

## **Study of the Revised Jury Plan for the U. S. District Court, Northern District of Illinois**

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From 2013 to 2017, the United States District Court for the Northern District of Illinois revised its jury plan several times in an effort to increase the diversity of the District's jury pools. The purpose of this study is to assess whether the revisions are achieving their desired effect.

### *I. Chronology of Revisions*

When the District filled its master jury wheels (MJWs) in 2009 and in 2011, the jury plan relied exclusively on the voter registration list (VR) as a source of prospective jurors. However, in August of 2012, the District revised its jury plan by combining three different source lists to fill the MJW: the VR, the state driver's license list (DL), and the list of those holding state-issued photo identification cards (ID cards).<sup>1</sup> These changes went into effect as of May 23, 2013, with the creation of the 2013 jury wheel.

In September of 2013, the District further revised its jury plan to deal with persistent problems of undeliverable mail and of nonresponse to jury qualification questionnaires presumably delivered. For every undeliverable questionnaire, the jury clerk sent a substitute qualification questionnaire to another person residing in the same zip code.<sup>2</sup> For nonresponses to questionnaires presumably delivered, the jury clerk first tried a follow-up nonresponse letter reminder with another questionnaire. If this second mailing elicited no response, the jury clerk

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<sup>1</sup> United States District Court for N. D. Ill., Plan for Random Selection of Jurors (2013), sec. 5(b). *See also* U.S. Dist. Ct. for N. D. Ill., "Federal District Court Seeks to Increase Jury Diversity (Aug. 8, 2013), [https://www.ilnd.uscourts.gov/\\_assets/\\_news/Jury%20Diversity%20Press%20Release%20080813.pdf](https://www.ilnd.uscourts.gov/_assets/_news/Jury%20Diversity%20Press%20Release%20080813.pdf).

<sup>2</sup> *Id.*, sec. 7(b)

then sent an additional nonresponse letter reminder with a questionnaire. If the third mailing elicited no response, the jury clerk then sent a substitute qualification questionnaire to another person residing in the same zip code as the non-respondent.<sup>3</sup> Pursuant to these jury plan revisions, replacement mailings began in November 2014.

In June 2014, all federal district courts began using a new juror qualification questionnaire.<sup>4</sup> As opposed to the previous form, the new one reversed the order of the questions asking respondents to identify their race and to specify whether or not they were Hispanic. The new form asked the Hispanic question first.

In January 2015, the District changed from a two-week jury duty summons to a one-week system.

On January 26, 2017, the District again revised its jury plan to add, as a source of potential jurors, names on the list of persons who had applied for and/or received unemployment insurance from the Illinois Department of Employment Security (IDES).<sup>5</sup> Use of IDES records began on January 28, 2018, with the creation of the 2017 jury wheel.

## II. *Methodology*

The District fills and empties its MJW approximately every two years. Using AO12 forms provided to us, we analyzed four different draws from the MJW in order to get a “before, during, and after” look at the District’s successive revisions of its jury plan between 2009 and

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<sup>3</sup> *Id.*

<sup>4</sup> See sample at [https://www.insd.uscourts.gov/sites/insd/files/JQQ\\_Website%20Color.pdf](https://www.insd.uscourts.gov/sites/insd/files/JQQ_Website%20Color.pdf)

<sup>5</sup> United States District Court for the Northern District of Illinois, Plan for Random Selection of Jurors (rev. January 26, 2017), sec. 7 (b), [https://www.ilnd.uscourts.gov/\\_assets/\\_documents/\\_forms/\\_press/ILNDJuryPlan.pdf](https://www.ilnd.uscourts.gov/_assets/_documents/_forms/_press/ILNDJuryPlan.pdf). This revised plan was approved by the Judicial Council for the Seventh Circuit on Feb. 28, 2017.

2015. We were not given access to the 2017 A012 since, at the time of this study, that wheel was still in active use and hence not yet open to researchers.

We began with the 2009 and 2011 A012s to establish a baseline for the demographics of jury selection before the District adopted any of the revisions that are the subject of this study. We then analyzed the 2013 A012 as the first jury wheel that used multiple source lists and also provided for targeted zip-code replacement mailings for undeliverable questionnaires and for nonresponse to questionnaires received. However, since not all these revisions were in place when the District began using the 2013 MJW in October of 2013, we analyzed the 2015 A012 to see the full effects of the District's jury plan revisions.

