



Racial and Ethnic Disparity in Manhattan Jury Pools:

Results of a Survey and Suggestions for Reform

By Bob Cohen, Esq., Policy Director, and Janet Rosales, Law Clerk

June, 2007

Citizen Action of New York
94 Central Avenue
Albany, NY 12206
Phone: (518) 465-4600 (x104)
Fax: (518) 465-2890
mail@citizenactionny.org
www.citizenactionny.org

Executive Summary

Members of the Manhattan community have long been concerned that juries in the county do not reflect a fair cross section of the community. In response to a particular concern expressed by members of the bar that people of color and Hispanics appeared to be underrepresented in the jury pools from which judges and litigants pick juries in Supreme Court, New York County (Manhattan), Citizen Action of New York tallied the apparent race and Hispanic status of Manhattan residents reporting for jury duty at jury assembly rooms for a 12-week period from November 2006 to February 2007.

Our survey of over 14,000 prospective jurors confirmed that **people of color and Hispanics were substantially underrepresented, measured by their proportionate share of the population of Manhattan. On the other hand, whites were substantially overrepresented.**²

The highest degree of underrepresentation was among Hispanics.

Specifically, the survey found that for civil and criminal courts combined, whites were overrepresented by 43%, Blacks were underrepresented by 42%, and Hispanics were underrepresented by 77%. (See the chart on this page.)

This report provides some explanations from the literature as to why people of color and

² The U.S. Census racial groups used in our survey are "White," "African-American," "Asian," and "Other" (i.e. "American Indian/Alaska Native" plus "Some Other Race" plus "Two or More Races".) This report uses the terms "people of color" and "communities of color" to collectively refer to census racial groups other than whites. Hispanics can be of any race under the U.S. Census scheme, and were therefore tallied separately.

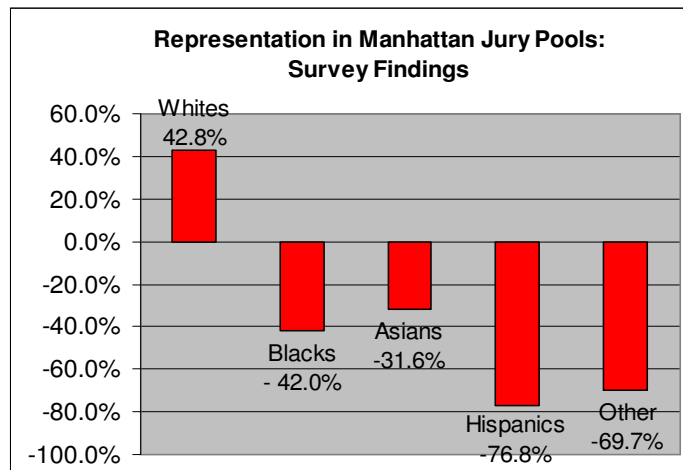
Hispanics might be underrepresented in jury pools, in Manhattan and elsewhere in the nation. Second, we offer recommendations that would increase the representation of these communities. As particular concerns were raised by attorneys practicing in New York County, the explanations and recommendations are presented with a particular focus towards improving jury pools in that county.

Both federal and state laws seek to ensure equal representation by mandating trial by jury selected at random from a "fair cross section of the community." Current jury

pools, however, fall far short of fair representation across racial and ethnic lines. The explanations for the disparity involve both inadequacies in the state and local administration of jury pools and challenges related to the socio-economic and

ethnic diversity of the state.

Generally, people of color and Hispanics are adversely impacted by requirements applicable to jury service. Out-dated mailing addresses, lower response rates to jury summons, and increased disqualification rates constitute a few of the key challenges. Solutions must be multi-faceted and strive to increase representation at each major milestone in the process, including the compilation of the statewide jury source list, the completion of qualifications questionnaires and determinations as to qualifications, postponements and excusals.



Summary of Major Recommendations

- ✓ Broaden the state juror source list to reflect the true racial and ethnic population of Manhattan.
- ✓ Send a higher proportion of qualifications questionnaires and summonses to communities with a higher proportion of people of color and Hispanics, to compensate for their lower response rates.
- ✓ Update juror source list addresses more frequently, from annually to semi-annually, to compensate for the higher mobility of people of color and Hispanics.
- ✓ Increase state regulation of county use of juror source lists to ensure that the pool of prospective jurors available for a particular trial is racially and ethnically balanced.

I. Citizen Action Survey

Introduction

Citizen Action of New York (“CANY” or “Citizen Action”) performed a survey of the racial and ethnic composition of Manhattan residents appearing for jury duty beginning in November 2006 in response to reports by members of the bar that there appeared to be a disproportionate number of white prospective jurors in the jury assembly rooms in New York County (the borough of Manhattan). We also surveyed the number of Hispanics. Citizens are summoned to courthouse jury assembly rooms for processing prior to appearing before individual judges and attorneys for possible selection as jurors through the process known as voir dire. The attorneys were concerned that the disproportionate number of whites in juries, if true, would violate the principle that litigants in New York State courts are entitled to trials by juries selected at random from a “fair cross-section of the community.” See Judiciary Law § 500.

Methodology

The Citizen Action survey used physical observation of prospective jurors to compare the percentage of the major racial groups and the percentage of Hispanics gathered in jury rooms in Manhattan courtrooms with the 2000 U.S. Census numbers for these groups. Our researchers simply noted the apparent race and apparent Hispanic status of each prospective juror in each jury assembly room and tallied the results. Asking prospective jurors in jury assembly rooms their race or ethnicity was not an option due to a prohibition against interviewing prospective jurors.³

The survey lasted for a 12-week period, from the week of November 6-9, 2006 through the week of February 5-8, 2007 at the two major locations used for jury selection for State Supreme Court civil court trials (60 Centre Street and 71 Thomas Street) as well as the two major locations used for State Supreme Court criminal court trials (100 Centre Street and 111 Centre Street). No surveying was done during the weeks beginning Monday, December 18th, 2006, and Monday, December 25th, 2006, as we were informed

³ While Citizen Action informed courtroom staff that our researchers would send observers to jury assembly rooms, we neither informed them of the nature of our research, nor of the identity of our researchers in order to increase the likelihood that our research would not impact on court practices. Our researchers did not engage in conversations with prospective jurors.

that jury selection would not occur or be vastly curtailed during these weeks due to the holidays. Surveying occurred during the Monday to Thursday period for each of the scheduled weeks on days when each jury assembly room had regularly scheduled days for jurors to report for initial processing in response to summonses. (A grid which indicates the precise days the survey was performed appears as Appendix B.)⁴

In total, we tallied the race and Hispanic status of 14,429 prospective jurors during the twelve-week period, comprising nearly all of those appearing for jury duty in Supreme Court, New York County. The length of the survey, the high percentage of the prospective jurors captured in the survey, and the large number of people surveyed gives us confidence that we have provided an extremely accurate picture of jury pools in Supreme Court in Manhattan.

