

**A PLAN OF OUR OWN:  
THE EASTERN DISTRICT OF PENNSYLVANIA’S  
INITIATIVE TO INCREASE JURY DIVERSITY**

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ABSTRACT

*Jury diversity is essential to ensuring the fair and impartial administration of justice for all. As our communities grow and continue to become more diverse, it is imperative that courts take steps to ensure their jury pools are reflective of the communities they serve. While empirical evidence demonstrates the value of jury diversity, it remains a difficult topic for courts to address. As the newest and first Latino Chief Judge of the Eastern District of Pennsylvania, two of my primary goals are ensuring that the court’s jury pool reflects the demographics of the district’s nine counties and every citizen has the opportunity to participate in the administration of justice. To these ends, the court has implemented four major reforms to improve its jury selection process. This effort is designed to promote the diversity of the Eastern District of Pennsylvania’s jury pool and foster community engagement that encourages participation within the legal system.*

TABLE OF CONTENTS

INTRODUCTION.....1  
I. BACKGROUND .....4  
    A. *The Importance of Juror Diversity* .....5  
    B. *The Challenges of Achieving Jury Diversity* .....10  
II. CHANGES WITHIN THE EASTERN DISTRICT OF PENNSYLVANIA .....16  
CONCLUSION .....19

INTRODUCTION

Imagine a young woman testifying on the witness stand about a criminal case involving a robbery that left two people dead. She is the only witness

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identifying the defendant as the perpetrator, and the defense's case hinges on a theory of mistaken identity. Her voice is unsteady as she testifies, but she recalls the description of the person she saw on the night in question with great detail, and it matches the appearance of the defendant. Her story is consistent, but she has never made eye contact for more than a passing glance during her testimony; rather, she recounts the details of her story with her gaze averted to the floor—regardless of whether she is responding to the questioning attorney or an instruction from the presiding judge. Before the jury is sent to deliberate, the judge instructs the jury on the central issue of evaluating a witness's credibility, explaining to the jury that it should consider the testifying young woman's demeanor, including her physical actions, such as the degree of eye contact she makes. After hearing this instruction and witnessing her testimony, would members of the jury find the young woman credible?

A jury's answer to this question, as well as the outcome of the case, may pivot on the diversity of its members. Based on the hypothetical above, the young woman knew the details of her story well but failed to make eye contact when testifying. Jurors from different cultures, however, may draw vastly different inferences about the young woman's credibility from her eye contact.<sup>1</sup> In many Latino and Asian cultures, avoiding direct eye contact demonstrates a sign of respect—and may enhance a witness's credibility.<sup>2</sup> Conversely, in Western culture, avoiding eye contact is considered an indication of deception or untruthfulness—and may diminish a witness's credibility.<sup>3</sup> Consequently, a more diverse jury may be inclined to find the young woman credible or engage in a more open discussion about how to interpret the young woman's lack of eye contact. On the other hand, a less diverse jury may be more willing to quickly find that the young woman's testimony was not credible. How a small act, like eye contact, can be interpreted differently by jurors depending on their background highlights how jury diversity may impact the outcome of a trial.<sup>4</sup>

Throughout my thirty-eight-year legal career, I have experienced our legal system from nearly every perspective—as a trial lawyer, a juror, and a federal and state judge. Each of these experiences has demonstrated the value of ensuring our juries reflect the community in which they sit. As a young public

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1. See COMM. ON MODEL CIVIL JURY INSTRUCTIONS WITHIN THE THIRD CIRCUIT, MODEL CIVIL JURY INSTRUCTIONS § 1.7 (2017) (“In deciding [whether you] believe [the witness], you may consider a number of factors, including . . . the witness's manner while testifying . . .”), [http://www.ca3.uscourts.gov/sites/ca3/files/1\\_Chaps\\_1\\_2\\_3\\_2017\\_Oct.pdf](http://www.ca3.uscourts.gov/sites/ca3/files/1_Chaps_1_2_3_2017_Oct.pdf) [http://perma.cc/YV55-MSTR].

2. See Christian Best, *Nonverbals*, PA. STATE UNIV. (Sept. 23, 2014), <http://sites.psu.edu/intercommpuertorico/nonverbals10/> [http://perma.cc/55YX-RWRC] (citing CARMEN JUDITH NINE CURT, *NON-VERBAL COMMUNICATION IN PUERTO RICO* 29–32 (1984)); see also Edward M. Chen, *The Judiciary, Diversity, and Justice for All*, 91 CALIF. L. REV. 1109, 1118 (2003) (“In some cultures, meeting the eyes of another is a sign of disrespect under certain circumstances.”).

3. William Y. Chin, *Multiple Cultures, One Criminal Justice System: The Need for a “Cultural Ombudsman” in the Courtroom*, 53 DRAKE L. REV. 651, 659 (2005).

4. See *id.* at 659–60 (detailing a case where the judge's knowledge of Native American culture resulted in the denial of a father's motion for change of custody).

defender for the Chester County Public Defender's Office, I learned how important the diversity of a jury can be to winning or losing a case. I represented a defendant in a criminal case where the jury included one black juror and one young female juror.<sup>5</sup> After a lengthy trial that hinged primarily on the credibility of the prosecution's witnesses, the jury returned a favorable decision for my client. Speaking with the jurors after the trial, I learned that the black and young female jurors were instrumental in finding that the prosecution's key witness was not credible based on their experiences.

