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JURY SYSTEM ASSESSMENT

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EXECUTIVE SUMMARY

In November 2005, the State Court Administrator's Office (SCAO) contracted with the National Center for State Courts (NCSC) to assess the qualification and summoning procedures used by the Third Circuit Court (Wayne County) to identify procedural and operational factors that might contribute to the disparity in minority populations in its jury pool and to make recommendations to improve the representation of those minorities.

To conduct this assessment, the NCSC collected data about every stage of the jury management process in 2004 and 2005 beginning with the source list (licensed drivers and state identification card holders) through the stage at which citizens report for jury service. After consolidating these data into four zip code categories based on the percentage of African-Americans in each zip code, the NCSC then compared this information to demographic information about Wayne Country derived from the 2000 Census. Based on juror surveys administered to citizens reporting for service, African-Americans averaged 25.7% of the jury pool in 2004-2005 (with significant month-to-month fluctuations) compared to 39.6% of the Wayne County adult population, an average disparity of 13.9%. It is important to recognize that this figure reflects the average over a two year period during which the Master Jury List was supplemented specifically to reduce this disparity. The disparity resulting from a purely random selection process was 20.7% – that is, the proportion of African-Americans in the Third Circuit jury pool was approximately half of what was expected given their representation in the community.

Using these zip code comparisons, the NCSC identified three points in the existing Third Circuit jury process that contribute to the level of disparity in the jury pool. The first point is the source list itself, which accounted for approximately 24% of the disparity. The second source of disparity resulted from the application of a suppression file in the jury automation system in which individuals who previously failed to respond to the qualification questionnaire were removed from consideration for jury service.* Because residents of predominantly African-American zip codes fail to respond at disproportionately high rates, this effect has compounded over the past four years contributing another 38% to the disparity. Finally, the NCSC found that residents in predominantly African-American zip codes also qualified at disproportionately low rates compared to other zip code categories, mainly due to non-response rates. This accounts for the final 38% of the total disparity.

In the second and third qualification draws in 2005, the Third Circuit supplemented the Master Jury List with 110,000 names randomly drawn from Detroit citizens to compensate for the low African-American representation in the jury pool. The NCSC found that supplementation increased the rate of African-American representation in the jury pool, but contributes to the number of non-respondents on the suppression file for future draws and increased the non-response rate overall. In the third qualification draw, the list of prospective jurors was submitted to a National Change of Address (NCOA) vendor to update the addresses. The NCSC found that this step did not appreciably improve the undeliverable rate, possibly because the suppression file was

* At the time that the suppression file criteria were established, the Third Circuit did follow-up on non-respondents; individuals to whom a second qualification was sent were not removed from the eligible jury list. That follow-up program was discontinued in 1997.

then reapplied to the updated list, which may have invalidated many of the updated addresses.

Hispanic representation in the jury pool appears to suffer from many of the same problems as African-American representation, especially the high non-response and undeliverable rates as seen in the three most heavily Hispanic zip codes. Arab-American representation could not be accurately assessed because the U.S. Census does not survey Arab-Americans as a separate ethnicity and the Third Circuit does not capture Arab-American as a separate category on its jury representation survey, making it impossible to assess this measure accurately.

The NCSC makes eight recommendations to the Third Circuit to address the procedural and operational areas most closely associated with under-representation of minorities in the jury pool. These recommendations are characterized as immediate/short-term, midterm, and long-term implementation goals.

Immediate / Short Term Implementation

Recommendation 1: Meet with the jury software vendor, Jury Systems Inc., to discuss assessment findings and recommendations and to seek their advice on implementation.

Recommendation 2: Continue to distribute and tabulate juror demographic surveys in the Assembly Rooms.

Recommendation 3: If the Third Circuit continues to supplement the Master Jury List, it should do so only in sufficient numbers to compensate for under-representation of minorities on the source list. The supplementation approach should be adjusted to reflect all predominantly and majority African-American zip codes, not just Detroit zip codes.

Recommendation 4: Discontinue the suppression file practice of removing names from the eligible jury list of individuals who fail to respond to the qualification questionnaire.

Midterm Recommendations

Recommendation 5: Re-implement a follow-up program and monitor results.

Recommendation 6: Improve juror utilization to reduce the burden of jury service on Wayne County citizens.

Long Term Recommendations

Recommendation 7: Evaluate the quality and availability of alternative source lists to supplement the list of licensed drivers and state identification card holders.

Recommendation 8: Convert to a one-step qualification and summoning process.

I. INTRODUCTION

In November 2005, the State Court Administrator's Office (SCAO) requested that the National Center for State Courts (NCSC) assess the jury system for the Third Circuit Court, located in Wayne County, Michigan. The impetus for the request came from growing concern by both the SCAO and the Third Circuit that the countywide jury pool did not adequately reflect the demographic characteristics of the adult population of Wayne County, particularly with respect to African-Americans, Hispanics, and Arab-Americans. The NCSC was contracted to examine the qualification and summoning processes to identify procedural or operational factors that contribute to the disparity in minority populations in the jury pool and to make recommendations to improve the representation of the jury pool.

During a site visit in December 2005, NCSC staff met with court officials and judges to learn their concerns about the jury system, observed the daily operations in the jury assembly rooms in the Coleman A. Young Municipal Center and the Frank Murphy Hall of Justice, documented the operational steps taken at each stage of the qualification and summoning process, and obtained data from the automated jury system. NCSC staff also obtained a detailed description from the Third Circuit's jury software vendor, Jury Systems Inc. (JSI), of the qualification process for three draws conducted in July and October 2004 and in March 2005.

II. DESCRIPTION OF EXISTING JURY SYSTEM OPERATIONS

The Third Circuit Court employs a two-step process to qualify and summons citizens for jury service. See Appendix B for a diagram of this process as it was performed in 2005. The first step identifies citizens who are statutorily qualified and able to serve as trial jurors (the Qualification Step). The process begins with the Court's receipt of the list of licensed drivers and state identification holders, which is the statutorily approved source list and is provided to the court by the Michigan Secretary of State. In 2005, the list included 1,384,616 names.[1] This list is forwarded to Jury Systems Inc. (JSI), the jury system vendor for the Third Judicial Circuit.

Under the direction of the Third Circuit, JSI first applies a "suppression file" to the dataset to remove the names of individuals that the Third Circuit has previously deemed ineligible or unavailable for jury service. These include citizens who have moved out of the county, citizens whose qualification questionnaires were returned by the U.S. Postal Service as undeliverable, citizens who have been temporarily or permanently excused due to age (over 70) or for medical reasons, citizens with previous felony convictions, citizens who have served as jurors within the past 12 months, citizens who have recently been summonsed for jury service, and citizens who have been sent a qualification questionnaire, but have not yet responded.[2] In 2005, the suppression file applied to the source list contained 1,106,118 records.[3] See Table 1. As a result of its

[1] The U.S. Census Bureau reports that the total adult population of Wayne County in 2000 was 1,483,482. Only the "jury eligible" population – that is, individuals who are statutorily qualified for jury service – is the appropriate baseline for purposes of evaluating the representativeness of the jury pool. For that reason, the total adult population (persons 18 years and older) was used in this analysis.

[2] As we discuss in greater detail in Section IV.B.2., the suppression of potential candidates for jury service contributes significantly to the disparity in minority representation in the Third Circuit jury pool.

[3] The suppression file is the cumulative collection of all records of potential jurors that have been deemed ineligible or unavailable for jury service since JSI began providing jury automation services in 2000. It

application, 505,635 records (37%) from the list of licensed drivers and Michigan identification card holders were removed from consideration for jury service for 2005. The resulting list is the master jury list for the year.

