of all Tuesdays had no voir dire activity and Wednesdays through Fridays were uniformly zero panel days.

One very interesting aspect of York County jury utilization compared to its peers is the close ratio of voir dire starts to trial starts. It is very unusual for a jury panel to be sent from the Assembly Room to a courtroom for jury selection and not have that case proceed to a full trial. Among other Class III counties in the Commonwealth, approximately 1 in 20 cases settle or plea during jury selection. In York County, these non-trial dispositions (plea agreements and settlements) occur without the jury panel leaving the Assembly Room.

A second positive aspect of juror utilization in York County is its relatively small panel size compared to its Class III peers. The judges in the York County Court of Common Pleas are routinely able to select juries from 28-person panels while the average panel size in other Class III counties is 41. This results in a slightly higher juror selection rate (43.7% versus 39.7%).

The primary cause of the low voir dire attendance rates and the correspondingly high zero panel day rates is the relative unpredictability of voir dire and trial starts. The cases that are set for trial for the criminal and civil trial terms are those for which the litigants have indicated during pretrial hearings that they wish to proceed to a trial by jury. Although the probability that any of these cases actually is tried to a jury is really

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they are selected near the end of their term of service. Thus, litigants are more likely to settle or plea later in the week.

quite low,<sup>12</sup> the prevailing judicial practice in York County is to summons citizens for jury service as if those cases would actually proceed to trial. Indeed, several individuals during the NCSC visit to the York County Court of Common Pleas stated explicitly that it is the presence of citizens available as trial jurors that prompts many litigants to plea or settle to avoid the expense and potential adverse outcome of a jury trial. While this may be true, using citizens as the impetus to force a litigant decision to either plea/settle or go to trial is a highly inefficient form of pretrial management. The most cost-effective use of citizens' time and court resources is to summons jurors only for the purpose of trying cases.

There are significant monetary and public relation costs associated with poor juror utilization. As Table 4 indicates, the comparatively high number of unused jurors – that is, citizens summonsed but not used for jury selection purposes – results in significantly higher juror fees per trial than in other Class III counties. In 2005 alone, juror fees and mileage incurred for citizens who never left the Jury Assembly Room cost county and state taxpayers an estimated \$152,000. Based on juror utilization trends through May 2006, these costs are likely to exceed \$188,000 for the 2006 calendar year.

| <b>Table 4: Jury Fees and Mileage, 2002 to May 2006</b> |                                  |                                     |  |
|---|----------------------------------|-------------------------------------|--|
| <b>Year</b>   | <b>Total Juror Fees Incurred</b> | <b>Average Juror Fees per Trial</b> | <b>Juror Fees Incurred for Unused Jurors</b> |
| <b>2002</b>   | \$258,592                        | \$1,586                             | \$116,688                                    |
| <b>2003</b>   | \$252,650                        | \$1,579                             | \$126,576                                    |
| <b>2004</b>   | \$226,138                        | \$1,713                             | \$124,561                                    |
| <b>2005</b>   | \$238,054                        | \$2,267                             | \$151,942                                    |
| <b>Jan - May 2006</b>                                   | \$124,351                        | \$2,073                             | \$78,458                                     |
| <b>York County 5-Year Average</b>                       | \$249,008                        | \$1,844                             | \$135,447                                    |
| <b>Class III County Average (2002-2004)*</b>            | \$141,176                        | \$1,280                             | \$41,977                                     |
| * Excludes York County statistics                       |                                  |                                     |  |

Juror fees and mileage, which are quite modest in Pennsylvania compared to national rates,<sup>13</sup> are only one portion of the actual monetary cost of poor juror utilization to the court and to the community at large. Administrative costs – that is, the costs associated with qualifying, summoning, and supervising the citizens who report for jury service – should not be overlooked. See Table 5. The cost of per diem jury clerks and

<sup>12</sup> Nationally, the percentage of criminal cases disposed by jury trial ranges from 2% to 4%. Civil jury trial rates are typically 1% or less of cases filed. The overwhelming majority of cases are disposed by plea agreement or settlement. RICHARD SCHAUFFLER et al., EXAMINING THE WORK OF STATE COURTS, 2005, 31, 53.