### III. *Increasing Rates of Response to Jury Summoning*

Prior to the jury plan revisions, the District experienced serious problems with undeliverable jury qualification questionnaires (JQQs), as well as with nonresponse to JQQs presumably delivered. *See* Table 1. In 2009, 6.5% (2,200) of mailed JQQs could not be delivered to the addressed recipient. Another 33.4% (11,304) did not respond to JQQs presumably delivered. Thus, out of 33,878 names drawn, only 20,374 (60.1%) made it onto an available jury wheel (AJW<sup>6</sup>). *Id.* The situation repeated in 2011. Combining undeliverables (1,115) and non-respondents (12,613), the yield from an original draw of 35,109, was only 21,381, or 60.9% of the original draw. *Id.*

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<sup>6</sup> We use the term "Available Jury Wheel" (AJW) to refer to the total number of summonsed persons, who by virtue of returning their JQQs, become potential available jurors. The Qualified Jury Wheel (QJW) refers to the subset of the AJW who are jury-eligible.

To deal with undeliverable JQQs and nonresponse to those presumably received, in 2013, the District adopted a targeted zip code replacement system.<sup>7</sup> For every undeliverable JQQ from a particular zip code, the jury commissioner mails a JQQ to another name on the MJW from the same zip code. The District uses the same zip code replacement system for nonresponse to a JQQ, once the original recipient fails to respond to two follow-up letter reminders.

These reforms have had considerable success in increasing the percent of persons who receive and return their JQQs. The 2015 wheel was the first where the replacement mailing system was fully in effect.<sup>8</sup> Of all persons to whom JQQs were mailed, 85.9% of persons completed and returned the forms (compared to yields of 60.1 and 60.9 in 2009 and 2011 respectively). Table 1. Correspondingly, the rate of undeliverable mail fell to 2.4%, compared to 6.5% in 2009 and 3.2% in 2011. Likewise, the rate of nonresponse fell to 11.7%, from a high of 35.9% in 2011.

The reduction in levels of nonresponse to JQQs may be attributable to reforms other than the replacement by zip code mailings. Beginning January 1, 2015, the District converted from a two-week call-in for jurors to a one-week/one trial system. Although we do not know how widely known this change was among the public, a plausible hypothesis is that persons are

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<sup>7</sup> Zip codes in the District are home to different percentages of racial and ethnic groups. The District adopted the zip code replacement method in part as a way of assuring that jury selection would achieve the statutory and constitutional requirement that jurors be chosen from a fair cross-section of the community. Part V, *infra*, studies the effects of zip code replacement on achieving cross-sectional jury selection in the District.

<sup>8</sup> The District created its 2013 jury wheel on May 23, 2013. The District did not revise its jury plan to provide for zip code replacement mailings until August of 2013. The first replacement mailings under the revised system went out in November of 2014. Therefore, the full effects of the zip code replacement revision do not appear until the 2015 wheel. Nonetheless, the rate of nonresponse to JQQs did fall in 2013 to 18%, down from rates of 33.4% in 2009 and 35.9% in 2011. See Table 1. On the other hand, the rate of undeliverable JQQs in 2013 rose to 12.9% from previous rates of 6.5% in 2009 and 3.2% and 2011. This spike in undeliverable JQQs in 2013 seems anomalous, since in 2015 the rate of undeliverable JQQs was only 2.4%. Table 1.

more willing to serve when the burden of jury duty goes from two weeks to one week. Finally, the online system, *eJuror*, provides persons with another, and for some, easier way to complete their JQQs.

Taken as a whole, as Table 1 shows, by 2015, the totality of the above reforms clearly succeeded in increasing rates of response to mailed JQQs.<sup>9</sup>

#### IV. *Racial Disparities*

One of the principal goals of the District's jury plan revisions is to make the jury pool more representative of the community as a whole. The hypothesis is that by supplementing the list of registered voters with the drivers' license list, the list of those holding state-issued photo ids, and the list of persons receiving unemployment compensation, the District will create an MJW that is a fairer cross-section of the community than previous reliance on the VR alone achieved. Likewise, since studies show that rates of undeliverable mail and nonresponse to JQQs are greater than average in poor and minority neighborhoods,<sup>10</sup> the hypothesis is that weighting replacement mailings by zip code will provide a remedy for the disproportionate

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<sup>9</sup> In theory, the remailing reform may have also contributed to the higher yield by altering the numerator and denominator of the nonresponse/undeliverable rate. Consider the following simplified example. If the District mails ten JQQs but four do not respond, then the nonresponse rate is 40%. If the District then mails out four replacement JQQs, and all four respond, then the nonresponse rate declines to 28.6% (4 divided by 14). Whether this mathematical change explains the decline in nonresponse depends on how many people respond to the remailing. In the simplified example, if only two of the new four persons respond, then the overall nonresponse rate rises slightly to 42.9% (6/14). We do not have data on how many of the remailings in this period generated a response. We note that NDIL sent us results from their 2018 pilot study of whether the design of a reminder postcard affects response; in those data about 21% of people responded to postcard mailings. This low proportion suggests that the change in numerator/denominator probably does not explain lowered nonresponse.