Table 1: 2005 Suppression File		
Total Names since 2001	1,106,118	100%
Served Recently (completed after May 1, 2004)	68,222	6%
Excused		
Temporarily (medical)	9,626	1%
Permanent (felon)	9,693	1%
Unqualified		
Temporarily (medical)	45,893	4%
Permanent (age)	323,099	29%
Summonsed	21,332	2%
Active (did not respond, no follow-up)	621,816	56%
Other	6,437	1%

JSI then assigns a district code to each record, which corresponds to specific district courts within Wayne County. The district code assigned to each name is based on the city and zip code of the street address. After the district codes are assigned, JSI randomly selects a sample of names[4] from the Master Jury List and assigns it a "District 99" code. District 99 is a countywide designation for the Third Circuit; individuals assigned to District 99 are summonsed either to the Frank Murphy Hall of Justice or to the Coleman A. Young Municipal Center. Unless otherwise indicated, all analyses described in this report refer to the countywide jury pool, rather than those of individual district courts within the Third Circuit.

At various times throughout the year – three times in 2005 – the Third Circuit directs JSI to randomly select a given number of names from the master jury list to

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therefore contains many records that no longer appear on the eligible juror list (e.g., names of individuals who have moved out of Wayne County since 2000, individuals who have died since 2000).

[4] The number of names selected is directed by the Third Circuit based on the anticipated need for jurors for the coming year. Jury Systems Inc., Source List Processing for the City of Detroit 2 (provided to the NCSC on August 17, 2005).

receive qualification questionnaires.[5] The selected names are forwarded to Miami Systems, a mailing house that prints and mails the qualification questionnaires. The questionnaire instructs the recipients to respond within 20 days of receipt. The selected names are also loaded onto the JSI system and given a status code "N" (for no response) until the prospective juror returns the questionnaire or it is returned as undeliverable by the U.S. Postal Service. After the questionnaire is returned to the Third Circuit, it is reviewed by the jury commissioners who make a determination about the person's eligibility for jury service. The person's status is then changed on the system to either a "Q" (qualified) or "U" (unqualified). If the person is deemed unqualified, the reason for this determination is also noted on the system. If no qualification questionnaire is returned, the status remains "N" (no response).

In 2004 through 2005, this process was conducted three times. In July 2004, the Third Circuit conducted the first draw (Load 251) by randomly selecting 49,181 names from the Master Jury List. In the second draw (Load 252), in response to concerns about the low proportion of African-Americans reporting for jury service, the Third Circuit instructed JSI to supplement the list with 110,000 names drawn from District 1, the City of Detroit, before randomly selecting 59,304 names. The supplementation with District 1 jurors continued in the third draw (Load 253) of 93,445 names. In addition, JSI sent the Load 253 list of names to a National Change of Address (NCOA)[6] vendor to verify and

[5] At the direction of the Third Circuit, JSI also selects names for each of the district courts based on their anticipated need for the year.

[6] NCOA is a service available from firms licensed through the U.S. Postal Service. These firms have access to the change of address data given to the Post Office by people when they move. Details on these services can be found on the USPS website at http://www.usps.com.

update the addresses.[7] The suppression file was also rerun on the third draw to prevent individuals who had served since the eligible juror list was compiled from being reselected for jury service.

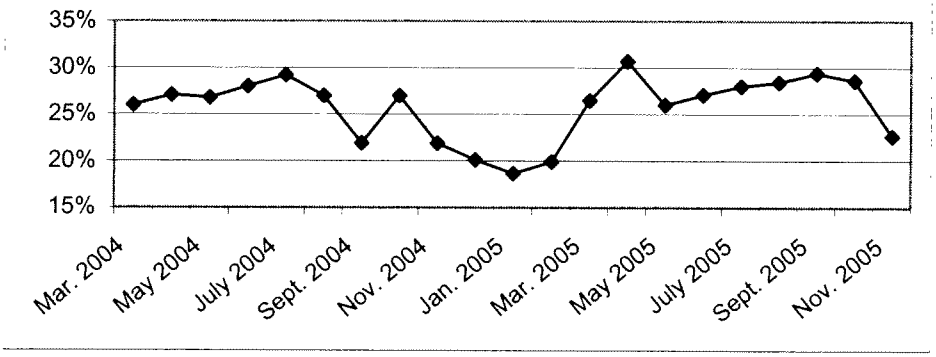
As needed, qualified jurors are sent a summons to appear for jury service in either the Coleman A. Young Municipal Center or the Frank Murphy Hall of Justice on a specific date, usually three to four weeks after receipt of the summons. Some jurors are instructed to call the court the evening before their reporting date to find out if they are needed that day. Jurors who are told not to report are rescheduled for a later date. Jurors who are told to report appear in court and, if selected as a trial juror, serve for the duration of that trial and are then released and exempt from jury service for a 12-month period. Jurors who are not selected as a trial juror are released that day and are exempt from jury service for a 12-month period.

[7] NCOA processing is an optional step that can be omitted if there is an urgent need to select additional names for jury service. Load 253 was the only draw during the August 2004 to September 2005 period in which NCOA processing was applied.

III. MINORITY REPRESENTATION IN THE THIRD CIRCUIT JURY POOL

In response to concerns about the low proportion of African-Americans reporting for jury service in the Third Circuit, the court in March 2004 began requesting that jurors reporting to the Frank Murphy and Coleman A. Young courthouses complete a survey upon reporting for jury service to indicate their date of service, zip code, gender, race, and ethnicity. The response to these surveys, which were conducted anonymously, was very high and the results accurately reflect the demographic characteristics of citizens reporting for jury service in those courthouses. Figure 1 illustrates the percent of African-Americans in the jury pool from March 2004 to December 2005. What is most surprising is the degree of month-to-month variation, which ranges from a high of 30.7% in April 2005 to a low of 18.7% in January 2005 and jumps as much as 6.6 percentage points in a single month (e.g., between February and March 2005).[8]

Figure 1: African-American Representation in Jury Pool



[8] This particular jump most likely occurred as jurors drawn from Load 252 began reporting for jury service. In Load 252, the Master Jury List was supplement with 110,000 additional names from the City of Detroit.

This variation is of concern for two reasons. Although we would expect some month-to-month variation, it should not ordinarily vary this much nor should it trend in any particular direction. Between July 2004 and February 2005, however, there is a noticeable and steady decline in the percentage of African-Americans in the jury pool. The second issue of concern is the amount of disparity between the proportion of African-Americans in the Wayne County adult population – 39.6% according to 2000 Census figures – and that of African-American reporting for jury service in the Third Circuit. Ideally there should be no difference in these figures, although as a practical matter most urban courts experience some disparity in minority representation, usually due to disproportionate rates of undeliverable qualification questionnaires and summonses, of non-response and failure-to-appear (FTA) rates, and of disqualification and excusal rates. In most instances, these disparity rates range from 2 to 4 percent – significantly lower than the average disparity rate of 13.7% that the Third Circuit has experienced over the past two years. Overall, the percentage of African-Americans reporting for jury service is more than one-third lower than expected based on Wayne County demographics.

In addition to African-American representation in the jury pool, the Third Circuit was also concerned with representation by the Hispanic and Arab communities. The U.S. Census reports that Hispanics make up 3.3% of the adult population of Wayne County, but the juror surveys indicate that only 2.0% of the jury pool is Hispanic. The absolute disparity, therefore, is 1.3% and the average month-to-month variation is less than .5% – in other words, consistent with comparable urban courts.

Measuring the Arab population is a more challenging task insofar that the 2000 U.S. Census did not measure Arab ethnicity in the total population. Instead, ancestry was a question included on the Census "long form" and distributed to a representative sample of households in 2000. Based on that information, the U.S. Census estimates that the Arab population[9] for Wayne County is 2.7% of the total population. The Third Circuit juror surveys did not specifically identify Arab-Americans as a separate race or ethnic category.[10] Without a firm baseline of Arab-American ethnicity from the U.S. Census Bureau and a reliable measure of this population in the jury pool, it was impossible for the NCSC to assess their representation in this study.

[9] U.S. Census includes persons tracing their ancestry to Egypt, Iraq, Jordan, Lebanon, Morocco, Palestine, Saudi Arabia, and Syria in the generic category of "Arab."

[10] Fewer than 200 individuals indicated their race/ethnicity as some variation of Arab-American in the open-ended section of the questionnaire (less than .6% of the juror surveys). It is quite possible that many persons of Arabic ancestry did not bother to complete that question, so the overall reliability of that statistic is highly suspect.