In order to determine the extent to which the juror pool in jury assembly rooms in Manhattan Supreme Court reflected the racial and ethnic composition of Manhattan, we used the 2000 U.S. Census results⁵ for the borough to determine the actual makeup of the population.⁶ The U.S. Census determines the racial breakdown of the population by asking all households to fill out a census form. The census form asks people to check one of the first 5 racial categories listed in Chart 1 (next page), based on their primary identification (“White,” “Black or African-American,” etc.). Respondents that write in entries such as “multiracial,” “mixed,” “interracial,” or a Hispanic or Latino group are tallied by the U.S. Census in the “some other race” category. Those who check more than one of the

⁴ The survey was not performed for an extremely small number of scheduled days on the grid due to survey staff unavailability.

⁵ An alternative measure for the Manhattan population we could have used is the U.S. Census’ “American Community Survey” (ACS) for 2005 (the latest available year). The ACS is a nationwide survey of households that is intended to replace the decennial census “long form” (that asks households a greater number of questions than the short form everyone receives). See U.S. Census Bureau. Survey Basics: What is the American Community Survey?, <http://www.census.gov/acs/www/SBasics/What/What1.htm>. For Manhattan County, the sample size used was 14,745 households; it is therefore less accurate than the decennial. <http://www.census.gov/acs/www/SBasics/SSizes/SSizes03.htm>. In any event, we do not believe that selecting the ACS would have substantively changed our central findings in regard to the overrepresentation of Whites, and underrepresentation of people of color and Hispanics. For example, while the decennial numbers indicate that Whites are 54.4% of the Manhattan population, Blacks 17.4%, and Hispanics, 27.2%, the corresponding ACS figures are Whites, 54.8%, Blacks, 14.9%, and Hispanics, 26.3%. [http://factfinder.census.gov/servlet/ACSSAFFacts?_event=ChangeGeoContext&geo_id=05000US36061&_geoContext=&_street=&_county=New+York&_cityTown=New+York&_state=04000US36&_zip=&_lang=en&_sse=on&ActiveGeoDiv=&_useEV=&pctxt=fph&pgsl=010&_submenuId=factsheet_1&ds_name=ACS_2005_SAFF&_ci_nbr=null&qtr_name=null®=null%3Anull&_keyword=&_industry=.](http://factfinder.census.gov/servlet/ACSSAFFacts?_event=ChangeGeoContext&geo_id=05000US36061&_geoContext=&_street=&_county=New+York&_cityTown=New+York&_state=04000US36&_zip=&_lang=en&_sse=on&ActiveGeoDiv=&_useEV=&pctxt=fph&pgsl=010&_submenuId=factsheet_1&ds_name=ACS_2005_SAFF&_ci_nbr=null&qtr_name=null®=null%3Anull&_keyword=&_industry=)

⁶ The U.S. Census data used for Manhattan for this report can be obtained by visiting: <http://www.empire.state.ny.us/nysdc/census2000/DemoProfiles/DP1NewYorkCounty.pdf>.

first 6 categories, or who do a combination of checking a box and writing a comment that indicates a separate race are categorized as “two or more races” (Category No. 7). Under the U.S. Census scheme, Categories 1 through 7 total 100%: all people (including Hispanics) are considered as members of one race only (Category Nos. 1-6), except for the 4% of New Yorkers who indicate more than one race (Category No. 7). According to the U.S. Census, the following is the breakdown of the racial composition of Manhattan:

Chart 1: Racial Composition of Manhattan; U.S. Census 2000

| Census Racial Category | # in Manhattan | % of all Manhattan Residents |
|-------------------------------------|-----------------------|-------------------------------------|
| 1) White | 835,510 | 54.36% |
| 2) Black or African-American | 267,302 | 17.39% |
| 3) American-Indian/Alaska Native | 7,617 | .50% |
| 4) Asian | 144,538 | 9.40% |
| 5) Native Hawaiian/Pacific Islander | 1,069 | 0.07% |
| 6) Some Other Race | 217,383 | 14.14% |
| 7) Two or More Races | 63,676 | 4.14% |
| Total | 1,537,195 | 100% |

In order to use the U.S. Census results as a basis for comparison with the results of our visual survey, we simplified the U.S. Census categories, collapsing the 7 racial categories listed above into 4 categories. We decided that attempting to distinguish among certain racial categories through quick physical observation would not yield meaningful results. Further, given that few Manhattan residents fit under the “American Indian/Alaska Native” and “Native Hawaiian/Pacific Islander” categories (comprising .5% and .07% of the Manhattan population, respectively), we thought it made more sense to combine them with other racial categories for this survey. The simplified scheme resulted in the following census figures for Manhattan:

Chart 2: Racial Composition of Manhattan; U.S. Census 2000
(with certain racial categories combined)

| Census Racial Category | # in Manhattan | % of all Manhattan Residents |
|--|-----------------------|-------------------------------------|
| 1) White | 835,510 | 54.36% |
| 2) Black or African-American | 267,302 | 17.39% |
| 3) Asian (combination of "Asian" and "Native Hawaiian/Pacific Islander" Census categories) | 145,607 | 9.47% |
| 4) Other (combination of "American Indian/Alaska Native," "Some Other Race" and "Two or More Races" census categories) | 288,676 | 18.78% |
| Total | 1,537,195 | 100% |

The CANY researchers were given instructions and a training that included a discussion as to which major ethnic groups in New York City fell under each of the four U.S. Census categories listed in Chart 2.

Our survey also compared the number of Hispanics in jury assembly rooms with the U.S. Census results. Under the U.S. Census scheme, Hispanics can be of any race, and may select the appropriate racial category they fall under in filling out the census form. The U.S. Census form contains a question in addition to the question as to one's race that asks if the respondent or members of his or her household are Hispanic. Based on this question, the 2000 U.S. Census found that 417,816 Manhattan residents are Hispanic, or 27.2%. The Citizen Action researchers were therefore instructed to determine whether each person observed appeared to be of Hispanic origin in addition to his or her apparent race.

If not selected on a particular day, prospective jurors in Manhattan and other counties in New York State are generally directed to return to jury assembly rooms an additional day (or sometimes two days) to see if they will subsequently be selected. However, given the impossibility of remembering the faces of all people who were surveyed on a previous date, CANY researchers were instructed to tally each person appearing in the jury room, even if they recognized someone from a previous day.⁷

⁷ However, in one instance, where court officials announced that everyone present in the room was a returnee from a previous day, results for that day were not included in this survey.