<sup>10</sup> See, e. g., Richard Seltzer, *The Vanishing Jury: Why are There not Enough Available Jurors?* 20 JUSTICE SYSTEMS JOURNAL 203, 211 (1998-1999); Taylor, Ralph B., Jerry H. Ratcliffe, Lillian Dote, & Brian A. Lawton (2007) "Roles of Neighborhood Race and Status in the Middle Stages of Juror Selection," 35 J. of Crim. Justice 391 (nonresponse data). But see Part V, *infra*.

effects that undeliverable mail and nonresponse have hitherto had on efforts of the District to achieve representative jury pools. We studied the results thus far.

As a preliminary matter, we note that the number of prospective jurors whose race or Hispanic status is unknown significantly decreased from 2009 to 2015 on the QJW.<sup>11</sup> In 2009, 4.4% of persons on the QJW did not identify their race; that percentage declined to 2.2% in 2015. See Table 2. In 2009, 20% of prospective jurors did not answer the yes or no question regarding Hispanic status. In 2015, the percentage was only 0.9%. *Id.*

There appear to be two reasons why the District has succeeded in compiling more complete information on the race and Hispanic status of prospective jurors. First, as mentioned above, like all federal courts, in 2014 the District began using a new JQQ form that inverted the order of the questions about race and Hispanic status, asking about Hispanic status first. Data from a study from the Census shows that this simple inversion leads to greater response to the Hispanic question.<sup>12</sup> Secondly, in August of 2016, persons reporting for jury duty could check in at newly installed kiosks at the courthouse. The kiosks prompted persons to answer any questions on the JQQ they failed to respond to when returning it.

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<sup>11</sup> Data for the AJW has puzzling anomalies with respect to missing data. Although the percentage of people missing on the Hispanic ethnicity question plummeted to 2.3% by 2015 (from a high of 23.6% in 2013), the number of people with missing data on race increased from 12.6 (2013) to 22.8% (2015). These high rates of missing information complicate analysis of the racial representativeness of the wheel. As we describe, rates of missing information on race were much lower on the QJW, and we therefore focus our analysis on QJW, which is the wheel from which jurors are actually summoned.

<sup>12</sup> See Elizabeth Martin, Theresa J. DeMaio, and Pamela C. Campanelli, "Context Effects for Census Measures of Race and Hispanic Origin," U.S. Bureau of the Census, available at <https://www.census.gov/srd/papers/pdf/sm9001.pdf>.

#### A. African-American representation

In Table 3, we compare the representation levels on the QJW to the prevalence of the three largest racial groups, Whites, African Americans, and Hispanics, in the population of the counties that make up the Northern District's Eastern Division.<sup>13</sup> In 2009, African Americans were 19.5% of the 18+ citizen population but only 13.4% of the QJW. Table 3. The situation was similar in 2011: African Americans were only 12.2% of the QJW while their percentage of the jury-eligible population was 19.5%.

Courts use one of two methods to calculate the legal significance of the above disparities. "Absolute Disparity" (AD) simply subtracts the proportion on the jury wheel from the proportion in the population. This method calculates the underrepresentation of African Americans as 6.1% in 2009 and 7.3% in 2011. Table 3. "Comparative Disparity" (CD) is a better method, since it tells courts what they need to know: what is the *proportional* loss of fair representation (i.e., the AD divided by the proportion of the group in the population). In 2009, the CD for African Americans was 31.3%. In 2011, the CD was 37.4%. Table 3. Thus across 2009

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<sup>13</sup> Asian Americans/Pacific Islanders constitute about five percent of the Eastern Division of NDIL and, unlike African Americans and Hispanics, we did not find strong evidence of consistent underrepresentation. Hence, we focus primarily on minority groups with higher prevalence in the area. To generate population values for all groups, we drew on the American Community Survey (ACS), which, beginning in the mid-2000s, sampled areas in the years between each decennial census. The ACS is advantageous because it keeps current with changes in the population between decennial censuses, and it also includes a question on citizenship. This provides a strong estimate of the jury-eligible population in an area (i. e., citizens who are 18 and over). The most precise ACS estimates combine samples across years, which reduces the size of sampling error for any one year. These estimates are available from the Census Bureau website (Table B05003; see <https://factfinder.census.gov/faces/nav/jsf/pages/index.xhtml>). Multi-year estimates were not available for all counties in the Eastern Division of the Northern District until 2010. We therefore use the three-year (2008 – 2010) numbers for both the 2009 and 2011 years. For the remaining intervals, we use the five-year estimates associated with the years just prior to the wheel, that is, 2012 (2008 – 2012) for the 2013 wheel and 2014 (2010 – 2014) for the 2015 wheel.

and 2011, African Americans were underrepresented on the QJW by about a third (average CD for these years = 34.4%).