IV. ANALYSIS

A. Data and Methodology

To identify the source of low minority representation in the Third Circuit jury pool, the NCSC relied on data from a number of sources. The first of these data sources came from JSI, the jury system vendor, located in Encino, California. JSI provided detailed documentation about the qualification and summoning process employed in 2005 as well as the following datasets:

- the number of individuals on the source list provided by the Michigan Secretary of State by zip code;
- the number of names on the master jury list (after the suppression file had been applied) by zip code;
- the number of questionnaires mailed to jurors in each zip code for Loads 251, 252, and 253; and
- the results of the qualification process for all qualification questionnaires mailed in 2005.

From the Director of Jury Services' Office, the NCSC obtained datasets of the summonses that were mailed to qualified jurors with reporting dates between February 2004 and November 2005 and the records of jurors who completed service from March 2004 through November 2005. Also from the Director of Jury Services, the NCSC obtained the original surveys administered to jurors in the Frank Murphy and Coleman A. Young jury assembly rooms from March 2004 through October 2004 and April 2005 through September 2005. The surveys were forwarded to Business Keypunch, a firm in Richmond, Virginia, for data entry and the resulting dataset was provided to the NCSC.

Finally, the NCSC downloaded files from the U.S. Census Bureau containing demographic information – specifically race and ethnicity – about the adult (age 18 and over) population of Wayne County documented in the 2000 Census. See Table 2. In addition, the NCSC downloaded matching information about individual zip codes located completely or partially within Wayne County. See Appendix C for a complete list of zip codes and communities included in the NCSC analyses.

Table 2: Demographics of Wayne County, Michigan	
Total Adult Population	**1,483,482**
White	54.9%
Black / African-American	39.6%
American Indian	0.4%
Asian	1.7%
Native Hawaiian / Pacific Islander	0.0%
Other / Multiple Race	3.4%
Hispanic	3.3%

With respect to the zip code data, it should be noted that the Census Bureau does not employ actual zip code designations in its datasets. Rather, it uses its own Zip Code Tabulation Area (ZCTA) codes based on census block designations to approximate the geographic boundaries of the U.S. Postal Service zip codes. These two substantially overlap, but there are some important differences. For example, the U.S. Census Bureau does not have ZCTA codes corresponding to every zip code within Wayne County. Moreover, ZCTA codes can run across county boundaries. As a result, the total adult population of Wayne County (1,483,482) is slightly less than the sum of the populations for each ZCTA code used the NCSC analyses (1,518,336).

B. Sources of African-American Disparity in the Third Circuit Jury Pool

To conduct the assessment, the NCSC compared the proportion of individuals in each zip code that participated at each stage of the jury process to the corresponding proportion of individuals in the adult population in Wayne County. In this way, we are able to measure the increase or decrease in disparity in the African-American population at each stage of the jury process and thereby identify the likely sources of disparity. The specific stages examined were:

- the source (the list of licensed drivers and state identification card holders provided by the Michigan Secretary of State);
- the Master Jury List (post suppression file application);
- the list of individuals who were mailed qualification questionnaires (Loads 251, 252 and 253);
- the list of qualified jurors in Loads 251, 252 and 253, respectively,
- the list of individuals summonsed for jury service; and
- the list of individuals who completed jury service.

To verify the validity and reliability of this approach, we then compared the list of completed jurors to the juror race/ethnicity surveys administered in the jury assembly rooms in the Frank Murphy and Coleman A. Young courthouses.

For the sake of simplicity, we collapsed the zip codes into four categories (quartiles): those that are predominantly African-American (more than 75% of the population is African-American), majority African-American (50% to 75% of the population is African-American), majority White (25% to 50% of the population is African-American) and predominantly White (less than 25% of the population is African-

American) zip codes. See Table 3. We will continue to use these descriptions to refer to the four zip code quartiles in this report.

Table 3: Zip Code Quartiles	Adult Population	
Predominantly African-American	483,751	32.6%
Majority African-American	126,426	8.5%
Majority White	102,089	5.3%
Predominantly White	806,070	53.6%
	1,518,336	

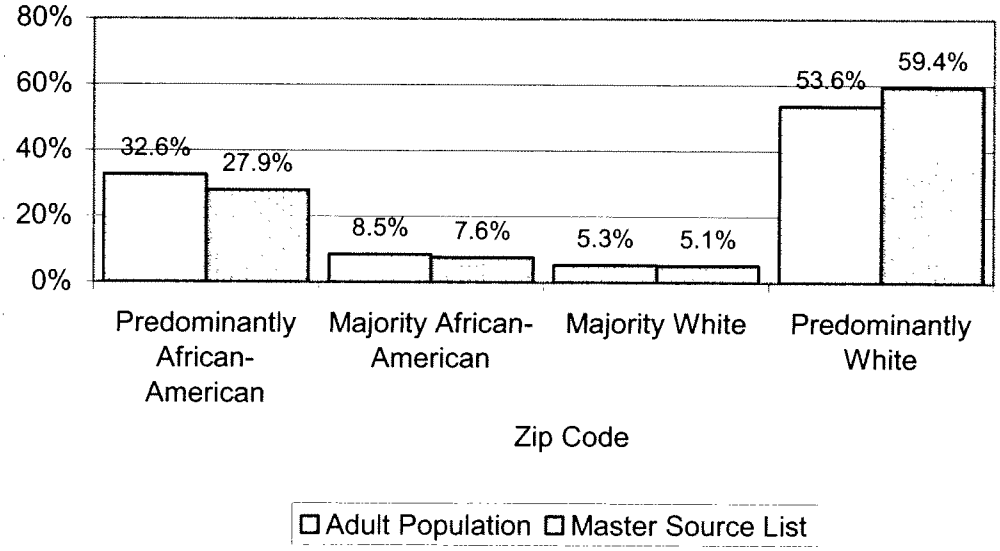
Wayne County is a particularly advantageous jurisdiction for using this technique because the community is so segregated. As Table 3 illustrates, more than 85% of the county population lives in a zip code with either a predominantly African-American or a predominantly White population while less than 15% of the population lives in more integrated neighborhoods. As a result, this technique can be used without encountering the major problems associated with making "ecological inferences" (e.g., falsely assuming that 50% of the people in the jury system datasets are African-American if they live in zip codes that are 50% African-American). It is this complication that explains why the proportion of citizens living in predominantly African-American zip codes is only 32.6% when the African-American population of Wayne County is 39.4%; the remaining 6.8% of African-Americans live in the other zip code categories. The problem of ecological inference still exists to some degree, but the probability that a person living in a predominantly African-American zip code is African-American is much higher in Wayne County than in jurisdictions that are more integrated.

1. Disparity in the Source List

The first comparison of the African-American population with the jury qualification and summoning process focuses on the list of licensed drivers and state identification card holders provided by the Secretary of State. See Figure 2. If the source

list was not a factor contributing to under-representation of African-Americans in the jury pool, we would expect to see similar or identical height for both columns in each quartile. What we do find, however, is that only 27.9% of the names on the source list live in predominantly African-American zip codes compared to 32.6% of the adult population. In contrast, predominantly White zip codes are over-represented on the source list. This differential representation on the source list accounts for 4.7 percentage points of the disparity found in predominantly African-American zip codes (24% of the total disparity). Because people living in predominantly African-American zip codes (the vast majority of whom are presumed to be African-American) are under-represented on the source list, they are correspondingly less likely to be included in subsequent stages of the jury qualification and summoning process.