Highlights of Findings

Our survey of 14,429 prospective jurors in Manhattan resulted in three critical findings:

- ✓ **Whites were extremely overrepresented in the pools of prospective jurors in Manhattan, measured by the U.S. Census.**
- ✓ **People of color and Hispanics were substantially underrepresented in juror pools.**
- ✓ **These findings apply equally in civil and criminal courts.**

The specifics follow:

All Courts:

As Chart 3 summarizes, of the racial and ethnic categories in our survey, Whites were the only group that was overrepresented in civil and criminal court jury pools, meaning that a higher percentage of whites were in the jury pool we surveyed than their percentage of the population of Manhattan, as measured in the 2000 Census. All other groups (Blacks, Asians, Other Races, and Hispanics) were underrepresented. **Whites were overrepresented by 43%, Blacks were underrepresented by 42%, and Hispanics were underrepresented by 77%.**

Chart 3: Representation in Civil and Criminal Court: Jury Survey Findings

| Race or Hispanic Status | # in Jury Pool | % in Jury Pool | % in Census | Actual Difference Expressed as %* | % Over or Underrepresentation |
|-------------------------------------|----------------|----------------|-------------|-----------------------------------|-------------------------------|
| Whites | 11,055 | 77.7% | 54.4% | 23.3% | 42.8% |
| Blacks/African-Americans | 1,430 | 10.1% | 17.4% | -7.3% | -42.0% |
| Asians/Hawaiians, Pacific Islanders | 929 | 6.5% | 9.5% | -3.0% | -31.6% |
| Other Races | 815 | 5.7% | 18.8% | -13.1% | -69.7% |
| Total | 14,429 | 100% | 100% | | |
| Hispanics | 887 | 6.3% | 27.2% | -20.9% | -76.8% |
| Total | 14,429 | 100% | 100% | | |

*A minus number indicates that this group is underrepresented.

Civil Courts:

As Chart 4 summarizes, Whites were the only group that was overrepresented in the civil court jury pools as well. **Whites were overrepresented by 42%, Blacks were underrepresented by 41%, and Hispanics were underrepresented by 77%.**

Chart 4: Representation in Civil Court: Jury Survey Findings

| Race or Hispanic Status | # in Jury Pool | % in Jury Pool | % in Census | Actual Difference Expressed as %* | % Over or Underrepresentation |
|-------------------------------------|----------------|----------------|-------------|-----------------------------------|-------------------------------|
| Whites | 5,032 | 77.3% | 54.4% | 22.9% | 42.0% |
| Blacks/African-Americans | 665 | 10.2% | 17.4% | -7.2% | -41.4% |
| Asians/Hawaiians, Pacific Islanders | 429 | 6.6% | 9.5% | -2.9% | -30.5% |
| Other Races | 383 | 5.9% | 18.8% | -12.9% | -68.6% |
| Total | 6,509 | 100% | 100% | | |
| Hispanics | 417 | 6.4% | 27.2% | -20.8% | -76.5% |
| Total | 6,509 | 100% | 100% | | |

*A minus number indicates that this group is underrepresented.

Criminal Courts:

Chart 5 shows that the same pat for criminal court: Whites were the only group that was overrepresented. **Whites were overrepresented by 43%, Blacks were underrepresented by 43%, and Hispanics were underrepresented by 78%.**

Chart 5: Representation in Criminal Court: Jury Survey Findings

| Race or Hispanic Status | # in Jury Pool | % in Jury Pool | % in Census | Actual Difference Expressed as %* | % Over or Underrepresentation |
|-------------------------------------|----------------|----------------|-------------|-----------------------------------|-------------------------------|
| Whites | 6,023 | 78.0% | 54.4% | 23.6% | 43.4% |
| Blacks/African-Americans | 765 | 9.9% | 17.4% | -7.5% | -43.1% |
| Asians/Hawaiians, Pacific Islanders | 500 | 6.5% | 9.5% | -3.0% | -31.6% |
| Other Races | 432 | 5.6% | 18.8% | -12.6% | -67.0% |
| Total | 7,720 | 100% | 100% | | |
| Hispanics | 470 | 6.1% | 27.2% | -21.1% | -77.6% |
| Total | 7,720 | 100% | 100% | | |

*A minus number indicates that this group is underrepresented.

Variations in the Makeup of Juror Pools Day-to-Day:

We found some variations in the composition of juror pools on a day-to-day basis, making us fear that it will be particularly hard to achieve representative juries on particular days in New York County:

- ✓ For 32 of the 59 days for which we surveyed the number of jurors and received meaningful data,⁸ less than 10% of the prospective jurors were Black (rounded off to the nearest percent), and for 45 of those days, less than 10% of the prospective jurors were Hispanic.
- ✓ For 28 of the 57 days for which we surveyed the number of jurors and received meaningful data; less than 10% of the prospective jurors were Black (rounded off to the nearest percent), and for 51 of those days, less than 10% of the prospective jurors were Hispanic.

Separating the Data By Type of Court and By Researcher:

We also broke down our survey data by the type of court (civil or criminal), and by researcher, to see if this enabled us to identify practices that applied in one court rather than the other or pointed to flaws in our survey. **We found no significant differences in our results based on the type of court. We also found that the findings of our individual researchers, “C” and “F,”⁹ were extremely consistent, at least in regard to Whites, Blacks, and Asians, giving us enormous confidence in our survey findings.**

Civil vs. Criminal:

- ✓ The results for all courts were 77.7% White, 10.1% Black or African-American, 6.5% Asian, and 6.2% Hispanic. This is compared to:
- ✓ 77.3% White, 10.2% Black or African-American, 6.6% Asian, and 6.4% Hispanic in the case of civil court; and
- ✓ 78.0% White, 9.9% Black or African-American, 6.5% Asian, and 6.1% Hispanic in the case of criminal court.

By Researcher:

- ✓ The results for “Researcher C” were 78.4% White, 10.3% Black or African-American, and 7.2% Asian.

⁸ By “meaningful data,” we mean that we’ve excluded days where our researchers found less than 20 prospective jurors assembled. The findings for these days, however, were included in the total data set.

⁹ 490 people were tallied by 2 temporary researchers other than “C” and “F.” Because this number is too small to be significant, we did not provide in this report a breakdown of their findings by researcher. However, their findings are included in the aggregate figures.

- ✓ Researcher “F’s” findings were quite similar: 77.6% White, 8.7% Black or African-American, and 5.5% Asian.
- ✓ On the other hand, C’s and F’s findings differed somewhat in regard to the percentage of Hispanics (4.5% for C vs. 8.4% for F) and of “Others” (4.1% for C vs. 8.3% for F), perhaps reflecting the difficulty of identifying the race or ethnicity of these populations by physical observation.

II. Policy Implications and Recommendations for Change

New York State Judiciary Law and the Jury Selection Process

Judiciary Law § 500 declares that a racially and ethnically balanced jury pool is a central legislative purpose of Article 16 of the Judiciary Law, the statute governing jury selection in New York State:

It is the policy of this state that all litigants in the courts of this state 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 county or other governmental subdivision wherein the court convenes; and that all eligible citizens shall have the opportunity to serve on grand and petit juries in the courts of this state, and shall have an obligation to serve when summoned for that purpose, unless excused. [emphasis added]

The fair cross-section requirement in part represents an attempt by New York State to address disparities based on race and ethnicity in jury pools, and even racial and ethnic exclusion from juries, a policy goal that has been recognized by the U.S. Supreme Court. In *Peters v. Kiff*, the Court stated that:

[W]hen any large and identifiable segment of the community is excluded from jury service, the effect is to remove from the jury room qualities of human nature and varieties of human experience, the range of which is unknown and perhaps unknowable. It is not necessary to assume that the excluded group will consistently vote as a class in order to conclude... that its exclusion deprives the jury of a perspective of human events.” 407 U.S. 493, 503-04 (1972) (overturning conviction of white defendant because blacks had been excluded from the jury pool).

