



JUDICIAL BRANCH OF ARIZONA

County of Maricopa

Office of the
Court Administrator

Marcus W. Reinkensmeyer
Court Administrator

201 W. Jefferson
Phoenix, Arizona 85003-2205
602/506-3190 (Tel)
602/506-0186 (Fax)

"Committed to the Timely, Fair and Impartial Administration of Justice"

March 14, 2008

Hon. Ruth V. McGregor, Chief Justice
Arizona Supreme Court
1501 W. Washington
Phoenix, Arizona 85007

Re: Plan for Alternative Juror Summoning Procedures

Dear Chief Justice McGregor,

Pursuant to A.R.S. § 21-302(E), the Superior Court of Arizona in Maricopa County requests authorization to re-implement the Proximity Weighted Summoning (PWS) juror selection system. This alternative procedure for summoning jurors is submitted pursuant to statutory amendments supported by the Arizona Supreme Court last year.

The PWS proposal allows the Superior Court in Maricopa County to summon most – but not all – jurors from zip codes closest to a Superior Court complex. The random selection of jurors ensures that all qualified jurors in Maricopa County have an equal opportunity to be summoned for jury service. Benefits associated with the system include reduction of citizen frustration and inconvenience; decreased cost for mileage reimbursement; higher juror yield and compliance with summons; increased use of public transportation to court, with decreased air pollution; and higher total trip reduction.

This letter, supporting documentation and public comments are provided for your review:

- Attachment 1 provides background information, an overview of the PWS re-implementation plan and an analysis of public comments regarding the plan;
- Attachment 2 presents the plan details within an independent PWS evaluation report issued by the National Center for State Courts, October 6, 2006; and,
- Attachment 3 is composed of all comments received during the public comment period of January 18 to February 18, 2008.

Thank you for your consideration of this request.

Sincerely,

A handwritten signature in black ink, reading "Marcus W. Reinkensmeyer". The signature is fluid and cursive, with the first name "Marcus" being particularly prominent.

Marcus W. Reinkensmeyer
Court Administrator/Jury Commissioner

Encl: 3

cc: Hon. Barbara Mundell, Presiding Judge
Hon. Norman J. Davis, Associate Presiding Judge
Hon. Janet Barton, Chair, Jury Management and Public Relations Committee
David K. Byers, Administrative Director, Administrative Office of the Courts
Phil Knox, General Jurisdiction Court Administrator
Brian Karth, Deputy Court Administrator, Court-wide Services

Proposal Approval Requested By: Marcus W. Reinkensmeyer, Maricopa County Jury Commissioner and Court Administrator, Superior Court in Maricopa County

Address: 125 W. Washington Street, Phoenix, AZ 85003

Telephone: 602-506-3190

Fax: 602-506-0186

E-mail: mreinken@superiorcourt.maricopa.gov

BACKGROUND

Pursuant to A.R.S. § 21-302(E), and Section 5-203 of the Arizona Code of Judicial Administration, the Superior Court in Maricopa County requests approval from the Arizona Supreme Court to implement alternative procedures for summoning jurors to this jurisdiction. Among other objectives, this proposal helps achieve goal #4 of the "Good to Great" Strategic Agenda by improving the jury management systems and providing a more convenient experience for many of our jurors.

A. Describe the issue, problem, or need for proposing the alternative summoning procedures.

Several counties have established more than one superior court location. Mohave County has three locations - Kingman, Bullhead City and Lake Havasu. Yavapai County has 2 locations - Prescott and Verde Valley. The Superior Court in Maricopa County (herein referred to as Superior Court) now has 6 Superior Court locations and plans for a 7th courthouse. Maricopa County has a greater population than 17 states and covers an area of 9,226 square miles, which is larger than 7 states. The coverage extends 132 miles east to west and 103 miles north to south.

Requiring jurors from Wickenburg or Sun City to travel to the Southeast court center in Mesa or requiring jurors from Queen Creek to travel to the Northwest court center in Surprise burdens citizens called for jury duty, increases costs for juror mileage and adds to air pollution and waste of fuel.

This proposal would allow the Superior Court in Maricopa County to summon most – but not all – jurors from zip codes closest to a court complex. Jurors would still be summoned, however, from anywhere within Maricopa County. The proposed change would require random selection of jurors in a manner that ensures that all qualified jurors in the county have an equal opportunity to be summoned for jury service.

The proposed jury selection system, Proximity Weighted Summoning (PWS), was implemented in 2004 after concerns were expressed by many jurors who were required to travel as far as 88 miles in order to appear for service at the Regional Court Center in

Mesa that opened in 1991. The PWS system remained in place through August 14, 2006 when the Superior Court reverted to county-wide summoning following a legal challenge to the PWS system.

As provided in the Arizona Code of Judicial Administration, Part 5: Court Operations, Chapter 2: Programs and Standards, Section 5-203: Trial and Grand Jury Management, E. Alternative Juror Summoning Procedures:

1. Upon approval, a Superior Court with multiple court locations in a county may use alternative juror summoning procedures. To obtain approval, the Jury Commissioner shall submit a plan for alternative summoning to the approving authority, which is either the presiding judge of the Superior Court or the chief justice of the Supreme Court, containing the following:
 - a. The reason for proposing the alternative summoning procedures;
 - b. A detailed explanation of the alternative procedures to be used for summoning jurors to each court location;
 - c. An explanation of how the alternative procedures provide for the summoning of jurors from a fair cross section of the community;
 - d. Any additional justification of the reasonableness of the alternative procedures; and
 - e. An explanation of how the alternative procedures satisfy the requirements of the constitutions of the United States and State of Arizona.

The body of this report will address each of the remaining requirements (b-e).

B. Specifically state why the proposal is necessary and provide a detailed explanation of the alternative procedures to be used for summoning jurors to each Superior Court location.

The number one complaint received by the jury management office in Maricopa County is from potential jurors who have been required to appear at a courthouse across the Valley from where they live rather than to the courthouse closest to their residence. Similar complaints are received by the Board of Supervisors. The costs for mileage reimbursement could be better spent on programs that improve the quality of life and public safety.

The objective of the PWS system is to draw Maricopa County jurors to the closest regional Superior Court facility (presently 4 including Downtown). Proximity is defined as the distance between a prospective juror's home zip code tabulation area (ZCTA) and the address of the summoning regional Superior Court facility.

Constraints are that:

1. Any summoning system must allow for all persons on the Master Jury List (residents of Maricopa County 18 years or older) to be randomly summoned for jury service to ANY Superior Court facility;
2. Any summoning system must allow for all persons on the Master Jury List to have the same probability of being randomly summoned to jury service for Superior Court, regardless of the location of their residence; and

3. The ethnic representation of jurors appearing for service at all Superior Court locations must accurately reflect the ethnic representation of persons eligible for jury service residing in Maricopa County (18 years or older, United States citizen, not convicted felon whose civil rights have not been restored, and not currently adjudicated as mentally incompetent or insane).

The first constraint prohibits any of the percentages in the PWS System matrix from being equal to zero.

The second constraint requires that each prospective juror have the same chance of being selected over time, even though he or she may have a greater chance of being sent to the closest courthouse than to a more distant courthouse.

To satisfy the third requirement for jury pools that mirror the countywide profile at each location, the Office of the Jury Commissioner developed a software tool to identify the demographic profile of the jury pool at each location. The Office of the Jury Commissioner has the added discretion to adjust the PWS System matrix at any time if its review of demographic profiles for each location so warrant.

C. Please provide an explanation of how the alternative procedures provide for the summoning of jurors from a fair cross section of the community.

Demographic data was downloaded from the 2000 Decennial Census and the 2005 American Community Survey from the US Census Bureau website. The 2000 Decennial Census information included race and ethnic demographic information about the adult (age 18 and older) population of Maricopa County on a countywide and on a zip code-by-zip code basis.

The 2005 American Community Survey is an annual survey that uses sampling methodology to provide reliable estimates to states and large, urban communities about population trends on key demographic, economic, housing, and social indicators between each decennial census. Although it currently does not provide information on geographic boundaries smaller than a countywide level, the American Community Survey does provide reliable estimates about significant factors related to juror qualification including citizenship status for the adult population.

Maricopa County was divided into 4 "zones" which were identified by their respective surrounding zip codes. In order to select jurors that have greater likelihood of being summoned to the nearest courthouse from their respective residences, the master jury file is run through a computer algorithm which randomly selects generally from the requesting zone, but also mixes calculated percentages from the other zones to achieve countywide summoning and proportionate ethnic representation.

D. Provide additional justification of the reasonableness of the alternative procedures.

The PWS System developed by the Superior Court in Maricopa County differs in several important respects from systems developed by other courts that have faced the question of how to summon jurors to multiple locations within a jurisdiction. Discretionary decision-making – in the location of courthouses in the jurisdiction, in defining the

geographical boundaries to be served by those courthouses, in determining the volume and types of cases to be tried in those locations are – inherent features of these systems.

The PWS System is unique in its attempt to balance several fundamental, but not necessarily mutually compatible, goals of jury management – namely, equal probability of selection for all eligible and available citizens, jury pools at each courthouse location that mirror the demographic characteristics of the entire county, and minimization of the inconvenience to citizens of serving in remote locations. It is an ambitious program and, from a purely qualitative standpoint, one that achieves these goals admirably well. The proposed changes will result in cost savings. At the current travel reimbursement rate of \$.0445/mile for jurors, Maricopa County anticipates that the cost of **\$1,833,000** for full county-side summoning could be reduced to between **\$1,445,000 and 1,348,000**, for an annual savings of between **\$388,000 to \$485,000**.

Other benefits associated with the implementation include reduction of citizen frustration and inconvenience; increased juror yields and reduced distance hardship exemptions; decreased cost for mileage reimbursement; less air particulates/pollution due to trip reductions/distances and less congestion during rush hour times for all county commuters.

Finally, this proposal will advance Goal No. 4 of the Strategic Agenda: Improving Communication and Cooperation with the Community. This proposal would "improve jury management systems and selection procedure" by making citizen convenience a priority, while still ensuring that every potential juror has the opportunity to serve as a juror. The proposal would demonstrate and promote mutual respect between the Superior Court and members of the community. The proposal would also advance Goal No. 3: Being Accountable, by "spend[ing] the time necessary to improve all parts of the judicial system."

E. Explain how the alternative procedures satisfy the requirements of the constitutions of the United States and State of Arizona.

In Arizona there is no Constitutional right to a randomly selected jury. That right is derived solely from statute and rule. The Constitution of Arizona under Article 6, §17 provides, "For the determination of civil causes in matters in which a jury demand has been entered, and for the trial of criminal causes, a trial jury shall be drawn and summoned from the body of the county, as provided by law."

F. Explain how the plan will ensure that racial and ethnic disparities will be systematically avoided.

The third constraint of the PWS proposal imposes the most ambitious requirement in that the Superior Court in Maricopa County would expect the jury pool at each location to reflect the demographic composition of its zone. Given the high convenience factors in the PWS System matrix, we would also expect the demographic composition of the jury pool in the Southeast, Northwest and Northeast Superior Court locations to strongly reflect their demographic zones. To satisfy the third requirement for jury pools that mirror the countywide profile at each location, the Office of the Jury Commissioner developed a software tool to predict the demographic profile of the jury pool at each location.

The Office of the Jury Commissioner has the added discretion to adjust the PWS System matrix at any time if its review of demographic profiles for each location so warrant. In order to verify that the proper demographic profiles have been maintained, statistical recaps will be periodically generated from juror bio information. Close review of racial and ethnic representation for jurors actually reporting to each of the regions will be matched to the PWS summoning model. Adjustments to the summoning model would be made if required at least twice per year in order to insure that the summoning model corresponds to the PWS matrix.

G. Explain the vetting and review process that was undertaken.

The plan for alternative summoning was circulated by the Maricopa County Jury Commissioner to the State Bar of Arizona, the Maricopa County Bar Association, the Maricopa County Attorney's Office, the Maricopa County Public Defender's Office, Chairman of the Maricopa County Board of Supervisors, Maricopa County Manager, Arizona League of Women Voters, Maricopa County Superior Court Civil Practice and Procedure Committee, Arizona Trial Lawyers Association, Maricopa County Office of the Legal Defender, and other interested parties, as appropriate, for comment. Comments received from this vetting process have been considered by the Jury Commissioner. The following represents generally the comments received from 19 representatives of various organizations the court solicited for comment. Of these, the Superior Court in Maricopa County received 2 positive comments, 2 no objections, 2 objections, and 13 non responses (and consequently no objections). A list of the organizations solicited and their position or non-response is attached.

The President of the State Bar of Arizona submitted the proposal to the Civil Practice and Procedure Committee and the Criminal Practice and Procedure Committee of the State Bar. Based on their review, the President responded that the State Bar had no objection to the re-implementation of PWS. John W. Rogers, Chair of the Civil Practice and Procedure Committee stated, "[W]e endorse the reimplementation of the PWS juror selection system in Maricopa County." Mr. Rogers' Committee also encouraged the Superior Court in Maricopa County to periodically reassess the system to ensure that it does not inadvertently produce racial or ethnic disparities in jury pools. The court plans to do so.

The Superior Court in Maricopa County maintains periodic review of reporting juror biography information in order to ensure that the summoning matrix is in sync with countywide ethnic percentage distribution. In order to adequately ensure that this internal review is accurate, the Superior Court in Maricopa County would likely choose to further safeguard this aspect of evaluation by contracting expert examination of the entire PWS matrix balance using expert subject matter representatives from the National Center for State Courts.

Additionally, the Chairman of the Maricopa County Board of Supervisors and the Maricopa County Manager have both expressed support in favor of reimplementation of PWS. Chairman Kunasek states, "Thank you for the opportunity to comment on the proposal to implement proximity weighted jury summoning in Maricopa County. As you know, Maricopa County strongly supported amendments to A.R.S. § 21-302 in the last legislative session for several important public policy reasons: (1) Convenience to the citizens; (2) Reduction of costs for mileage; (3) Reduction of air pollution in keeping with

the County's clean air/trip reduction policy. It is also estimated that implementing the new system could save Maricopa County taxpayers \$436,000 per year."

While the League of Women Voters of Arizona took no position on the plan, their President stated that "the plan seems consistent in reflecting the area's demographics."

Max Bessler of the Maricopa County Office of the Legal Defender forwarded the comments of one attorney who did not identify himself. The anonymous attorney incorrectly stated that the data contained in the report of the National Center for State Courts "show significant disparities in the composition of county population in regards to jury selection." This conclusion is not supported by the National Center for State Court report on the review of the PWS program. The anonymous attorney is also incorrect in believing that "alternative juror-summoning was tried before and struck down by a court ruling." In fact, the recent challenge to the PWS system did not prevail as evidenced by the October 2007 ruling by Judge William J. O'Neil. Judge O'Neil ruled that the system was in compliance with Arizona law (CV 2006-012150).

H. Micheal Wright, writing on behalf of the Arizona Trial Lawyers Association, stated that the "Plan now proposed, in our view, invites Constitutional challenges." (Letter at page 5). Mr. Wright's main objection concentrated on a concern that socio-economic considerations must be taken into account in jury selection. The claim that PWS results in an unfair cross-section vis-à-vis economic status, however, lacks merit for the reason that a group based upon economic class is not a distinct class for purposes of determining whether a fair cross-section has been selected. See *Coleman v. McCormick*, 874 F.2d 1280, 1284 (9th Cir. 1989).

Based on a careful review of all comments submitted, the proposal is submitted for approval without modification to the original proposal circulated for public comment.

Responses to Juror Summoning Procedures

Official	Supports	No Objection	Objects	No Response
Maricopa County Board of Supervisors Andrew Kunasek, Chairman 301 W. Jefferson, 10 th Floor Phoenix, AZ 85003	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Maricopa County Attorney's Office Honorable Andrew Thomas, County Attorney 301 W. Jefferson, Suite 800 Phoenix, AZ 85003	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
League of Women Voters of Metro Phoenix Bonnie Saunders, President 2510 S. Rural Rd., #102 Tempe, AZ 85282	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Office of the Legal Advocate Bruce Peterson, Acting Legal Advocate 3800 N. Central Ave., #1500 Phoenix, AZ 85012	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Arizona Trial Lawyers Association Christopher Jensen, Executive Director 711 Whipple Street Prescott, AZ 86301-1717	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
State Bar of Arizona Daniel J. McAuliffe, President One Arizona Center 400 E. Van Buren Phoenix, AZ 85004-0001	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Official	Supports	No Objection	Objects	No Response
Maricopa County Management David Smith, County Manager 301 W. Jefferson, 10 th Floor Phoenix, AZ 85003	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
MAG – Maricopa Association of Governments Dennis Smith, Executive Director 302 N. 1 st Ave., #300 Phoenix, AZ 85003	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Arizona Attorneys for Criminal Justice Ellen Salvesen, Executive Director 2340 W. Ray Rd., #1 Chandler, AZ 85224-3516	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
American Board of Trial Advocates Frank Lesselyoung, President 382 E. Palm Lane Phoenix, AZ 85004	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
American Board of Trial Advocates H. Christian Bode, President 7377 E. Doubletree Ranch Road, Ste. 210 Scottsdale, AZ 85258	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Arizona State Attorney General's Office Hon. Terry Goddard, Attorney General C/O Terry Fenzl, Chief of Staff 1275 W. Washington Phoenix, AZ 85007	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Office of the Public Defender James Haas, Chief Public Defender 620 W. Jackson St., Suite 4015 Phoenix, AZ 85003	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

Official	Supports	No Objection	Objects	No Response
Arizona Trial Lawyers Association Janice Goldstein, Executive Director 1661 E. Camelback Rd., #204 Phoenix, AZ 85016 Response from H. Micheal Wright	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Office of Public Defense Services Jim Logan, Director 620 W. Jackson St., #3077 Phoenix, AZ 85003	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Maricopa County Bar Association Hon. Louis Araneta, President 201 W. Jefferson Phoenix, AZ 85003	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Community Legal Services Lillian Johnson, Executive Director 305 S. 2 nd Ave. Phoenix, AZ 85036-1538	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Office of the Legal Defender Max Bessler, Chief Administrator 222 N. Central Ave., #8100 Phoenix, AZ 85004 Response from anonymous attorney	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Arizona Association of Defense Counsel Milton Hathaway Jr., Executive Director P.O. Box 591 Prescott, AZ 86302-0591	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

NATIONAL CENTER FOR STATE COURTS
Court Services Division

**ASSESSMENT OF PWS SYSTEM EFFECTS ON THE
RANDOM SELECTION OF JURORS AND THE
DEMOGRAPHIC CHARACTERISTICS OF THE JURY
POOL IN THE SUPERIOR COURT OF ARIZONA,
MARICOPA COUNTY**

Final Report
October 6, 2006

By Paula L. Hannaford-Agor
Director, Center for Jury Studies
&
G. Thomas Munsterman
Director Emeritus, Center for Jury Studies

Daniel J. Hall
Vice President, National Center for State Courts

Court Consulting Services
National Center for State Courts
707 Seventeenth Street, Suite 2900-A
Denver, CO 80202-3429
(303) 293-3063

Online legal research provided by LexisNexis.