<sup>13</sup> Paula L. Hannaford-Agor, *Jury News: the Laborer is Worthy of His Hire and Jurors are Worthy of Their Jury Fees*, CT. MGR. (forthcoming Fall 2006).

the tipstaves to supervise unused jurors is the largest single administrative cost of poor jury utilization. In 2005, the York County Court of Common Pleas spent an estimated \$57,500 on these staff positions on zero panel days when no jury selection activity took place.

| <b>Table 5: Estimated Administrative Costs for Jury Operations, 2006</b> |                  |
|--|------------------|
| <b>Automation Support</b>  | \$13,500         |
| <b>Printing &amp; Postage</b>  | \$11,500         |
| <b>Staffing</b>  |                  |
| Processing Qualification Questionnaires                                  | \$1,500          |
| Per Diem Jury Clerks   | \$15,000         |
| Tipstaves  | \$99,866         |
| <b>Total</b>   | <b>\$141,366</b> |

In addition, the York County Court of Common Pleas also incurs approximately \$16,500 in upfront administrative costs such as automation support, printing and postage for qualification questionnaires and summonses, and overtime wages for court staff to process the qualification questionnaires. To the extent that the Court is not using jurors as efficiently as it could, the cost and effort needed to generate a sufficient number of jurors is correspondingly higher than they need to be. Based on current juror utilization practices, the court summonses approximately 300 citizens for jury service for 26 weeks each year to ensure that a sufficient number of jurors will be available in the Jury Assembly Room to satisfy the unlikely possibility that all of the judges with trials scheduled will impanel a jury that day. This translates to a need for 9,600 York County citizens to be qualified for jury service annually, which exhausts the entire list of jurors that were qualified from the 25,000 individuals sent qualification questionnaires. In effect, the fact that only one-third of summonsed jurors are currently used for jury selection purposes means that the administrative costs associated with qualifying and summoning jurors are also three times higher than they need to be.

Juror fees, mileage, and administrative costs are direct expenses associated with jury operations and explicitly included in the Court’s annual budget. Perhaps more than any other court function, however, the actual cost of jury operations is heavily, even predominantly, subsidized by the community. Juror fees and mileage reimbursement do not begin to compensate citizens and their employers for the lost income, lost productivity, and lost opportunity costs associated with jury service. In York County, as in most jurisdictions, these costs are voluntarily, if sometimes grudgingly, absorbed by the community as the price of supporting the local justice system. But the fact that they are not directly incurred by Court does not mean they should be discounted or ignored. In York County, where 61% of the adult population is employed and the median income

is \$23,521,<sup>14</sup> the estimated cost of poor juror utilization to jurors and their employers in 2005 was \$308,181.

Finally, poor jury utilization also imposes non-monetary costs on the Court in the form of decreased public trust and confidence in the justice system. Empirical research repeatedly documents that citizens who participate in the justice system as trial jurors or veniremen have significantly more positive views of the justice system than those that are not provided an opportunity to observe and participate in jury service.<sup>15</sup> These citizens then communicate their experiences and views – positive and not-so-positive – to their families, neighbors and co-workers in the community. Based on current juror utilization practices in York County, the vast majority of citizens who report for jury service do not have this positive experience. Instead, they are left waiting in the Jury Assembly Room, thinking that jury service is a waste of their time.<sup>16</sup> This is the prevailing view that is then communicated back to the community.

### **B. AOPC Reporting Issues**

In reviewing the Jury Utilization Reports submitted to the AOPC, and in confirming with AOPC staff the definition for each reporting field, it became apparent that many of the monthly reports included mathematical and other reporting errors. In particular, it appears that York County staff tend to undercount the number of juror days (Column A) when panels for special juries are summonsed. Another common error was to mistakenly include sworn jurors in the count of juror days. Both types of errors distort the York County jury utilization statistics, especially compared to its Class III peers.<sup>17</sup>

### **C. Minority Representation**

The York County Court of Common Pleas does not currently document the racial and ethnic demographics of the citizens who report for jury service. Consequently, there is no definitive evidence that the jury pool does or does not accurately reflect the demographic characteristics of the community. Anecdotal reports from several judicial officers and court administration staff suggested that the introduction of licensed drivers

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<sup>14</sup> 2005 American Community Survey, Table B19301 (Per Capita Income in 2005 Inflation Adjusted Dollars) and Table B23001 (Sex by Age by Employment Status for the Population 16 Years and Over) for York County, Pennsylvania.

<sup>15</sup> For a summary of this literature, see Shari S. Diamond, *What Jurors Think: Expectations and Reactions of Citizens Who Serve as Jurors*, in ROBERT E. LITAN ed., VERDICT: ASSESSING THE CIVIL JURY SYSTEM 282 (1993).