The declaration in Article 16 governs jury selection within the context of compiling jury source lists, sending qualification questionnaires to prospective jurors and making determinations regarding qualifications, postponements, and excusals. These activities are the key components in impaneling juries for both criminal and civil trials. This report does not analyze the activities that occur once prospective jurors have been assembled in jury rooms, such as questioning by judges and lawyers (voir dire).

The jury system is administered on the county level through a Commissioner of Jurors. See Judiciary Law § 502. The primary duties of the Commissioner include the qualification and summoning of jurors, enforcement, and general jury service matters

including attendance, orientation, panel selection and payroll. *See Interim Report of the Commission on the Jury to the Chief Judge of the State of New York*, 23 (June 2004) (hereinafter, *Jury Reform-Interim Report*). In New York City boroughs, including Manhattan, the county clerk is the Commissioner of Jurors. Judiciary Law § 502.

Jurors are initially summoned by county jury commissioners through having their name included on the statewide “jury source list.” The state Office of Court Administration (OCA) has the sole responsibility for generating the jury source list. Each year, OCA compiles information from voter registration, driver’s license, income tax, Department of Labor and family assistance lists as well as an Automated Jury File. *Jury Reform-Interim Report*, at 23-24. Included within the Automated Jury Files are the names of persons eligible to be called for jury service under the Judiciary Law.

Based on this source list, qualification questionnaires are sent to prospective jurors. The Commissioner of Jurors has compliance authority and may seek monetary penalties and request that the court use its contempt power for non-compliance. Judiciary Law § 527; *See also* 73A NY Jur Jury §§ 70, 71. Individuals are disqualified for jury service based on of felony convictions, lack of fluency in English, based on age (under eighteen years of age) or because they are not United States citizens. Judiciary Law § 510. By statute, juror commissioners must maintain a list of disqualified individuals and the reasons for disqualification. 73A NY Jur Jury § 70.

The local jury commission offices order summonses from the automated state list and mail and print them locally based on local court needs. In response to summonses, prospective jurors arrive at the courthouse jury assembly rooms to participate in the empanelling process for specific trials, including for voir dire. Each day that a juror performs service, he or she is entitled to a per diem \$40 allowance (effective in 1997, increased from \$15). Judiciary Law § 521; *Jury Reform-Interim Report supra* at 27.

These basic steps compose the foundation of the current jury system throughout New York State. The authority to change the jury system is held by the State Legislature and “[t]he Legislature’s power to make laws for procuring and impaneling a jury ,,, is *limited only by the constitutional duty* to preserve the right to trial by an impartial jury.” [emphasis added] 73A NY Jur Jury § 6. Given the considerable discretion possessed by local juror commissioners under state law, the commissioners may make many of the changes proposed in this report.

The Federal Perspective

In 1968, Congress passed the Jury Selection and Service Act (“JSSA” or the “federal jury selection act”) following a March 1967 Judicial Conference that recommended a uniform method for assembling jury pools. The 1965 legislation resulted from years and even decades of challenges to the uneven representation in juries and jury selection systems. Based on these challenges, Congressional concern with inconsistent procedures for developing jury pools heightened. Cynthia Williams, *Jury Source Representativeness and the Use of Voter Registration Lists*, 65 N.Y.U. L. REV. 590, 599-600 (1990) (hereinafter, *Voter Registration Lists*).

The legislative purpose of JSSA is set forth in 28 USC § 1861:

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.

The primary mechanism for implementing the right to a fair cross section of the community is via each district court’s jury selection plan, a statutory mandate of 28 USC § 1863.

Constitutional scrutiny of federal jury pools has been rooted in either an individual’s claim that 1) he or she did not obtain a fair trial because of a disparate jury or that 2) an agency or judge’s effort to modify the jury pool composition was invalid. Courts have used two constitutional standards to determine whether an individual, primarily in criminal trials, can overturn convictions based on a partial jury and whether district jury selection plans and associated methodologies meet the requirements of the constitution. *Voter Registration Lists supra* at 596-602. The two standards include: the equal protection standard, applicable to the federal judiciary through the Fifth Amendment, and the Sixth Amendment fair cross-section requirement. *Id.* at 596. Barring actual removal of whites from the jury pools, efforts to increase jury representativeness will likely survive constitutional challenges. *See United States v. Ovalle*, 136 F.3d 1092 (6th Cir. 1998) (holding that the “subtraction method” of balancing the jury wheel in which one in five non-African-Americans was removed violated the Fifth Amendment).

Legislative History of Judiciary Law Article 16

New York State completely overhauled Article 16 of Judiciary Law in 1977. See Chapter 315, Laws of 1977. Among the goals were to make the New York statute similar to the Federal Jury Selection Service Act of 1968. See generally *Memorandum of Office of Court Administration*, 1997 N.Y. Sess. Laws, Vol. 2, at 2617. In its legislative memorandum on the statutory revisions, the Office of Court Administration stated that Judiciary Law §§ 506-507 provided for the establishment of random selection of jurors from voter registration lists, supplemented by utility users, motor vehicle operators, and state and local taxpayers. *Id.*

Section 506 sets forth the types of lists used to generate potential jurors' names. In 1994, the Legislature amended the section to add various social services program participation lists as an additional source. Currently, sources include lists of utility subscribers, licensed operators of motor vehicles, registered owners of motor vehicles, state and local taxpayers, persons applying for or receiving family assistance, medical assistance or safety net assistance and persons receiving state unemployment benefits. Once the source lists have been compiled, § 507 provides that selection of names must be random.

Challenges to New York State's jury selection system or its method for determining source lists have been unsuccessful to date. *People v. Guzman*, 89 A.D.2d 14 (2d Dep't 1982); *People v. Taylor*, 191 Misc. 2d 672 (Sup. Ct. Queens Cty. 2002). Challenges brought in criminal trials have contended that disparate jury composition violates the Sixth and Fourteenth Amendments. *People v. Levandowski*, 190 Misc.2d 738, 746 (Sup. Ct. Rensselaer Cty. 2002) (court rejected criminal defendant's claim that constitutional protections of the Sixth and Fourteenth Amendments required source lists based on town residence rather than on a county wide basis).

Reforming the Jury Selection System in New York State

Below we examine proposals to improve the jury selection statute in New York State from the standpoint of representation of people of color and Hispanics on jury pools, based on the various points in the jury system process. These points are the 1) compilation of the statewide jury source list and its use by counties; 2) the qualifications

process; and 3) postponements and excusals. At the outset, it should be noted that solutions should be multi-faceted because the reality of underrepresentation is based on a number of factors. Mary Catherine Campbell, *Current Developments 2004-2005, Black, White, and Grey: The American Jury Project and Representative Juries*, 18 GEO. J. LEGAL ETHICS 625, 627 (2005) (hereinafter, *American Jury Project*).