The views and opinions expressed in this report are those of the authors and do not necessarily reflect those of the Superior Court of Arizona, Maricopa County, or the National Center for State Courts.

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I. INTRODUCTION

In July 2006, the Superior Court of Arizona, Maricopa County (Superior Court), contracted with the National Center for State Courts (NCSC) to review its jury management system. The Superior Court specifically requested that the NCSC Center for Jury Studies determine whether its Proximity Weighted Summoning (PWS) System randomly selects jurors from the master jury list for the county; whether the PWS System systematically excludes any identifiable group or population; and the effect of the PWS System on the demographic characteristics of jurors reporting at the various courthouse facilities in Maricopa County. The Superior Court also requested that the NCSC describe how other courts around the country summons jurors to multiple locations within a jurisdiction.

The impetus for this request resulted from a series of jury challenges alleging that the PWS System fails to comply with Arizona law requiring that jurors be randomly selected from the master jury list for the county and that the PWS System produces jury pools in the various court locations that do not reflect a fair cross section of the community. G. Thomas Munsterman and Paula Hannaford-Agor of the NCSC Center for Jury Studies visited the Superior Court on August 21-22 to obtain operational information about the PWS System, supporting data from the jury management system, and the Biographical Forms completed by jurors who reported for service in the Superior Court from September 2005 through August 2006. This report summarizes the findings from this assessment.

II. SUMMONING FOR MULTIPLE LOCATIONS

How courts select names of persons to serve when there are several court locations within a jurisdiction is an uncharted field in practice and jurisprudence. The only known discussion of this topic is in a book written by the authors of this report.¹ The decision about how to summons jurors to multiple locations within the jurisdiction depends on a number of factors including the actual location of the courthouses to which jurors will be summonsed, the number of jurors needed at each location based on the volume and types of cases to be tried, and the relative ease or difficulty jurors will experience in traveling to those locations. As a practical matter, courts have a great deal of discretion in how each of these factors should be taken into account when determining jury summoning procedures.

Certainly the first, and most far-reaching factor, is a court's decision to build additional courthouses to better serve its resident population. The primary purpose for decentralizing a jurisdiction is to provide its citizens with improved "access to justice." Precisely where to locate new courthouses, and which geographic areas of the jurisdiction these new courthouses are intended to serve, are decisions that involve the greatest degree

¹ G. THOMAS MUNSTERMAN & PAULA L. HANNAFORD-AGOR, THE PROMISE AND CHALLENGES OF JURY SYSTEM TECHNOLOGY 24-26 (NCSC 2003).

of discretion.² In making these decisions, courts generally consider the convenience of litigants, lawyers, witnesses, and the public including prospective jurors.³ Specific issues related to jury operations, such as equal probability of selection and representation, generally fall low on the list of priorities, however.

Table 1 illustrates the range of discretion exercised by U.S. courts in how jurors' names are selected and allocated to a courthouse when a jurisdiction has more than one location for conducting jury trials. The first model reflects the default position – that is, courts that have only a single location for jury trials or that summons jurors randomly from the entire jurisdiction for all locations. No discretion as to juror allocation is exercised for this model. Theoretically, all names on the master jury list have an equal probability of selection and the demographic make-up of the jury pool is generally uniform at all locations.

For the second and third models presented in Table 1, the primary area of discretionary decision-making involves establishing the geographic boundaries from which jurors will be summonsed for each location. Sometimes this decision rests simply on geography or, more precisely, topology. The Superior Court in El Dorado County, California, has several courthouses located near Placerville, the county seat, as well as one located in South Lake Tahoe. A mountain range separates Placerville on the western slope from South Lake Tahoe on the eastern slope. Jurors are drawn from either side of the mountains to report to their local courthouses.

Some superior courts in California have multiple courthouses, many of which were formerly municipal courts before the state unified its court system in 2000 and converted its municipal courts to superior courts.⁴ In some counties, such as San Diego, the courts draw jurors on a countywide basis for the “main courthouse” but draw from the former municipal court boundaries for other locations. This arrangement is permissible by California statute provided that “all qualified persons in the county [have] an equal opportunity to be considered for jury service.”⁵ In Cook County, Illinois, the downtown Chicago courts draw countywide while other courts draw from north or south of Roosevelt Road.

² Often these decisions are made by representatives of both the state and local court system and non-court agencies and are driven as much by the needs and resources of non-court agencies (e.g., access to government-owned property, public safety, traffic patterns, etc.) as by court needs and resources.

³ ROBERT W. TOBIN, *CREATING THE JUDICIAL BRANCH: THE UNFINISHED REFORM 237* (NCSC 1999).

⁴ CAL. GOV'T CODE §§ 70200-70219 (West 2006).

⁵ CAL. CIV. PROC. § 198.5 (West 2006) (“If sessions of the superior court are held in a location other than the county seat, the names for master jury lists and qualified jury lists to serve in a session may be selected from the area in which the session is held, pursuant to a local superior court rule that divides the county in a manner that provides all qualified persons in the county an equal opportunity to be considered for jury service. Nothing in this section precludes the court, in its discretion, from ordering a countywide venire in the interest of justice.”).

Table 1: Key Decisional Factors in Jury Summoning to Multiple Locations				
	Random across jurisdiction	Hardline geographic demarcation	Countywide and hardline geographic demarcation	Proximity Weighted System
Examples	Most jurisdictions (all single location jurisdictions)	San Bernadino and El Dorado Counties; federal district courts	San Diego and Orange Counties, CA; Cook County, IL	Los Angeles County, CA; Maricopa County, AZ
Authority	Legal default	Jurisdiction Jury Plan adopted by Court Rule or Administrative Order; local practice (unchallenged)		Presiding Judge
Discretion in juror allocation	None	Selection of geographic demarcation lines		Assignment of zip code to zone; estimate of anticipated need per location; percentage matrix determination
Demographic Representation of Jury Pool	Basically uniform, contingent on percent reporting	Essentially separate jurisdictions	Separate or equal jurisdictions	Blends cross-section across locations
Randomness (Equal probability of Selection)	Same probability for all persons on the master jury list	Depends if hardline geographic demarcation matches court demands		Equal probability if anticipated needs are close to actual needs
Susceptibility to non-randomness	No	Yes		Yes, but very slight
Level of Citizen Inconvenience	Most inconvenience	Least inconvenience, some relief	Some relief	Minimizes level of inconvenience

Federal district courts provide another example of the discretion of a court in establishing the jurisdiction of the sub-locations. The U.S. Code defines the jurisdictions of the federal district courts.⁶ For some states the jurisdiction is established, but the sub-districts, known as Divisions, may or may not be defined by the Code. Some sections simply give the places of holding court. For example, Section 82 states that “Arizona constitutes one judicial district. Court shall be held at Globe, Phoenix, Prescott and Tucson.” The US District Court of Arizona then defines the divisions and the counties they encompass through its local rules of civil procedure.⁷

⁶ 28 U.S.C. §§ 81-144 (2006).

⁷ L. R. CIV. PROC. 77.1 (D. Ariz. 2005-2006) (“The District covers the entire State of Arizona. However, for convenience the District is divided into three unofficial divisions, each named and comprising counties as follows ...”). The rule then provides the counties in each division.

The federal statute is explicit that the most important issue with respect to divisions within the federal District Court is convenience, not equal probability of jury selection or concerns for the cross-section of the jury pool in each division. In fact, unless the jury trial caseloads in the three divisions match the jury eligible populations in the three divisions, the probability of selection of a citizen as a juror will be different in each division. This probability will also differ based on the ability of the courts to bring in only the number of prospective jurors needed to select a jury. These differences are subtle and usually are ignored, however these are factors in terms of equal probability of selection in Maricopa County, as we discuss in Section V.

In a hardline defined system, differences in the probability of persons being selected for jury service are very likely to occur due to the differences in the needs of the court locations for jurors. It is also very likely that the cross section of those serving will be different because the “community boundaries” are redefined. When there are several courts in a county and some draw county wide and others draw from less than the county, these same differences can occur.⁸

An alternative to the ‘hardline boundaries’ in the examples above are the methods used in Los Angeles County, California and in Maricopa County. The Superior Court of Los Angeles County holds jury trials in 34 locations. Dividing Los Angeles County into 34 sub-jurisdictions would be extremely difficult given the location of the courts across the county. To solve the problem, the court developed a system that gives each person in the county an equal probability of selection but assigns prospective jurors to a court that is closest to their residence consistent with the needs of each court for jurors. That is, a person can be asked to report to one of several courts based on the random assignment process and the estimated needs of the courts. This method is called the “bullseye method,” named after the graphical display which shows a circle around each court location. The radius of the circle is proportional to the needs of each court location.⁹ Los Angeles also restricts the maximum distance that a person can be asked to travel for jury service to 20 miles. This places a limit on the radius of these many intersecting circles. Because of these restrictions, some people in Los Angeles County can serve in many locations and others can serve in only one location. However, everyone can serve as a juror in some court location.

With the incredible diversity and the enclaves of racial and ethnic populations within Los Angeles County, the persons reporting at any of the 34 locations can hardly be expected to demographically reflect the entire county. The California Government Code, paragraph 69640 provides: “The Superior Court in Los Angeles County may by local rule establish superior court districts within which one or more sessions of the court shall be held.” The Superior Court established 11 judicial districts. The applicable region for demographic purposes was addressed in *Williams v. Superior Court of Los Angeles County*, in which the California Supreme Court said “[t]he

⁸ The sequence in which the names are drawn for the various courts can also produce unintended results. For example, if precautions are not taken, some areas can be completely excluded.

⁹ The National Center has worked with the Los Angeles Courts on this selection methodology. On a typical day approximately 10,000 people report for jury duty in Los Angeles County, which illustrates the enormity of the system.

appropriate definition of “community” for cross-section analysis is the judicial district in which the case is tried, not the county as a whole.”¹⁰

The Proximity Weighted Summoning (PWS) System developed in Maricopa County is described in detail in Section III of this report and is similar in concept to the Los Angeles system. Names are randomly drawn from the entire county population and the majority of jurors summonsed to each location reside closest to that location, although some may be assigned to more distant courts if the needs of those courts for jurors so demand. There is no mileage limit as in Los Angeles.

In addition to the discretion of establishing the sub-jurisdictions, there are two additional areas of discretion in the Maricopa and Los Angeles juror allocation system. The second is the determination of the closest court location. In Maricopa County, each zip code is classified into one of four zones. The zip codes classified as Zone 1 are those closest in proximity to the Downtown courthouse. Those for Zones 2, 3, and 4 are closest to the Southeast, Northwest, and Northeast courthouses, respectively. Some zip codes are approximately equidistant to two or more courthouse locations. In other instances, a zip code may be closest to one location as measured by a straight line, but transportation factors may indicate that the commute from that zip code would actually be shorter to a more distant courthouse. In either case, the Office of the Jury Commissioner exercises its discretion as to the zone classification. The Superior Court in Los Angeles County has somewhat less discretion in this regard. There each census block is classified as to the locations to which jurors from that block can be assigned, using a straight line distance as the standard. Permissible court locations are ranked from closest to furthest, subject to the 20-mile rule.

The third area of discretion is in the estimation of the need for jurors at each court location. This is done twice a year in Maricopa and is used in the random selection of names for each location. The estimate is based on past use of jurors and can include any other factors which might affect this estimate. This last area of discretion is the most dynamic and once established is in effect until the next projection is made. The impact of this last area can be illustrated with a scenario in which one court location, due to some unforeseen circumstance, no longer holds jury trials. Persons allocated to that courthouse and those already summoned would be cancelled and would therefore have a lower probability of selection. They could be asked to report to another courthouse or be re-summonsed, but for a limited period of time the probability of selection would be different for each zone.

In addition to randomness, cross-section, and discretion, Table 1 describes the impact of each model on the level of convenience (or inconvenience) for jurors, which is not known to have been explicitly treated in case law or statutes. Nevertheless, it is an underlying factor in court decentralization and is implicitly referenced as a potential barrier to full participation in jury service in the ABA Principles for Juries and Jury Trials.¹¹ The PWS System developed by the Superior Court in Maricopa County was

¹⁰ 781 P.2d 537 (Cal. 1989).

¹¹ Principle 2 states “Citizens have the right to participate in jury service and their service should be facilitated.”

intended to bring juror convenience into the equation with randomness, cross-section, and discretion.

III. PROXIMITY WEIGHTED SUMMONING (PWS) SYSTEM

The system used in Maricopa County to select names of persons to be summoned for jury service is called Proximity Weighted Summoning. This system was developed in Maricopa County and is similar in many respects to the Los Angeles County jury system. To the best knowledge of the authors, however, the PWS System is not used in any other U.S. court. The reason for this uniqueness is that so few other courts face the multi-location issue discussed in Section II. The PWS System has been described in several documents.¹² In this section we summarize the key points and examine more closely those elements that are unique and critical to this process.

The master jury list contains the names of persons from the list of registered voters and the list of licensed drivers and state identification card holders. The master jury list is renewed annually by ACS, the Maricopa County jury management software vendor. Names are randomly drawn from the master jury list for service in the various court locations in Maricopa County.¹³ Names are drawn for the Superior Court subject to a set of percentages or weights which are determined by the Office of Jury Commissioner. These percentages are the crucial and unique step in the PWS System. The percentages used in the period from September 2005 to August 2006 are provided in Table 2.¹⁴

	Downtown	SE	NW	NE
Zone 1	50.01%	3.95%	6.00%	11.00%
Zone 2	19.35%	88.74%	3.00%	3.00%
Zone 3	19.35%	3.65%	87.35%	3.00%
Zone 4	11.29%	3.66%	3.65%	83.00%

¹² These documents include:

1. Bob James, Director of Jury Management, Judicial Branch of Arizona in Maricopa County, Statement Regarding Proximity Weighted Summoning (May 26, 2006).
2. John Barrett, Judicial Branch Chief Technology Officer, Jury Information (July 31, 2006)
3. ACS Government Systems, Data_Merge_Maricopa.doc (Aug. 17, 2006)
4. Letter to Deborah E. Johnson from Charles P. Byers, Director, Juror Solutions, Re: Affiliated Computer Services (ACS) Juror Management System Random Juror Selection and Verification (Aug. 8, 2006).

¹³ The Office of the Jury Commissioner is responsible for summoning jurors for the grand jury and for several of the municipal and justice-of-the-peace courts in addition to the Superior Court.

¹⁴ Bob James, Director of Jury Management, Judicial Branch of Arizona in Maricopa County, Statement Regarding Proximity Weighted Summoning (May 26, 2006).

Each column reflects the desired geographic composition of the jurors summonsed for each location. For example, Zone 1 contributes 50.01% of the jurors summonsed to the Downtown location, Zone 2 contributes 19.35% percent, and so on. Each column must total 100%.

The percent of persons summonsed to the courthouse nearest their home for each location – which might be considered the “convenience factor” – is shown in the diagonal percentages. This convenience factor is approximately 50% at the Downtown location and is over 80% in the other locations. The substantially lower convenience factor for Zone 1 results from the greater demand for jurors in Zone 1 as compared to its available population. Except for the Downtown location, the vast majority of jurors summonsed to the other locations are generally from “the neighborhood.”

If the PWS System was not in effect, the geographic composition of the jurors summonsed would be identical for each location. It would simply reflect the proportion of the adult population living in each zone. See Table 3. The degree to which the values in Table 3 differ from those in Table 2 gives a sense of the impact of the PWS System. For example, under the PWS System, only 17% the jury pool for the NE courthouse must travel from a more distant courthouse compared to 89% that would have to if the PWS System were not in place.

	Downtown	SE	NW	NE
Zone 1	37.3%	37.3%	37.3%	37.3%
Zone 2	32.0%	32.0%	32.0%	32.0%
Zone 3	20.2%	20.2%	20.2%	20.2%
Zone 4	10.5%	10.5%	10.5%	10.5%

The percentages in the PWS System matrix in Table 2 are not exclusive answers derived from a set of mathematical equations. Rather, they reflect one combination of percentages out of many possible combinations that, in the judgment of the Office of the Jury Commissioner, best satisfies the needs of the courts for jurors subject to three preexisting constraints. These constraints are that:

1. Any summoning system must allow for all persons on the Master Jury List (residents of Maricopa County 18 years or older) to be randomly summoned for jury service to ANY Superior Court facility;
2. Any summoning system must allow for all persons on the Master Jury List to have the same probability of being randomly summoned to jury service for Superior Court, regardless of the location of their residence; and
3. The ethnic representation of jurors appearing for service at all Superior Court locations must accurately reflect the ethnic representation of persons eligible for jury service residing in Maricopa County (18 years or older, United States citizen,

not convicted felon whose civil rights have not been restored, and not currently adjudicated as mentally incompetent or insane).¹⁵

The first constraint prohibits any of the percentages in the PWS System matrix from being equal to zero.

The second constraint requires that each prospective juror have the same chance of being selected over time, even though he or she may have a greater chance of being sent to the closest courthouse than to a more distant courthouse. A preliminary analysis of the allocation of prospective jurors to each location based on the PWS System matrix, however, quickly reveals some differential in the summoning rates across zones. Table 4 illustrates how the existing PWS System matrix would result in slightly unequal summoning rates across zones if, hypothetically, 500,000 citizens were summonsed for jury service given the existing demand for jurors in the four locations. The percentages in the far right-hand column are the total number of jurors that would be summonsed from each zone expressed as a percentage of the total number of records assigned to those zones on the master jury list.

