

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS**

GENERAL ORDER 13 - 0008

**AUTHORIZATION FOR THE CHICAGO TRIBUNE TO ACCESS RECORDS OF THE
MOST RECENTLY EXPIRED MASTER JURY WHEEL UNDER 28 U.S.C. § 1868**

IT APPEARING THAT, through a letter to Chief Judge Holderman dated May 9, 2013 (which is attached to this General Order), the Chicago Tribune has requested access to the records of the court's most recently expired master jury wheel, which is the jury wheel that was in effect from April 2009 through February 2011; and

IT FURTHER APPEARING THAT the Chicago Tribune's May 9, 2013, letter constitutes a "petition . . . in writing setting forth the reasons for requesting access" in compliance with § 10(b) of the court's *Plan for Random Selection of Jurors* (rev. 2012); and

IT FURTHER APPEARING THAT the Chicago Tribune is requesting access to the most recently expired master jury wheel records "for the purpose of determining the validity of the selection of any jury," in compliance with 28 U.S.C. § 1868;

IT IS THEREFORE ORDERED that the Clerk shall make available to the Chicago Tribune's designated representative the AO-12 forms for the jury wheel in effect from April 2009 through February 2011.

ENTER:

FOR THE COURT



JAMES F. HOLDERMAN
Chief Judge

Dated at Chicago, Illinois this 14th day of May, 2013.

Karen H. Flax
Assistant General Counsel
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May 9, 2013

RECEIVED

MAY - 9 2013

Chief Judge James F. Holderman
United States District Court

VIA HAND-DELIVERY

The Honorable James F. Holderman
Chief Judge, United States District Court
for the Northern District of Illinois
Everett McKinley Dirksen Courthouse
219 South Dearborn Street
Chicago, Illinois 60604

Re: Request for Access to Jury Wheel Data

Dear Judge Holderman:

I am in-house counsel for the *Chicago Tribune*. Recently, our journalists have been reporting on how federal courts around the country, including the Northern District of Illinois, are trying to ensure that juries represent the racial makeup of their communities. As the Court's Jury Plan states,

It is the purpose of the Jury Plan to implement the policies declared in the Jury Act, that all litigants in federal courts entitled to trial by jury shall have the right to grand and petit juries selected at random from a fair cross section of the community in the district or division wherein the court convenes, that all citizens shall have the opportunity to be considered for service on grand and petit juries in the district courts of the United States, and that all citizens shall have an obligation to serve as jurors when summoned for that purpose.

Plan for Random Selection of Jurors, U.S.D.C., N.D. Ill., § 1 (rev. June 2012) ("Jury Plan"); see also Jury Selection and Services Act of 1968 ("JSSA"), 28 U.S.C. § 1861, *et seq.* (articulating a "policy of the United States that all litigants in Federal courts entitled to trial by jury shall have the right to grand and petit juries selected at random from a fair cross section of the community in the district or division wherein the court convenes").

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The research for this important reporting requires access to jury wheel data maintained by the District Court. Specifically, the Tribune reporters are seeking the release of the racial, ethnic and gender and age breakdown for the most recently expired 50,000-name jury wheel -- for those who returned the questionnaires and for the qualified wheel. Tribune also is requesting a breakdown by zip code and hometown for those three categories as well. Finally, our request includes the AO-12 forms associated with the most recently expired jury wheel. We, of course, are willing to work with the clerk's office to answer any questions or assist in any way that would expedite the release of the information we are requesting.

Our reporters, Annie Sweeney and Cynthia Dizikes, were told by the clerk's office that they would need a court order to obtain the above-noted master jury wheel data they seek, and that counsel should contact your chambers for further information and instruction. I send this letter pursuant to the clerk's direction and ask that you consider this letter our request for an order releasing the information requested by Tribune. I also note the following by way of further background to and support for our reporters' request:

- There can be no question that the subject of Tribune's reporting is of the utmost public interest, as reflected in the federal policies expressly enshrined in both the JSSA and this District's Jury Plan.
- Under the First Amendment, the selection of a jury is presumptively open to the public, *Press-Enterp. Co. v. Superior Court*, 464 U.S. 501 (1984); information relating to the jury selection process -- including juror names, which Tribune is not seeking here -- is thus presumptively public information, subject to a right of access under both the First Amendment and common law. *E.g.*, *United States v. Blagojevich*, 612 F.3d 558, 563 (7th Cir. 2010); *United States v. Wecht*, 537 F.3d 222, 238-39 (3d Cir. 2008).
- It is Tribune's understanding that the Court is about to begin populating a new master jury wheel, which is done every two years. (Jury Plan, § 6(d).) The Tribune reporters seek access to the data from the master jury wheel that is about to be "emptied."
- The federal Jury Act provides: "After the master jury wheel is emptied and refilled . . . all records and papers compiled and maintained by the jury commission or clerk before the master wheel was emptied shall be preserved in the custody of the clerk for four years or for such longer period as may be ordered by a court, and shall be available for public inspection for the purpose of determining the validity of the selection of any jury." 28 U.S.C. § 1868.
- The Northern District's Jury Plan implements Section 1868: "All records and documents compiled and used in the jury selection process shall be maintained and

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filed by the clerk, using intervals of time commencing with the proceedings to fill the master wheels and ending when all persons selected to serve before the wheels were emptied have completed their service. Said records shall be preserved for four years as required by 28 U.S.C. § 1868 and shall then be destroyed unless otherwise ordered by the Court." (Jury Plan, § 10(e).)

- The Jury Plan further provides: "The contents of records and documents used in connection with the jury selection process, including the juror qualification questionnaires, shall not be disclosed except as provided in 28 U.S.C. § 1867(f) and this Plan. Parties requesting access to these records shall petition the Court in writing setting forth the reasons for requesting access." (Jury Plan, § 10(b).) Section 1867(f) provides that "[t]he contents of records or papers used by the jury commission or clerk in connection with the jury selection process shall not be disclosed . . . until after the master jury wheel has been emptied and refilled . . . and all persons selected to serve as jurors before the master wheel was emptied have completed such service."

Here, Tribune does not seek access to juror questionnaires; the records Tribune seeks pertain exclusively to the racial, ethnic and gender composition of the recently emptied jury wheel, and both the JSSA and Jury Plan expressly provide for the filing and preservation of such records for public inspection. 28 U.S.C. § 1868; Jury Plan, § 10(e). As such, it is considered a "publicly available source[]":

The JSSA only prohibits the Court clerk from disclosing records or papers from the jury selection process for all master wheels which have not yet been emptied. The records or papers from all other master jury wheels are kept on public record in the Court clerk's office for at least four years. 28 U.S.C. § 1868. Because the master wheel from which Defendant Kirkpatrick's jury was selected has been retired, the information that Defendant requests about the master wheel from which his grand jury was drawn is available to him without court order.

United States v. Kilpatrick, No. 10-CR-20403, 2012 WL 3133939, at *8 (E.D. Mich. Aug. 1, 2012).

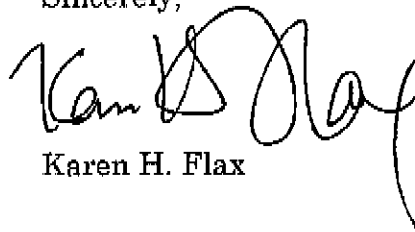
Finally, in addition to what the JSSA and Jury Plan provide, free access to the judicial records that Tribune seeks is presumed under the constitution and common law. *E.g.*, *Richmond Newsp., Inc. v. Virginia*, 448 U.S. 555, 575 (1980). This fundamental presumption of openness "may be overcome only by an overriding interest based on findings that closure is essential to preserve higher values and is narrowly tailored to serve that interest." *Press-Enterp.*, 464 U.S. at 510.

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To the extent that access to these public records requires a "petition . . . in writing" (Jury Plan, § 10(b)), Tribune again respectfully requests that Your Honor accept this letter as our formal written request for that purpose, or alternatively please advise us if a formal motion would be required.

Thank you for your consideration of these issues, which are and will continue to be of vital importance to the *Chicago Tribune's* reporting on matters of important public interest. Should you have any questions, I can be contacted at the above-noted telephone number.

Sincerely,

A handwritten signature in black ink, appearing to read "Karen H. Flax". The signature is fluid and cursive, with a large, sweeping flourish at the end.

Karen H. Flax

KHF/mrr