

Report on the Jury System

United States District Court for the Southern District of New York

Since 2023, the Clerk’s Office of the Southern District of New York (“Office”), in collaboration with the Clerk’s Office Committee of the Board of Judges (“Committee”) and with the approval of the Board of Judges (“BOJ”), has been working to ensure that each of our jury pools represents a fair cross section of the communities served by the court. This report summarizes steps already taken and plans for the immediate future.

Background

The Jury Selection and Service Act of 1968, 28 U.S.C. § 1861 et seq. (“Jury Act”), provides in part:

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.

The Jury Act requires district courts to devise a plan for the random selection of grand and petit jurors designed to achieve the objectives of the Jury Act. Id. § 1863(a). It directs each district court to compile a list of names of prospective jurors (“Master Wheel”) selected from voter registration lists or lists of actual voters and supplemented with other sources of names where necessary to achieve a fair cross section of the community and prevent discrimination. Id. § 1863(b)(2).

Our plan, most recently revised on October 5, 2023, is entitled [The Amended Plan for the Random Selection of Grand and Petit Jurors in the United States District Court for the Southern District of New York](#). It

addresses such matters as the source of names for the Master Wheels, and the division of jurors between the court's Foley Square courthouses and the White Plains courthouse.

Master Wheels

Since the advent of the Jury Act, our court has used lists of registered voters as the sole source of names when filling the Master Wheels. Since the creation of the White Plains division in 1983, our district has had two Master Wheels. The names of prospective jurors for Foley Square juries are drawn from the lists of registered voters in the counties of New York, Bronx, Westchester, Rockland, and Putnam. The names of prospective jurors for White Plains juries are drawn from the lists of registered voters in the counties of Westchester, Rockland, Putnam, Orange, Dutchess, and Sullivan.

Qualified Wheels

Our court follows a two-step process for identifying eligible jurors from those names that appear in the Master Wheels and summoning them to jury duty. In the first step, Juror Qualification Questionnaires ("JQQs") are sent to randomly selected names in the Master Wheels. Jurors are directed to complete the JQQ and may do so either on-line or by returning the JQQ by mail. After the Office reviews the JQQs, the names of those persons found eligible to serve are placed in the qualified jury wheels ("Qualified Wheels").

The JQQ asks prospective jurors a series of questions, including their age, citizenship, occupation, and if they have a reason that may excuse or disqualify them from serving. The JQQ also asks prospective jurors to identify their race, ethnicity, and gender. That demographic data

is reflected in Form AO-12, entitled Report on the Operation of the Jury Selection Plan.¹

In the second step, the Jury Administrator randomly selects names from the Qualified Wheels to fill venires. At any one time, our Qualified Wheels contain between 3,000 to 12,000 names.

2023 Changes

As a result of our recent study of our jury selection process, which began in earnest in early 2023, our court decided to make two changes. One affects the Master Wheels. A second affects the Qualified Wheels.

In October of 2023, the Jury Plan was amended to reduce the time to reconstitute the Master Wheels from four years to two years. This change is expected to improve the extent to which our Master Wheels represent those eligible to serve as jurors, that is, its representativeness. Rebuilding the Master Wheels more frequently helps to improve accuracy by eliminating the names of those who have died or left the district, by updating the addresses of those who have moved within the district, and by adding the names of people who have recently moved into the district or reached voting age. This change should also reduce the number of undeliverable JQQs.

As a second change, beginning in early 2024, our court has mailed a second JQQ to those persons who fail to respond to an initial JQQ (“non-respondents”). Higher response rates have been shown to increase

¹ The AO-12 does not assist our court in understanding the racial composition of our Qualified Wheels. The AO-12 report does not capture racial categories in the manner used by modern demographers. For instance, respondents are asked to classify themselves as White or Black, and separately to indicate whether they are Hispanic. By contrast, modern demographers include Hispanic as a racial category, alongside White and Black.

representativeness.

2024-2025 Study

In 2024, following the decision of the Court of Appeals in United States v. Slaughter, 110 F.4th 569 (2d Cir. 2024),² the Committee reconvened to consider further steps to improve the representativeness of the jury system. At issue in Slaughter was the disparity in representation of Black and Hispanic persons in the Qualified Wheels when compared to the citizen voting age population (“CVAP”).

To better understand these issues, the Office and Committee reviewed published materials, consulted with several other courts and organizations, including the New York State Office of Court Administration and the National Center for State Courts (“NCSC”), and retained two experts. The Committee undertook to learn whether the source of any disparity in the representativeness of our jury wheels arose in the Master or Qualified Wheels. For example, if a Master Wheel were not representative, it would never be possible to assemble a representative Qualified Wheel. If the Master Wheel were representative, it would be fair to infer that any lack of representativeness in the Qualified Wheel would have been a product of the process of generating the Qualified Wheel.

² Defendant Slaughter challenged the District Court’s denial of his motion to dismiss the indictment on the ground that the SDNY’s jury selection plan systematically underrepresents Black and Hispanic or Latino people in violation of the right to a grand jury drawn from a fair cross-section of the community under the Sixth Amendment and the Jury Act. The Circuit Court, while finding the underrepresentation to be “troubling”, nevertheless affirmed the District Court, concluding that Slaughter failed to meet his burden of proving systemic exclusion in the District’s jury selection process.