The Statewide Jury Source List and Its Use By Counties

Two proposed ways to increase representation of people of color and Hispanics are by 1) source list supplementation and 2) aggressively increasing source data accuracy. The federal jury selection act requires court system administrators and jury commissioners to create jury selection plans to ensure that jury pools are representative. "Congress selected voter registration lists as the primary source of jurors, [explaining that] these lists provide the widest community cross section of any list readily available." See John P. Bueker, *Jury Source Lists: Does Supplementation Really Work?*, 82 CORNELL L. REV. 390, 396 (January 1997) (hereinafter, *Does Supplementation Really Work?*). However, using voter registration lists as the sole source has been highly criticized because a voter list does not in fact represent a fair cross section of the community. *Id.* at 392. Twelve states, New York among them, and numerous federal districts have responded to these criticisms by implementing multiple source lists, a practice known as supplementation. *Id.*; See also *Voter Registration Lists, supra* at 633. (Pursuant to Judiciary Law § 506, voter registration lists are one of the sources of names of prospective jurors in New York State.)

As previously stated, New York's statute requires multiple sources for the statewide jury source list, including lists of utility subscribers, licensed operators of motor vehicles, registered owners of motor vehicles, state and local taxpayers, persons applying for or receiving family assistance, medical assistance or safety net assistance and persons receiving state unemployment benefits. The Chief Administrator of the courts has the authority to add sources not listed in the statute. Judiciary Law § 506; 22 NYCRR § 128.3. The Chief Administrator should use this authority to the fullest, by exploring what additional sources would best accomplish the goal of ensuring that the jury pool in Manhattan reflects the true racial and ethnic composition of Manhattan. The state juror source list should then be broadened to accomplish this purpose.

As traditional supplementation efforts have not been highly successful in increasing representation of people of color and Hispanics, other efforts are necessary. See *Does Supplementation Really Work?*, *supra* at 392-93. Pennsylvania's statute, for example, grants express authority to supplement jury source lists to include persons listed in telephone, city and municipal directories, to any tax assessment sources, federal and state programs and those on school census lists. 42 Pa.C.S. § 4521. Using lists from community organizations may also provide expanded diversity. See Andrew J. Lievens, *Fair Representation on Juries in the Eastern District of Michigan: Analyzing Past Efforts and Recommending Future Action*, 38 U. MICH. J.L. REFORM 941, (Summer 2005) (hereinafter, *Eastern District of Michigan*).¹⁰ Another legislative approach is to expressly authorize jury commissioner discretion on how to supplement lists, thereby enabling variations based on the needs of individual counties. For instance, a Virginia statute permits jury commissioners to use voter registration lists and "where feasible, a list of persons issued a driver's license..., city or county directories, telephone books, personal property tax rolls, and other such lists as may be designated and approved by the chief judge of the circuit, to select the jurors representative of the broad community interests, to be placed on the master jury list." Va. Code Ann. § 8.01-345.

In addition to broadening jury source lists, the accuracy of source lists is crucial to ensuring that the initial search for prospective jurors can achieve a fair cross section of the community. People of color and Hispanics tend to be more mobile. As a result, their addresses in source lists tend to be less accurate than information in regard to whites. *Does Supplementation Really Work*, *supra* at 435. In New York, the OCA compiles the juror source list annually. *Interim Report, June 2004* at 23. However, to avoid list staleness, and to combat the challenges of undeliverable mail to communities of color, commentators have suggested that an annual update is insufficient. See *People v. Taylor*, 191 Misc. 2d at 682. Furthermore, an outdated database system which utilizes multiple lists, as in New York, has an added challenge because "when duplicates remain undetected in a merged list, any unrepresentativeness in the source lists becomes

¹⁰ The focus of the survey which formed the basis of this report is Manhattan. We assume that surveys in many other counties in the state would find similar patterns as in New York County, arguing for efforts to add additional statewide sources of names to the statewide juror source list. However, we see nothing in Article 16 that would preclude the Chief Administrator from adding to the jury source list additional lists that are primarily or entirely drawn from New York County.

exacerbated and amplified.” *Id.* at 683. To address these concerns, we recommend that the juror source list be updated at least semi-annually.

New Mexico requires that the database of registered voters and driver’s license holders be updated monthly and the database of personal income filers be updated quarterly. N.M. Stat. Ann. § 38-5-3. Frequent updates to source lists captures new residents more readily and locates existing residents who recently moved. Another option would be to create a system that secures accurate information by requiring individuals to complete change of address forms. *American Jury Project supra* at 629 (recommending implementation of a “National Change of Address System” to keep information current).

Finally, the potential for underrepresentation of people of color and Hispanics for particular trials also occurs due to the relative lack of state oversight of the use of the OCA jury source list. As previously stated, local juror commission offices are responsible for issuing summonses to prospective jurors. By regulation, jurors are to be “selected for summoning at random from prospective jurors previously qualified for service.” See 22 NYCRR § 128.6. However, there are no state requirements other than the requirement of randomness governing who is selected for summoning for a particular trial. Our survey showed there is considerable variation as to the racial and ethnic breakdown of those who appear in jury rooms on a day-to-day basis, meaning that there is a greater danger on some days than others of picking unrepresentative juries. For example, as previously stated, for 32 of the 59 days of the Citizen Action survey, less than 10% of the prospective jurors in civil jury pools were Black, and for 45 of those days, the jury pool was less than 10% Hispanic. It is hard to imagine how a representative jury could be selected given such a pool. Increased state regulation of county use of state juror source lists should be considered, particularly with a view towards increasing the likelihood that the jury pool available for each trial is racially or ethnically balanced.

The Qualifications Process

Nationally, there are primarily two ways in which to qualify prospective jurors. The qualification and summons forms can either be combined or separate, using either a one-step or two-step process. G. Thomas Munsterman, *Jury System Management* 29 Williamsburg, Virginia 1996. County juror offices in New York State utilize the OCA juror

source list as a source to mail either the qualification questionnaire or the combined questionnaire and summons. *Jury Reform-Interim Report* at 24, 29.

The Manhattan procedure is to send prospective jurors a juror qualifications questionnaire roughly 3 months before the summons. If the prospective juror is deemed disqualified, he or she will not receive any summons.¹¹ Interview With Court Personnel, March 22, 2007.

Underrepresentation of people of color and Hispanics in jury pools results in part from poor participation early on in the process. For a variety of reasons, these groups tend to respond to jury qualifications questionnaires at significantly lower rates. For instance, the Commissioner of Jurors of Kings County in *Guzman* testified that only 24% of the Hispanics who received subpoenas for jury service appeared for the qualification examination. In contrast, the Commissioner stated that 52% of the non-Hispanics appeared for the qualification examination. *Guzman*, 89 A.D.2d at 20.

Further, low response rates -- for all population groups -- is particularly important to address in Manhattan. According to recent data, the initial response rate for New York County residents as a whole was 48%, while the response rates for Albany and Onondaga counties were 75% and 73%. While the final response rate for New York County was 73% (as compared to 87% in Albany County at and 89% in Onondaga County), New York County's response rate nevertheless lagged behind others by 15% or more. *Interim Report*, June 2004, Exhibit C.