	Downtown	SE	NW	NE	Total		
Existing Caseload Distribution	63%	20%	5%	11%	100%		
Jurors summonsed from ...							% of Master Jury List
Zone 1	158,300	4,042	1,549	6,084	169,975	22.3%	
Zone 2	61,250	90,806	775	1,659	154,490	17.7%	
Zone 3	61,250	3,735	22,556	1,659	89,200	20.7%	
Zone 4	35,737	3,745	943	45,909	86,334	18.6%	
Total	316,537	102,328	25,823	55,311	499,999		

* Total does not sum to 500,000 due to rounding.

This table illustrates a key feature of the PWS System – namely, that the ability to allocate jurors to multiple courthouses while simultaneously balancing the demographic profile of the jury pool and minimizing the inconvenience imposed on citizens necessarily requires some degree of flexibility in the summoning rate between zones. In Section V, we found a slight variation in summoning rates consistent with that expected from the PWS System matrix in the allocation of jurors to courthouse locations from September 2005 to August 2006. This raises the new and interesting question of how “equal” must equal probability of selection be?

Table 4a also highlights the sensitivity of the PWS System matrix to slight variations in the demand for jurors at each location. Table 4 showed the summoning effects based on the projected juror demand at the time the PWS System matrix was

¹⁵ Bob James, Director of Jury Management, Judicial Branch of Arizona in Maricopa County, Statement Regarding Proximity Weighted Summoning (May 26, 2006).

developed for the opening of the NE courthouse. This table shows how those summoning rates would change if the actual juror demand differed from the projected juror demand.¹⁶

Table 4a: Effect of Alternative Caseload Distributions to Allocation of 500,000* Jurors						
	Downtown	SE	NW	NE	Total	
Alternative Caseload Distribution 1	61%	18%	8%	13%	100%	
Jurors summonsed from ...						% of Master Jury List
Zone 1	152,531	3,555	2,400	7,150	165,636	21.8%
Zone 2	59,018	79,866	1,200	1,950	142,034	16.3%
Zone 3	59,018	3,285	34,940	1,950	99,193	23.0%
Zone 4	34,435	3,294	1,460	53,950	93,139	20.1%
Total	305,002	90,000	40,000	65,000	500,002	
	Downtown	SE	NW	NE	Total	
Alternative Caseload Distribution 2	65%	22%	4%	9%	100%	
Jurors summonsed from ...						% of Master Jury List
Zone 1	162,533	4,345	1,200	4,950	173,028	22.7%
Zone 2	62,888	97,614	600	1,350	162,452	18.6%
Zone 3	62,888	4,015	17,470	1,350	85,723	19.9%
Zone 4	36,693	4,026	730	37,350	78,799	17.0%
Total	325,002	110,000	20,000	45,000	500,002	
	Downtown	SE	NW	NE	Total	
Alternative Caseload Distribution 3	63%	20%	12%	5%	100%	
Jurors summonsed from ...						% of Master Jury List
Zone 1	157,532	3,950	3,600	2,750	167,832	22.1%
Zone 2	60,953	88,740	1,800	750	152,243	17.4%
Zone 3	60,953	3,650	52,410	750	117,763	27.3%
Zone 4	35,564	3,660	2,190	20,750	62,164	13.4%
Total	315,002	100,000	60,000	25,000	500,002	
* Total does not sum to 500,000 due to rounding.						

¹⁶ Juror demand among multiple locations can change quite easily. For example, a change in judicial assignments that increases the number of judges conducting jury trials in a location would necessarily increase the demand for jurors at that location. Conversely, the transfer of judges to non-jury trial calendars at a location would decrease the demand for jurors at that location.

The third constraint imposes the most ambitious requirement of the three. We would expect the jury pool at each location to reflect the demographic composition of its zone if the demarcation of zones followed the usual hardline approach described in Section II. Given the high convenience factors in the PWS System matrix, we would also expect the demographic composition of the jury pool in the SE, NW and NE court locations to strongly reflect their demographic zones. To satisfy the third requirement for jury pools that mirror the countywide profile at each location, the Office of the Jury Commissioner developed a software tool similar in approach to that used by the authors of this report to predict the demographic profile of the jury pool at each location. The Office of the Jury Commissioner has the added discretion to adjust the PWS System matrix at any time if its review of demographic profiles for each location so warrant.

IV. DATA SOURCES AND METHODS

We collected data about the PWS System and its effects on the pool of available jurors at each court location from several different sources. Several analytical methods were also employed to conduct this assessment. One source of information was written documentation about the PWS System provided by the Office of the Jury Commissioner. This included the document entitled “Statement Regarding Proximity Weighted Summoning” dated May 26, 2006 as well as documentation prepared by the Court’s jury software vendor ACS about the procedures employed to compile the master jury list. Staff also met with Bob James, the Director of Jury Management, on August 21 and 22, 2006 to obtain clarification about the PWS System documentation and other relevant details of jury operations in the Maricopa County Superior Court.

During the visit we also obtained a number of electronic datasets for use in the assessment. Two of these datasets consisted of records extracted from the master jury lists from which jurors were summonsed during the period September 2005 to August 2006.¹⁷ These datasets included the identification number assigned to each record and the zip code and date-of-birth associated with each record. The Pre-March 2006 master jury list, which consisted of approximately 2.9 million records, was used to select jurors who were first summonsed to appear on April 27, 2005 through June 18, 2006. The Post-March 2006 master jury list consisted of approximately 3.1 million records and was used to select jurors who were first summonsed to appear on June 19, 2006 through the remainder of this assessment period. Analytically, we believed it important to conduct parallel analyses – one focused on jurors summonsed from the Pre-March 2006 dataset and one focused on jurors summonsed from the Post-March 2006 dataset to identify and control for any systematic differences that might occur as a result of changes in the master jury list that might otherwise be ascribed to the PWS System.

¹⁷ The master jury list is compiled annually from the list of registered voters and the list of licensed drivers. The Office of the Jury Commissioner obtains the lists from the Maricopa County Department of Elections and the Arizona Division of Motor Vehicles, respectively, and forwards them to the Court’s jury software vendor (ACS). ACS merges the lists, identifies and removes duplicate records and submits the compiled list to an NCOA vendor to update addresses. ACS then returns the cleaned master jury list to the Superior Court for use in summoning jurors.

A second dataset contained information about jurors summonsed to appear from October 2005 through August 2006. Each record included the record identification number as well as the assigned group and pool numbers, the location to which the juror was summonsed, the mailing address zip code for each record, the jury status for each record (e.g., undeliverable summons, disqualified, excused, qualified and available to serve, instructed to report), and the appearance date (if any) for each record. After removing duplicate records,¹⁸ this dataset consisted of 531,760 records, of which 375,740 were summonsed to PWS Superior Court locations.¹⁹

To monitor the demographic characteristics of the jury pool at each location, the Superior Court regularly reviews the biographical forms that jurors complete upon reporting for service. In addition to information used by judges and litigants during voir dire, these forms request jurors to identify their race/ethnic background. See Appendix A. To enable us to compare this information on a zip code-by-zip code basis, the forms completed by jurors who reported for service at the four PWS court locations from September 2005 to May 2006²⁰ were shipped to Business Key punch of Virginia, a data entry firm in Richmond, Virginia, which entered selected fields from the forms into a dataset for analysis purposes. The resulting dataset consisted of 52,936 records²¹ and included the court location, the date of service, the juror's zip code, and the juror's responses to the question concerning racial/ethnic background.²² A complication in the use of this dataset was how the Superior Court collapsed race and ethnicity into a single question on the biographical forms during this period, while the US Census Bureau

¹⁸ We found that approximately 24% of the original dataset consisted of duplicate records – that is, records with identical juror identification numbers. From discussions with Deborah Johnson, Court Technology Services (CTS), and through subsequent analysis of the duplicate records, we found that more than two-thirds of the duplicate records (70%) occurred when jurors deferred to a new date or failed to appear for jury service on the summonsed date, in which case the jury automation system creates a new record with the same juror identification number but assigns a new group and pool number for the new reporting date. The remaining duplicate records had identical identification numbers, pool numbers, group numbers, summons dates, and reporting status. According to Deborah Johnson, staff are not sure of the origin of those remaining duplicate records without further analysis.

¹⁹ The remaining records were summonsed by the Superior Court for the municipal and justice-of-the-peace courts, for county or state grand jury, or for the Superior Court juvenile court location.

²⁰ Approximately 1.6% of the biographic forms indicated dates of service prior to September 2005, .6% indicated dates of service after May 2006 (including some dates that had not yet occurred at the time of this assessment), and .2% did not indicate a date of service. The forms may have been completed incorrectly by the jurors or entered into the dataset incorrectly. These records were not used in subsequent analyses.

²¹ All but 5 of the original forms shipped to Business Key punch were entered in the dataset. The biographical forms that were not entered were forms introduced by the Superior Court in September 2006, which revised the demographic question by separating the categories for race and ethnicity according to US Census definition

²² Each race/ethnicity category was assigned a number (e.g., Black, non-Hispanic was coded as “1”, White, non-Hispanic as “2”, Hispanic as “3”, etc.). Jurors who indicated multiple choices for race/ethnicity were coded as “9” (multiple). All responses written in the field marked “Other” were entered as a text field in the dataset.

disaggregates race and ethnicity as separate concepts.²³ The Superior Court form also omitted a category for Hawaiian natives or Pacific Islanders.²⁴

We also downloaded demographic data from the 2000 Decennial Census and the 2005 American Community Survey from the US Census Bureau website.²⁵ The 2000 Decennial Census information included race and ethnic demographic information about the adult (age 18 and older) population of Maricopa County on a countywide and on a zip code-by-zip code basis. The 2005 American Community Survey is an annual survey that uses sampling methodology to provide reliable estimates to states and large, urban communities about population trends on key demographic, economic, housing, and social indicators between each decennial census.²⁶ Although it currently does not provide information on geographic boundaries smaller than a countywide level, the American Community Survey does provide reliable estimates about significant factors related to juror qualification including citizenship status for the adult population.²⁷ This information was a critical component of the NCSC methods used to model the demographic profiles for each location.

One minor complication in this analytical approach is that the US Census Bureau does not actually use US Postal Service (USPS) zip codes in its data analysis. Instead, it has developed a system of Zip Code Tabulation Areas (ZCTA), which approximates the geographic boundaries of the USPS zip codes. As a result, some USPS zip codes do not have an equivalent Census Bureau ZCTA, either because the zip code references non-residential mailing addresses (e.g., post office box locations, large commercial or government addresses) or because the resident population for that zip code is so small that the Census Bureau merged it with another ZCTA. In addition, the ZCTA codes used in the 2000 Census do not reflect more recent additions or modifications to the USPS zip code areas. Of the 188 USPS zip codes that the Superior Court uses in the PWS System to assign zones, the US Census Bureau has 119 ZCTA equivalents, which account for all but .8% of the records with valid Maricopa County zip codes on the Pre-March 2006 master jury list.

To determine whether the PWS System randomly selects citizens from the master jury list for Maricopa County, we undertook a detailed comparison of the proportion of residents living in each ZCTA according to the 2000 Decennial Census with the

²³ See Elizabeth M. Grieco & Rachel C. Cassidy, *Census 2000 Brief: Overview of Race and Hispanic Origin* (March 2001) (available at <http://www.census.gov/prod/2001pubs/c2kbr01-1.pdf>).

²⁴ The US Census Bureau estimates that .1% of the adult population of Maricopa County classifies itself as Hawaiian native or Pacific Islander.

²⁵ <https://www.census.gov>.

²⁶ The American Community Survey is an annual survey that samples 1 out of every 6 households in every county, American Indian and Alaska Native Area, Hawaiian Home Land, and Puerto Rico. Testing for the American Community Survey began in 1996 and the survey is intended to provide critical economic, social, housing, and demographic information to federal, state, and community policymakers every year instead of once in 10 years. It will replace the Census Bureau “long form” in the 2010 Decennial Census. AMERICAN COMMUNITY SURVEY: QUESTIONS AND ANSWERS (January 2005) (available at http://www.census.gov/acs/www/Sbasics/Congress_toolkit/Q&A.pdf).

²⁷ See Tables B05003(A)-(I).

proportion of names on the master jury list in the corresponding zip codes and the proportion of names selected for jury service in the PWS courts. We continued this approach for every stage of the jury selection process from the compilation of the master jury list to the appearance of summonsed jurors at each of the PWS locations to determine if the PWS System had a disproportionate impact on any identifiable groups or populations within Maricopa County.

To examine the impact of the PWS System on the demographic profile of the jury pool at each court location, we used information from the US Census Bureau about the demographic profile of each ZCTA to model the expected demographic profile of the jury pool for those locations at each stage of the summoning and qualification process. This approach introduces an analytical complication referred to by statisticians as an ecological inference problem. This methodological approach employs probability theory to make inferences about the likely demographic make-up of a given geographic region (ZCTA). However, the fact that the population of a given ZCTA is 50% Hispanic does not necessarily mean that 50% of the individuals from the corresponding zip code that qualify for jury service or that appear for jury service are likewise 50% Hispanic. For ZCTA populations with very small minority populations (e.g., less than 15%), ecological inference problems become even more acute because the probability that any given record in that ZCTA is a member of that minority population is correspondingly small. To verify the validity of this approach, we therefore compared the model estimations to the actual demographic profile at each location based on the responses to the juror biographical forms.

The resulting demographic profiles from this modeling process and from the Juror Biographic Forms were then used to calculate the absolute and comparative disparity for all race and ethnic categories to determine if they approach or exceed legally recognized levels.²⁸ Absolute disparity is the difference between the proportion of a cognizable group in the community and the corresponding proportion of that group in the jury pool. Comparative disparity measures the relative (comparative) level of under-representation given the proportion of the cognizable group in the community. The Arizona Supreme Court has indicated that an absolute disparity of 11% may, in appropriate cases, be sufficient to establish a *prima facie* violation of the fair cross section requirement.²⁹ In a later decision, the Arizona Court of Appeals opined that a comparative disparity well below 50% is unlikely to be sufficient to establish under-representation, especially if the absolute disparity is also small.³⁰

²⁸ In *Duren v. Missouri*, the US Supreme Court set out three steps necessary to support a challenge to the jury pool – namely, that the underrepresented population must be from a “cognizable” group, that the proportion of the cognizable group in the jury pool is not fair or reasonable in relation to the number of persons in the community, and that the under-representation is due to systematic exclusion. Absolute disparity and comparative disparity are two common methods of measuring the extent to which a cognizable group is under-represented or over-represented in the jury pool.

²⁹ *Arizona v. Gretzler*, 612 P.2d 1023, 1040 (Ariz. 1980).

³⁰ *Arizona v. Sanderson*, 898 P.2d 483, n.2 (Ariz. App. 1995).

V. FINDINGS

A. Random Selection in Summoning in the PWS System

To determine whether the PWS System randomly selects citizens from the master jury list for jury service in the Superior Court, we constructed two datasets – one for each of the master jury lists used to summons jurors during the period October 3, 2005 through August 11, 2006. As discussed previously, it is important to conduct separate analyses on jurors summonsed from each master jury list to identify and control for differences that might occur as a result of changes in the master jury list. Each dataset included the following information for each ZCTA: the zone assigned by the PWS System, the total adult population according to the 2000 Decennial Census; the number of records on the master jury list; the number of jurors summonsed to PWS locations for the Superior Court; the number of jurors qualified for jury service at PWS locations for the Superior Court; the number of jurors told to report and waived off at each PWS location; and the number of jurors who appeared for jury service at PWS locations.

The dataset for the Pre-March 2006 master jury list aggregated the 2.9 million records into 119 categories, one for each valid Maricopa County zip code with an equivalent ZCTA, and included the aggregated records for jurors originally summonsed from October 2005 through June 18, 2006 – roughly an 8.5 month period. Similarly, the dataset for the Post-March 2006 master jury list aggregated the 3.1 million records into 119 categories, again one for each valid Maricopa County zip code with an equivalent ZCTA, and included the aggregated records for jurors originally summonsed from June 19, 2006 through August 11, 2006 – roughly a two-month period.³¹ Combined, the two datasets reflect the jury summoning activity in the Superior Court for slightly less than the full year (10.5 months) during which the PWS System operated with four locations. These datasets do not include information about jurors who were originally summonsed for service prior to October 3, 2005, but who deferred their service until after October 3, 2005 or who were given a new service date after October 3, 2005 after failing to appear on the original service date.

Average (Mean) Summoning Rates by Zone

Using these datasets, we calculated the summoning rate – that is, the percentage of jurors summonsed from the applicable master jury list – for each ZCTA and aggregated these rates into their assigned PWS zones. Table 5 illustrates the average (mean) summoning rate for each ZCTA by PWS zone as well as the standard deviation and the minimum and maximum ZCTA summoning rates for each PWS zone.

³¹ The aggregated figures for each ZCTA in the Post-March 2006 dataset include 249 records of jurors who deferred their service date until after August 11, 2006 or who were given a new service date after August 11, 2006 after failing to appear on the original service. These records comprise only .2% of the records for this time period and do not affect the overall calculations.

Table 5: Mean Summoning Rate by Zone					
Pre-March 2006 Master Jury List					
Zone	# of ZCTA in Zone	Mean Summoning Rate	Standard Deviation	Minimum Rate	Maximum Rate
1	38	11.5%	1.0%	11.1%	11.8%
2	34	9.5%	1.0%	9.2%	10.0%
3	26	10.7%	1.7%	10.0%	11.4%
4	21	13.1%	0.9%	12.7%	13.5%
Total	119	11.1%	1.7%	10.7%	11.4%
Post-March 2006 Master Jury List					
Zone	# of ZCTA in Zone	Mean Summoning Rate	Standard Deviation	Minimum Rate	Maximum Rate
1	38	3.2%	0.4%	2.7%	4.7%
2	34	2.8%	3.7%	1.6%	23.4%
3	26	2.6%	0.4%	1.2%	3.0%
4	21	2.8%	0.2%	2.5%	3.0%
Total	119	2.9%	2.0%	1.2%	23.4%

Overall, 11.1% of the names on the Pre-March 2006 master jury list were selected for jury service at PWS locations in the Superior Court during the period from October 3, 2005 to June 18, 2006. There was some variation in the summoning rate by PWS Zone as a result of the summoning parameters established in the PWS System for that period. The actual variation in the summoning rate among PWS zones (3.6 percentage points) is less than that projected by the PWS System based on the original parameters (4.81 percentage points). Some variation within each PWS Zone also occurs as a result of the random selection process itself. In PWS Zone 3, for example, the summoning rates range from 10.0% to 11.4% across the 26 ZCTAs, the largest variation of the four PWS zones.