By moving to multiple source lists, the District has made progress in fair representation for African Americans, although a shortfall persists. In 2013, the AD declined to 5% and in 2015, it was 5.2%. Table 3. The CD figures declined to 25.8% and 27.1% respectively. Table 3. Across 2013 and 2015, African Americans were underrepresented on the QJW by about a fourth (average CD = 26.5%).

#### B. Hispanic representation

In 2009, Hispanics were 12% of the 18+ citizen population but only 10.2% of the QJW. Table 3. In 2011, Hispanics were 12% of the jury-eligible population but only 8.7% of the QJW. *Id.*

The AD for Hispanic underrepresentation on the 2009 QJW was 1.8%. The AD on the 2011 QJW was 3.3%. *Id.* The average AD across 2009 and 2011 was 2.55%.

The CD for Hispanic underrepresentation on the 2009 QJW was 15%. The CD for the 2011 QJW was 27.5%. *Id.* On average, the CD for 2009 and 2011 combined was 21.25%.

After the jury plan revisions, the District's QJWs more fairly represent the jury-eligible Hispanic population. The AD declined to 0.8 in 2013, and ticked up slightly to 1.2 in 2015, for an average AD of 1.0% over the last two QJWs, compared to an average AD of 2.55% prior to the revisions. *Id.* The CD declined to 6.3% in 2013 and 8.8% in 2015, for an average CD of 7.55% over the last two QJWs, compared to an average CD of 21.25% prior to the revisions. *Id.*

These CD figures show substantial improvement in Hispanic representation on the 2015 QJW. There has also been dramatic improvement in lowering rates of missing data on the

Hispanic ethnicity question, which produces more reliable estimates of this group's representation on the QJW. In all, to date, the jury plan revisions have been more successful in increasing Hispanic representation than is the case for African-American representation.

V. *A Preliminary Look at the Zip Code Replacement-Mailing Reform*

As stated above, one aim of sending out replacement mailings by zip code is to compensate for disproportionately high levels of nonresponse from zip codes with predominantly minority residents. There are two different causes of nonresponse. The first is failure of a JQQ to be delivered at all to a person at a given address ("undeliverables"). The second is failure of persons to respond to a JQQ presumably delivered ("nonresponse" proper).<sup>14</sup>

With the data provided to us, we were able to do only a highly preliminary examination of whether the new way of doing replacement mailings is increasing minority representation on the District's jury wheels.<sup>15</sup>

Table 4 presents demographic data about the top ten zip codes to which the District sent a replacement JQQ for one returned as undeliverable for the years 2015 and 2017. On average, the population of these ten zip codes was just as likely to be non-Hispanic White

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<sup>14</sup> The District data codes people who do not respond (and whose JQQ does not come back as undeliverable) as nonresponders. However, it bears mentioning that research suggests that some proportion of nonresponders did not, in fact, receive their JQQs. See, e.g., Seltzer, note 10, *supra*.

<sup>15</sup> We had access to different datasets for the issue of undeliverables compared to nonresponse. For undeliverables we used a file that listed the zip codes to which the District sent remailings in the years 2014, 2015, 2017, and 2018; we focus on two years as the most relevant: 2015 (since the program was fully in place throughout this year) and 2017 (since some of this time also stems from the 2015 wheel). For nonresponse, we had a file that indicated which areas had generated a code of nonresponse for the wheels 2011, 2013, and 2015. We focus primarily on 2015 as the relevant post-reform period. If the District seeks to do an intensive investigation of the remailing process, we advise using similar datasets for both types of remailing prompts, going beyond our analyses to examine the characteristics of all areas that received remailings (e.g., not just the top ten), and carefully tracking the outcome of each remailing.

(39.8%) as African-American (40.1%). The average Hispanic population was 11%. Whites were a majority of the population in five of the ten zip codes (over 60% of the population in three of these areas). African Americans were a majority in three (over 90% in two of these three). The Hispanic population did not exceed 31% in any of the ten zip codes.

These data do not suggest that, in and of itself, replacement mailings for undeliverable JQQs are likely to increase African American or Hispanic representation. In fact, somewhat to our surprise, Table 4 shows that undeliverable JQQs frequently went to zip codes where a large majority of the residents were non-Hispanic White.<sup>16</sup>

Table 5 shows the ten zip code areas that generated the highest number of nonresponse codes for the 2015 wheel.<sup>17</sup> African Americans were an overwhelming majority in half of the 10 zip codes (i.e., over 90% of the population in five of the ten), and were the majority in two others; across all these areas, African Americans were 71.2% of the population on average. Hispanics were a majority (over 50% of the population) in two areas. In all of the remaining zip codes, African Americans and Hispanics together constituted a majority of citizens in these areas, and in none did the non-Hispanic White population exceed 15% (overall average 5.1%).