<sup>16</sup> Before releasing them from service at the end of the week, Mr. Chuk or another court administration official routinely explains to jurors the amount of work (e.g., cases disposed) that has been accomplished during the trial term. He explains that many of these cases actually settled or plead *because* the jurors were available in the Jury Assembly Room to try cases, even if the jurors themselves were unaware of these activities. He reports that many jurors are relieved to hear that their presence in the jury room that week has not been completely in vain.

<sup>17</sup> These errors did not significantly change the overall statistics or the conclusions about juror utilization to be drawn from them.

as a source list for the master jury list has improved the representation of minorities in the jury pool. Nevertheless, this issue continued to be of concern, especially with respect to defendant perceptions of fairness, particularly in light of the racial overtones in a recent high profile trial involving the alleged participation of a former mayor of York, Pennsylvania in race riots in the 1960s.

Concerns about proportional representation of racial and ethnic minorities in the jury pool are endemic in the United States, especially in urban areas. Fortunately, when courts discontinued the use of “key-man” jury qualification and summoning systems in favor of procedures that randomly select citizens from broad-based juror source lists, the potential for intentional discriminatory exclusion of minorities essentially disappeared.<sup>18</sup> Today, low minority representation in the jury pool arises from more intransigent social factors that are external to court procedures. For example, mobility rates by racial and ethnic minorities tend to be higher than for non-minorities,<sup>19</sup> resulting in higher proportions of qualification questionnaires and summonses returned undeliverable by the US Postal Service. There is also a strong correlation between minority status and lower income,<sup>20</sup> increasing the level of financial hardship associated with jury service, especially with longer terms of service. In some communities, the proportion of Black males with previous felony convictions can substantially reduce the qualification rates for this population cohort compared to Whites. In other communities, Hispanic and Asian residents are disproportionately disqualified due to citizenship status and English language fluency.

The lack of documentation on the racial and ethnic characteristics of jurors makes it impossible to determine whether any or all of these factors may be affecting minority representation in the York County jury pool. It is, however, possible to examine existing jury management practices in geographic subpopulations – namely zip code tabulation areas (ZCTA)<sup>21</sup> within York County – to identify steps within the jury qualification and summoning process issues that may affect minority representation. For example, 87% of the adult Black population of York County and 77% of the Hispanic population live in

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<sup>18</sup> Paula L. Hannaford, G. Thomas Munsterman & B. Michael Dann, *Administrative, Structural, and Procedural Reforms of the American Jury in the Past Thirty-five Years*, in GORDON M. GRILLER & E. KEITH STOTT, JR. eds., *THE IMPROVEMENT OF THE ADMINISTRATION OF JUSTICE* (7th ed. 2002).

<sup>19</sup> For example, 18.5% of Whites moved into their homes in the 12 months preceding the 2000 Decennial Census compared to 23% of Blacks, 27% of Asians, and 28% of Hispanics. U.S. CENSUS BUREAU, AMERICAN FACTFINDER, Census 2000 Summary File 3, Tables HCT31(A)-(H) (Year Householder Moved Into Unit).

<sup>20</sup> The per capita median income for Whites in 1999 was \$23,918 compared to \$14,437 for Blacks, \$21,823 for Asians, and \$12,111 for Hispanics. U.S. CENSUS BUREAU, AMERICAN FACTFINDER, Census 2000 Summary File 3, Tables P157(A)-(H) (Per Capita Income in 1999 Dollars).

<sup>21</sup> A Zip Code Tabulation Area (ZCTA) is the US Census Bureau geographical equivalent to the US Postal Service Zip Code. Some zip codes do not have an equivalent Census Bureau ZCTA, either because the zip code references non-residential mailing addresses (e.g., post office box locations, large commercial or government addresses) or because the resident population for that zip code is so small that the Census Bureau merged it with another ZCTA. In addition, the ZCTA codes used in the 2000 Census do not reflect more recent additions or modifications to the USPS zip code areas.

one of three ZCTAs. If minorities are missing from the jury pool in sizeable numbers, it may be possible to measure under-representation in these zip codes.<sup>22</sup>