Simply waiting for a longer period of time before finalizing master wheels or jury pool lists might partly address the problem. *Does Supplementation Really Work, supra* at 427. Another option is to resend the jury questionnaire request and do so more times than at present. *Id.* at 426. Crafting the questionnaire into a motivational tool advocating jury service duty and benefits could result in better response rates. *See Eastern District of Michigan, supra* at 966-67. The Eastern District of Michigan federal district court currently includes a flyer with the questionnaire that specifically informs prospective jurors that

¹¹ This is significant because many Manhattan residents may fill out the questionnaire before being summoned, and therefore do not appear in jury assembly rooms. Given that among the disqualifying reasons are being able to understand and communicate in the English language, and non-citizenship, it is entirely possible that this accounts in part for some of the disparity between the U.S. Census numbers for people of color and Hispanics and their proportion in New York County jury pools, as measured by our survey. *See* Judiciary Law § 510.

minority groups have been underrepresented in the past and as such minority participation is especially important. *Id.*

Stratified sampling techniques have been proposed as an effective way to combat low response rates among communities of color and Hispanics. Jury pool administrators can identify zip codes with a high proportion of people of color and Hispanics. *Does Supplementation Really Work?*, *supra* at 427-28. Then the local commissioner office sends additional questionnaires or a larger percentage of questionnaires to individuals within those communities. *Id.* The weighted sampling “over-sampl[es] those populations that continue to yield disproportionately fewer venire members.” *Eastern District of Michigan*, *supra* at 962-63. We recommend that this technique be utilized in Manhattan to increase jury representativeness. Similarly, a higher percentage of summonses can be directed to certain zip codes.

Techniques like weighted sampling are of course subject to constitutional scrutiny. Commentators have argued that adding to the jury pool is significantly different than the situation in *Ovalle*, in which the Sixth Circuit struck down removal of whites from the jury pool. Leslie Ellis and Shari Seidman Diamond, *Symposium: The Jury and Race: Race, Diversity, and Jury Composition: Battering and Bolstering Legitimacy*, 78 CHI.-KENT. L. REV. 1033, 1055-56 (2003). Although weighted sampling would be tested under *Ovalle*, it appears promising that it would be upheld as against a constitutional challenge. *Id.*; See *Developments in the Law: The Civil Jury: Jury Selection and Composition*, 110 HARV. L. REV. 1443, 1453 (1997) (recommending weighted or stratified sampling but stating that its legality is uncertain).

Another, although potentially unpopular mechanism to increase representation of people of color and Hispanics is to step up enforcement efforts for avoiding jury duty. In New York State, juror commissioners have compliance authority and may take action against those not responding through the court’s contempt power or by bringing noncompliance proceedings for civil penalties. NY CLS Jud § 527; *See also* 73A NY Jur Jury §§ 70, 71. Although precise statistics regarding enforcement are lacking, it appears anecdotally that enforcement is somewhat limited.

Disqualifications

As already stated, once a prospective juror receives a summons to appear for jury duty, or a few weeks prior to receipt of the summons, as in the case of Supreme Court, New York County, he or she must complete a qualifications questionnaire. It is at this juncture that some individuals are removed from the jury pool based on statutorily mandated disqualifying criteria. New York abolished the use of a permanent qualified jury in 1995 following the recommendations of the 1994 Jury Project. As such, jury lists are updated based on the answers to qualifications questionnaires.

Pursuant to Judiciary Law § 510, individuals only qualify as a juror if they meet all of the following criteria:

1. Be a citizen of the United States, and a resident of the county.
2. Be not less than eighteen years of age.
3. Not have been convicted of a felony.
4. Be able to understand and communicate in the English language.

See also Guzman, 89 A.D.2d 14 (2d Dep't 1982).

People of color and Hispanics tend to qualify at a lower percentage rate than Caucasians. In *Guzman*, of the Hispanics who appeared to complete qualification questionnaires only 45% qualified. The commissioner explained that the majority of disqualifications resulted from individuals' failure to read, write and comprehend the English language. 89 A.D.2d at 11-12.

As qualifications based on English proficiency set forth minimum, practical baselines, most commentators have recognized that wholesale changes in order to increase representation of people of color and Hispanics would be illogical and against the interests of justice. However, the requirement for proficiency in English might be further analyzed as an area for improvement. For example, once a juror is disqualified, the individual remains off the list. Judiciary Law § 509 mandates that a "record of the persons who are found not qualified or who are excused, and the reasons therefor, shall be maintained by the commissioner of jurors." At some point, those disqualified based on lack of English proficiency should be re-qualified as English proficiency increases over time.

"Lifetime felon exclusion is the majority rule in the United States. It affects an estimated thirteen million people and about thirty percent of black men." Brian C. Kalt, *The Exclusion of Felons from Jury Service*, 53 AM. U.L. REV. 65, 147 (October 2003).

Some states take a different approach than New York's permanent bar to jury service based on a previous felony conviction, enabling the restoration of rights based on the type of felony and the passing of a specified time period. Rhode Island law, for example, provides that "[n]o person convicted of a felony shall be allowed to serve as a juror, until completion of such felon's sentence, served or suspended, and of parole or probation regardless of a nolo contendere plea." R.I. Gen. Laws § 9-9-1.1. This statute more readily enables a felon's rights to be restored and thus added as a qualified juror.

Postponements and Excusals

Prospective jurors who are otherwise qualified might not ultimately serve because they request and are granted postponements or excusals. A postponement is readily granted if an individual has not previously requested one, the application is timely and the person agrees to serve on a date no more than six months beyond postponement. Judiciary Law § 517; 73A NY Jur Jury § 74. On the other hand, an excusal is granted only if an individual is incapable of jury service because of a mental or physical condition or demonstrates that service would cause an undue hardship or extreme inconvenience to the prospective juror because of a person under his or her care or to the public. Judiciary Law § 517; 73A NY Jur Jury § 75. Further, the individual must show that a postponement does not suffice. *Id.* OCA updates its records accordingly. *Jury Reform-Interim Report supra* at 25.

It may be difficult to further increase jury representativeness in New York State through the modification of requirements in regard to postponements and excusals, although this area should be studied further. New York has already implemented measures to reduce postponements, including one day or one trial commitments, and automated, easy steps to postpone and reschedule jury service. *See Jury Project* 1994; *Jury Reform-Interim Report*, June 2004; *See generally* Mark A. Behrens, *Five Ways the Kentucky Legislature Can Improve Jury Service*, 42 BRANDEIS L.J. 1, 11 (Fall 2003).

A greater number of excusals may be another reason for underrepresentation of people of color and Hispanics in jury pools. "Among groups with high numbers of one-parent households, excusals for family hardship are high...". Kurt M. Saunders, *Balancing the Jury Pool*, 69 PA Bar Assn. Quarterly 133, 135-136 (July 1998). Better compensation for jury service would offset hardships and enable prospective jurors to obtain temporary

elder or child care during jury service. Although further limiting the instances in which prospective jurors could obtain excusals might increase jury representativeness, it might impose hardships on many individuals.