The figures in Table 5 strongly suggest that nonresponse is greatest in zip codes where the population is majority African American and Hispanic. For that reason, mailing a replacement JQQ to a resident in the same zip code where the nonresponse occurred may help to remedy the disproportionate effect that nonresponse has on maintaining proportional

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<sup>16</sup> Of course, it is not possible to extrapolate from this overall data any conclusions about who, by race or ethnicity, are not receiving their JQQs.

<sup>17</sup> High-frequency areas vary somewhat from year to year, but the rankings for both undeliverable remailings and nonresponses were fairly stable across years. For example, among the areas that were the ten highest for nonresponses in 2015, all but two were in the top ten for 2013. Thus, we do not see our preliminary results as anomalies of the years we examined.

representation of African-American and Hispanic residents of the District, assuming that the remaining generates a response.

VI. *A Caveat to the Reforms: Continuing Problems with the QJW*

In Part III, *supra*, we reported that the District's revised jury plan has significantly alleviated problems with undeliverable mail and nonresponse, thereby increasing the percentage of persons who return their JQQs (*see* Table 1). However, there appears to be a Catch-22 here. On the one hand, the reforms are working to increase the percentage of persons who form an AJW by receiving and returning their JQQs. *Id.* On the other hand, a greater percentage of persons on the AJW do not meet statutory qualifications for jury service or otherwise have to be excused before the QJW is formed. In Table 6 we present the proportion of the AJW that ends up on the QJW. We proceed to explore this issue.

Table 6 reprises the numbers from Table 1 regarding the number of names drawn, the size of the AJW, and of the QJW. As we indicated above, the number of names the District draws from the MJW to receive a JQQ grew substantially from 2009 to 2015. In 2009, which pre-dates all reforms, the District drew 33,878 names from the MJW to receive a JQQ. Of that number, 20,374 returned their JQQs, forming the AJW. *Id.* The QJW had 15,968 names remaining on it. *Id.*

In 2011, the number drawn from the MJW increased only a little, to 35,109, as did the AJW (21,381), but the QJW was similar in size as the previous wheel, 15,242. *Id.*

Beginning in 2013, the first year that fully reflects drivers' license supplementation, the size of the draw increased by almost 40%, to 47,318 names.<sup>18</sup> *Id.* This produced a substantially larger AJW, with 32,903 names (an increase of over 60% from 2009), with a final QJW of 21,156, which was about one-third larger than the 2009 QJW (a 32.5% increase in size). *Id.*

In 2015, with a new jury wheel the number of persons receiving JQQs substantially increased to 59,952.<sup>19</sup> Out of this number, 51,485 persons responded, an impressive yield of 86%, compared to a yield of 60% in 2009 from the initial mailing of JQQs that year.<sup>20</sup> However, the 51,485 names on the 2015 AJW then declined to 27,998 names on the QJW, once persons on the AJW were disqualified or otherwise excused.

Two observations should be made about the 2015 QJW. On the one hand, in terms of raw size, the number of persons on the QJW increased by 75% over the size of the 2009 QJW. This in itself is important, since it shows that the District is spreading potential jury duty among a greater number of citizens.

On the other hand, even as the absolute number of persons on the District's jury wheels grew substantially from 2009 to 2015, the *proportion* of persons who made it through the process and onto the QJW has not grown and remains just below 50%. In 2009, prior to the

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<sup>18</sup> We derive this figure by subtracting the size of the draw in 2009 (33,878) from the size in 2013 (47,318) and then dividing the difference by the original 2009 value (i.e.,  $13,440/33,878 = 39.7\%$ ).

<sup>19</sup> As noted in Part I, beginning January 1, 2015, the District converted from a two-week call-in for jurors to a one-week/one trial system. Anticipating a need for more jurors under a one-week/one trial system, the jury commissioners increased the number of persons receiving a JQQ.