Table 6 shows the breakdown of the three zip code tabulation areas with the highest proportion of Black and Hispanic residents as well as the total of all other zip codes tabulation areas in the county. Residents living in zip codes 17402, 17403, and 17404 equal 34.2% of the adult population of York County. Surprisingly, residents living in zip codes 17402 and 17404 are sent qualification questionnaires, qualify, are summonsed, and report at slightly, but statistically significantly, higher rates than expected given their relative population sizes. Residents living in zip code 17403 qualify at a slightly reduced rate, but thereafter are summonsed and report for service in proportion to the qualified rate. Rates for residents in all other county zip code tabulation areas are consistent with their population sizes. Although ecological inference problems do not permit a conclusion that racial and ethnic minorities are proportionately represented in the jury pool, this preliminary view suggests that residents living in the highest minority zip codes in York County are represented in the jury qualification and summoning process in numbers proportional to the size of the population in the community.

| <b>Zip Code</b>                              | <b>Adult Population</b> |       | <b>Questionnaires Mailed</b> |       | <b>Qualified Jurors</b> |       | <b>Summonsed Jurors</b> |       | <b>Jurors Reporting for Service</b> |       |
|--|-------------------------|-------|------------------------------|-------|-------------------------|-------|-------------------------|-------|-------------------------------------|-------|
| 17402  | 34,246                  | 10.7% | 2,915                        | 11.7% | 1,350                   | 12.3% | 1,061                   | 12.4% | 586                                 | 11.8% |
| 17403  | 32,581                  | 10.1% | 3,021                        | 12.1% | 970                     | 8.8%  | 772                     | 9.0%  | 448                                 | 9.0%  |
| 17404  | 43,117                  | 13.4% | 4,211                        | 16.9% | 1,763                   | 16.0% | 1,373                   | 16.0% | 825                                 | 16.6% |
| Other Zip Codes in York County, Pennsylvania | 211,192                 | 65.8% | 14,795                       | 59.3% | 6,908                   | 62.9% | 5,364                   | 62.6% | 3,103                               | 62.5% |
| <b>Total</b>                                 | <b>321,136</b>          |       | <b>24,942</b>                |       | <b>10,991</b>           |       | <b>8,570</b>            |       | <b>4,962</b>                        |       |

<sup>22</sup> This approach to assessing fair cross section introduces an analytical complication referred to by statisticians as an ecological inference problem. It employs probability theory to make inferences about the likely demographic make-up of a given geographic region (ZCTA). However, the fact that the population of a given ZCTA is 25% Hispanic does not necessarily mean that 25% of the individuals from the corresponding zip code that qualify for jury service or that appear for jury service are likewise 25% Hispanic.

## V. RECOMMENDATIONS

### **A. The York County Court of Common Pleas should more rigorously document the judicial demand for jury panels to more accurately predict the existing ratio of demand to utilization and to set realistic improvement goals for the immediate future.**

Access to the monthly juror utilization statistics made it possible to calculate voir dire attendance rates and other key measures of juror utilization. During her visit to York County, the NCSC consultant was not able to obtain information about the precise number of jury trials scheduled each day during the May 2005 to May 2006 trial terms, which prompted the number of jurors summonsed each day. As discussed in Recommendations B and C, the ratio of jury panel demand to actual use is a key measure that will assist the Court in predicting more accurately the number of jurors needed for service on any given day. Because the nexus between caseflow management, especially trial certainty, and juror utilization is so close, this measure should be monitored frequently, at least weekly during trial terms.

The Court should also establish realistic goals and implementation plans to address the causes of poor juror utilization identified in this report. For example, the Court might initially establish a goal to increase the voir dire attendance rate to 70% – that is, at least equal to that of its Class III peers. To achieve that goal, the Court could decrease the number of jurors summonsed and told to report incrementally (e.g., 10% fewer per month) until this goal is achieved. See Recommendation C. Ideally, once this initial goal is realized, the Court would then establish a new goal to meet the NCSC and AOPC standards for juror utilization (e.g., 90% voir dire attendance rate, 10% zero panel day rate). In addition to standard measures of juror utilization, the ratio of jury panel demand to actual use provides a baseline measure against which the Court can evaluate its progress.

### **B. The York County Court of Common Pleas should implement pretrial case management policies, and encourage judicial enforcement of those policies, to improve the predictability of trial starts.**

Poor juror utilization in the York County Court of Common Pleas is primarily the result of the unpredictability of trial and voir dire starts.<sup>23</sup> Currently, the court summonses citizens for jury service in numbers sufficient to accommodate the potential jury panel requirements of all judges with jury trials scheduled during trial terms. Yet the historical record demonstrates that the likelihood of all judges needing jury panels on the same day is extremely low. In an average trial term week, only two jury panels will be sent to courtrooms for voir dire.

The most straight-forward and effective way to improve juror utilization is for the Court to better predict when jury trials are likely to start and summons jurors accordingly.