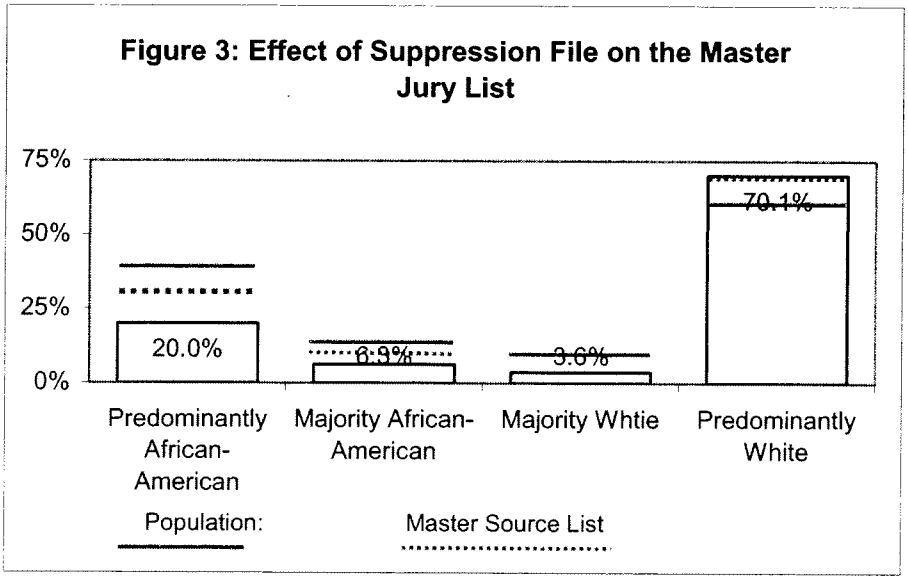
Figure 2: Comparison of Census to Source List



2. Suppression File Effect on Master Jury List

Recall that after the source list is delivered to JSI, a suppression file is applied to eliminate the names of individuals whom the Third Circuit has previously deemed ineligible or unavailable for jury service. Figure 3 illustrates the effect of the suppression file on the resulting Master Jury List, from which approximately 50,000 names were randomly selected to receive qualification questionnaires on July 29, 2004 (Load 251). The heavy solid lines reflect the proportion of the adult population and the heavy dotted lines reflect the proportion of names on the source list. The application of the suppression file further distorts the representation in predominantly African-American zip codes over and above that caused by the source list. Names from predominantly African-American zip codes comprise only 20% of the eligible jury list compared to 27.9% of the source list and 32.6% of the adult population. In effect, the suppression file accounts for another 7.9 percentage points (38%) of the minority disparity in the Third Circuit jury pool.

Figure 3: Effect of Suppression File on the Master Jury List



Looking back at Table 1 reveals the likely reason for this effect. More than half the names on the suppression file (56%) were classified as CAND (active candidates for jury service).[11] Those records are individuals who were mailed a qualification questionnaire, but had not responded by the time the suppression file was applied. The suppression criteria for CAND status applied to all active candidates for jury service since Qualification Questionnaire Load 22 (mailed in 2002). At one time, the Third Circuit sent second qualification questionnaires to individuals who failed to respond, which changed the status of that record in the system from CAND (active candidate) to RSND (resent questionnaire),[12] but the practice of following-up on non-responders was discontinued in 1997. As we discuss below, the non-response rate is disproportionately high in predominantly African-American zip codes compared to other zip code categories. This problem has been compounding over time as these non-responders are added to the suppression file and eliminated from receiving qualification questionnaires in the future.

3. Supplementation of Source List and NCOA Update

In response to concerns about the declining proportion of African-Americans reporting for jury service, the Third Circuit in October 2004 supplemented the Master Jury List with 110,000 names from the City of Detroit. On October 25, 2004 approximately 60,000 qualification questionnaires were sent to individuals randomly selected from this supplemented list (Load 252). A third draw (Load 253) of approximately 100,000 names was made from the supplemented list on March 30, 2005.

[11] At the time that the suppression file criteria were established, the Third Circuit did follow-up on non-respondents; individuals to whom a second qualification was sent were not removed from the eligible jury list.

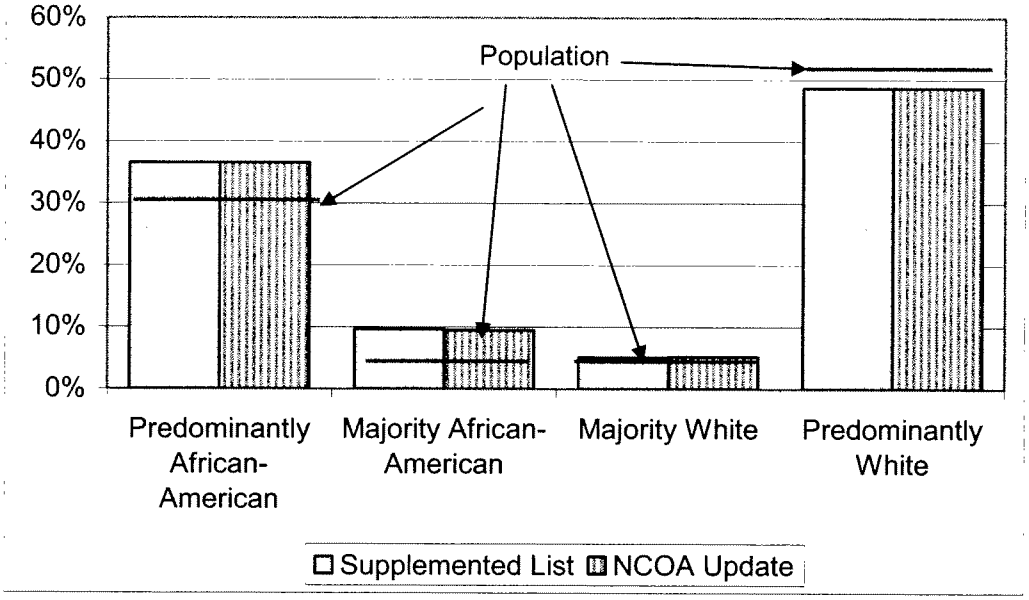
[12] Individuals who are sent a second qualification questionnaire are not added to the suppression file.

The list of names and addresses for this final draw were sent to NCOA to verify the addresses before they were mailed. The suppression file was also reapplied to the updated list. Figure 4 provides the results of the second and third draws (post supplementation and NCOA update).

The most significant finding is that supplementing the Master Jury List with additional names from Detroit actually overcompensates for both the disproportionately low representation on the source list and the effects of the suppression file on predominantly African-American zip codes. Approximately 37% of the questionnaires mailed as part of the second qualification round (Load 252) were sent to predominantly African-American zip codes even though only 32.6% of the Wayne County adult population lives in those areas. As a result, the predominantly White zip codes now receive a disproportionately low number of qualification questionnaires.[13]

[13] The majority African-American and majority White zip codes are now also over-represented in this stage of the qualification and summoning process, albeit only slightly.

Figure 4: Effect of Supplementation and NCOA Update



The NCOA update does not have an appreciable effect on the distribution of qualification questionnaires mailed to prospective jurors, which is expected at this stage of the process as NCOA merely updates the addresses for a randomly selected number of records from the augmented Master Jury List. The expected effect of the NCOA process should occur during the qualification process in the form of a reduced rate of undeliverable questionnaires.

4. Results of the Qualification Process

Prospective jurors are instructed to return the completed qualification questionnaires within 20 days of receipt. Once those questionnaires are returned to the court, the Wayne County jury commissioners review the forms and make determinations about prospective jurors' eligibility and availability based on the responses to the questionnaires. Among the criteria for being deemed "unqualified" are lack of citizenship; lack of residency in the county; felony conviction; inability to speak English;

medical hardship or permanent handicap; deceased; jury service within the past 12 months; or the qualification questionnaire returned as undeliverable at that address. Individuals who do not meet any of those criteria are deemed qualified and may be summonsed for jury service at a later date. Recall that questionnaires that are not returned to the court continue their status as "No Response" in the jury management system. Table 4 provides the breakdown for each of the three qualification draws conducted in 2005.