There is a similar pattern of variation among PWS zones and among ZCTAs within each PWS zone in the Post-March 2006 dataset. Overall, 2.9% of the names were selected from the master jury list in the period from June 19, 2006 through August 11, 2006. This rate varied from 2.6% in Zone 3 to 3.2% in Zone 1. The variation in ZCTA summoning rates, ranging from 1.6% to 23.4%, was greatest in Zone 2.

PWS Effects on the Proportion of Persons Summoned from Zip Code Equivalents at Each Stage of the Jury Selection Process

To further investigate whether the PWS System randomly selects names from the master jury list, we undertook a detailed analysis to determine if the proportion of the population in each ZCTA changes in a statistically measurable way from one stage of the jury summoning process to the next, which would suggest a systematic effect of the PWS System. We first calculated the proportion of the adult population that lives in each ZCTA according to the 2000 Decennial Census and then corresponding proportions for

each subsequent stage of the jury summoning process (e.g., master jury list, summonsed to PWS location, qualified to serve, told to report versus put on call, appeared for service). By calculating confidence intervals estimating the expected range of percentages for each ZCTA, we determined whether the actual percent for each ZCTA differed from the expected range and its relative direction. For the sake of brevity, these calculations – specifically, the indicators of statistically measurable differences in the population proportions for the summoning stage of the jury selection process – are collectively referred to as the “PWS Effects” for the remainder of this report.

Tables 6a through 6d present the results of these analyses at the 95% confidence levels for Zones 1 through 4, respectively. Each column indicates the proportion of the population in that zip code at each stage of the jury selection process as well as an indicator (1, 0, or -1) of whether the percentage differs in a statistically measurable way from the previous jury selection stage.³² The shaded areas indicate the zip codes the ZCTA percentages that differ significantly from the previous jury summoning stage. For example, the names on the Pre-March 2006 Master Jury List for ZCTA 85009 comprise only 1.0% of the total, which is significantly less than the corresponding proportion of the adult population (1.6%) of Maricopa County.

³² A value of zero (0) indicates no statistically measurable difference in population percentage from the previous stage of jury selection. A value of 1 or -1 indicates that the population percentage is statistically greater or less, respectively, than the previous stage of jury selection.

Table 6a: Probability that the ZCTA Proportion Differs from the Previous Stage of the PWS Jury Summoning Process for Zone 1 at 95% Confidence (Pre-March 2006 Master Jury List)

Zip Code	Adult Population	Master Jury List Pre-March 2006	Summonsed to PWS Location	Qualified to Serve	Told to Report	Put On Call	Appeared		
85003	0.3%	0.3%	0	0.3%	0	0.2%	0	0.3%	0
85004	0.2%	0.1%	0	0.2%	0	0.1%	0	0.2%	0
85006	0.9%	0.6%	0	0.6%	0	0.6%	0	0.7%	0
85007	0.5%	0.4%	0	0.4%	0	0.4%	0	0.5%	0
85008	1.7%	1.3%	0	1.3%	0	1.1%	0	1.4%	0
85009	1.6%	1.0%	-1	1.0%	0	1.0%	0	1.2%	0
85012	0.2%	0.2%	0	0.3%	0	0.2%	0	0.3%	0
85013	0.7%	0.7%	0	0.7%	0	0.7%	0	0.9%	0
85014	1.0%	0.8%	0	0.8%	0	0.7%	0	1.0%	0
85015	1.3%	1.0%	0	1.0%	0	0.8%	0	1.1%	0
85016	1.3%	1.1%	0	1.1%	0	1.0%	0	1.3%	0
85017	1.2%	0.8%	0	0.8%	0	0.7%	0	0.9%	0
85018	1.3%	1.3%	0	1.3%	0	1.2%	0	1.6%	0
85019	0.7%	0.6%	0	0.6%	0	0.6%	0	0.8%	0
85020	1.2%	1.1%	0	1.1%	0	1.0%	0	1.4%	0
85021	1.3%	1.1%	0	1.1%	0	0.9%	0	1.2%	0
85022	1.5%	1.6%	0	1.6%	0	1.5%	0	2.0%	0
85029	1.5%	1.4%	0	1.4%	0	1.3%	0	1.7%	0
85031	0.8%	0.6%	0	0.7%	0	0.7%	0	0.8%	0
85033	1.5%	1.2%	0	1.3%	0	1.2%	0	1.6%	0
85034	0.2%	0.2%	0	0.2%	0	0.2%	0	0.2%	0
85035	1.2%	0.9%	0	0.9%	0	1.0%	0	1.2%	0
85037	0.9%	1.0%	0	1.0%	0	1.1%	0	1.4%	0
85040	1.8%	0.7%	-1	0.7%	0	0.7%	0	0.9%	0
85041	0.9%	1.1%	0	1.3%	0	1.5%	0	1.9%	0
85043	0.3%	0.6%	0	0.6%	0	0.6%	0	0.8%	0
85048	1.0%	1.1%	0	1.2%	0	1.2%	0	1.6%	0
85051	1.3%	1.2%	0	1.2%	0	1.1%	0	1.5%	0
85251	1.4%	1.3%	0	1.3%	0	1.1%	-1	1.4%	0
85257	1.0%	1.0%	0	1.0%	0	0.9%	0	1.2%	0
85301	1.8%	1.4%	0	1.5%	0	1.3%	-1	1.6%	0
85302	1.2%	1.2%	0	1.3%	0	1.2%	0	1.7%	0
85303	0.6%	0.7%	0	0.8%	0	0.8%	0	1.1%	0
85304	0.8%	0.9%	0	1.0%	0	1.0%	0	1.3%	0
85305	0.2%	0.2%	0	0.3%	0	0.3%	0	0.4%	0
85329	0.1%	0.0%	0	0.0%	0	0.1%	0	0.1%	0
85339	0.2%	0.3%	0	0.4%	0	0.5%	0	0.6%	0
85353	0.2%	0.4%	0	0.5%	0	0.5%	0	0.7%	0

Table 6b: Probability that the ZCTA Proportion Differs from the Previous Stage of the PWS Jury Summoning Process for Zone 2 at 95% Confidence (Pre-March 2006 Master Jury List)

Zip Code	Adult Population	Master Jury List Pre-	Summonsed to PWS	Qualified to Serve	Told to Report	Put On Call	Appeared						
85044	1.3%	1.4%	0	1.2%	0	1.2%	0	1.3%	0				
85045	0.1%	0.2%	0	0.2%	0	0.2%	0	0.2%	0	0.3%	0		
85201	1.6%	1.4%	0	1.0%	-1	0.9%	0	0.7%	0	1.0%	0	0.8%	0
85202	1.4%	1.3%	0	1.0%	-1	0.9%	0	0.8%	0	1.0%	0	0.9%	0
85203	1.1%	1.1%	0	0.9%	0	0.9%	0	0.8%	0	0.9%	0	0.9%	0
85204	1.9%	1.7%	0	1.4%	-1	1.4%	0	1.2%	0	1.5%	0	1.2%	0
85205	1.4%	1.3%	0	1.1%	0	1.1%	0	1.0%	0	1.1%	0	1.1%	0
85206	1.1%	1.0%	0	0.9%	0	0.8%	0	0.7%	0	0.8%	0	0.8%	0
85207	0.8%	1.2%	0	1.1%	0	1.2%	0	1.1%	0	1.2%	0	1.2%	0
85208	1.4%	0.9%	0	0.8%	0	0.7%	0	0.6%	0	0.8%	0	0.7%	0
85210	1.2%	1.1%	0	0.8%	-1	0.7%	0	0.7%	0	0.8%	0	0.7%	0
85212	0.3%	0.5%	0	0.4%	0	0.5%	0	0.4%	0	0.5%	0	0.5%	0
85213	1.0%	1.0%	0	0.8%	0	0.9%	0	0.8%	0	0.9%	0	0.9%	0
85215	0.6%	0.5%	0	0.5%	0	0.5%	0	0.4%	0	0.5%	0	0.5%	0
85219	0.9%	0.1%	-1	0.1%	0	0.1%	0	0.0%	0	0.1%	0	0.0%	0
85220	1.1%	0.2%	-1	0.2%	0	0.1%	0	0.1%	0	0.2%	0	0.1%	0
85224	1.4%	1.4%	0	1.3%	0	1.4%	0	1.2%	0	1.4%	0	1.4%	0
85225	2.0%	1.9%	0	1.8%	0	1.8%	0	1.7%	0	1.9%	0	1.7%	0
85226	1.2%	1.2%	0	1.2%	0	1.2%	0	1.2%	0	1.3%	0	1.5%	0
85233	1.1%	1.2%	0	1.1%	0	1.2%	0	1.2%	0	1.3%	0	1.4%	0
85234	1.1%	1.2%	0	1.1%	0	1.3%	0	1.2%	0	1.4%	0	1.3%	0
85236	0.2%	0.3%	0	0.3%	0	0.4%	0	0.4%	0	0.4%	0	0.4%	0
85242	0.4%	0.8%	0	0.8%	0	0.8%	0	0.7%	0	0.9%	0	0.6%	0
85248	1.2%	1.5%	0	1.4%	0	1.4%	0	1.4%	0	1.5%	0	1.8%	0
85249	0.3%	1.1%	1	1.1%	0	1.3%	0	1.3%	0	1.3%	0	1.6%	0
85250	0.6%	0.7%	0	0.5%	0	0.6%	0	0.5%	0	0.6%	0	0.6%	0
85256	0.1%	0.1%	0	0.1%	0	0.1%	0	0.1%	0	0.1%	0	0.1%	0
85264	0.0%	0.0%	0	0.0%	0	0.0%	0	0.0%	0	0.0%	0	0.0%	0
85268	0.7%	0.8%	0	0.8%	0	0.8%	0	0.8%	0	0.8%	0	0.9%	0
85281	1.9%	1.7%	0	1.3%	-1	1.0%	-1	0.9%	0	1.0%	0	0.8%	0
85282	1.8%	1.8%	0	1.3%	-1	1.3%	0	1.1%	0	1.3%	0	1.2%	0
85283	1.5%	1.5%	0	1.2%	-1	1.2%	0	1.0%	0	1.2%	0	1.0%	0
85284	0.5%	0.6%	0	0.5%	0	0.6%	0	0.6%	0	0.6%	0	0.8%	0
85296	0.9%	1.3%	0	1.3%	0	1.5%	1	1.4%	0	1.6%	0	1.6%	0

Table 6c: Probability that the ZCTA Proportion Differs from the Previous Stage of the PWS Jury Summoning Process for Zone 3 at 95% Confidence (Pre-March 2006 Master Jury List)													
Zip Code	Adult Population	Master Jury List Pre-	Summonsed to PWS	Qualified to Serve	Told to Report	Put On Call	Appeared						
85306	0.9%	0.9%	0	0.8%	0	0.8%	0	0.7%	0	0.9%	0	0.7%	0
85307	0.3%	0.3%	0	0.2%	0	0.2%	0	0.2%	0	0.2%	0	0.2%	0
85308	2.0%	2.2%	0	2.2%	0	2.4%	0	2.1%	0	2.5%	0	2.3%	0
85309	0.0%	0.0%	0	0.0%	0	0.0%	0	0.0%	0	0.0%	0	0.0%	0
85320	0.0%	0.0%	0	0.0%	0	0.0%	0	0.0%	0	0.0%	0	0.0%	0
85322	0.0%	0.0%	0	0.0%	0	0.0%	0	0.0%	0	0.0%	0	0.0%	0
85323	0.9%	1.5%	1	1.5%	0	1.7%	0	1.5%	0	1.8%	0	1.4%	0
85326	0.7%	0.6%	0	0.7%	0	0.8%	0	0.7%	0	0.9%	0	0.6%	0
85335	0.2%	0.7%	0	0.7%	0	0.8%	0	0.7%	0	0.9%	0	0.6%	0
85337	0.1%	0.1%	0	0.0%	0	0.0%	0	0.0%	0	0.0%	0	0.0%	0
85338	0.5%	1.2%	1	1.3%	0	1.5%	0	1.4%	0	1.5%	0	1.5%	0
85340	0.2%	0.6%	0	0.6%	0	0.7%	0	0.7%	0	0.8%	0	0.7%	0
85342	0.0%	0.0%	0	0.0%	0	0.0%	0	0.0%	0	0.0%	0	0.0%	0
85345	1.6%	1.7%	0	1.7%	0	1.8%	0	1.5%	0	1.9%	0	1.5%	0
85351	1.3%	1.2%	0	1.1%	0	0.7%	-1	0.6%	0	0.8%	0	0.8%	0
85354	0.1%	0.1%	0	0.1%	0	0.1%	0	0.1%	0	0.1%	0	0.1%	0
85355	0.1%	0.1%	0	0.1%	0	0.2%	0	0.1%	0	0.2%	0	0.2%	0
85361	0.1%	0.1%	0	0.1%	0	0.1%	0	0.1%	0	0.1%	0	0.1%	0
85363	0.1%	0.2%	0	0.2%	0	0.1%	0	0.1%	0	0.2%	0	0.1%	0
85373	0.5%	0.5%	0	0.5%	0	0.3%	0	0.3%	0	0.4%	0	0.3%	0
85374	1.0%	1.3%	0	1.3%	0	1.3%	0	1.1%	0	1.3%	0	1.2%	0
85375	1.2%	1.0%	0	1.0%	0	0.6%	-1	0.5%	0	0.6%	0	0.6%	0
85379	0.0%	0.6%	0	0.6%	0	0.8%	0	0.7%	0	0.8%	0	0.8%	0
85381	0.7%	0.8%	0	0.9%	0	1.0%	0	0.8%	0	1.0%	0	0.9%	0
85382	1.2%	1.2%	0	1.2%	0	1.2%	0	1.1%	0	1.3%	0	1.2%	0
85390	0.3%	0.2%	0	0.2%	0	0.2%	0	0.1%	0	0.2%	0	0.2%	0

Table 6d: Probability that the ZCTA Proportion Differs from the Previous Stage of the PWS Jury Summoning Process for Zone 4 at 95% Confidence (Pre-March 2006 Master Jury List)

Zip Code	Adult Population	Master Jury List Pre-	Summonsed to PWS	Qualified to Serve	Told to Report	Put On Call	Appeared
85023	1.1%	1.0%	1.1%	1.1%	0.9%	1.2%	0.8%
85024	0.6%	0.6%	0.7%	0.7%	0.6%	0.8%	0.6%
85027	1.2%	1.2%	1.4%	1.4%	1.1%	1.5%	1.0%
85028	0.7%	0.7%	0.9%	0.9%	0.8%	1.0%	0.8%
85032	2.2%	2.0%	2.2%	2.2%	1.8%	2.4%	1.7%
85050	0.6%	0.7%	0.8%	0.9%	0.7%	1.0%	0.8%
85053	0.9%	1.0%	1.1%	1.1%	0.9%	1.2%	0.9%
85054	0.1%	0.1%	0.1%	0.1%	0.1%	0.1%	0.1%
85085	0.0%	0.3%	0.4%	0.5%	0.4%	0.5%	0.4%
85086	0.3%	0.8%	1.0%	1.2%	0.9%	1.3%	1.0%
85087	0.1%	0.1%	0.2%	0.2%	0.2%	0.2%	0.2%
85253	0.6%	0.6%	0.8%	0.9%	0.7%	0.9%	0.8%
85254	1.6%	1.7%	1.9%	2.0%	1.6%	2.2%	1.8%
85255	0.7%	1.2%	1.4%	1.5%	1.2%	1.6%	1.3%
85258	0.9%	0.9%	1.1%	1.0%	0.8%	1.1%	0.9%
85259	0.8%	0.7%	0.9%	1.0%	0.7%	1.1%	0.8%
85260	1.2%	1.3%	1.5%	1.5%	1.2%	1.7%	1.3%
85262	0.4%	0.6%	0.8%	0.9%	0.7%	1.0%	0.7%
85263	0.1%	0.1%	0.1%	0.1%	0.1%	0.1%	0.1%
85310	0.7%	0.8%	0.9%	1.1%	0.9%	1.2%	0.9%
85331	0.8%	0.8%	1.0%	1.1%	0.9%	1.3%	0.9%

We found that the percentage of jurors summonsed to PWS locations differed from the corresponding percentage of the Pre-March 2006 Master Jury List in seven ZCTA areas. Six ZCTA percentages, all in Zone 2, were significantly less and one (in Zone 4) was significantly more than the corresponding master jury list percentage. This is consistent with the pattern observed in Table 5 and is likely the result of the PWS System parameters in place during this time period. Of particular importance, in only one instance (ZCTA 85281) do the effects of the disproportionately high and low summoning in these zip codes perpetuate into subsequent stages of the jury selection process. This suggests the absence of a widespread, systematic effect of the PWS System on jury summoning and qualification. In fact, as we discuss shortly, the shaded ZCTA areas do not correlate with key geographic (ZCTA population) and demographic (race and ethnicity) variables

A similar conclusion arises from the Post-March 2006 analyses.³³ Five of the ZCTA percentages for jurors summonsed to PWS locations differed significantly from the corresponding percentages on the master jury list, all from Zone 2. Four were significantly less, none of which carried over into the qualification stage. Only in ZCTA 85249, where the master jury list percentage was .7%, did the disproportionately high summoning percentage (1.1%) carry over to a disproportionately high qualification rate (1.2%).

³³ Tables corresponding to Tables 6a through 6d are not provided for the Post-March 2006 analyses, but are available from the authors on request.

Correlations of PWS Effects with Geographic and Demographic Variables

In addition to the effects of the PWS System summoning on each ZCTA, we also examined whether PWS System effects have any correlation with key geographic or demographic variables. Table 7 presents the results of these correlations expressed as “Pearson Correlation Coefficients,” which are statistical measures that range from -1 to 1 and reflect the extent to which two variables correlate or move together in the same or opposite direction.³⁴ The presence of an asterisk beside a variable indicates that the probability is greater than 99% that the correlation is not the result of random chance.