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<sup>23</sup> The absence of firm and credible trial dates can cause additional work for the court and such other court-related agencies as the office of the clerk of courts. See DAVID C. STEELMAN, PRELIMINARY ASSESSMENT OF OPERATIONAL ISSUES IN THE OFFICE OF THE CLERK OF COURTS FOR YORK COUNTY, PENNSYLVANIA (NCSC 2006), Recommendation 4.

Such an approach requires effective pretrial management by judges to set firm trial dates, to encourage litigants to inform the court in a timely manner of non-trial dispositions (e.g., plea agreements and settlements), and to calendar cases during the trial term according to level of certainty that they will actually proceed to trial.<sup>24</sup> It also requires effective communication between the courtrooms and the jury office with respect to the anticipated daily need for jury panels.

Many courts across the country employ semi-formal or informal policies to provide appropriate incentives for litigants to inform the court of their intent to accept a plea agreement or settle a civil matter before jurors are told to report for service. A common technique in Florida courts, for example, is to assess the full costs of requiring jurors to report unnecessarily against civil litigants who settle on the day of trial or who fail to inform the court of their intent to settle before jurors are told to report for service, usually the day before trial.<sup>25</sup> These costs may include juror fees and mileage reimbursement for citizens who reported for service as well as administrative expenses such as staffing costs.

State laws vary substantially with respect to the practice of assessing court costs against criminal defendants. Nevertheless, many judges have established similarly effective policies to encourage prosecutors and defense counsel to engage in timely plea negotiations. A common tactic is for the court to have a “plea cutoff date” policy,<sup>26</sup> informing prosecutors and criminal defendants that notice of their intent to plea must be provided to the court by a specified date and time before jurors are told to report for service, again usually the day before the trial is scheduled to start. If they fail to do so, the defendant must plea to the full charge(s) filed.<sup>27</sup> This type of policy provides equal incentives for the prosecution and the defense to engage in meaningful plea negotiations.

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<sup>24</sup> A full discussion of effective caseload management techniques is beyond the scope of this assessment, but as a general matter, courts should use trial-scheduling practices and continuance policies that create an expectation on the part of all concerned that a trial will begin on the first date scheduled and that emphasize readiness to try rather than settle cases as a means to induce settlements. There are four steps that will ensure firm and credible trial dates: (1) identifying cases suitable for early disposition before they are put on a trial calendar; (2) having realistic “setting levels” on the trial calendar; (3) consistent application of a policy limiting trial-date continuances; and (4) finding a way to provide “backup judge” capacity. See DAVID C. STEELMAN, JOHN A. GOERDT & JAMES E. MCMILLAN, CASEFLOW MANAGEMENT: THE HEART OF COURT MANAGEMENT IN THE NEW MILLENNIUM (NCSC 2004). Having firm and credible trial dates is a key area of court performance measurement. See COURTOOLS, MEASURE 5: TRIAL DATE CERTAINTY (NCSC 2005) (available at [http://www.ncsconline.org/D\\_Research/CourTools/Images/courtools\\_measure5.pdf](http://www.ncsconline.org/D_Research/CourTools/Images/courtools_measure5.pdf)).

<sup>25</sup> The vast majority of courts now use a telephone call-in system for jury service. Citizens are summonsed to report for jury service on a specific day, but the summons informs jurors to call a dedicated telephone number after a certain time (e.g., 4:00 pm) the day before trial to find out if they are still needed to report.

<sup>26</sup> See STEELMAN et al., *supra* note 24, at p.33 for further discussion of the application of a plea cutoff date policy to criminal cases.

<sup>27</sup> See, e.g., N.J. CT. R. Rule 3:9-3(g) (2006) (“Plea Cut Off. After the pretrial conference has been conducted and a trial date set, the court shall not accept negotiated pleas absent the approval of the Criminal Presiding Judge based on a material change of circumstance, or the need to avoid a protracted trial or a manifest injustice.”).



Prosecutors are encouraged to assess the strength of their cases and make reasonable plea offers or face the prospect of having to prove all charges to a jury beyond a reasonable doubt. Criminal defendants are encouraged to accept reasonable plea offers or accept a sentence commensurate with conviction on more serious charges. Of course, the trial judge retains the discretion to permit a late plea agreement if the parties can show good cause why they could not inform the court of the decision to plea in a timely manner. For these types of “incentive policies” to be effective, enforcement must be consistently and uniformly applied by all of the judicial officers of the court.