III. Conclusion

The survey accompanying this report found overwhelming evidence of underrepresentation by people of color and Hispanics in jury pools in Manhattan. The obvious result of underrepresentation in jury pools is that parties and judges alike are impeded in their efforts to pick juries that represent a fair cross-section of Manhattan. Given the importance of representative juries to the maintenance of a fair justice system in New York State, a continuation of the disparities found in this survey is intolerable.

The recommendations in this report should therefore be carefully considered by policymakers on a local and state level. Administrative changes will be necessary to address the disparities we found, especially the broadening of juror source lists and appropriate changes to the use of those lists to reflect the actual racial and ethnic composition of Manhattan. Given that Article 16 gives local court administrators and the Chief Administrator considerable discretion in regard to the process of summoning jurors and selecting those to be summoned for jury duty, court administrators should not wait for the Legislature to act to address this urgent problem.

Appendix A

Sample State Statutes

What is Included in Source Lists

California

Cal Code Civ Proc § 197

§ 197. Random selection of jurors; Appropriate source lists

(a) All persons selected for jury service shall be selected at random, from a source or sources inclusive of a representative cross section of the population of the area served by the court. Sources may include, in addition to other lists, customer mailing lists, telephone directories, or utility company lists.

(b) The list of registered voters and the Department of Motor Vehicles' list of licensed drivers and identification cardholders resident within the area served by the court, are appropriate source lists for selection of jurors. These two source lists, when substantially purged of duplicate names, shall be considered inclusive of a representative cross section of the population, within the meaning of subdivision (a).

(c) The Department of Motor Vehicles shall furnish the jury commissioner of each county with the current list of the names, addresses, and other identifying information of persons residing in the county who are age 18 years or older and who are holders of a current driver's license or identification card issued pursuant to Article 3 (commencing with Section 12800) of, or Article 5 (commencing with Section 13000) of, Chapter 1 of Division 6 of the Vehicle Code. The conditions under which these lists shall be compiled semiannually shall be determined by the director, consistent with any rules which may be adopted by the Judicial Council. This service shall be provided by the Department of Motor Vehicles pursuant to Section 1812 of the Vehicle Code. The jury commissioner shall not disclose the information furnished by the Department of Motor Vehicles pursuant to this section to any person, organization, or agency.

Florida

Fla. Stat. § 40.011

§ 40.011. Jury lists

(1) The Department of Highway Safety and Motor Vehicles shall deliver quarterly to the clerk of the circuit court in each county a list of names of persons who reside in that county, who are citizens of the United States, who are legal residents of Florida, who are 18 years of age or older, and for whom the department has a driver's license or identification card record. The clerk of the circuit court shall add to the list the name of any person who is 18 years of age or older and who is a citizen of the United States and a legal resident of Florida and who indicates a desire to serve as a juror, but whose name does not appear on the department list, by requiring such person to execute an affidavit at the office of the clerk.

Illinois

705 ILCS 310/2a

Combination of Lists

Sec. 2a. The combination of the lists of registered voters, driver's license, Illinois Identification Card, and Illinois Disabled Person Identification Card holders and the preparation of jury lists under this Act shall, when requested by the Chief Judge or his designee, be accomplished through the services of the Administrative Office of the Illinois Courts.

Michigan

MCLS § 600.1304

§ 600.1304. Selection of jurors; list.

Sec. 1304. The jury board shall select from a list that combines the driver's license list and the personal identification cardholder list the names of persons as provided in this chapter to serve as jurors.

New Jersey

N.J. Stat. § 2B:20-2

§ 2B:20-2. Preparation of juror source list

a. The names of persons eligible for jury service shall be selected from a single juror source list of county residents whose names and addresses shall be obtained from a merger of the following lists: registered voters, licensed drivers, filers of state gross income tax returns and filers of homestead rebate application forms. The county election board, the Division of Motor Vehicles and the State Division of Taxation shall provide these lists annually to the Assignment Judge of the county. The Assignment Judge may provide for the merger of additional lists of persons eligible for jury service that may contribute to the breadth of the juror source list. Merger of the lists of eligible jurors into a single juror source list shall include a reasonable attempt to eliminate duplication of names.

b. The juror source list shall be compiled once a year or more often as directed by the Assignment Judge.

c. The juror source list may be expanded by the Supreme Court as it deems appropriate.

Pennsylvania

42 Pa.C.S. § 4521

§ 4521. Selection of prospective jurors

(a) PREPARATION OF MASTER LIST OF PROSPECTIVE JURORS. --At least annually the jury selection commission shall prepare a master list of prospective jurors. The list shall contain all voter registration lists for the county, which lists may be incorporated by reference, or names from such other lists which in the opinion of the commission will provide a number of names of prospective jurors which is equal to or greater than the number of names contained in the voter registration list. The commission may, but will not be required to, supplement the master list of prospective jurors to include, without being limited to, persons in any of the following categories:

- (1) Persons listed in telephone, city, municipal directories and similar directories.

(2) Persons who pay taxes or are assessed for taxes imposed by any political subdivisions.

(3) Persons in the county participating in any State, county or local program authorized by law and, to the extent such names are available, persons participating in any Federal program authorized by law.

(4) Persons who are on school census lists.

(5) Any other person whose name does not appear in the master list of prospective jurors and who meets the qualifications for jurors set forth in this chapter and who makes application to the commission to be listed on the master list of prospective jurors.

Virginia

Va. Code Ann. § 8.01-345

§ 8.01-345. Lists of qualified persons to be prepared by jury commissioners; random selection process [in part]

The jury commissioners shall utilize random selection techniques, either manual, mechanical or electronic, using a current voter registration list and, where feasible, a list of persons issued a driver's license as defined in § 46.2-100 from the Department of Motor Vehicles, city or county directories, telephone books, personal property tax rolls, and other such lists as may be designated and approved by the chief judge of the circuit, to select the jurors representative of the broad community interests, to be placed on the master jury list. The commissioners shall make reasonable effort to exclude the names of deceased persons and unqualified persons from the master jury list. After such random selection, the commissioners shall apply such statutory exceptions and exemptions as may be applicable to the names so selected. The chief judge shall promulgate such procedural rules as are necessary to ensure the integrity of the random selection process and to ensure compliance with other provisions of law with respect to jury selection and service.

Updating Source Lists

New Mexico

N.M. Stat. Ann. § 38-5-3

§ 38-5-3. Source for juror selection

A. Each county clerk shall make available to the secretary of state a database of registered voters of the clerk's county. The secretary of state shall preserve and make available to the information systems division of the general services department, by electronic media, a database of New Mexico registered voters, by county, which shall be updated monthly. The director of the motor vehicle division of the taxation and revenue department shall make available by electronic media to the information systems division of the general services department a database of driver's license holders in each county, which shall be updated monthly. The secretary of taxation and revenue shall make available to the information systems division of the general services department, by electronic media, a

database of New Mexico personal income tax filers by county, which shall be updated quarterly.