<sup>20</sup> This improved yield suggests that persons might be more willing to respond to a JQQ when the commitment went from two weeks to one week or one trial, *see* Part III, *supra*. However, we do not have firm data to confirm this hypothesis. The ability to complete JQQs online through the eJuror system may also increase juror response. *See* U.S. Courts, "Federal Courts Using Technology to Improve Juror Experience," <https://www.uscourts.gov/news/2017/05/05/federal-courts-using-technology-improve-juror-experience> ("great return rate for jury questionnaires since implementing eJuror").

jury plan revisions, the QJW retained 47.1% of the names initially drawn from the MJW to receive JQQs. Table 6. In 2015, the QJW retained 46.7% of names drawn from the MJW. *Id.*

Clearly, there remains a problem with retaining jurors from the AJW to the QJW. The jury plan revisions *are* working to increase the percentage of persons who receive their JQQs and return them (85.9% in 2015 compared to a low of 60.1% in 2009, *see* Table 1). However, a greater percentage of persons on the AJW then need to be disqualified or granted exemptions. To cite one more “pre” and “post” revised jury plan comparison: In 2009, the QJW was 78.4% of the AJW. Table 6. By contrast, in 2015, the QJW retained only 54.4% of the names on the AJW. *Id.* We now turn to an in-depth study of this issue of loss of potential jurors at the QJW stage.

#### VII. *Reasons for Attrition at the QJW Stage*

Table 7 tabulates the reasons persons are disqualified or exempted from jury duty based on data provided to us from the Jury Management System (JMS) database. We contrast the first (2009) and last (2015) wheel we examined. Across these two time periods, the single greatest reason persons are excused from jury duty is that they ask for the over-70 age exemption. As persons born during the so-called “baby boomer” years reach the age of 70, the number of persons entitled to this statutory exemption grows in both absolute and proportional terms. In 2009, 6.7% of persons who returned their JQQs received the over 70 excuse. In 2015, the first year that people born in 1945 reached the age of 70, that percentage grew to 11.4%. Table 7.

The growth in over-70 excuses has nothing to do with any of the District's revisions to its jury plan since 2012. The growth is a byproduct of an aging population and would have occurred, even if the District had not revised its jury plan.<sup>21</sup>

For our purposes, the most significant growth in disqualifications, and one likely attributable to the District's decision to use the DL as one source of prospective jurors, is the increase in disqualifications for lack of citizenship. In 2009, when the District restricted jury eligibility to registered voters, only 0.2% of those returning JQQs were disqualified for lack of citizenship. In 2015, that number significantly increased to 6.7%. Table 7. Whereas it used to account for very few disqualifications, non-citizenship is now second only to exemptions to over-70 persons as a reason the District strikes names from the QJW.<sup>22</sup>

Illinois maintains two separate lists of license drivers. Undocumented immigrants are eligible to receive a special temporary license.<sup>23</sup> The regular DL is limited to citizens and lawful residents, including those with valid green cards, student or work visas. The District uses only the regular DL when compiling an MJW.

It seems probable that, by virtue of holding a regular DL, some District residents receive a JQQ but are not citizens eligible for jury duty. We have not undertaken a study of how many non-citizen residents of the District hold a regular DL. However, Table 7 suggests that the number is significant and is one explanation of the observed attrition from the AJW to the QJW.

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<sup>21</sup> It seems plausible that the growth in excuses for physical and mental disability (from 1.8% to 5.2%) is also connected to an aging population. Table 7.

<sup>22</sup> The third largest cause of disqualification is for physical or mental disability. The fourth largest cause of disqualification is for lack of English language proficiency, which also could be linked to the change in source lists. Table 7. To avoid unduly disqualifying persons for language difficulties, since 2015 a District judge reviews any returned JQQ that raises an issue about language command.

<sup>23</sup> Office of Illinois Sec. of State, "Temporary Visitor Drivers' License (TVDL) for Undocumented (Non-Visa Status) Individuals," <https://www.cyberdriveillinois.com/departments/drivers/TVDL/tvdl.html>.

In fact, non-citizenship accounted for one out of every five (20.4%) disqualifications or exemptions the District granted in 2015. Table 7.

#### *VIII. Recommendations for Further Study*

To fully understand how the jury selection system in the Northern District operates in practice, and to continue to explore sources of attrition and underrepresentation, we offer several recommendations for areas of additional research.

- This study should be updated when the District's 2017-19 jury wheel becomes available to researchers. This would indicate whether the patterns we observed in 2015 are proving stable. It would also provide information about the 2017 jury plan revisions that, for the first time, added the IDES unemployment lists as a source of juror names.

- We also recommend a separate study of attrition in jury venires due to Failures to Appear (FTAs). The information reported here pertains to earlier phases of the jury selection process. Whether and how the District further loses people through FTAs would assist in understanding the composition of specific venires.