**C. As a temporary measure, the Court should base its prediction of jury panel needs on historical patterns rather than actual trial calendars.**

A less direct remedy for poor juror utilization involves predicting jury panel requirements based on historical patterns rather than actual trial calendars. As will be explained, this approach has the potential to result in occasional juror shortages and may precipitate undesirable jury panel “hoarding” practices by judges. As such, it is not the preferred approach to improved juror utilization, but it may be employed as a temporary measure while the court undertakes and evaluates the effectiveness of measures to improve trial predictability (Recommendations A and B).

As Table 3 illustrated, Mondays have the highest level of juror utilization. Voir dire attendance rates decline precipitously thereafter. One approach would simply be to eliminate the availability of jury panels later in the week (e.g., Thursdays and Fridays), reserving those days during trial terms for non-trial dispositions and pretrial hearings. Doing so from May 2005 through May 2006 period would have eliminated 25 zero panel days, or approximately one-third of the zero panel days during that period. Limiting the availability of jury panels would also result in greater incentives for judges to prioritize their trial calendars to reserve Mondays, Tuesdays and Wednesdays for cases that are highly likely to go to trial. The Court could develop a procedure to permit judges to request a jury panel on Thursdays or Fridays (e.g., with consent of President Judge required), but by essentially designating such panels as “special juries” – that is, summonsed specially for a particular trial – judges would be more likely to carefully prescreen cases to ensure that litigants are very serious about going to trial.

Early in the week, the Court could also summons fewer jurors for jury service. For example, on average two jury panels were sent to courtrooms for voir dire on Mondays. Rather than summoning a sufficient number of citizens for four or five jury panels, which is the current practice, the Court could summons only enough jurors for two, or perhaps three, panels (e.g., 60 to 90 jurors). Based on historical patterns, summoning jurors for two panels would satisfy actual Court needs in 73% of the Mondays for criminal terms and summoning for three panels would have satisfied 86% of those needs.

Obviously, such an approach will result in occasional jury panel shortages during which judges may not be able to obtain a panel immediately, if at all, on that day. “Recycling” jurors – that is, sending persons who were not selected as jurors for one trial to a second (or more) courtrooms for jury selection – may alleviate some of the juror shortage on any one day, but not all. Thus, it will be important to establish some firm

policies to prevent judges from “hoarding” jury panels (e.g., requesting a panel and keeping it in reserve in case it might be needed). Such a policy might involve a requirement that jury panels must be sent to the courtroom for jury selection within a short period of time after requesting the panel (e.g., 15 to 30 minutes) or the panel will be dissolved and the jurors released back into the pool. It might also require judges to send unused jurors back to Jury Assembly promptly after releasing them from that panel.

Ultimately, the success of these types of policies depends on the judges’ willingness to work cooperatively to improve jury utilization and to be considerate of their judicial colleagues by requesting jury panels only when they are certain to use them. Invariably, it will also require some degree of judicial understanding and patience on those inevitable, but rare, occasions that a jury panel cannot be obtained immediately.

**D. The Court should implement a juror call-in system to provide greater flexibility to adjust the number of jurors reporting for service on a daily basis.**

If trial predictability can be improved, the Court would also greatly benefit from the use of a telephone call-in system to inform jurors on a daily basis whether they should report for service. Such a system would provide the Court with greater flexibility to increase or decrease the number of jurors reporting on a daily basis. It would provide the Court with a mechanical means to break the existing managerial dependence on summoning excessive numbers of citizens at the beginning of the week and then gradually releasing them as the cases are disposed during the trial terms. Instead, the Court could evaluate its need for jurors on a daily basis and inform jurors to report accordingly.

These types of systems consist of a dedicated telephone number connected to telephone recording device on which jury personnel post a message informing jurors whether they need to report for service the following day. The telephone number is printed on the jury summons with an instruction that jurors should call the number before the reporting date to learn whether they are needed for trial. A sufficient number of telephone lines should be assigned to the telephone number to accommodate the anticipated volume of calls by jurors. Larger jurisdictions that routinely manage multiple jury panels can accommodate the need for some, but not all, jurors to report by posting messages for individual jurors (e.g., jurors with ID numbers 1 to 50 report for service, jurors with ID numbers 51 to 250 call back tomorrow after 4 pm) or by assigning jurors to groups of 20 to 50 (e.g., groups 1 and 2 report for service, groups 3 and 4 are released from service).