Compliance and Enforcement

Washington

Rev. Code Wash. (ARCW) § 2.36.170

§ 2.36.170. Failure of juror to appear -- Penalty

A person summoned for jury service who intentionally fails to appear as directed shall be guilty of a misdemeanor.

Nevada

Nev. Rev. Stat. Ann. § 6.040

6.040. Penalty for failing to attend and serve as a juror.

Any person summoned as provided in this chapter to serve as a juror, who fails to attend and serve as a juror, shall, unless excused by the court, be ordered by the court to appear and show cause for his failure to attend and serve as a juror. If he fails to show cause, he is in contempt and shall be fined not more than \$500.

Qualifications

Delaware

10 Del. C. § 4509

§ 4509. Disqualification from jury service

(a) The Court shall determine on the basis of information provided on the juror qualification form or interview with the prospective juror or other competent evidence whether the prospective juror is disqualified for jury service.

(b) All persons are qualified for jury service except those who are:

- (1) Not citizens of the United States;
- (2) Less than 18 years of age;
- (3) Not residents of the county of prospective jury service;
- (4) Unable to read, speak and understand the English language;
- (5) Incapable, by reason of physical or mental disability, of rendering satisfactory jury service; or
- (6) Convicted felons who have not had their civil rights restored.

(c) A prospective juror may be required to submit proof as to possible disqualification, including a physician's or Christian Science Practitioner's certificate, and the physician or practitioner is subject to inquiry by the Court at its discretion.

Rhode Island

R.I. Gen. Laws § 9-9-1.1

§ 9-9-1.1. Qualifications of jurors

- (a) A person is qualified to serve as a juror if the person is:
- (1) A citizen of the United States; and
 - (2) A resident of Rhode Island who either:
 - (i) Resides in the county where the person is registered to vote; or
 - (ii) Is licensed to operate a motor vehicle within this state; or
 - (iii) Possesses a Rhode Island identification card issued pursuant to the provisions of §§ 3-8-6 and 3-8-6.1; or
 - (iv) Is an individual filing a state income tax return; or
 - (v) Is an individual recipient of unemployment compensation.
 - (3) At least 18 years of age;
 - (4) Able to understand and participate in the court proceedings; and
 - (5) Physically and mentally capable of performing in a reasonable manner the duties of a juror.
- (b) No person shall be allowed to serve as a juror if he or she has been lawfully adjudicated to be non compos mentis.
- (c) No person convicted of a felony shall be allowed to serve as a juror, until completion of such felon's sentence, served or suspended, and of parole or probation regardless of a nolo contendere plea.
- (d) Notwithstanding subdivisions (a)(4) and (5), a person with a disability shall not be ineligible to serve as a juror solely on the basis of his or her disability, and if that person meets the above requirements, with reasonable accommodations if necessary, he or she shall be deemed a qualified juror.
- (e) Nothing in this section shall prevent the court from disqualifying a prospective juror because he or she lacks a faculty or has a disability which will prevent the potential juror from being a competent juror in a particular case.
- (f) Nothing in this section shall be construed to limit a party's right to peremptorily challenge jurors.

Wisconsin

Wis. Stat. § 756.02

756.02. Juror qualifications.

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. Judicial Council Note, 1996: This section, based on prior s. 756.01 (1), implements ABA Standard 4. [Re SCO No. 96-08 eff. 7-1-97]

Louisiana

La. R.S. 13:3042

§ 13:3042. Exemptions from civil jury service; twenty-four-month waiver of petit jury service

A. The exemptions from jury service in civil cases are as provided in Article 403 of the Louisiana Code of Criminal Procedure.

B. A prospective juror may apply for a twenty-four-month waiver of petit jury service when either:

(1) The prospective juror has a mental or physical condition that causes him or her to be incapable of performing jury service. The juror, or the juror's personal representative, shall provide the court with documentation from a physician licensed to practice medicine verifying that a mental or physical condition renders the person unfit for jury service for a period of up to twenty-four months.

(2) Jury service would cause undue or extreme physical or financial hardship to the prospective juror or a person under his or her care or supervision. A judge of the court for which the individual was called to jury service shall make undue or extreme physical or financial hardship determinations. The authority to make these determinations is delegable only to court officials or personnel who are authorized by the laws of this state to function as members of the judiciary.

C. A person asking for a waiver based on a finding of undue or extreme physical or financial hardship shall take all actions necessary to have obtained a ruling on that request by no later than the date on which the individual is scheduled to appear for jury duty.

D. For purposes of this Chapter, "undue or extreme physical or financial hardship" is limited to circumstances in which an individual would:

(1) Be required to abandon a person under his or her personal care or supervision due to the impossibility of obtaining an appropriate substitute care giver during the period of participation in the jury pool or on the jury; or

(2) Incur costs that would have a substantial adverse impact on the payment of the individual's necessary daily living expenses or on those for whom he or she provides the principal means of support; or

(3) Suffer physical hardship due to an existing illness or disease.

E. "Undue or extreme physical or financial hardship" does not exist solely based on the fact that a prospective juror will be required to be absent from his or her place of employment.

F. A person asking a judge to grant a waiver based on "undue or extreme physical or financial hardship" shall be required to provide the judge with documentation, such as, but not limited to federal and state income tax returns, medical statements from licensed physicians, proof of dependency or guardianship, and similar documents, which the judge finds to clearly support the request to be excused. Failure to provide satisfactory documentation shall result in a denial of the request for a waiver.

G. After twenty-four months, a recipient of a petit jury service waiver under this Section shall become eligible once again for qualification as a juror.

Appendix B

| Location | Monday Even Weeks | Monday Odd Weeks | Tuesday Even Weeks | Tuesday Odd Weeks | Wednesday Even Weeks | Wednesday Odd Weeks | Thursday Even Weeks | Thursday Odd Weeks | Comments |
|--|-------------------------|------------------------|--------------------------|-------------------------|-------------------------|------------------------|---------------------------|--------------------------|----------------|
| 60 Centre Street, Room 452 (note: are 2 nearby rooms, both called 452); (646) 386-5961 | | | | | | | | | Civil court |
| 71 Thomas St, Room 100; (646) 386-5965 | | | | | | | | | Civil court |
| 100 Centre Street, Room 1517; (646) 386-5962 | | | | | | | | | Criminal court |
| 111 Centre Street Room 1121; (646) 386-5964 | | | | | | | | | Criminal court |

Highlighted means court doing jury selection that day.

Schedule: Observation will occur for 12 weeks, although there's a two-week break in December (the weeks of December 18th and December 25th) . Observation is Monday to Thursday, unless there's a holiday (see below); there's no jury selection on Fridays. Here's when we're going to do observation:

1. November 6-9; no work November 7th (Election Day)
2. November 13-16*
3. November 20-23; no work November 23rd (Thanksgiving)
4. November 27 to December 1
5. December 4 to December 7
6. December 11 to December 14
7. January 1 to 4; no work January 1 (New Year's)
8. January 8 to 11
9. January 15 to 18; no work January 15 (Martin Luther King Jr. Day)
10. January 22 to January 25
11. January 29 to February 1
12. February 5 to February 8