- We recommend that the Administrative Office ("AO") of U.S. Courts reconsider its current interpretation of the Jury Selection and Service Act's requirement that the jury-eligible population of each "county . . . or similar political subdivision" in a federal district be proportionally represented on the master jury wheel. *See* 28 U.S.C., sec. 1863(b)(3). To accomplish this proportionality, the AO has instructed the Clerk of Court to abide by the following additional language in 1863(b)(3): *"For the purposes of determining proportional representation in the master jury wheel, either the number of actual voters at the last general election in each county, parish, or similar political subdivision, or the number of registered*

*voters if registration of voters is uniformly required throughout the district or division, may be used.”(emphasis added).*

This requirement places the Clerk of the Court in a quandary. As studied in this report, the District now uses several lists, other than the voter registration list, to compile a master jury wheel. The Clerk of Court would like to determine the proportional draw, based on a political subdivision’s jury eligible population on the combined and merged lists in use. This would be more accurate than making the draw reflect a political subdivision’s share of the population on the voter registration list alone. But the AO interprets 1863(b)(3) as requiring the Clerk of Court to use the less accurate and less comprehensive voter-registration data, even after the District amended its jury plan to find jury-eligible voters through use of multiple lists. We recommend that the District judges consider this issue as a matter of law and make a determination of whether the issue warrants the AO’s attention.

- As noted, *supra*, note 15, more information could be gathered and analyzed regarding both the process and effect of remailings for undeliverables and nonresponses, including the response rates of those receiving such remailings.

## IX. *Conclusion*

The District’s jury plan revisions are working as intended to increase rates of response to mailed JQQs.

The District’s jury plan revisions are working as intended to increase representation for African-American and Hispanic citizens. Although both groups have seen improvement in their

representation in jury pools, the improvement is more significant for Hispanics than for African Americans (who were still underrepresented on the 2015 QJW by 25%).

Finally, the District is experiencing new problems with retaining jurors on the QJW. Much of the problem is attributable to an aging population that is entitled to ask to be excused from jury duty upon reaching the age of 70. However, use of the DL as a source of juror names appears to increase the need to disqualify non-citizen DL holders who, since 2013, now receive JQQs.

Table 1. Profile of Wheels for Northern District/Eastern Division, Across Time

	2009		2011		2013		2015	
	N	% of Draw						
Total Drawn	33,878	--	35,109	--	47,318	--	59,952	--
Total Undeliverable	2,200	6.5	1,115	3.2	6,092	12.9	1,445	2.4
Total NonResponse	11,304	33.4	12,613	35.9	8,504	18.0	7,022	11.7
Total on Available Wheel	20,374	60.1	21,381	60.9	32,903	69.5	51,485	85.9
Total on Qualified Wheel	15,968	47.1	15,242	43.4	21,156	44.7	27,998	46.7

Source: A012 forms for each of the wheel-years listed.

Table 2. Profile of the Qualified Wheels, Across Time

Year	2009		2011		2013		2015	
	N	% of total						
Total	15,968	100	15,242	100	21,156	100	27,998	100
Analysis of Race								
Whites	11,564	72.4	11,291	74.1	14,467	68.4	19,324	69.0
Blacks	2,133	13.4	1,852	12.2	3,036	14.4	3,932	14.0
Asian/Pacific Islander	686	4.3	809	5.3	1,310	6.2	1,826	6.5
Other/Multi-Race	877	5.5	727	4.8	1,420	6.7	2,297	8.2
Unknown on Race	708	4.4	563	3.7	923	4.4	619	2.2
Analysis of Hispanics								
Hispanic	1,629	10.2	1,333	8.7	2,546	12.0	3,477	12.4
Unknown on Hispanic	3,199	20.0	2,831	18.6	4,354	20.6	245	0.9

Source: AO12 forms for each wheel-year listed.

Table 3. Absolute Disparities (AD) and Comparative Disparities (CD), Across Time: Qualified Wheels.

	2009			2011			2013			2015		
	% on Qualified Wheel*	% in Pop. +	AD/ (CD)	% on Qualified Wheel	% in Pop.	AD/ (CD)	% on Qualified Wheel	% in Pop.	AD/ (CD)	% on Qualified Wheel	% in Pop.	AD/ (CD)
Whites	72.4	62.7	-9.7/(-15.5)	74.1	62.7	-11.4/(-18.2)	68.4	61.9	-6.5/(-10.5)	69.0	60.9	-8.1/(-13.3)
Blacks	13.4	19.5	6.1/ (31.3)	12.2	19.5	7.3/ (37.4)	14.4	19.4	5.0/ (25.8)	14.0	19.2	5.2/ (27.1)
Hispanic	10.2	12.0	1.8/ (15.0)	8.7	12.0	3.3/ (27.5)	12.0	12.8	0.8/ (6.3)	12.4	13.6	1.2/ (8.8)

Source: AO12 forms for each wheel-year listed.

\*As in Table 2, we retain those listed as "unknown on race" to derive these proportions.

+ "Pop." = "population." Population proportions come from the American Community Survey multi-year estimates, Table B05003.