**E. The Court should reduce the term of service to one day / one trial to minimize the inconvenience and hardship resulting from poor juror utilization that any single juror experiences.**

One unfortunate aspect of the poor juror utilization in York County is that citizens who report for service experience the frustration of waiting in the Jury Assembly Room for the entire week. One way to minimize the inconvenience and hardship of pool juror

utilization that any single juror would experience is to reduce the term of service to one day or one trial.<sup>28</sup> By itself, such a change would have little or no effect on juror utilization rates, but it would have a small effect on costs insofar that unused jurors would only receive the \$9 juror fee. The \$25 juror fee would only be incurred for impaneled jurors serving on trials that exceed three days.

Nationally, an estimated 23% of state trial courts encompassing 56% of the American population have a one day/one trial term of jury service. Courts that have implemented this system do report that they have to summons proportionately more citizens for service to compensate for jurors' limited availability. Theoretically, this would also be the case in York County. By substantially improving juror use through Recommendations B and C, however, it is conceivable that the York County Court of Common Pleas could implement a one day/one trial term of service without summoning more jurors, but instead using the jurors it already summons more effectively. If a one day/one trial term of service were implemented, the Court should invest in a telephone call-in system to provide a mechanism to inform jurors whether they need to report for service each day. See Recommendation D.

**F. The Court should request the AOPC to provide training on Juror Utilization Report definitions and procedures.**

Although the reporting errors observed in the monthly Juror Utilization Reports reviewed by the NCSC for this assessment were insufficient to change the overall findings and recommendations, the accuracy of those reports and their comparability to reports filed by courts in other Class III counties would improve with better training and oversight of the staff who prepare those reports. The Court should request the AOPC to review Juror Utilization Report definitions and procedures with staff. Court Administration should also review all reports before submission to correct mathematical and logical errors.

**G. The Court should systematically document the demographic characteristics of the jury pool to verify whether Blacks and Hispanics are fairly represented. The Court should also implement steps to improve jury yield generally.**

The Court does not currently have a procedure in place to document the racial and ethnic characteristics of its jury pool. As a result, the NCSC consultant was unable to determine whether minorities, in particular Blacks and Hispanics, are fairly represented in the jury pool. Some individuals indicated their belief that minority representation in the jury pool had improved as a result of adding licensed drivers as a source list, but others continued to express concerns on this topic.

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<sup>28</sup> Some courts employ a variation on one day/one trial terms of service by requiring jurors to be available on an "on-call basis" for a longer period of time (e.g., one to two weeks), but once they report to the courthouse, their service is completed by serving one day or one trial. G. THOMAS MUNSTERMAN, PAULA L. HANNAFORD-AGOR & G. MARC WHITEHEAD eds., JURY TRIAL INNOVATIONS (2d. ed.) § 2.2 (One Day/One Trial Terms of Jury Service) (2006).

The most reliable method for documenting the demographic profile of the jury pool is simply to ask jurors to indicate their race and ethnicity on an anonymous survey that uses US Census Bureau definitions when jurors report for service. See Appendix A for a sample questionnaire. The questionnaire should be distributed to jurors when they report for service. The results should be tabulated at least weekly. The Court should be prepared to see some week-to-week variability in Black and Hispanic representation, but given current summoning rates, this approach would permit the Court to make a more informed determination about the adequacy of the demographic profile in the jury pool within four to six weeks after implementation.

Regardless of whether Blacks, Hispanics, or other minorities are fairly represented in the jury pool, the Court should implement steps to improve the jury yield generally. For example, the qualification yield – that is the number of persons found to be qualified and available from the total number of qualification questionnaires mailed – is 44%. The majority (56%) of qualification questionnaires are thus returned undeliverable by the US Postal Service, are not responded to by the recipients, or the responses indicate that the recipients are not qualified for jury service. This is substantially higher than the 35% rate for these categories that is the average for comparably sized courts across the country.<sup>29</sup> The qualification yield could be substantially improved by sending the addresses for the qualification questionnaires to a National-Change-of-Address (NCOA) vendor before mailing.<sup>30</sup> In addition to updating addresses, vendors can code addresses into zip+4 or other delivery codes so that the Court can take advantage of reduced mailing rates. Most courts have found that the money saved from fewer qualification questionnaires being returned as undeliverable more than pays for the NCOA costs.

The court should also implement a follow-up program for individuals who do not respond to the qualification questionnaire. Typically, courts that send a second qualification questionnaire within a reasonable period of time (e.g., two to four weeks) after the first questionnaire was due see a response rate ranging from 30% to 50%. Individuals responding to second qualification questionnaires typically qualify at similar rates as those who responded to the first questionnaire. As a result of having more qualified jurors available for jury service following qualification, the Court may be able to reduce the number of qualification questionnaires it mails annually, thus saving printing, postage, and staff processing costs.