Table 7: Correlation of PWS System Effects with Geographic and Demographic Variables

	Pearson Correlation Coefficient	
	Pre-March 2006	Post-March 2006
ZCTA Size	-0.155	-0.290 *
% White	0.072	0.061
% Black	-0.142	-0.051
% American Indian / Native Alaskan	-0.018	-0.013
% Asian	0.057	-0.252 *
% Hawaiian / Pacific Islander	-0.283 *	-0.064
% Other Race	0.019	-0.024
% Multiracial	-0.047	-0.137
% Hispanic	0.045	-0.025

* Correlation is significant at the .01 level (2-tail)

We found no correlation between PWS System effects and the ZCTA population for the Pre-March 2006, suggesting that the PWS System does not disproportionately select or avoid selecting citizens from more densely populated areas. Except for persons of Hawaiian/Pacific Islander descent, which comprise only .2% of the adult population in Maricopa County,³⁵ there was no correlation between PWS System effects and the proportion of various racial and ethnic subpopulations. It is important to recognize that

³⁴ A value of 1 would indicate that the variables are perfectly correlated – that is, as the value for one variable increases, the second variable increases at the same rate. In contrast, a value of -1 indicates that the variables are inversely correlated – as the value for one variable increases, the second variable decreases at the same rate. A value of 0 indicates that the two variables have no correlation whatsoever.

³⁵ The PWS effect observed for the Hawaiian/Pacific Islander subpopulation may also derive from the fact that the vast majority (79.4%) live in PWS Zones 1 and 2, rather than being more evenly dispersed as are the other race and ethnic populations. Because we know that the PWS summoning rate for Pre-March 2005 was slightly higher in Zone 4, there is a measurable inverse correlation between Hawaiian/Pacific Islander population and PWS System effects on summoning.

these correlations are based on inferences about the racial and ethnic make-up of each ZCTA, which may not be entirely accurate given the ecological inference problems associated with small minority populations discussed previously.

The Post-March 2006 analyses yielded similar results for most of the demographic variables, except the affected subpopulation was Asian rather than Hawaiian/Pacific Islander. Again, this correlation may not be entirely accurate insofar that ecological inference problems tend to complicate the interpretation of this statistic. The summoning rate from the Post-March 2006 master jury list was also disproportionately high for less populous ZCTA areas due to the combination of the concentration of more populous ZCTA areas in Zones 1 and 2 and the higher summoning rate from Zone 1 during the period June 19 through August 11, 2006. Moreover, the fact that the different subpopulations were affected during different summoning periods (Pre and Post-March 2006 master jury lists) also suggests that these correlations might have resulted from differing juror demands by the various PWS locations, rather than a direct PWS effect.

B. Effect of PWS System on the Demographic Profile of the Jury Pool

To investigate the effect of the PWS System on the demographic profile of the jury pool at each PWS location, we imported the demographic characteristics for each ZCTA from the 2000 Decennial Census into the Pre-March 2006 and Post-March 2006 Master Jury Lists and into the Summoned Jurors dataset. In essence, for each record in the datasets, we assigned a probability that the person was White, was Black, was Hispanic, etc. based on the ZCTA associated with that record. This permitted us to predict the average (mean) proportion of each race and ethnicity for each PWS location. We then compared the PWS location profiles at each stage of the summoning process with the countywide profile from the 2000 Decennial Census and with the master jury list profiles and computed the absolute and comparative disparity for each location. To verify the reliability of this approach, we then compared the actual demographic profiles of the jury pool at each PWS location based on the biographical forms completed by jurors.

Table 8 provides the results of this demographic modeling process. The left-hand margin of the table provides the demographic profile for Maricopa County according to the 2005 American Community Survey. The columns to the right present the projected demographic profile for each court location and for each stage of the jury summoning process. The top, right quadrants also present the projected demographic profile for the Pre-March 2006 and Post-March 2006 master jury lists. For comparability with the actual demographic profiles derived from the Juror Biographical Forms, Table 8 provides the profiles of the jury pool in each location for each subsequent jury selection stage. This is based on all the jurors summonsed under the PWS System, rather than separating them based on the master jury list from which they were summonsed.

Table 8: Demographic Models based on 2000 Decennial Census					
Maricopa County Adult Population 2005 American Community Survey		Master List			
		Pre-March 2006		Post-March 2006	
N	2,597,348	2,889,024		3,072,094	
% White	80.9%	81.9%		82.0%	
% Black	3.6%	3.0%		3.0%	
% Am Indian / Alaskan Native	1.6%	1.5%		1.6%	
% Asian	2.8%	2.2%		2.2%	
% Hawaiian / Pacific Islander	n/a	0.2%		0.2%	
% Other	9.6%	8.4%		8.4%	
% Multi	1.4%	2.0%		2.0%	
% Hispanic (adj for citizenship)	13.1%	12.3%		12.2%	
Maricopa County Adult Population 2005 American Community Survey		Summonsed PWS			
		Downtown	SE	NW	NE
N	2,597,348	221,288	65,352	18,243	48,223
% White	80.9%	79.4%	84.4%	85.1%	89.5%
% Black	3.6%	3.5%	2.4%	2.7%	1.9%
% Am Indian / Alaskan Native	1.6%	1.7%	1.6%	0.9%	0.9%
% Asian	2.8%	2.1%	2.6%	1.8%	1.9%
% Hawaiian / Pacific Islander	n/a	0.2%	0.2%	0.1%	0.1%
% Other	9.6%	9.9%	6.9%	7.6%	4.0%
% Multi	1.4%	2.1%	1.8%	1.7%	1.5%
% Hispanic (adj for citizenship)	13.1%	13.9%	10.7%	12.2%	6.9%
Maricopa County Adult Population 2005 American Community Survey		Qualified			
		Downtown	SE	NW	NE
N	2,597,348	143,603	43,677	12,523	33,119
% White	80.9%	79.2%	84.5%	84.5%	89.6%
% Black	3.6%	3.6%	2.4%	2.8%	1.9%
% Am Indian / Alaskan Native	1.6%	1.7%	1.6%	0.9%	0.1%
% Asian	2.8%	2.2%	2.6%	1.9%	1.9%
% Hawaiian / Pacific Islander	n/a	0.2%	0.1%	0.1%	0.1%
% Other	9.6%	10.0%	6.8%	8.0%	3.9%
% Multi	1.4%	2.1%	1.8%	1.7%	1.5%
% Hispanic (adj for citizenship)	13.1%	14.0%	10.5%	13.0%	6.9%

Table 8: Demographic Models based on 2000 Decennial Census (con't.)						
Maricopa County Adult Population 2005 American Community Survey		On Call				
		Downtown	SE	NW	NE	
N	2,597,348	82,773	34,611	12,310	27,996	
% White	80.9%	79.5%	84.4%	84.5%	89.7%	
% Black	3.6%	3.5%	2.4%	2.8%	1.9%	
% Am Indian / Alaskan Native	1.6%	1.7%	1.6%	0.9%	0.8%	
% Asian	2.8%	2.1%	2.6%	1.9%	1.9%	
% Hawaiian / Pacific Islander	n/a	0.2%	0.1%	0.1%	0.1%	
% Other	9.6%	9.9%	6.9%	8.0%	3.8%	
% Multi	1.4%	2.1%	1.8%	1.7%	1.5%	
% Hispanic (adj for citizenship)	13.1%	13.9%	10.5%	12.9%	6.7%	
Maricopa County Adult Population 2005 American Community Survey		Report				
		Downtown	SE	NW	NE	
N	2,597,348	60,830	9,066	213	5,123	
% White	80.9%	78.9%	84.8%	82.7%	88.7%	
% Black	3.6%	3.6%	2.4%	3.0%	2.1%	
% Am Indian / Alaskan Native	1.6%	7.8%	1.5%	1.1%	0.9%	
% Asian	2.8%	2.2%	2.6%	1.7%	1.9%	
% Hawaiian / Pacific Islander	n/a	0.2%	0.1%	0.1%	0.1%	
% Other	9.6%	10.2%	6.7%	9.3%	4.4%	
% Multi	1.4%	2.2%	1.8%	1.8%	1.6%	
% Hispanic (adj for citizenship)	13.1%	14.1%	10.4%	15.0%	7.5%	
Maricopa County Adult Population 2005 American Community Survey		Appeared				
		Downtown	SE	NW	NE	
N	2,597,348	41,169	7,600	123	3,184	
% White	80.9%	81.4%	85.2%	85.1%	90.2%	
% Black	3.6%	3.2%	2.3%	2.6%	1.8%	
% Am Indian / Alaskan Native	1.6%	1.6%	1.4%	1.0%	0.8%	
% Asian	2.8%	2.2%	2.6%	1.7%	1.9%	
% Hawaiian / Pacific Islander	n/a	0.2%	0.1%	0.1%	0.1%	
% Other	9.6%	8.6%	6.4%	7.7%	3.5%	
% Multi	1.4%	2.0%	1.8%	1.6%	1.4%	
% Hispanic (adj for citizenship)	13.1%	12.6%	10.1%	13.1%	6.6%	

Before discussing the results of Table 8, it is important to consider several methodological problems that complicate these analyses. First, recall from our previous discussion that the approach employed in calculating these estimates inherently involves

ecological inference problems. Although the 2000 Decennial Census reports that 38% of the adult population living in ZCTA 85003 was Hispanic, there is no guarantee that 38% of the records on the master jury list with that zip code represent Hispanic persons.³⁶

Recall also that until September 2006 the Superior Court categorized race and ethnicity differently than the US Census Bureau in three significant respects. The US Census Bureau separates race and ethnicity into different concepts, whereas the Court combined the two on the Juror Biographical Form. The US Census Bureau also identifies Hawaiian/Pacific Islander as a race, a category that was omitted by the Superior Court.

Most significantly, race and ethnic categories for the US Census Bureau are exhaustive; if the respondent to the Decennial Census fails to indicate race for one or more of the household members, the race is imputed based on the race of other household members, the relationship to the other household members, or the race indicated for the members of that household in the previous decennial census.”³⁷ A similar protocol, which involves the use of Spanish surnames, is followed for missing information about Hispanic/Latino ethnicity.³⁸ Yet nearly one in five jurors (19%) in Maricopa County chose not to indicate their race or ethnicity, or responded with a non-race response (e.g., nationality) on the Juror Biographical Forms. See Table 8a. This can have a profound effect on how the demographic profile is characterized. If missing race information is considered, for example, the jury pool for all Superior Court locations combined is 73.9% White, but if it is disregarded, the White proportion of the jury pool is estimated at 91.0%.³⁹

A final complication in these analyses is the issue of how to adjust the Hispanic population percentage to reflect the fact that a significant portion (43.3%) of the Hispanic community in Maricopa County are non-citizens and therefore ineligible for jury service. The 2005 American Community Survey estimated that 23.1% of the adult population of Maricopa County was Hispanic, but discounting this figure to compensate for US citizenship results in an estimate that only 13.1% of the jury eligible population is Hispanic.⁴⁰

³⁶ In fact, as Table 8a illustrates, the “actual” percentage of jurors from ZCTA 85003 who reported being of Hispanic/Latino ancestry was 13.5%.

³⁷ US CENSUS BUREAU, Census Data Information, Subject Characteristic: Race (located at http://factfinder.census.gov/servlet/MetadataBrowserServlet?type=subject&id=PLRACE&dssspName=DEC_2000_PL&back=update&lang=en).

³⁸ Arthur R. Cresce, Audrey D. Schmidley & Roberto R. Ramirez, *Identification of Hispanic Ethnicity in Census 2000: Analysis of Data Quality for the Question on Hispanic Origin* (U.S. Census Bureau Working Paper 75) (located at <http://www.census.gov/population/www/documentation/twps0075/twps0075.pdf>).

³⁹ To categorize juror race and ethnicity as accurately as possible from the Juror Biographical Forms, we reviewed any comments written by jurors in the space marked “Other.” Of the 914 written comments, it was possible to infer a valid race or ethnicity for 483 records (52.8%). These inferred classifications are reflected in Table 8a.

⁴⁰ To further complicate this issue, the master jury list used for jury selection is derived from the list registered voters, for which US citizenship is required, and the list of licensed drivers, which does not require US citizenship. Because the list of licensed drivers is the larger of the two lists and is also designated as the primary list, we believed it appropriate to further adjust the projected Hispanic proportion of the jury pool to reflect the fact that one of the source lists already excludes non-citizens.

Maricopa County Adult Population 2005 American Community Survey		Actual Based on Juror Biographical Forms with Imputed Race/Ethnicity*				
		Total	Downtown	SE	NW	NE
N	2,597,348	52,936	41,056	7,881	294	3,705
% White	80.9%	73.9%	72.8%	78.9%	71.4%	76.0%
% Black	3.6%	3.1%	3.4%	2.0%	2.7%	1.9%
% Am Indian / Alaskan Native	1.6%	1.0%	1.1%	0.9%	0.0%	0.6%
% Asian	2.8%	2.2%	2.2%	2.2%	1.4%	1.8%
% Hawaiian / Pacific Islander	n/a	0.2%	0.2%	0.1%	0.7%	0.1%
% Other	9.6%	0.0%	0.0%	0.0%	0.0%	0.0%
% Multi	1.4%	0.8%	0.8%	0.9%	0.7%	0.6%
% Missing / Non-Race Response	n/a	18.8%	19.5%	14.9%	23.1%	19.0%
% Hispanic (adj for citizenship)	13.1%	11.6%	12.5%	8.9%	8.2%	7.1%

* Race / Ethnicity imputed from written comments, if available, for records with missing information.

Turning back to Table 8, it is clear that the projected demographic profiles of the jury pool at each location differ somewhat from each other and from the countywide profile. Although most of these differences are likely due to the summoning differential inherent in the PWS System, some difference in the location profiles would also be expected to occur as a result of differences in the reporting rates at each location, especially by jurors summonsed to more remote locations. Notwithstanding these differences, the absolute disparity does not exceed 10% for any of the race categories. The highest levels of absolute disparity – ranging from 8.6% to 9.3% – show that Whites are projected to be slightly over-represented in the NE courthouse, but the greatest comparative disparity for Whites at this location is projected to be 11.5%, well below the 50% threshold suggested by the *Sanderson* opinion.⁴¹

The models also project that Hispanics will be slightly over-represented in the Downtown courthouse (5.5 to 5.8% at various stages) and in the NW courthouse (7%) at the stage of being told to report. The corresponding comparative disparities at the Downtown location range from 42.2% to 44.5% over-represented. The only comparative disparity greater than 50% is projected to occur for Hispanics who are told to report to the NW courthouse (53.7%), but the actual projection for those that appear at this location is only 33.8%.

In most respects, the NCSC demographic models correspond fairly closely to the actual demographic profiles for each location based on the Juror Biographical Forms.

⁴¹ It should also be noted that the inferred demographic profile for the master jury lists has a slightly higher proportion of Whites and slightly lower proportions of all other races (except Hawaiian / Pacific Islander) and of Hispanics compared to the 2005 American Community Survey estimates. Because the master jury list is the operational starting point for the jury selection process, rather than the general community, this demographic profile is expected to perpetuate throughout subsequent stages of jury selection.

The two most significant differences across all Superior Court locations are the proportions White and Other jurors. The actual proportion of White jurors who report for service ranges from 6.4 to 14.5 percentage points less than that projected, depending on the location. The actual proportion of Other jurors is 6.3 and 9.2 percentage points higher than that projected for the NW and NE locations, respectively. Both of these differences most likely result from how the US Census Bureau and the Superior Court define race, especially the treatment of missing information, rather than from actual differences in the projected versus actual demographic profiles for each location.⁴²

VI. CONCLUSIONS

The PWS System developed by the Superior Court differs in several important respects from systems developed by other courts that have faced the question of how to summons jurors to multiple locations within a jurisdiction. Discretionary decision-making – in the location of courthouses in the jurisdiction, in defining the geographical boundaries to be served by those courthouses, in determining the volume and types of cases to be tried in those locations – is an inherent feature of these systems. The PWS System is unique in its attempt to balance several fundamental, but not necessarily mutually compatible, goals of jury management – namely, equal probability of selection for all eligible and available citizens, jury pools at each courthouse location that mirror the demographic characteristics of the entire county, and minimization of the inconvenience to citizens of serving in remote locations. It is an ambitious program and, from a purely qualitative standpoint, one that achieves these goals admirably well.

The review of jurors summonsed to the PWS locations indicates a very slight difference in the summoning rates across zones during the October 2005 to August 2006 period that can be attributed to the PWS System. For the Pre-March 2006 master jury list, the summoning rates ranged from 9.5% to 13.1% (3.6 percentage points). For the Post-March 2006 master jury list, the variation is .6 percentage points. In both instances, the variation is less than the expected variation of 4.8 percentage points projected by the PWS System matrix.

It is also clear from the comparison of summoning rates for the Pre-March and Post-March 2006 master jury lists that the PWS System does not consistently summons from the any one zone more heavily than the other zones. The shift from Zone 4 with the highest summoning rate for the Pre-March 2006 master jury list to Zone 1 with the highest rate for the Post-March 2006 master jury list is most likely the result of shifting demands for jurors at those locations.

This assessment also found that the PWS System does not systematically exclude any identifiable populations or groups from jury service. Citizens are summonsed from the vast majority of valid Maricopa County zip codes in proportion to their numbers on the master jury list and, for the handful of zip codes that were over-summonsed or under-summonsed, no discernible pattern can be found to suggest that the PWS System effects perpetuate into subsequent stages of the jury selection process.

⁴² Jurors could write their race or ethnicity in a space provided. Recall, for example, that the Superior Court did not provide “Other Race” as an option on the Juror Biographical Form.

Similarly, we found no correlation between the summoning effects of the PWS System and significant racial and ethnic populations in Maricopa County. The only statistically measurable correlations found in these analyses occurred in the Hawaiian/Pacific Islander and Asian subpopulations, which comprise .2% and 2.8%, respectively, of the adult population of Maricopa County. These correlations should be interpreted cautiously insofar that ecological inference problems may be operating, particularly with such small populations. Moreover, the fact that the different subpopulations were affected for different summoning periods suggests that these correlations may be the result of differing juror demands by the various PWS locations, rather than a direct PWS effect. The same conclusion can be drawn from the inconsistent correlation for population density from the Pre-March 2006 master jury list to the Post-March 2006 master jury list.