Table 4. Racial composition of zip codes that had ten highest number of remailings for undeliverable addresses, across 2015 and 2017 (combined).

	60619	60624	60640	60618	60613	60625	60616	60615	60622	60637	
<b>Total in zip:</b>											
All	47,762	25,581	51,733	58,993	40,827	48,533	34,027	29,446	40,916	34,695	--
Hispanic	460	420	4,412	18,293	4,127	10,212	3,364	1,133	8,491	867	--
African American	46,292	24,228	8,674	1,878	2,336	2,577	10,864	18,229	3,106	26,584	--
NH White	624	696	32,641	33,907	31,692	27,763	9,733	7,982	27,141	5,839	--
<b>Composition</b>											<b>Average %</b>
%Hispanic	1.0	1.6	8.5	31	10.1	21	9.9	3.8	20.8	2.5	11.0
%African American	96.9	94.7	16.8	3.2	5.7	5.3	31.9	61.9	7.6	76.6	40.1
%NH White	1.3	2.7	63.1	57.5	77.6	57.2	28.6	27.1	66.3	16.8	39.8
<b>N Remailings</b>	<b>154</b>	<b>142</b>	<b>140</b>	<b>125</b>	<b>123</b>	<b>121</b>	<b>117</b>	<b>112</b>	<b>112</b>	<b>112</b>	<b>148</b>

Source: Data provided on remailings to zip codes for undeliverables.

Table 5. Racial composition of zip codes that had the highest numbers of nonresponses in 2015.

	60628	60623	60620	60639	60629	60619	60624	60617	60651	60644	
<b>Total in zip:</b>											
All	50,753	40,860	53,569	45,270	56,090	48,374	25,707	53,965	40,845	34,767	--
Hispanic	1,143	19,299	479	29,898	29,615	452	419	15,044	10,592	1,066	--
African American	48,287	19,796	51,749	10,084	17,483	46,944	24,487	33,862	28,464	32,714	--
NH White	1,045	1,364	701	4,463	8,168	574	732	4,907	1,765	949	--
<b>Composition</b>											<b>Average %</b>
%Hispanic	2.3	47.2	0.9	66	52.8	0.9	1.6	27.9	25.9	3.1	22.9
% African American	95.1	48.4	96.6	22.3	31.2	97	95.3	62.7	69.7	94.1	71.2
%NH White	2.1	3.3	1.3	9.9	14.6	1.2	2.8	9.1	4.3	2.7	5.1
<b>N Nonresponders</b>	<b>153</b>	<b>147</b>	<b>141</b>	<b>131</b>	<b>130</b>	<b>129</b>	<b>127</b>	<b>124</b>	<b>119</b>	<b>106</b>	<b>131</b>

Source: Data provided on nonresponse numbers for each wheel-year.

Table 6. The Qualified Wheel as a Proportion of the Names Drawn and of the Available Wheel

	2009	2011	2013	2015
Total Names Drawn	33,878	35,109	47,318	59,952
Total on Available Wheel	20,374	21,381	32,903	51,485
Total on Qualified Wheel	15,968	15,242	21,156	27,998
Qualified Wheel as a % of Total Drawn	47.1	43.4	44.7	46.7
Qualified Wheel as a % of Available	78.4	71.3	64.3	54.4

Source: A012 forms for each of the wheel-years listed above.

Table 7. Profile of Exemptions and Disqualifications, Per JMS Database, 2009 and 2015

	N		% of Total in Database		% of Total Disqualified/ Excused/ Exempted	
	2009	2015	2009	2015	2009	2015
Excused-Over 70	913	4,734	6.7	11.4	45.5	34.5
Not a Citizen	23	2,803	0.2	6.7	1.1	20.4
Physical/Mental Disability	246	2,163	1.8	5.2	12.3	15.8
Not Fluent in English	227	1,301	1.7	3.1	11.3	9.5
Not/No Longer a District Resident	152	1210	1.1	2.9	7.6	8.8
Convicted/ Rights Not Restored	53	426	0.4	1.0	2.6	3.1
Exempt-Fire/Police	139	286	1.0	0.7	6.9	2.1
Deceased	1	190	0.0	0.5	0.0	1.4
Excused-Volunteer Safety Official	47	142	0.3	0.3	2.3	1.0
Exempt- Full-Time Public Official	40	138	0.3	0.3	2.0	1.0
Excused due to Care of a Child	5	109	0.0	0.3	0.2	0.8
All Others	160	226	1.2	0.5	8.0	1.6
Total Not Qualified/Exempt/Excused	2006	13,728	14.8	32.9	--	--
Total in Database	13,527	41,689	--	--	--	--

Source: JMS database.