1. Experts

Maxwell Palmer, Ph.D., Professor of Political Science at Boston University, was retained to produce two demographic studies, one of our Master Wheels, dated January 13, 2025, the second of our Qualified Wheels, dated February 28, 2025.

Professor Palmer's analysis of the Master Wheels estimated the racial demographics³ of the Master Wheels to be "very close" to the CVAP of the communities served by the court. Professor Palmer utilized Bayesian Improved Surname Geocoding (BISG), a statistical method that estimates a person's race or ethnicity based on their surname and address. This is a scientifically accepted method for estimating racial composition of a community. This analysis was essential since the lists of registered voters which are used to populate our Master Wheels do not include race or ethnicity data.

In Professor Palmer's analysis of the Qualified Wheels, he estimated the racial demographics of potential jurors as they progressed through the juror qualification process. He concluded that the delivery of JQQs did not lead to disparities in the Qualified Wheels. There was, however, a "substantial" variation by race among the groups that returned the JQQ. Potential jurors who were Black and Hispanic returned JQQs at a lower rate than White persons. He found no meaningful difference across groups when measuring the percentage of a group summoned for jury service after those who returned JQQs had been qualified. Professor Palmer's report also identified potential explanations for the disparities in response rates.

We have learned that this finding of a variation in response rates among racial groups is consistent with the experience of other courts.

³ In estimating race, Professor Palmer used the categories of White, Black, Hispanic, Asian, and "other".

Because Professor Palmer's analysis measured return rates for the period from early 2021 through mid-2024, it did not study whether our practice of mailing a second JQQ, which we began in early 2024, has improved the response rate.

The second expert retained by the court is Nina Chernoff, Esq., Law Professor at the City University of New York School of Law. She authored a report, dated January 10, 2025, advising on steps a court may take to improve the representativeness of its jury pools, including adding source lists to a Master Wheel. During her meeting with the Committee, Professor Chernoff explained that caution should be used in deciding which additional sources should be used to supplement a Master Wheel since a source may detract from rather than improve representativeness. For example, she guessed that, in this District, the addition of Motor Vehicle records to the Master Wheels might decrease representativeness.⁴

As we assessed the wisdom of supplementing the Master Wheels with additional source lists, we considered that every other district within our Circuit supplements their Master Wheels with at least names from the Department of Motor Vehicles.⁵ To our knowledge, however, none of the districts has studied the impact on representativeness of supplementing their Master Wheels with additional source lists.

⁴ The addition of motor vehicle records decreased the representativeness of the Master Wheel in the Eastern District of Pennsylvania. Thomas J. Clewley, Management of the Master Jury Wheel and the Jury System in the Eastern District of Pennsylvania, NCSC, at 28-40 (April 8, 1998).

⁵ While the Eastern District of New York's Jury Plan allows it to add up to five supplemental source lists for its Master Wheel, it has only supplemented its Master Wheel with the Department of Motor Vehicles list.

2. Next Steps

As is our practice following the date of each Congressional or Presidential Election, we are in the process of building new Master Wheels. This will enable us to build new Qualified Wheels over the spring and summer of 2025. In the meantime, our Office and Committee will continue to study what improvements should be made to our jury selection process. Since we have learned that our Master Wheels are representative of the communities served by the court, we do not want to take steps that would be likely to decrease their representativeness. Accordingly, the Committee made several recommendations to the BOJ at its January 2025 meeting, each of which the BOJ accepted.

The BOJ accepted the recommendation of the Committee not to add additional sources of names to our Master Wheels without further study. It also approved the retention of an expert to analyze the demographics of two potential source lists for the counties in our district: the New York State Department of Motor Vehicles database and the New York State Department of Taxation and Finance database. This analysis will help us to decide whether adding names from either or both sources will be likely to improve or to detract from representativeness.

In addition, the BOJ approved the Committee's proposal to analyze the demographics of our Qualified Wheels for a second time in the fall of 2025. By that time, more than 40,000 JQQs will have been mailed to randomly selected names in our newly constituted Master Wheels. During this entire period, our practice of mailing a second JQQ to non-respondents will have been in effect. We have been told that we should have a statistically significant sample by the Fall. This second analysis will give our court a better baseline from which to measure the representativeness of the Qualified Wheels and assess the impact of any further changes we may decide to make to our jury selection process.

Finally, in late 2025, the Committee will reconvene to review this new information. The Office and Committee will consider whether additional changes to our jury selection process are warranted and whether further recommendations should be made to the BOJ.

Conclusion

Providing litigants with juries that represent a fair cross section of the communities served by the court is a critical exercise. It is not a straightforward exercise. No single change will easily move the court closer to that goal, as demonstrated by the findings outlined in this Report. Nevertheless, the Office will continue to assess our jury selection process and to gather information to help the court make informed decisions, to improve the representativeness of our Qualified Wheels, and to ensure that any changes we make move us closer to that objective and not further away.

March 2025