## **VI. CONCLUSIONS**

Juror utilization rates in the York County Court of Common Pleas are poor compared to its Class III peers and by national and AOPC standards. Of particular concern are the low voir dire attendance rate and the high zero panel day rates, which were 36.2% and 71.6%, respectively, in 2005. Interestingly, the Court compared quite favorably to its peers on other key measures of juror utilization including panel size and the

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<sup>29</sup> Preliminary finding of the NCSC State-of-the-States Survey of Jury Improvement Efforts.

<sup>30</sup> These vendors have access to the change of address data given to the Post Office by people when they move. Details on these services and the firms licensed to provide these services can be found on the USPS website at <http://www.usps.gov>.

ratio of voir dire to trial starts. But these were not, of themselves, sufficient to compensate for the fact that nearly three times the number of jurors currently report for jury service than are needed to pick juries. Poor juror utilization currently costs the Court approximately \$200,000 in jury fees and administrative costs per year. It also costs York County citizens and employers an estimated \$300,000 in lost income, lost productivity, and lost opportunity costs annually. Although not quantifiable in monetary terms, poor juror utilization also decreases public support and trust in the local justice system.

The primary cause of poor juror utilization in the York County Court of Common Pleas is unpredictable trial starts due to the prevailing practice of permitting litigants to settle or plea on the day of trial. Historically, the likelihood that a jury panel will be needed for jury selection is fairly high on Mondays, but declines precipitously for the remainder of the week. Even on Mondays, however, the Court historically summonsed 80% more citizens during criminal trial terms, and 60% more citizens during civil trial terms, than is necessary to select jurors.

The most efficient remedy for the Court is to improve trial predictability through more effective pretrial management practices. In particular, judicial officers should screen pending cases more thoroughly to identify those with a high probability of going to trial and to prioritize those cases on the calendar during trial terms. A settlement/plea cutoff policy may also provide appropriate incentives to litigants to engage in timely negotiations and to notify the Court of their intent to agree to a non-trial disposition before jurors are told to report for service. As interim measure, Court can consider eliminating the availability of jury panels late in the week, and reducing the size of the jury pool to correspond more closely to historical jury panel use practices. If the latter approach is employed, the court should implement policies to prevent, or at least minimize, counter-productive practices such as the hoarding of jury panels. Finally, the Court should improve the accuracy of its reporting practices to the AOPC on jury utilization issues by seeking training from AOPC staff on key definitions and procedures.

With respect to the diversity of the jury pool, there was insufficient information to determine whether jurors reporting for service in York County reflect a fair cross section of the community. However, an analysis of jury qualification, summoning, and reporting for the three zip codes with the highest percentages of Black and Hispanic residents did not indicate that those zip codes are measurably under-represented in the jury pool. To better address these concerns, the Court should take steps to document the demographic characteristics of the jury pool. It should also take appropriate steps to improve jury yield generally.

## Appendix A: JURY COMMUNITY REPRESENTATION SURVEY

The following information is requested for statistical reporting purposes only

### YOUR VOLUNTARY PARTICIPATION IS REQUESTED

Date of Service: \_\_\_\_\_ Home Zip Code: \_\_\_\_\_

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#### PLEASE CHECK APPROPRIATE BOXES FOR SECTIONS 1, 2 AND 3

1. GENDER:             Male             Female

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2. RACE (based on U.S. Census Bureau definitions)

**White:** A person having origins in any of the original peoples of Europe, North Africa or the Middle East.

**African-American or Black:** A person having origins in any of the black racial groups of Africa.

**American Indian or Alaskan Native:** A person having origins in any of the original peoples of North America and who maintains cultural identification through tribal affiliation or community recognition.

**Asian or Pacific Islander:** A person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands. These areas include, for example, China, India, Japan, Korea, the Philippine Islands and Samoa.

**Other or Multiracial:** A person having origins other than those listed above **OR** a person having parents of different races.

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3. ETHNICITY (based on U.S. Census Bureau definitions)

**Hispanic or Latin American:** A person having origins in any of the original people of Spain, Portugal, South America, Central America, Mexico, Puerto Rico, Cuba, or the Caribbean Islands.

**Not Hispanic or Latin American**

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**THANK YOU FOR YOUR COOPERATION**

(One survey per Juror please)