The demographic profiles of the jury pool differ slightly by location, but overall they closely mirror the demographic profile for Maricopa County. Across all of the locations, the most significant deviations from the countywide profile occur for Whites and for "Other" race. These deviations may not be as extensive as they appear, however, due to the large proportion of jurors (19%) who declined to indicate their race or ethnicity on the Juror Biographical Forms. Moreover, the deviations themselves are well within the parameters established in Arizona case law for absolute and comparative disparity.



Maricopa County

Board of Supervisors

Andy Kunasek, Chairman
301 W. Jefferson, 10th Floor
Phoenix, Arizona 85003-2148
Phone 602.506.7562
FAX 602.506.6362
www.maricopa.gov

February 12, 2008

The Honorable Barbara Mundell
Presiding Judge
Superior Court in Maricopa County
125 W. Washington Street
Phoenix, AZ 85003

Dear Judge Mundell:

Thank you for the opportunity to comment on the proposal to implement proximity weighted jury summoning in Maricopa County. As you know, Maricopa County strongly supported amendments to A.R.S. § 21-302 in the last legislative session for several important public policy reasons:

1. Convenience to the citizens.
2. Reduction of costs for mileage.
3. Reduction of air pollution in keeping with the County's clean air/trip reduction policy.

It is a common complaint of county citizens that driving long distances to courthouses on the other side of our county is a hardship. Many say that they would be happy to perform their civic duty to serve as jurors, but wonder why they could not serve at a courthouse closer to their homes.

It is also estimated that implementing the new system could save Maricopa County taxpayers \$436,000 per year. In these difficult economic times, when the county has seen a significant reduction in its revenues, it is more important than ever to implement cost-saving measures in order to save as many county programs as possible, and continue to perform the County's mandated functions and service to its citizens.

Please inform the Arizona Supreme Court that Maricopa County leadership strongly supports implementation of the proximity weighted summoning system.

Sincerely,


Andy Kunasek
Chairman

Lilia Linn - SUPCRTX

From: Marcus Reinkensmeyer - SUPCRTX
Sent: Monday, January 21, 2008 6:32 PM
To: Lilia Linn - SUPCRTX
Subject: Fw: Plan for Alternative Juror Summoning Procedures

Thank you. Marcus

Sent from my wireless handheld device.

----- Original Message -----
From: Jim Bloom - DIST3X
To: Marcus Reinkensmeyer - SUPCRTX
Sent: Fri Jan 18 18:01:35 2008
Subject: Re: Plan for Alternative Juror Summoning Procedures

Looks good to me.

----- Original Message -----
From: Nancy Schripsema - SUPCRTX
To: Jim Bloom - DIST3X
Cc: Marcus Reinkensmeyer - SUPCRTX
Sent: Fri Jan 18 17:48:23 2008
Subject: FW: Plan for Alternative Juror Summoning Procedures

Jim,

Just want to forward this information to you and an FYI.

Marcus

From: Nancy Schripsema - SUPCRTX On Behalf Of Marcus Reinkensmeyer - SUPCRTX
Sent: Friday, January 18, 2008 2:01 PM
To: Andrew Kunasek - DIST3X
Cc: Marcus Reinkensmeyer - SUPCRTX; Jessica Funkhouser - SUPCRTX
Subject: Plan for Alternative Juror Summoning Procedures
Importance: High

Chairman Kunasek,

We request your review and comments of the attached information regarding the Plan for Alternative Juror Summoning Procedures.

Thank you,

Marcus W. Reinkensmeyer
Court Administrator/Jury Commissioner

<<Andrew Kunasek Chairman BOS.doc>> <<Letter re-Juror Summons PWS_PROPOSAL Attach #1 1-18-08.DOC>> <<Letter re-Juror Summons 1-18-08 AZ_Final_Report_Revise.pdf>>

Lilia Linn - SUPCRTX

From: Marcus Reinkensmeyer - SUPCRTX
Sent: Monday, January 21, 2008 6:33 PM
To: Lilia Linn - SUPCRTX
Subject: Fw: Plan for Alternative Juror Summoning Procedures

File
Thank you. Marcus

Sent from my wireless handheld device.

----- Original Message -----
From: David Smith - CAOX
To: Marcus Reinkensmeyer - SUPCRTX
Sent: Fri Jan 18 17:22:20 2008
Subject: RE: Plan for Alternative Juror Summoning Procedures

Marcus, the plan looks good to me.

From: Nancy Schripsema - SUPCRTX On Behalf Of Marcus Reinkensmeyer - SUPCRTX
Sent: Friday, January 18, 2008 5:00 PM
To: David Smith - CAOX
Cc: Marcus Reinkensmeyer - SUPCRTX; Jessica Funkhouser - SUPCRTX
Subject: FW: Plan for Alternative Juror Summoning Procedures
Importance: High

Mr. Smith,

We request your review and comments of the attached information regarding the Plan for Alternative Juror Summoning Procedures.

Thank you,

Marcus W. Reinkensmeyer
Court Administrator/Jury Commissioner

<< File: David Smith County Manager.doc >> << File: Letter re-Juror Summons
PWS_PROPOSAL Attach #1 1-18-08.DOC >> << File: Letter re-Juror Summons 1-18-08
AZ_Final_Report_Revised.pdf >>

Nancy Schripsema - SUPCRTX

From: Marcus Reinkensmeyer - SUPCRTX
Sent: Tuesday, January 22, 2008 3:18 PM
To: Nancy Schripsema - SUPCRTX
Subject: Fw: Plan for Alternative Juror Summoning Procedures

Start file of responses.
Thank you. Marcus

Sent from my wireless handheld device.

----- Original Message -----

From: Bonniesaun@aol.com <Bonniesaun@aol.com>
To: Marcus Reinkensmeyer - SUPCRTX
Sent: Tue Jan 22 14:39:21 2008
Subject: Plan for Alternative Juror Summoning Procedures

Dear Marcus W. Reinkensmeyer:

Regarding your plan for alternative juror summoning procedures, the League of Women Voters of Arizona has no position on this matter so we cannot comment except to say that the plan seems consistent in reflecting the area's demographics. We wish you the best in implementing it.

Bonnie F. Saunders, Ph.D.
President, LWV/AZ

Start the year off right. Easy ways to stay in shape.
<http://body.aol.com/fitness/winter-exercise?NCID=aolcmp00300000002489>

Nancy Schripsema - SUPCRTX

From: Marcus Reinkensmeyer - SUPCRTX
Sent: Tuesday, February 12, 2008 7:36 AM
To: Nancy Schripsema - SUPCRTX
Subject: Fw: Plan for Alternative Juror Summoning Procedures.doc

Attachments: Plan for Alternative Juror Summoning Procedures.doc

Pls hold
Thank you. Marcus

Sent from my wireless handheld device.

----- Original Message -----

From: Max Bessler - OLDX
To: Marcus Reinkensmeyer - SUPCRTX
Sent: Mon Feb 11 10:41:12 2008
Subject: Plan for Alternative Juror Summoning Procedures.doc

Marcus,



Plan for Alternative
Juror Sum...

I as
are worth. ed an attorney for his take on the Alternative Juror Summoning Procedures. Take them for what they
Max

Plan for Alternative Juror Summoning Procedures

A review of this plan brought to mind some compelling concerns (noted below) that will arise immediately for many attorneys.

1. The juries resulting from implementation of this proposed procedure will not be representative of the entire county, as provided by law; but will be
 - race-weighted,
 - ethnically biased, and
 - economically prejudiced.
2. The data in the attached assessment by National Center for State Courts show significant disparities in the composition of county population in regards to jury selection:
3. The convenience factor and environmental issues do not outweigh the momentous legal rights and interests of defendants/litigants seeking a fair trial as provided by the Arizona constitution and statutes. If the marginal/tangential/administrative factors of convenience and air-quality are important for the courts and community, their remedy is to change the constitution and/or divide Maricopa County into smaller counties. (Note: a comparison of individual state populations, areas, and # of counties points out Arizona's extremely low # of counties for its size.)
4. Most attorneys are not concerned about ending up with disgruntled jurors on their jury panels because of the inconvenience of driving to a remote court. Many jurors already are disgruntled about having to interrupt their normal lives and/or work day by serving at all, and that cannot be overcome by letting location determine jury service. Jurors' resentment can be assuaged by addressing their additional complaints about (1) receiving misinformation and lackluster or indifferent replies from courthouse staff, (2) being stuck in uncomfortable rooms for long periods of time, and (3) having limited amenities for jury service in addition to their travel/parking inconveniences.

Perhaps county jury duty could be improved for the prospective jurors by incorporating techniques used by other jurisdictions and private industry to reinforce for jurors (aka "customers") how valued they are. E.g.:

- a. replace the wording of "jury duty" with "jury service" or "jury privilege,"
- b. arrange for ample juror parking next to courthouse and provide designated parking passes to jurors called to service,
- c. have smiling, helpful "customer service" staff in the jury room, trained (in the face of anger or annoyance) to pleasantly greet the jurors, answer their questions, and offer solutions where possible,
- d. provide comfortable jury rooms, outfitted with separate areas for quiet reading, for TV viewing, and for conversation/games/eating. These rooms would have desks set up for personal computer use, writing, and/or cell phone use. Coffee, juice, water, tea, granola bars, and fruit would be available. Also, minimizing jurors discomfort by limiting "standing time" and time outside in the Arizona heat is possible with proper planning and communication protocols.
- e. distribute a brochure explaining jury service and the roles of each party, including the jurors. Explain the basics of the law and jury pools. Give examples of cases and the specific impact of the respective juries to "sell" the positive aspects of jury service.

5. A plan for alternative juror-summoning was tried before and struck down by a court ruling. Nothing has changed in the law since that time, and the only apparent reason for resurrecting this procedure is to meet an organizational goal to "'improve jury management systems and selection procedure' by **making citizen convenience a priority**, while ensuring that every potential juror has the opportunity to serve as a juror" [*emphasis added*] – a truly chilling priority in a democracy's justice system.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY
HON. MARK F. ACETO
125 W. WASHINGTON, SUITE 309
PHOENIX, ARIZONA 85003

(602) 506-5261

TO: Judge Mundell, Marcus Reinkensmeyer
FROM: Mark Aceto *ma*
DATE: February 11, 2008
RE: Proximity Weighted Juries

At a meeting on February 7, the Civil Practice and Procedure Committee agreed to endorse our proximity weighted jury summoning system. It is my understanding that the chairman of the Committee has sent a final version of the attached memo to the President of the State Bar confirming the Committee's endorsement.

February __, 2008

TO: Daniel J. McAuliffe, President, State Bar of Arizona

FROM: John W. Rogers, Chair
State Bar Civil Practice and Procedure Committee

RE: **Plan for Alternative Juror Summoning Procedures in Maricopa County**

Pursuant to your request, the Civil Practice and Procedure Committee has reviewed and discussed the proposal to reimplement the Proximity Weighted Summoning (PWS) juror selection system in the Superior Court in Maricopa County, as described in Marcus Reinkensmeyer's January 18, 2008, letter and attached materials. As we understand how the system would work, most prospective jurors would be summoned to report to a regional court center from zip codes closest to that center. The remaining prospective jurors would still be summoned from anywhere in Maricopa County, which would help ensure that the jury pools at each of the regional court centers would approximately reflect the ethnic and racial composition of Maricopa County's population.

The advantages to this system are obvious. Most prospective jurors would travel a shorter distance to report for jury service, which would lessen the inconvenience of jury duty and increase the likelihood that prospective jurors would actually report for service. It also would lessen the County's costs for reimbursing juror mileage, as well as lessen the air pollution associated with traveling to report for jury duty.

Our only concern, shared by the Superior Court and others, is that selection system not result in racial or ethnic disparities in the jury pools generated for the regional court centers in Maricopa County. Although we are sensitive to the difficulties and uncertainties in preparing a reliable statistic analysis of this issue, it appears from the report by the National Center for State Courts that the PWS system, if reimplemented, would not systematically exclude any identifiable ethnic or racial groups in Maricopa County from jury service at any of the regional court centers.

As such, we endorse the reimplementation of the PWS juror selection system in Maricopa County. We would, however, encourage the Superior Court to periodically reassess the efficacy of the PWS juror selection system to make sure that it is not inadvertently producing racial or ethnic disparities in the jury pools at any of the regional court centers.

If the Committee can be of further assistance, please let us know.

*ARIZONA TRIAL
LAWYERS ASSOC.*

**UDALL
SHUMWAY
& LYONS** COUNSELORS AT
LAW SINCE 1966
A PROFESSIONAL CORPORATION

WRITER'S DIRECT LINE: 480-461-5327
EMAIL: mzt@udallshumway.com

Barry C. Dickerson²
Steven H. Everts^{2,3,5}
H. Micheal Wright¹
Clark R. Richter
Roger C. Decker
Denise Lowell-Britt
Stephen L. West
Bradley D. Gardner⁴
Brian T. Allen
Curtis M. Chipman
R. Scott Currey^{7,8}
David R. Schwarz
Jill K. Osborne⁶
April A. Speelmon
Lincoln M. Wright
Nathan A. Skinner
Richard D. Lyons
Jill L. Rogers
Sheri D. Gibisch

**FACSIMILE TRANSMITTAL
COVER PAGE**

DATE: February 13, 2008
ATTENTION: Marcus Reinkensmeyer
602-506-0186
FROM: Amy Gariepy
Legal Assistant to H. Micheal Wright
CLIENT/MATTER:
OUR FILE NO.: 999999-999
NUMBER OF PAGES: 6 (INCLUDING THIS COVER PAGE)

Robert M. Jarrell, Jr.
Southeast Arizona Office

Of Counsel
David K. Udall
Dale R. Shumway
John H. Lyons¹

COMMENTS:

**IF YOU DO NOT RECEIVE ALL PAGES,
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Admissions:
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⁴Also admitted in Minnesota
⁵Also admitted in Kentucky
⁷Also admitted in Montana
⁸Also admitted in Colorado

⁶Fellow of the American Academy of
Matrimonial Lawyers

www.udallshumway.com

MESA OFFICE: 30 West First Street • Mesa, Arizona 85201-6654 • 480.461.5300 FAX 480.833.9392
SOUTHEAST ARIZONA OFFICE: 135 East Maley • Willcox, Arizona 85643 • 520.384.2289 FAX 520.384.2280

**UDALL
SHUMWAY
& LYONS** COUNSELORS AT
LAW SINCE 1965
A PROFESSIONAL LIMITED LIABILITY COMPANY

WRITER'S DIRECT LINE: 480-461-5347
EMAIL: hmw@udallshumway.com

Barry C. Dickerson¹
Steven H. Everts^{2,3,4}
H. Micheal Wright¹
Clark R. Richter
Roger C. Decker
Denise Lowell-Britt
Stephen L. West
Bradley D. Gardner
Brian T. Allen
Curtis M. Chipman
David R. Schwartz
Jill K. Osborne⁵
Erin H. Walz^{6,7}
Lincoln M. Wright
Richard D. Lyons
Sheri D. Shepard
Bert D. Millett

February 13, 2008

Marcus W. Reinkensmeyer
Office of the Court Administrator
Judicial Branch of Arizona
County of Maricopa
201 W. Jefferson
Phoenix, AZ 85003-2205

Re: Jury Selection Proposal

Dear Mr. Reinkensmeyer:

I write on behalf of the Arizona Trial Lawyers Association in response to your proposed Plan for Alternative Juror Summoning Procedures. Thank you for inviting us to provide comments.

By way of history in 2002 Maricopa County began utilizing a regionalized "weighted" jury pool system to summon jurors to the outlying Judicial District Courts. When that practice came to the attention of law practitioners a protest arose, motions were filed, and the County suspended the practice and returned to a county-wide juror pool. Objectors to the practice were concerned that a weighted system would result in an unfair jury mix because of the difference in demographics among the Judicial Districts. For example, could a poor, minority defendant in a criminal matter get a fair jury in the upper-class, conservative Northeast Judicial District? Or could a wealthy corporate defendant get a fair jury in a future Southwest Judicial District?

Robert M. Jarrett, Jr.
Southeast Arizona Office

Of Counsel
David K. Udall
Dale R. Shumway
John H. Lyons

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²Family Law

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of Matrimonial Lawyers

www.udallshumway.com

MESA OFFICE: 30 West First Street • Mesa Arizona 85201-6654 • 480.461.5300 FAX: 480.833.9392
SOUTHEAST ARIZONA OFFICE: 135 East Maley • Willcox, Arizona 85643 • 520.384.2289 FAX: 520.384.2280

UDALL, SHUMWAY & LYONS

February 13, 2008

Page 2

It was also considered that any jury selection method must follow the Arizona Constitution requirement that:

" . . . For the trial of civil causes . . . a trial jury shall be drawn and summoned from the body of the County, as provided by law." (Article 6 Section 17)

The phrase "from the body of the County" has a historical connotation of meaning "from the County as a whole," according to Black's Law Dictionary.

This past year, legislation was introduced in Senate Bill 1434 to amend statutory law to allow again for the use of a weighted method, it being considered that the existing statute that provided for a "master list of the county" method needed to be changed to reduce challenges to jury panels under the statute. The proponents as well as the opponents, including the Arizona Trial Lawyer's Association and others, recognized that any amendment to the statute would have to survive a Constitutional attack. So negotiations took place, primarily between myself on behalf of the Arizona Trial Lawyers Association and Jerry Landau and the Honorable Barbara Mundell on behalf of the Maricopa County courts to iron out language in the amendments that would seem to satisfy the practical concerns that litigators have about the makeup of jurors in the Judicial Districts as well as to avoid a Constitutional challenge in future trials.

The pertinent language that was agreed upon is:

21-302

C. JURORS SHALL BE SUMMONED BY USING A COUNTYWIDE SUMMONING METHOD THAT IS IN COMPLIANCE WITH THE CONSTITUTIONS OF THE UNITED STATES AND THIS STATE.

D. A COURT MAY USE ALTERNATIVE PROCEDURES FOR SUMMONING JURORS THAT ARE IN COMPLIANCE WITH THE CONSTITUTIONS OF THE UNITED STATES AND THIS STATE BY PROVIDING FOR THE SUMMONING OF JURORS FROM A FAIR CROSS SECTION OF THE COMMUNITY AS PROVIDED IN A PLAN APPROVED PURSUANT TO RULES ADOPTED BY THE SUPREME COURT.