Table 4: Results of Qualification Draws

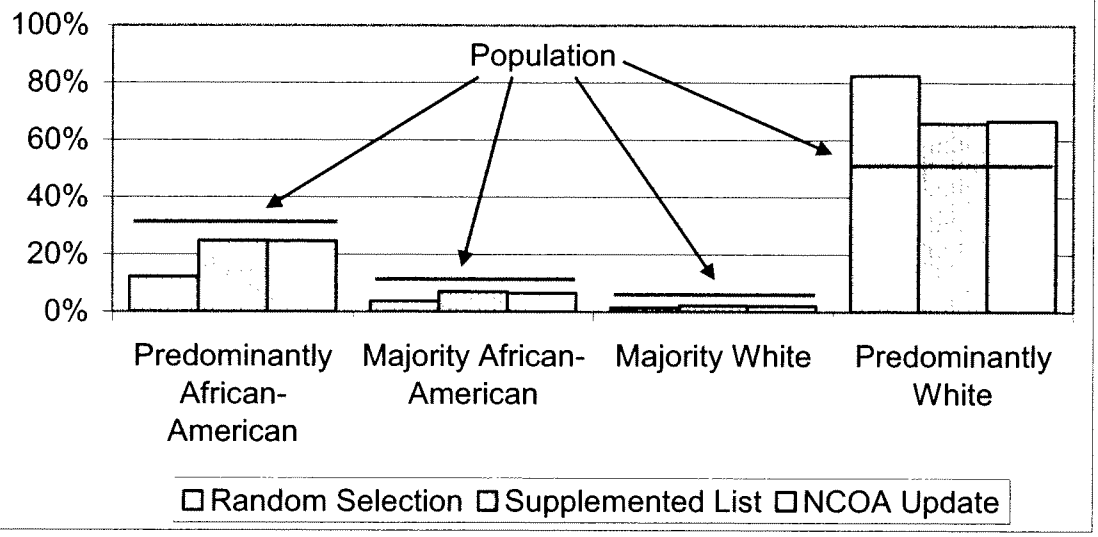
	Qualified	Unqualified	No Response
Random Selection	39.1%	23.2%	37.7%
Supplemented List	32.4%	22.0%	45.7%
NCOA Updated List	33.8%	21.5%	44.7%

Most apparent from this comparison is that the qualification rate decreases substantially in the second and third draws (6.7% for the supplemented list and 5.3% for the NCOA updated list) compared to the first draw (random selection). There is only a slight decrease – less than 2% – in the unqualified rate. Most of the effect is seen in a substantially increased non-response rate (8.0% and 7.0%, respectively).

When we examine this effect in the context of the zip code quartile breakdown, we see the familiar pattern of disproportionately low qualification rates in predominantly African-American zip codes and disproportionately high qualification rates in predominantly White zip codes. Looking just at Figure 5, it appears that supplementing the eligible juror list with additional names from Detroit compensates not only for the earlier source list and suppression file effects, but also for the qualification effects in predominantly African-American zip codes. In the first qualification draw (Load 251), the qualification rate in predominantly African-American zip codes was 12.3% compared

to a population rate of 32.6%. This reflects an additional 7.9 percentage point decrease from the proportion of qualification questionnaires mailed to these zip codes (38% of the total disparity).

Figure 5: Qualification Rates



In the second and third qualification draws, the qualification rates are 24.8% and 24.7%, respectively, which are still substantially lower than the population rate of 32.6%, but a vast improvement over the 12.3% rate in the first draw. However, the supplementation also appears to increase the contribution of this stage to overall disparity in the jury pool. In the first draw, the absolute disparity in African-American representation decreased 7.9 percentage points compared to a decrease of 12.1 and 12.7 percentage points, respectively, in the qualification draws based on the supplemented list. Although supplementation can be an effective remedy for the disparity in minority representation, in actual operation, it is not a very efficient one for the Third Circuit. In

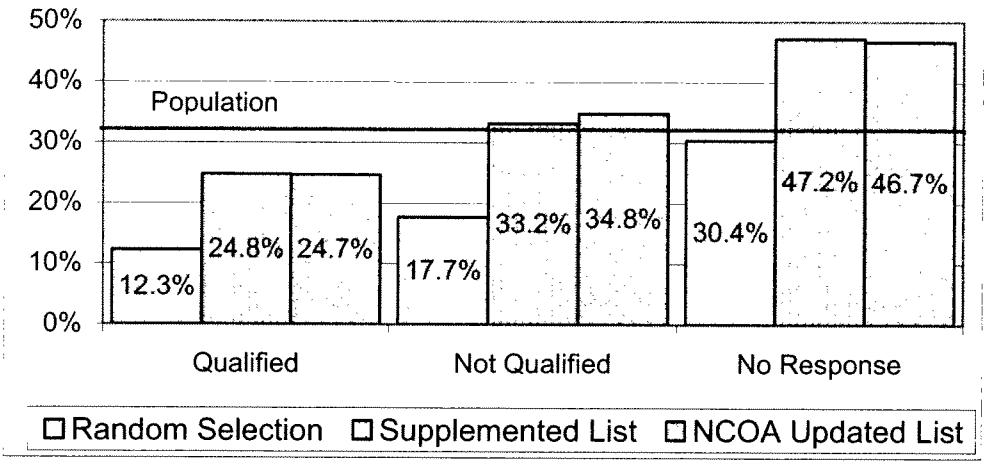
essence, supplementation attempts to compensate for the disparity rather than addressing the causes of disparity directly.

Examining the unqualified and non-response rates helps explain the reasons for the differential qualification rates. Figure 6 shows the qualified, not qualified, and non-response rates in the predominantly African-American zip codes. We previously documented that the source list and the suppression file contributed a total of 12.6 percentage points to the disparity in representation by people living in predominantly African-American zip codes. After accounting for these two steps in the jury process, we find that the unqualified rate for individuals living in these zip codes is, in fact, roughly proportional to their population rate within Wayne County.[14]

One thing that is surprising is that the undeliverable rate, which contributes to the unqualified rate, does not decline for the third qualification draw even though the addresses were updated by the NCOA vendor. It is not precisely clear why this would be the case, although one possibility is the reapplication of the suppression file to the updated list, which may actually invalidate any updated addresses provided by NCOA. To investigate this effect, it would be necessary to document the number of records from the eligible jury list that were updated during the NCOA process and the number of those records that were subsequently suppressed.

[14] For example, the unqualified rate (17.7%) plus the previous disparity rates (12.6%) equals 30.3%, only slightly less than the population rate of 32.6%.

Figure 6: Result of Qualification Process in Predominantly African-American Zip Codes



When we examine these findings in the context of the zip code quartiles, we find that the non-response rate is the most significant contributor to the differential qualification rates across the zip code quartiles. As we saw in Table 4, the non-response rate for the first qualification draw was 37.7% overall. In the predominantly African-American zip codes, this rate was 54% compared to 29% in the predominantly White zip codes.[15] Moreover, as we see in Table 5, the non-response rates for each quartile do not change dramatically in subsequent draws.

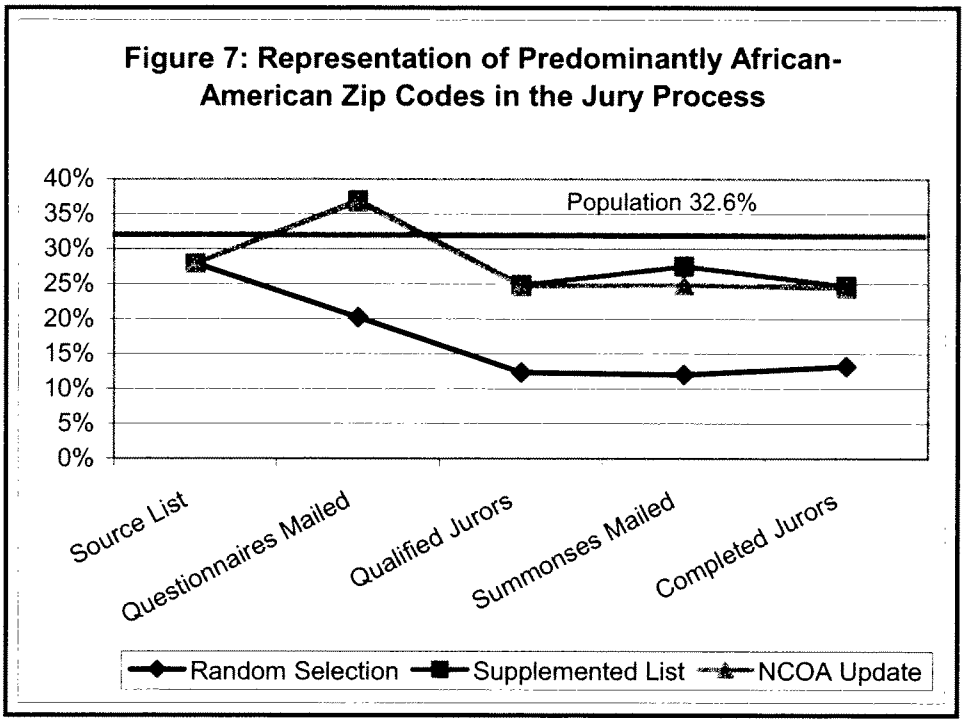
[15] The majority African-American and majority White zip codes also had proportionately high non-response rates – 55.0% and 62.9%, respectively – although because of the small proportion of the population that lives in those zip codes, these rates do not contribute substantially to the overall rate.