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This language was selected with the recognition that it still might be subject to challenge under Article 6 Section 17 in any future trial, but the pressure of the need to facilitate jury service and reduce the costs to the County led us to support the language because the size of Maricopa County is such as to allow a fair cross section of the County populace to be represented in regionalized jury pools PROVIDED that the regions were fairly distributed through the County and drew from areas that include a balance of demographics. When I voiced concern about carving the jury pools into too small of a region because of the obvious difference in socio-economic areas of the County, I was told that the County had no intention of creating that kind of a problem.

The study that is referenced is from a population spread in the year 2000; eight-year-old information. The County has changed considerably since 2000 especially with substantial growth in the northeastern, northwestern and southeastern parts. But no one can argue with the proposition that even in the year 2000 the northeast area of the County has differed substantially in socio-economic as well as racial demographics from other areas of the County. We believe the difference is even more marked now than it was in 2000. Any thought that a jury pool made up only of northeastern residents of the County represents a fair cross section of the whole County ignores reality.

The Plan that is now proposed seems to focus only on the issue of race in arguing that it allows for a fair representation. While race is important in analyzing a jury mixture, and racial makeup is disparate even in the 2000 study, it is not the only aspect of the "fair cross section" concept. Socio-economic considerations also must be taken into account, such as income, working class versus professionals. These factors, as well as race, bear on juror background and potential bias. Again, the chances of a poor litigant with a claim against a wealthy corporation, or vice-versa, getting an objective, unbiased jury pool drawn from the proposed regions within the County is doubtful and trials are likely to face challenges under the Constitution to the jury makeup.

The "fair cross section" language was proposed by the County and was taken from the case of State v. Superior Court, 157 Ariz. 541, 760 P2d 541 (1988) in which Justice Feldman wrote in an In Banc decision:

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Defendant argues that under the sixth amendment to the federal constitution his right to an "impartial jury" includes the opportunity to obtain a jury comprising a fair cross-section of the public. This principle is well established. See *Ballew, Peters, McCray, Wheeler, Gilmore*. Obviously, this right is implicated not only when those rejected for discriminatory motives are members of the defendant's own racial or **545 *545 ethnic group. The discriminatory exclusion of jurors from any cognizable group necessarily violates the right to a chance for a fair cross-section, no matter what the racial or ethnic characteristics of the defendant, his lawyer, the judge or any party to the action. *Griffith v. Kentucky*, 479 U.S. 314, 107 S.Ct. 708, 93 L.Ed.2d 649 (1987); *Fields v. People*, 732 P.2d 1145 (Colo.1987); *Gilmore*, 103 N.J. at 536 n. 9, 511 A.2d at 1164 n. 9.

The state argues that the explicit language of *Batson* applies only to those cases in which the excluded jurors and the defendant himself are of the same racial group. This is true. We believe, however, that the language of *Batson*'s holding was aimed at the specific facts and legal issues presented to the Court. Lacking specific guidance from the Supreme Court, we must determine in this case whether the *Batson* principle applies to situations going beyond *Batson*'s specific facts and to those involving the jury trial guarantee of the sixth amendment.

Arizona provides an illuminating frame of reference. This state has a rich and diverse racial and ethnic composition of Native American, Hispanic, Caucasian, Black, Oriental and other citizens. Throughout Arizona's history, members of a wide variety of racial, ethnic and religious groups have settled in the territory and state, contributing their unique cultures, traditions and views to those of Arizona's indigenous peoples. Both the newcomers and the native peoples of this region have contributed immeasurably to the growth and development of our state. If we apply the *Batson* principle exclusively to those cases in which the defendant and the excluded jurors are of the identical racial or ethnic group, our trial judges and lawyers will frequently be forced to inquire into the racial and ethnic makeup of particular jurors. If possible we should adopt the rule that would obviate or reduce the necessity for such an unseemly and intrusive procedure.

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Thus, the Arizona Supreme Court recognized that a diverse racial and ethnic jury composition is required by the U.S. Constitution as well as the Arizona Constitution, not only where the litigants may be of a particular ethnic group, but in order to preserve the integrity of the jury system in deciding issues. The benefit of a "rich and diverse" composition of juries must recognize the undisputable fact that diversity of people from different socio-economic backgrounds likewise is important in the makeup of juror pools, because those differences, as with race and ethnic identity, color a jury's ability to view evidence and issues fairly. That is why the U.S. and Arizona Constitutions afford parties the right to juries that represent a "fair cross section of the public".

We believe that in order to satisfy the demands of the Constitution for a jury pool drawn from the County as a whole and the new statutory requirement for a fair cross section of the community, any demarcation of regions of the County from which juries are drawn must include a fair mix of both "upper-class" as well as "lower-class" neighborhoods. The Plan now proposed errs in splitting the County into quadrants. If the County were split in half on a north-south line it might pass Constitutional muster; or if the lines were drawn in a north-south line splitting the County in four regions this might provide a fair cross section. Factors other than only race should be considered, such as property values, to get a fair cross section of the community. But the method that is proposed isolates the northeastern area and will likely isolate the southwestern area when a Southwest Judicial District is established. The Plan now proposed, in our view, invites Constitutional challenges.

We trust that these thoughts will be shared with those reviewing the Plan before it is submitted to the Supreme Court and that we will have an opportunity to provide further comments as the matter develops.

Yours truly,



H. Micheal Wright

cc: Jerome Landau, Esq.
Hon. Barbara Mundell

Nancy Schripsema - SUPCRTX

From: Marcus Reinkensmeyer - SUPCRTX
Sent: Tuesday, February 19, 2008 6:37 AM
To: Nancy Schripsema - SUPCRTX
Subject: Fw: Plan for Alternative Juror Summoning Procedures

Attachments: Memo to Daniel McAuliffe.pdf



Memo to Daniel
McAuliffe.pdf (...)

Please print. And hold

Thank you. Marcus

Sent from my wireless handheld device.

----- Original Message -----

From: McAuliffe, Dan <dmcauliffe@swlaw.com>
To: Marcus Reinkensmeyer - SUPCRTX; daniel.mcauliffe@azbar.org <daniel.mcauliffe@azbar.org>
Cc: Jessica Funkhouser - SUPCRTX; teresa.schmid@azbar.org <teresa.schmid@azbar.org>;
nedra.brown@staff.azbar.org <nedra.brown@staff.azbar.org>
Sent: Mon Feb 18 10:38:40 2008
Subject: RE: Plan for Alternative Juror Summoning Procedures

Marcus:

I referred your letter and accompanying materials to both the Civil Practice and Procedure and the Criminal Practice and Procedure Committees for review and comment. Based upon their review, I am pleased to inform you that the State Bar of Arizona has no objection to the re-implementation by the Maricopa County Superior Court of the Proximity Weighted Summoning system for summoning jurors to serve in its Regional courts.

You might be interested in the Memorandum generated by the Civil Practice and Procedure Committee and I have attached it for your information.

Regards,

Dan McAuliffe
President
State Bar of Arizona

From: Nancy Schripsema - SUPCRTX [mailto:nschrips@superiorcourt.maricopa.gov] On Behalf Of Marcus Reinkensmeyer - SUPCRTX
Sent: Friday, January 18, 2008 4:57 PM
To: daniel.mcauliffe@azbar.org
Cc: Marcus Reinkensmeyer - SUPCRTX; Jessica Funkhouser - SUPCRTX; teresa.schmid@azbar.org
Subject: Plan for Alternative Juror Summoning Procedures
Importance: High

Mr. McAuliffe,

We request your review and comments of the attached information regarding the Plan for Alternative Juror Summoning Procedures.

Thank you,

Marcus W. Reinkensmeyer
Court Administrator/Jury Commissioner

<<Daniel McAuliffe AZ Bar Assoc.doc>> <<Letter re-Juror Summons PWS_PROPOSAL Attach #1 1-18-08.DOC>>
<<Letter re-Juror Summons 1-18-08 AZ_Final_Report_Revised.pdf>>

February 8, 2008

TO: Daniel J. McAuliffe, President, State Bar of Arizona

FROM: John W. Rogers, Chair
State Bar Civil Practice and Procedure Committee

RE: **Plan for Alternative Juror Summoning Procedures in Maricopa County**

Pursuant to your request, the Civil Practice and Procedure Committee has reviewed and discussed the proposal to reimplement the Proximity Weighted Summoning (PWS) juror selection system in the Superior Court in Maricopa County, as described in Marcus Reinkensmeyer's January 18, 2008, letter and attached materials. As we understand how the system would work, most prospective jurors would be summoned to report to a regional court center from zip codes closest to that center. The remaining prospective jurors would still be summoned from anywhere in Maricopa County, which would help ensure that the jury pools at each of the regional court centers would approximately reflect the ethnic and racial composition of Maricopa County's population.

The advantages to this system are obvious. Most prospective jurors would travel a shorter distance to report for jury service, which would lessen the inconvenience of jury duty and increase the likelihood that prospective jurors would actually report for service. It also would lessen the County's costs for reimbursing juror mileage, as well as lessen the air pollution associated with traveling to report for jury duty.

Our only concern, shared by the Superior Court and others, is that selection system not result in racial or ethnic disparities in the jury pools generated for the regional court centers in Maricopa County. Although we are sensitive to the difficulties and uncertainties in preparing a reliable statistic analysis of this issue, it appears from the report by the National Center for State Courts that the PWS system, if reimplemented, would not systematically exclude any identifiable ethnic or racial groups in Maricopa County from jury service at any of the regional court centers.

As such, we endorse the reimplementation of the PWS juror selection system in Maricopa County. We would, however, encourage the Superior Court to periodically reassess the efficacy of the PWS juror selection system to make sure that it is not inadvertently producing racial or ethnic disparities in the jury pools at any of the regional court centers.

If the Committee can be of further assistance, please let us know.

February 18, 2008

Marcus W. Reinkensmeyer
Court Administrator/Jury Commissioner
Maricopa County Superior Court
201 West Jefferson
Phoenix, AZ 85003-2205

Re: Plan for Alternative Juror Summoning Procedures

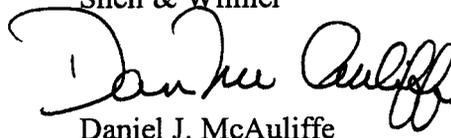
Dear Mr. Reinkensmeyer:

This is in regard to the request set forth in your letter to me dated January 18, 2008. As I advised you in a recent e-mail message, your letter and its accompanying materials were referred, for review and comment, to both the Civil Practice and Procedure Committee and Criminal Practice and Procedure Committee. Based upon their responses, I am in a position to advise you that the State Bar of Arizona would have no objection to the re-implementation by the Maricopa County Superior Court of its Proximity Weighted Summoning juror selection system.

I am also enclosing herewith the brief memorandum received from the Chair of the Civil Practice and procedure Committee for your files and information.

Very truly yours,

Snell & Wilmer



Daniel J. McAuliffe

DJM:mjt
Enclosure
cc: Nina Benham
John Rogers

February 8, 2008

TO: Daniel J. McAuliffe, President, State Bar of Arizona

FROM: John W. Rogers, Chair
State Bar Civil Practice and Procedure Committee

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If the Committee can be of further assistance, please let us know.

Ariz. 1, 5, 347 P.2d 565, 569 (1959). This Court by its minute entry dated May 16, 2006, allowed the submission of 30 interrogatories to the Superior Court of Arizona in Maricopa County to avoid that element of surprise and better enable the parties to clarify any other requests for discovery regarding the PWS system at issue. Initially objections to PWS were raised in both pre-trial and post-trial matters. However, all pre-trial cases were removed as their objections were made moot by the order of Judge Mundell stopping the use of the PWS system until a ruling on the issue of randomness could be argued and ruled upon.

A status conference was held on August 9, 2006. At that time, the various causes of actions whose parties objected to the jury selection process were combined under this cause number to address the sole issue presented to this court. Other cases were also combined under this cause when written objections to PWS were filed in their individual cases. Those parties who objected to the PWS system, regardless of their original party designation, were declared Petitioners. Those who believed the regionalized approach was random were declared to be Respondents. Both Petitioners and Respondents were ordered to meet and agree on one lead counsel for each side to brief and argue the case. Over objection this court authorized the Attorney General to file an Amicus Curiae brief on behalf of the Maricopa County Superior Court and granted it the same rights as a party.

Initially, Petitioners requested that depositions be conducted of various individuals. This Court declined to authorize such discovery without being presented specific reasons for such discovery as required by Rule 27(B) of the Arizona Rules of Civil Procedure. That rule outlines the procedure for requesting the taking of depositions in post-trial matters. *"The motion shall show the names and addresses of the persons to be examined, the substance of the testimony which the party expects to elicit from each and the reasons for perpetuating their testimony."* (Emphasis added.) No motion in accordance with Rule 27(B) was ever submitted. While a stipulation of discovery was submitted, this Court declined to adopt that stipulation as no reason for the stipulated depositions was submitted and informed the parties of the need to state their reason for the need for any deposition requested. Contrary to Petitioners' arguments, they have no fundamental right to take depositions without court approval. Rule 27(B) states, *"The court in which the judgment was rendered may allow the taking of the depositions of a witness. . ."* (Emphasis added)

Petitioners have objected to the limited discovery which this court has allowed, but their objections are without basis. They were limited by their own inaction. Of the initial 30 interrogatories which this court authorized, Petitioners did not submit any interrogatories for eight months. When the interrogatories were propounded, they were quickly answered on January 29, 2007. No objections were submitted regarding those answers, no request for supplementation to those answers was made and no requests for more interrogatories were filed. Notwithstanding the absence of a Rule 27(B) compliant motion, this court overruled an objection and authorized Petitioners to take a deposition. Petitioners were granted thirty days to take the deposition but Petitioners took no steps to notice the deposition despite Amicus counsel making the deponent available. Petitioners declined to even respond to the offers of availability of that individual or another individual who was believed to be more knowledgeable of the subject matter. On May 4, 2007, nearly one year after this Court first authorized the use of interrogatories by Petitioners, this court declined Petitioners' ongoing request to submit

additional discovery as no good cause had been shown. Their complaint regarding discovery, while noted, is without merit.

Petitioners by footnote state they "do not concede that the Maricopa Court has jurisdiction to frame an issue which it may not hear due to an acknowledged ethical conflict and then consolidate it for hearing. Furthermore, Petitioners do not concede that the Court has the authority to order all consolidated parties on one side of an issue (which the Court framed) to designate a lead attorney to represent those parties."

While Petitioners have apparently not conceded those issues, they have not objected to them either and as a result, this Court is not inclined to address them.

The method which then Presiding Judge Colin Campbell utilized to implement the PWS system with neither an Administrative Order nor any other writing is more than unfortunate. That he took no steps to give notice of his implementation of this system to the public or practicing attorneys is without excuse and was an arrogant use of his power. The right to a jury trial is at the heart and soul of the American justice system. Jury service is rightfully praised as one of the critical cornerstones of good citizenship and is a liberty that has value beyond measure. Alexis de Tocqueville wrote:

The jury, and more especially the civil jury, serves to communicate the spirit of judges to the minds of all the citizens; and this spirit, with the habits which attend it, is the soundest preparation for free institutions. It imbues all classes with a respect for the thing judged and with the notion of right. If these two elements be removed, the love of independence becomes a mere destructive passion. ALEXIS DE TOCQUEVILLE, DEMOCRACY IN AMERICA 285 (J.P. Mayer ed., 1975)

While the best of intentions may have been present, integrity requires much more than good intentions. The court must not only conduct its proceedings openly, it must conduct its public business openly as well. The jury selection process is at the heart of the business of the public. Integrity requires discerning what is right, doing what is right and then telling the world what you have determined to be right to do. The authority and legitimacy of the judicial system is entrusted to it by the public it serves. However, there is no formal requirement for a written administrative order nor notice to the public or Bar of its implementation by Judge Campbell. There is no dispute that then Presiding Judge Colin Campbell directed the implementation of the PWS system. The method of his implementation is objectionable. The implementation of the PWS it is not illegal on the basis of the method he used.

Analysis:

In determining whether Maricopa County is randomly selecting jurors' names from its master jury list as is required under state law, this Court has not viewed the past practices in Maricopa County as being "perfect" or the "standard" by which the PWS system must be considered. Rather, the scrutiny which this court has utilized is as though there had been no jury selection system in place at all. With this presumption the issue is framed: Is the PWS system utilized by Maricopa County under the requisite statutes random? This Court, as a result, addresses the very limited question which has been posed to it, but has also chosen to comment on the

issues of jury selection. It is not the role of this Court to determine whether the PWS system is preferred or not, but rather only whether randomness as set forth in Arizona law is adhered to by the use of the PWS system.

In Arizona there is no Constitutional right to a randomly selected jury. That right is derived solely from statute and rule. The Constitution of Arizona under Article 6, §17 provides, "*For the determination of civil causes in matters in which a jury demand has been entered, and for the trial of criminal causes, a trial jury shall be drawn and summoned from the body of the county, as provided by law.*" The laws which provide for the calling of a jury are codified at A.R.S. §21-301 et seq. A.R.S. §21-301 directs that the jury commissioner of each county is to prepare and maintain a current master jury list of eligible juror candidates. The names of those individuals are to be comprised of those eligible to serve on a jury in the county in which the trial is to be conducted. In accordance with that statute, the "*names of prospective jurors to serve on trial and grand juries shall be selected at random from the master jury list of the county.*" There is no dispute regarding the master jury list. It is randomly created in Maricopa County under the PWS system.

Petitioners argue that PWS cannot be random because no "master jury file" is created under the PWS system. Their reasoning is flawed. There is no requirement for the creation of a separately drawn "master jury file" in Maricopa County as it uses data processing equipment.

Under these statutes, by order of the presiding judge in each county, the jury commissioner is required to obtain from the master jury list the number of names necessary, in the opinion of that presiding judge, to provide a sufficient number of persons for jury service during the ensuing time period the presiding judge designates. The method by which those names are drawn is alternatively set forth in A.R.S. §21-312 and A.R.S. §21-313 depending on whether a county utilizes data processing equipment. For those counties that do, "*The jury commissioner or the jury commissioner's agent shall conduct the drawing by randomly selecting names of prospective jurors from the master jury list.*" Once manually drawn, subpart (b) of that law states those manually drawn names constitute "the master jury file."

However, for Maricopa County and other counties that use data processing equipment, the applicable statute is A.R.S. §21-313 which simply states: "*In any county where data processing equipment is used the jury commissioner or the jury commissioner's agent shall cause the device to be programmed to ensure the random selection of names on the master jury list.*" There is no requirement for the creation of a master jury file or for that matter a qualified jury list.