Table 5: Non-Response Rate (%)

	ZIP CODE			
	Predominantly African-American	Majority African-American	Majority White	Predominantly White
Random Selection	54.0	55.0	62.9	29.2
Supplemented List	57.3	55.8	66.5	24.6
NCOA Update	55.6	56.5	65.2	30.5

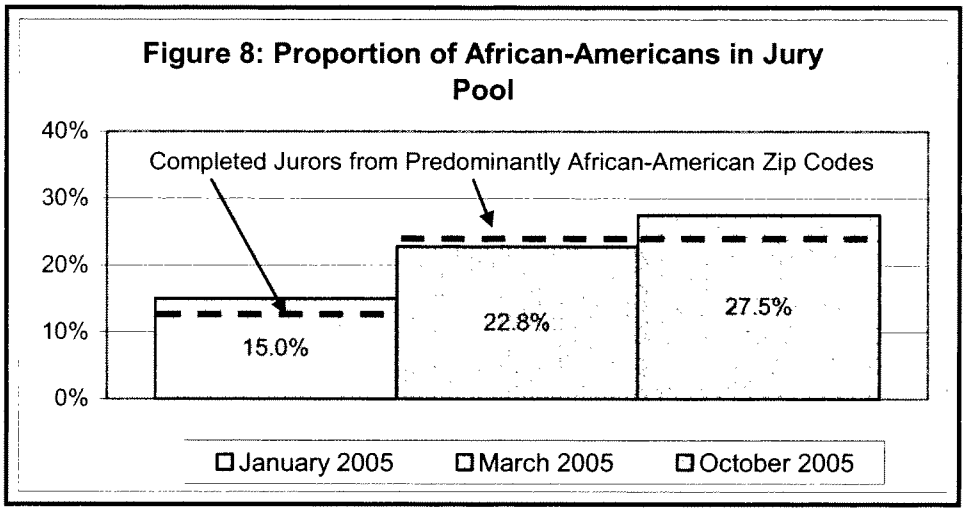
5. Summoning and Reporting Rates

The last two stages of the jury selection process that we examined were the rates at which qualified jurors were summonsed to report for jury service and the rates at which they actually completed jury service. From these analyses, we can determine whether random selection procedures for selecting names to receive a jury summons or failure-to-appear (FTA) rates contribute to disparity in the African-American representation in the jury pool. As we see in Figure 7, the summoning and reporting steps do not appear to affect representation in an appreciable way. The proportion of predominantly African-American zip codes falls steadily in the randomly selected draw (Load 251) from source list to qualified juror, but then remains fairly flat through the rest of the process. Similarly, representation by these zip codes for the second and third draws levels off at the same stage, albeit at a much higher rate due to the overcompensation effect of the supplementation.



6. Testing the Zip Code Quartile Methodology

As we discussed above, using zip code quartiles to assess racial representation in the jury pool involves the possibility of ecological inference errors. To verify these findings, we used the juror surveys to compare the actual proportion of African-Americans reporting for jury service to the proportion of predominantly African-American zip codes completing jury service. Figure 8 provides this information for the three months in which the respective qualification draws (Loads 251, 252, and 253) constituted the greatest proportion of completed jurors. The heavy dotted lines show the proportion of individuals completing jury service from predominantly African-American zip codes. As we see, the difference in these figures is 3.1 percentage points or less for all three draws, which tends to confirm the validity of this methodological approach under the current demographic circumstances of Wayne County.



C. Hispanic and Arab-American Representation

The Third Circuit Court is also concerned about the participation rates of other racial and ethnic minorities in the jury pool – in particular, for Hispanics and Arab-Americans. The NCSC attempted to use this technique to assess Hispanic representation in the three zip codes (48209, 48210, and 48216) with the highest percentage of Hispanic population. The pattern of representation in those zip codes was similar to that observed in predominantly African-American zip codes – e.g., a decrease in the qualification questionnaires following application of the suppression file and increased non-response rates. But due to the likelihood of ecological inference errors, it cannot be reliably inferred that it is Hispanics who are being suppressed or not responding to the qualification questionnaires in disproportionate numbers from those zip codes. There is no reliable baseline measure of Arab-American representation in Wayne County because the U.S. Census does not survey Arab-Americans as a separate ethnicity and the Third Circuit does not capture Arab-American as a separate category on its jury representation survey. Therefore it was not possible to assess the representation of this population.

V. RECOMMENDATIONS

The findings from this assessment suggest several stages of the jury qualification and summoning process that can be modified to improve the representation rates of African-American, and possibly other minority populations, in the Third Circuit jury pool. Implementation of some of these recommendations will require substantial consultation with Jury Systems Inc. Moreover, implementation of some recommendations may affect the jury yield and other aspects of the Third Circuit jury operations. Consequently, these recommendations are characterized as "immediate/short term implementation," "midterm implementation," and "long term implementation."

A. Immediate / Short Term Recommendations

Recommendation 1: Meet with the jury software vendor, Jury Systems Inc., to discuss assessment findings and recommendations and to seek their advice on implementation.

Many of these recommendations require technical adjustments to the jury automation system provided by JSI. The Third Circuit should meet with JSI representatives to discuss the assessment findings and recommendations and to obtain their guidance about the technical and logistical details concerning implementation including estimated costs and time requirements. Among the specific points the Third Circuit should discuss with JSI include:

- The effect of the NCOA on the rate of undeliverable qualification questionnaires. In particular, the Third Circuit should obtain from JSI the proportion of records from the Master Jury List that are updated by the NCOA vendor and the proportion of the updated records that are subsequently made unavailable during the reapplication of the suppression file;
- The appropriate rate of supplementation of names to compensate for various sources of under-representation of African-Americans in the jury pool. See Recommendation 3. This discussion should take into consideration the decision concerning criteria for selecting names for supplementation (e.g., Detroit-only, predominantly African-American zip codes-only, stratified supplementation based on the proportion of

African-American residents in each zip code), the timing and extent of implementation of Recommendation 4 (discontinue the suppression file practice of removing non-responders), and the actual effectiveness of a follow-up program at equalizing non-response rates across the community;

- The likely effects on qualification yield and administrative costs related to the implementation of Recommendation 4. The Third Circuit should make arrangements with JSI to assess the effects of removing non-responders from the suppression file criteria in incremental stages;
- The appropriate automation to implement and evaluate a program to follow-up on non-responders. See Recommendation 5; and
- The logistical steps involved in converting from a two-step to a one-step qualification and summoning process. See Recommendation 8.

Recommendation 2: Continue to distribute and tabulate juror demographic surveys in the Assembly Rooms.

The anonymous juror survey is the most accurate way to assess minority representation in the jury pool and the response experience in the Third Circuit has been very good. The survey should be modified to reflect current U.S. Census definitions, specifically to differentiate between race and ethnicity. A modified version of the current juror survey, which incorporates these changes, is included as Appendix D. The daily tabulation should incorporate the zip code as well as the date-of-service, gender, race, and ethnicity so that the types of analyses that were performed in this assessment can be replicated in the future to assess the effects of improvement efforts.

Recommendation 3: If the Third Circuit continues to supplement the Master Jury List, it should do so only in sufficient numbers to compensate for under-representation of minorities on the source list. The supplementation approach should be adjusted to reflect all predominantly and majority African-American zip codes, not just Detroit zip codes.

The supplementation using additional names from Detroit was initially designed to increase the African-American representation in the jury pool, an approach that is

clearly effective. Implementation of these recommendations, especially those concerning the suppression file (Recommendation 4) and follow-up on non-respondents (Recommendation 5), should dramatically improve the minority representation in the Third Circuit, making it not only unnecessary to supplement at the current rate, but even unwise insofar that it might produce the opposite effect of making African-Americans over-represented in the Third Circuit jury pool.

The only other factor that significantly contributes to under-representation of residents living in predominantly African-American zip codes is the source list itself. If, after addressing the suppression file and non-response problems, the Third Circuit considers it necessary to continue to supplement the Master Jury List to compensate for under-representation of the source list, our best estimate based on current analyses is that the supplementation should require no more than 12,600 Detroit-only names.

Before continuing to supplement by that amount, however, the Third Circuit should also consider modifying its current approach to supplementation to address two issues. First, at least two zip codes within the city of Detroit are majority White (48209 and 48240), so supplementing the Master Jury List with names from these areas is likely to be counter-productive. Second, supplementing only with Detroit residents places an extra burden on those residents insofar that they are more likely than residents living elsewhere in Wayne County to be summonsed for jury service.

A more equitable approach, and one more consistent with the objectives of supplementation, would be to supplement the Master Jury List with names from zip codes that are predominantly or majority African-American regardless of their location within the county. Several alternative methods are possible. For example, the Third Circuit

could develop a supplement formula based either on the percentage of African-Americans in each zip code, or only in zip codes with a high certain percentage (e.g., more than 75%) of African-Americans. The latter approach would reduce the likelihood of ecological inference problems, but would restrict the eligible zip codes to ones within the City of Detroit.

The actual supplementation rate will differ according to factors such as criteria (e.g., Detroit only, predominantly African-American zip codes only) from which the additional names will be drawn. Moreover, implementation of Recommendations 4 and 5 may also affect the optimal supplementation rate (e.g., by adjusting the timing of the suppression file phase-out, the impact of the follow-up program, and other implementation details). The Third Circuit should consult with Jury System Inc. so that the supplementation accurately reflects how each of the recommendations is actually implemented. Any method should be very carefully considered before implementation, including how frequently that supplementation approach should be evaluated and adjusted to meet current needs.

Recommendation 4: Discontinue the suppression file practice of removing the names of individuals who fail to respond to the qualification questionnaire from the Master Jury List.

In 2005, the suppression file applied to the Master Jury List removed individuals who had not responded to previous qualification questionnaires since 2002. This procedure effectively rewarded their non-compliance by removing them from consideration from jury service for the foreseeable future. The simplest and most direct approach is simply to remove this criterion from the suppression file, but there are some

logistical issues associated with reintroducing those individuals on the eligible jury list all at once.[16] There is little doubt that some of these individuals will be ineligible or unavailable for jury service and many others may have moved in the interim, making it difficult to locate them. As a result, the overall qualification yield may decrease and the administrative costs of jury operations may increase in the short term.

To control these effects, the Third Circuit should consider removing this criterion incrementally beginning with the most recent non-responders. For example, the criterion for the next application of the suppression file might continue to remove non-responders from 2002 to 2004, but make available non-responders from 2005 as these more recent non-responders are more likely to be living at the same address and will be more easily found for qualification purposes. The following suppression file application would continue to suppress 2002 and 2003 responders, but reintroduce 2004 non-responders to the eligible jury list. And so on. The goal would be to eliminate this criterion entirely within a two-year time frame.

B. Midterm Recommendations

Recommendation 5: Re-implement a follow-up program and monitor results.

Non-response is a major contributing factor to the lack of minority representation in the Third Circuit jury pool. An effective follow-up program will greatly relieve this problem. The Third Circuit can expect an increase in administrative costs (e.g., postage, printing and staff expenses) associated with the follow-up program, but if experience

[16] Recall that there were 621,816 names classified as "CAND" on the 2005 suppression file.

with the program is similar to that of the 1995 program, these costs will be off-set by the increased juror yield.

To assess the effectiveness of the follow-up program, it will be necessary to introduce a mechanical or systematic way to differentiate individuals responding to an initial qualification questionnaire from those responding to a follow-up questionnaire. A mechanical approach might involve printing the follow-up questionnaire on colored stock paper so that they can be easily identified and tabulated. The jury automation system has a feature that identifies individuals who have been sent a second qualification questionnaire (e.g., status is RSND), but the distinction between first and follow-up responders is lost after the person responds to the qualification questionnaire. The Third Circuit should consult with JSI to determine if there is a reasonably cost-effective way to configure the automation system to track these individuals.

Recommendation 6: Improve juror utilization to reduce the burden of jury service on Wayne County citizens.

One observation by the NCSC during its visit to the Third Circuit in December 2005 was the poor utilization of jurors at both countywide locations and in the Detroit District Court. From January through August, 2005, for example, 48% of the jury panels reporting to the Coleman A. Young Municipal Center and 71% of the jury panels reporting to the Frank Murphy Hall of Justice were cancelled on the day of trial, ostensibly due to late plea agreements and settlements. Improved pretrial management to better predict which cases will actually go to trial would result in significant cost savings (jury fees, staff time) as well as reducing the burden of jury service on citizens. In the long run, it would also reduce the number of citizens who must be qualified and

summonsed for jury service, thus reducing printing, postage, staff, and administrative costs, and require citizens to report less frequently than they do now.

In the long run, improved juror utilization would also improve minority representation in the available jury pool. Recall that individuals who report for jury service are exempt from service for the next 12 months. In 2005, these individuals comprised 6% of the total suppression file. Insofar that the vast majority of African American jurors in Wayne County report to one of these three court locations, improved utilization would conserve this very scarce and valuable resource for actual trials and reflect treatment of jurors more consistent with their role in the administration of justice.

C. Long Term Recommendations

Recommendation 7: The SCAO should evaluate the quality and availability of alternative source lists to supplement the list of licensed drivers and state identification card holders.

The list of licensed drivers and state identification card holders is the source list currently authorized under Michigan law for jury selection purposes. As this assessment has shown, however, this list is one of the sources of under-representation of African-Americans in the jury pool, accounting for an estimated 4.9% of the total disparity in the Third Circuit. The vast majority of states now merge two or more source lists to compile the master jury list, usually combining the state's registered voters and licensed drivers lists. New York and Connecticut supplement these two lists with the lists of state income tax filers, unemployment compensation recipients, and welfare recipients (New York only). Typically, these lists add only a small number of unique names – that is, names that do not appear on other lists – but because they are more frequently maintained, the addresses are often more accurate, thus reducing the rate of undeliverable summonses. JSI is the jury management vendor for many courts that use multiple lists and has a well-established and documented technological capability to merge the lists and remove duplicates. For the SCAO, the primary assessment criteria will be how well any additional list supplements the licensed driver list with unique names in predominantly African-American zip codes within the Third Circuit and elsewhere in the state of Michigan. The intent is to equalize the representation of these zip codes on the master jury list.

Recommendation 8: Convert to a one-step qualification and summoning process.

Although the two-step qualification and summoning process is not itself a source of disparity in the jury pool, the Third Circuit should use these jury improvement efforts as an opportunity to combine these steps into a single process. Doing so would eliminate the lag time between the qualification and summoning stages, possibly reducing FTA rates due to jurors moving between the time they are qualified and when they are sent a summons to report for service. Other benefits of a one-step system are a more even work flow – that is, jury operations would consist of a continuous, but reduced volume, process of qualification/summoning rather than a large volume of qualification questionnaires processed several times each year. A one-step system would also involve less printing and postage costs overall. Over half of state trial courts nationally operate one-step jury management processes.[17]

Courts that have converted from a two-step to a one-step process generally report that the transition sometimes feels somewhat chaotic, but that the long term benefits greatly outweigh any temporary disruptions. The most difficult aspects of the conversion generally involves accurately estimating what the new jury yield under the combined system will be, which is critical for knowing the number of prospective jurors to summons for jury service on any given day, and phasing in the new system while simultaneously phasing out the old system. Again, JSI supports many courts that have undertaken this transition. The Third Circuit should consult with JSI to ensure a smooth and uneventful transition.