The reason for this is apparent. The physical drawing of names and the physical compilation of such a list is not necessary with data processing equipment. As a result and not surprisingly, under A.R.S. §21-321, those counties that do not use data processing equipment are directed to physically draw names from a physically drawn qualified jury list and place those names in a bowl or box or other holding device. No such requirement is made for counties such as Maricopa that utilize data processing equipment. Instead under A.R.S. §21-321(B), Maricopa County is directed to follow the procedure set forth in A.R.S. §21-313. As a result, the argument that randomness is absent because Maricopa County does not create a physically separate master jury file and a physically separate qualified jury list is without merit.

The statutes which govern the process of choosing jurors in Maricopa County do not require the creation of those lists.

The term "random" is not defined by statute in Arizona. Curiously Petitioners argue "Random is not redefined for jury summoning purposes by the Arizona legislature because the legislature prohibited the use of the Proximity Weighted System implemented by the Maricopa Court in 2002." This court could find no such prohibition in the laws of Arizona. This court has not been cited to any such prohibition by Petitioners and has attempted to search the records of the Arizona Legislature for such prohibition. None exists. "Redefined" presumes a term has been defined earlier. However Petitioners refer this court to no statutory definition of "random" in Arizona and this court has found none.

In determining whether the PWS system is random, this court has considered the common usage of the word and, among others, used two methods to assist in its analysis of the issue posed to it. First, the court has used the method outlined by the United States Supreme Court *Duren v. Missouri*, 439 U.S. 357, 364, 99 S.Ct. 664, 668 (1979) to determine if there is an absence of randomness. If there is an absence of randomness, then the PWS system cannot, as a matter of law, be random. Second, the court has made an analysis of whether the PWS system allows an equal opportunity for every qualified citizen to be called to jury service. In utilizing these methods this court is keenly aware that while a multitude of rights may be intertwined, two distinct and separate but equally important rights are critical. There is a distinct right of the public to serve on a jury. Every qualified citizen has a right to be equally likely to be called for jury service. In addition there is a right that the selection of a jury be from a fair cross-section of the community. *Taylor v. Louisiana*, 419 U.S. 522, 530, 95 S.Ct. 692, 697-98 (1975). However neither the Sixth Amendment of the United States Constitution nor the Arizona Constitution guarantees a randomly selected jury. *United States v. Wellington*, 754 F.2d 1457, 1468 (9th Cir. 1985). The Sixth Amendment does not require that the jury contain representatives from every group in the community. *Lockhart v. McCree*, 476 U.S. 162, 173-75, 106 S.Ct. 1758, 1765-66 (1986). In the court's analysis of this issue it has relied heavily on the report submitted by the Amicus expert as has Petitioners, Respondents and Amicus. No expert was ever named and no report submitted by either the Petitioners or Respondents.

Petitioners argue that a *Duren* analysis is inappropriate because the constitutional issue of whether the PWS system results in a fair cross section of the community is not at issue. However the analysis is appropriate to determine whether there is a lack of randomness resulting in an impartial jury selection. That three prong test has long been in use in Arizona. *State v. Bernal*, 137 Ariz. 421, 671 P.2d 399 (1983). While Petitioners may be uncomfortable with that analysis, this Court is satisfied that such an analysis demonstrates there is not an absence of randomness sufficient to prove a *prima facie* case of lack of impartial jury selection.

The first prong of that test requires that for the analysis that no group *that is distinct* be excluded. A group is distinct if it meets certain criteria. Many groups have been defined as "distinct." Case law has established that women/men, African Americans, Hispanics and Native Americans are distinctive groups. The Amicus expert report makes clear that no distinct class is excluded by the PWS system.

The second prong is that no distinct group as determined by the first prong be underrepresented in the jury venire in relation to the number of such persons in the community. Again the expert's report is clear that the PWS system does not result in the under-representation of any distinct group. The system utilized by the Superior Court in Maricopa County does not diminish the likelihood that a member of a minority or other under-represented group compared to the average person in a community will have a less likelihood to be called to jury service. The statistical evidence presented demonstrates that no improper disparity exists, regardless of which disparity test is utilized. To the contrary, the statistics demonstrate that the demographic profiles of the jury pool overall closely mirror the demographic profile for Maricopa County. There is no under-representation of Hispanics as initially alleged by Petitioners or any other distinct group.

Finally the third prong of the *Duren* test requires that the under-representation results from a systematic exclusion of a distinct group in the jury selection process. The expert's assessment is that the "system does not systematically exclude any identifiable populations or groups from jury service." There is no absence of randomness as defined by *Duren* with respect to race or any other distinct group in the use of the PWS system.

The second method which this court considers of importance is a statistical assurance that the right of every qualified citizen to have an equal and random opportunity to be called for jury service be safeguarded by PWS. The PWS system is programmed to protect that right. As set forth within the Expert's Report, the PWS system assures that those persons on the master jury list have an equal probability of selection for service in Maricopa County. No contrary evidence has been submitted by Petitioners.

Petitioners remaining position rests on their position that the statutory procedures in Arizona "require random selection at each significant step of the process after the formation of the Master Jury List. Notably, compliance with the statutes ensures that each name on the respective lists has the same probability of being selected through the process." However this argument fails as well for two reasons. First, the laws relied upon by Petitioners all contain the same undefined term "random." Petitioners cite this court to the laws of the state of California which define "random" but complain that the definition is improper as it favors the PWS that Los Angeles County utilizes but the rest of California does not. That law defines random in that it "means that which occurs by mere chance indicating an unplanned sequence of selection." Respondents refer the court to the New Oxford American Dictionary which defines the term as something "made, done, happening or chosen without method or conscious decision." They also cite the court to the Merriam-Webster's Collegiate Dictionary 11th Ed. that gives the explanation: "Random stresses lack of a definite aim, fixed goal or regular procedure." Amicus refers this court to the Federal Ninth Circuit Court of Appeals which ruled: "the essence of randomness is the absence of any arbitrary attempt to exclude a class of persons from the jury." *United States v. Nelson*, 718 F. 2d 315, 319 (9th Cir. 1983). Where Petitioners' argument fails is that in each of definitions, whether chosen by Petitioners, Respondents or Amicus is the meaning that it is the result that is uncertain. When no one is able to accurately predict the result of a selection process it may qualify as random.

Petitioners' position that "each name on the respective lists has the same probability of being selected" has never been the definition of random in Arizona. Even a simple review of the

procedure that is available in counties without data processing equipment demonstrates that random does not mean "that each name on the respective lists has the same probability of being selected". If the term "random" is defined as suggested by Petitioners then the physical drawing of names by a jury commissioner would result in every individual on the list having the exact same probability of their name being drawn by data processing equipment. Both methods are allowed by statute; therefore both methods are random under the law. However, with Petitioners' definition, one statutory method cannot result in a more or less random selection of one name over another. Petitioners' argument does not stand up under scrutiny.

By way of example, nothing within the statute precludes the jury commissioner from always drawing under A.R.S. §21-312 the names of those individuals at the top of the box or bowl from which they would be drawn as opposed to the middle or bottom. Such a method employed consistently by a jury commissioner would meet the requirements of the statute and be random under the law. However, if such a method were employed, each name in the bowl would not have the same probability of being selected, at the time of selection, as argued by Petitioners. All individuals may have an equal possibility of having their names land at the top of that box or bowl. But at the pivotal time of selection, only those names resting at the top of that box would have an equal probability of being drawn while those in the middle and bottom would have none. The law in Arizona has always permitted this imperfect human element to enter in the selection process and still be random.

A substantially equal opportunity for a name to be drawn is all that is required in Arizona to meet the requirement of being random. Even in numbered data processing equipment, randomness cannot mean perfectly equal probability as argued by Petitioners. Under Petitioner's argument any deviation, regardless of how slight must necessarily result in a lack of random selection. Alternatively, Petitioners must accept that some deviation from a perfectly equal probability may still be random. Left unsaid in Arizona law is what statistical deviation is acceptable. In the absence of a clear definition, this court is satisfied that PWS is random. It affords each individual on the master jury list an equal probability of being selected for jury service. Nothing more is required under A.R.S. §21-312.

Petitioners were under no duty to submit any prejudice that occurs from the use of the PWS system, but there appears to be none. Their remaining arguments are not legal positions but rather appear to be anger in the guise of argument. This court sees no reason to comment on their lack of merit. While not for this court to address, it is apparent that none of the arguments of Petitioners rises to the standard required under Article 6, §27 of the Arizona Constitution which mandates "No cause shall be reversed for technical error in pleadings or proceedings when upon the whole case it shall appear that substantial justice has been done." The jurors in Maricopa County under the PWS system were selected randomly in that they were chosen in an unbiased manner, with no predetermination of who would be selected.

NOW THEREFORE THE COURT FINDS that the Superior Court of Arizona in Maricopa County was randomly selecting jurors' names from its master jury list, as required under Arizona state law when utilizing the Proximity Weighted Summoning System.

Mailed/distributed copy: 10/24/2007

CLERK OF THE COURT
MARICOPA COUNTY SUPERIOR COURT
201 W JEFFERSON
PHOENIX AZ 85003

HON BARBARA RODRIGUEZ MUNDELL

SCOTT A AMBROSE
JOEL E SANNES
MARK D WILSON
ERYN M MCCARTHY

RICHARD W SHAPIRO
2398 E CAMELBACK RD STE 1010
PHOENIX AZ 85016

JOHN R GUSTAFSON
STAFF ATTORNEY
PIMA COUNTY SUPERIOR COURT
110 WEST CONGRESS
TUCSON AZ 85701-1331

ARIZONA
REVISED STATUTES

ANNOTATED

2007
Cumulative Pocket Part

For Use in 2007-2008

Replacing 2006 Pocket Part supplementing 2002 main volume

Volume 7B

Title 20

§§ 20-1701 to 20-End

Titles 21 to 22

Including Legislation Enacted Through
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**CHAPTER 3
FORMATION OF JURIES**

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ARTICLE 1. JURY LIST

§ 21-301. Master jury list; source lists

Text of section effective January 1, 2008

- A. The jury commissioner shall produce a master jury list. The master jury list shall be comprised of the names and addresses of eligible persons who reside in the county and shall

include persons on the voter registration list of the county, other persons eligible for jury service who have been licensed pursuant to title 28, chapter 8, article 4 or 5¹ and persons from other lists as determined by the supreme court. The master jury list shall be prepared so as to avoid duplication of the names of eligible juror candidates.

B. Not later than January 1 following each biennial general election, the county recorder shall provide the jury commissioner or jury manager with a list containing the names and addresses of all persons qualified to vote at the preceding general election. At least once every six months thereafter the county recorder shall provide the jury commissioner with the names and addresses of all additional persons who have registered as voters since the date of the last list.

C. On written request by a jury commissioner or jury manager, the director of the department of transportation shall furnish and periodically revise a list of the names and addresses of all persons in that county who are at least eighteen years of age and who have been licensed pursuant to title 28, chapter 8, article 4 or 5. Except as provided in § 21-312, no jury commissioner or jury manager may disclose information furnished by the director of the department of transportation pursuant to this section to any person, organization or agency for any use other than the selection of jurors.

Added by Laws 1970, Ch. 124, § 7. Amended by Laws 1978, Ch. 154, § 2, eff. June 1, 1980; Laws 1991, Ch. 268, § 3; Laws 1997, Ch. 1, § 43, eff. Oct. 1, 1997; Laws 2007, Ch. 199, § 11, eff. Jan. 1, 2008.

¹ Sections 28-3151 et seq., 28-3221 et seq.

For text of section effective until January 1, 2008, see § 21-301, in the main volume

Historical and Statutory Notes.

The 2007 amendment by Ch. 199 rewrote the section, which had read:

"A. Names of prospective jurors to serve on trial and grand juries shall be selected at random from the master jury list of the county.

"B. The jury commissioner of each county shall prepare and maintain a current master jury list of eligible juror candidates. The list shall be comprised of the names and addresses of eligible persons who reside in the county and shall include persons on the voter registration list of the county, other persons eligible for jury service who have been licensed pursuant to title 28, chapter 8, article 4 or 5 and persons from other lists as determined by the supreme court. The master jury list shall be prepared so as to avoid duplication of the names of eligible juror candidates.

"C. Not later than January 1 following each biennial general election, the county recorder shall provide the jury commissioner with a list containing the names and addresses of all persons qualified to vote at the preceding general election. At least once every six months thereafter the county recorder shall provide the jury commissioner with

the names and addresses of all additional persons who have registered as voters since the date of the last list.

"D. Upon written request by a county jury commissioner, the director of the department of transportation shall furnish and periodically revise a list of the names and addresses of all persons in such county who are at least eighteen years of age and who have been licensed pursuant to title 28, chapter 8, article 4 or 5. No county jury commissioner may disclose information furnished by the director of the department of transportation pursuant to this section to any person, organization or agency for any use other than the selection of jurors.

"E. In any county in which the selection and drawing of jurors are performed by data processing equipment, the names contained in the master jury list shall be maintained in a uniform format."

Laws 2007, Ch. 199, § 31, provides:

"Sec. 31. Effective date

"This act is effective from and after December 31, 2007."

Research References

Forms

7 Ariz. Legal Forms R 12.1, Selection And Preparation Of Grand Jurors.

Treatises and Practice Aids

8 Arizona Practice § 7.2, Selecting Persons To Serve As Jurors.

2A Arizona Practice § 20.2, The Jury List.

§ 21-302

JURIES

§ 21-302. Juror summoning; procedures

Effective January 1, 2008

A. The superior court in each county shall summon trial jurors from the master jury list pursuant to rules adopted by the supreme court.

B. The superior court in each county shall summon grand jurors from the master jury list pursuant to rules adopted by the supreme court.

C. Jurors shall be summoned by using a countywide summoning method that is in compliance with the constitutions of the United States and this state.

D. A court may use alternative procedures for summoning jurors that are in compliance with the constitutions of the United States and this state by providing for the summoning of jurors from a fair cross section of the community as provided in a plan approved pursuant to rules adopted by the supreme court.

E. If the superior court in a county has multiple court locations, the court may propose alternative procedures for summoning jurors as provided in a plan approved by the supreme court or the presiding judge of the county in which the court is located. The alternative procedures may be designed to minimize the distance prospective jurors must travel and to avoid unnecessary travel expenses by dividing the county into jury districts or using a countywide juror summoning method that affords all qualified persons in the county an opportunity to be considered for jury service at any court location.

F. Except as provided in subsection H of this section, if multiple courts operate at one location, jurors may be summoned countywide or from the jurisdiction of the courts and pooled for use by any superior court or justice of the peace court at that location.

G. Only persons who reside within the city or town limits of the court are eligible for jury service in municipal court.

H. In counties with a population of two million persons or more, a person must reside within the precinct limits of the court to be eligible for jury service in a justice of the peace court.

Added by Laws 2007, Ch. 199, § 12, eff. Jan. 1, 2008.

Historical and Statutory Notes

Laws 2007, Ch. 199, § 31, provides:
"Sec. 31. Effective date

"This act is effective from and after December 31, 2007."

ARTICLE 2. SELECTING PERSONS FOR PROSPECTIVE JURY SERVICE

§ 21-311. Number of names to be drawn for jury service

Repeal

This section is repealed by Laws 2007, Ch. 199, § 13, effective January 1, 2008.

§ 21-311. Master jury file; master jury list

Text of section effective January 1, 2008

A. If a superior court uses a master jury file, the presiding judge of the superior court, on completion of the master jury list and at other times as necessary, shall order the jury commissioner to randomly select from the master jury list the number of names that are necessary to provide a sufficient number of persons for jury service during the ensuing six months or a shorter time period as the presiding judge deems appropriate. The persons who remain on the list at the end of the designated period may be retained and carried over once to the next succeeding master jury file.

B. To establish the master jury file the jury commissioner or the jury commissioner's designee shall randomly select from the master jury list the number of names specified in the order.

C. If the presiding judge of the superior court believes that additional jurors will be required, the presiding judge may order the jury commissioner to randomly select additional names from the master jury list.

D. If a justice of the peace court or a municipal court uses a master jury file, the justice of the peace or the presiding municipal court judge, upon production of the master jury list pursuant to § 21-301 and at other times as necessary, shall order the jury manager to randomly select from the master jury list the number of names that are necessary to provide a sufficient number of persons for jury service during the ensuing six months or a shorter time period as the justice of the peace or the presiding judge deems appropriate. The jurors who remain on the list at the end of the designated period may be retained and carried over once to the next succeeding master jury file.

E. To establish the master jury file the jury manager or the jury manager's designee shall randomly select from the master jury list the number of names specified in the order.

F. If the justice of the peace or the presiding municipal court judge believes that additional jurors will be required, the justice of the peace or the presiding municipal court judge may order the jury manager to randomly select additional names from the master jury list.

G. The use of a master jury file is optional.

Added by Laws 2007, Ch. 199, § 14, eff. Jan. 1, 2008.

For text of section effective until January 1, 2008, see § 21-311, in the main volume

Historical and Statutory Notes

Laws 2007, Ch. 199, § 31, provides:

"Sec. 31. Effective date

"This act is effective from and after December 31, 2007."

Reviser's Notes:

2007 Note. Pursuant to authority of § 41-1304.02, in the section heading "master jury" was substituted for "source".

Research References

Forms

- 7 Ariz. Legal Forms R 12.1, Selection And Preparation Of Grand Jurors.
- 7 Ariz. Legal Forms R 18.3, Jury Information.

Treatises and Practice Aids

- 8 Arizona Practice § 7:2, Selecting Persons To Serve As Jurors.

2A Arizona Practice § 20.3, Drawing The Panel.

§ 21-312. Drawing of names; master jury file

Repeal

This section is repealed by Laws 2007, Ch. 199, § 13, effective January 1, 2008.

§ 21-312. Juror records

Text of section effective January 1, 2008

A. The list of juror names or other juror information shall not be released unless specifically required by law or ordered by the court.

B. All records that contain juror biographical information are closed to the public and shall be returned to the jury commissioner, the jury manager or the court when jury selection is completed and may not be further disclosed or disseminated by a party or the party's attorney.

C. A random jury box seating list is confidential before use.

Added by Laws 2007, Ch. 199, § 14, eff. Jan. 1, 2008.

For text of section effective until January 1, 2008, see § 21-312, in the main volume