[17] Based on a preliminary view of the NCSC State-of-the-States Survey of Local Court Jury Operations.

APPENDIX A: GLOSSARY OF ACRONYMS AND TERMS

Assembly Room – Located at both Frank Murphy and Coleman A. Young courthouses, the room where citizens who were summoned for jury service report until sent to a courtroom for jury selection or dismissed from service.

CAND – Code used in jury system to indicate that the record is an "active candidate for jury service" and should be suppressed from further selection consideration.

District 1 – Detroit only designation used for questionnaire and summons distribution.

District 99 – Countywide designation used for questionnaire and summons distribution.

FTA – Failure to Appear. Juror does not report on specified date for jury service.

JSI – Jury Systems Incorporated. Third Circuit Court's jury software vendor located in Encino, California.

Jury Community Representation Survey – Voluntary/anonymous survey completed by jurors reporting for jury service indicating demographic information such as their date of service, zip code, gender, race and ethnicity.

Master Jury List – List of eligible jurors resulting after the suppression file has been applied to the annual source list. The Master Jury List is used for the random mailing of qualification questionnaires.

Miami Systems Incorporated – Vendor contracted to print and mail jury qualification questionnaires and summonses for the Third Circuit Court. This vendor is located in Cincinnati, Ohio.

NCOA – National Change of Address. Service available for accessing change of address data given to the Post Office by people when they move. (See footnote 4, page 8.)

NCSC – National Center for State Courts. A nonprofit organization dedicated to improving the administration of justice by providing leadership and service to the state courts.

Qualification Questionnaires – Forms sent at various times throughout the year to determine whether citizens are statutorily qualified and able to serve as trial jurors.

SCAO – State Court Administrative Office. The administrative office of the Supreme Court of Michigan that oversees all local and state courts throughout the state.

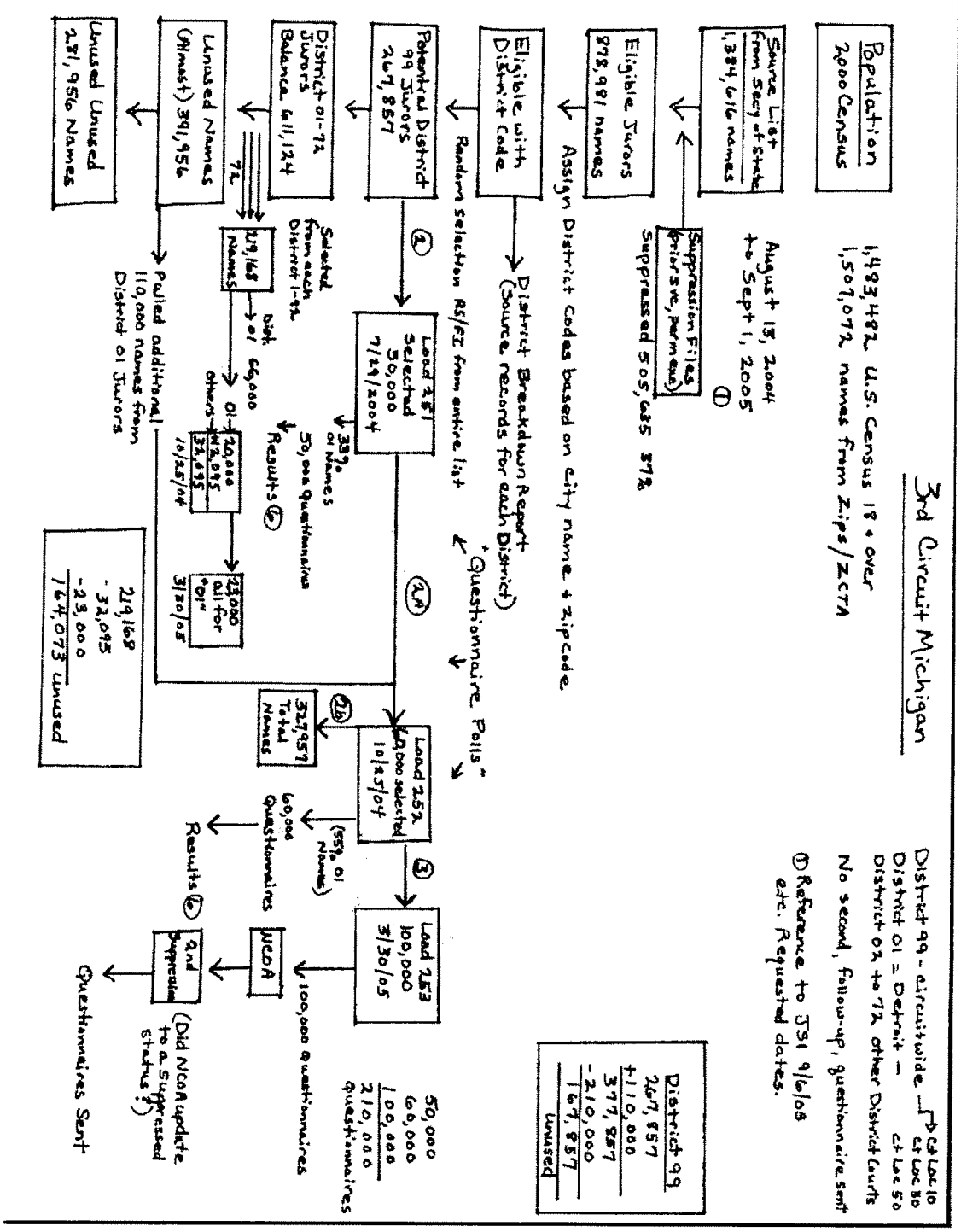
SEMCOG – Southeast Michigan Council of Governments. A regional planning resource for local government agencies in Southeast Michigan.

Source List – Initial list of names of Wayne County residents who are 18 years of age or older holding driver licenses or personal identification cards. This list is provided by the Michigan Secretary of State and used to create the Master Jury List.

Suppression File – Database containing a list of those names of persons deemed not qualified or ineligible for jury service due to various reasons. Criteria may include deceased, felon, overage, and others.

ZCTA – Zip Code Tabulation Area. Geographical representations created by the US Census Bureau to approximate the geographical boundaries of the US Postal Service zip code service areas.

APPENDIX B: DIAGRAM OF JURY QUALIFICATION PROCESS IN 2005



APPENDIX C: ZCTA AREAS INCLUDED IN NCSC ANALYSES

Allen Park	48101
Belleview	48111
Canton	48187, 48188
Dearborn	48120, 48124, 48126, 48128
Dearborn Heights	48125, 48127
Detroit	48201, 48202, 48203, 48204, 48205, 48206, 48207, 48208, 48209, 48210, 48211, 48212, 48213, 48214, 48215, 48216, 48217, 48218, 48219, 48221, 48223, 48224, 48225, 48226, 48227, 48228, 48230, 48234, 48235, 48236, 48237, 48238, 48239, 48240
Ecorse	48229
Flatrock	48134
Garden City	48135
Gilbraltar	48173
Grosse Ile	48138
Grosse Point	48230, 48236
Grosse Point Farms	48237
Grosse Point Park	48212, 48224, 48230, 48236, 48237
Grosse Point Shores	48230, 48236, 48237
Grosse Point Woods	48230, 48236, 48237
Hamtramck	48211
Harper Woods	48225
Highland Park	48203
Inkster	48141
Lincoln Park	48146
Livonia	48150, 48152, 48154
Melvindale	48122
New Boston	48164
Northville,	48167
Plymouth	48170
Redford	48239
River Rouge	48218
Riverview	48192
Romulus	48174
Southgate	48195
Taylor	48180
Wayne	48184
Westland	48185, 48186
Woodhaven	48183
Wyandotte	48192

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:** _____

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 originis 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.

THANK YOU FOR YOUR COOPERATION

(One survey per Juror please)