As a juror, I witnessed how aware juries are of the diversity of their members and the different views each juror brings to deliberations as a result. In the summer of 1998, I was called for jury service in the Court of Common Pleas of Chester County, Pennsylvania, and was chosen to serve as a juror in a civil case. The case involved a dispute over property damage that occurred after a flood. Even though neither of the parties in the case were diverse, my co-jurors were keenly interested in discussing my view of the case and perception of how the events unfolded. While I was unable to serve as a juror for the entirety of the case because of my election to the bench, this experience imparted on me how aware juries are of the diversity of their members and the potentially different views each juror may hold as a result of their diverse backgrounds.

Finally, as a federal and state court judge, I have experienced the benefits diverse juries bring to the legal system. In my experience, juries with greater diversity tend to deliberate longer and ask more questions during their deliberations. During a recent trial I presided over, the parties picked a jury with significant gender and age diversity. After the close of evidence and the jury charge, it appeared the deliberations would not take very long. However, the jury deliberated for several days and asked numerous questions demonstrating how thoroughly they considered the issues in the case. While the number of questions a jury asks depends on the complexity of the case, one consistent theme within the legal system I have seen is that diverse juries are more inquisitive during deliberations and take time to thoroughly consider the issues presented.

Although my experiences have shown that diversity within the jury box benefits our legal system, a lack of jury diversity<sup>6</sup> remains a problem. Courts often have difficulty addressing jury diversity due to the numerous complex underlying issues the problem presents.<sup>7</sup> A lack of juror diversity may result from a court's jury selection policy or lack of policy; potential jurors may also

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5. In my family tree, there is a wide array of color diversity between each branch. Some of my family members have a dark complexion and could be considered black, while others have a light complexion and could be considered white. However, neither label would be completely accurate due to our Puerto Rican heritage. Accordingly, because a person's skin tone may not accurately reflect their heritage and each person may self-identify differently, this Article uses general terms to describe a person's complexion.

6. This Article uses the term "diversity" broadly to include a variety of characteristics such as gender, race, and age.

7. THE FIRST JUDICIAL DIST. OF PA., JUROR PARTICIPATION INITIATIVE 5-6 (2018), [http://www.courts.phila.gov/pdf/report/FJD\\_JPIC\\_Final.pdf](http://www.courts.phila.gov/pdf/report/FJD_JPIC_Final.pdf) [<http://perma.cc/A2QH-F727>].

choose not to return their jury service questionnaires, fail to report to jury selection because they cannot afford to take time away from work, decline to be part of a system they view as unfair, or be unreachable because their address may have changed.<sup>8</sup> With varying underlying causes contributing to a lack of jury diversity and finite resources to address these issues, increasing juror diversity remains an elusive target.

As the first Latino Chief Judge in the 229-year history of the Eastern District of Pennsylvania,<sup>9</sup> one of my top priorities is ensuring our court's jury pool is representative of the community. As a result of the work done while I chaired the court's Jury Committee and Jury Diversity Subcommittee the court has implemented new programs and significant changes to its existing jury program. Unlike many jury diversity initiatives in the United States district courts, which are developed at the national level by the Administrative Office of the United States Courts,<sup>10</sup> our court has developed its plan for increasing juror diversity and representation through a grassroots, community initiative. To ensure the jury pool better represents this jurisdiction's nine counties,<sup>11</sup> the court has implemented four major reforms: (1) increasing the size of the jury plan's master wheel, (2) increasing the frequency of National Change of Address system checks, (3) implementing a new "second questionnaire" system, and (4) employing a broad community outreach campaign. Through these initiatives, the court hopes to draw a more diverse and representative jury pool that will better meet the needs of our community and foster community engagement that encourages participation.

## I. BACKGROUND

Before discussing our court's initiatives more thoroughly, it is important to revisit why juror diversity remains a central goal for courts and address why jury diversity remains a complex issue for many courts. Juror diversity is important because (1) it allows the justice system to reflect the composition of the community, (2) empirical evidence shows that jury diversity leads to better and more efficient deliberations, and (3) jury participation serves as a form of civic engagement, which results in a more democratic society through the engagement

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8. *Id.* at 5–6 (“[L]ower juror response can be traced to the mobility of urban populations. As is the case with other major metropolitan jurisdictions, many people move freely within and outside of Philadelphia for a variety of reasons, often leaving no forwarding address.”).

9. The position of chief judge was statutorily created in 1948. *See* Act of June 25, 1948, ch. 646, § 45, 62 Stat. 869, 871 (current version at 28 U.S.C. § 136).

10. The Administrative Office of the United States Courts “is the agency within the judicial branch that provides a broad range of legislative, legal, financial, technology, management, administrative, and program support services to federal courts.” *Judicial Administration*, U.S. COURTS, <http://www.uscourts.gov/about-federal-courts/judicial-administration> [http://perma.cc/HLC3-LQAJ] (last visited Mar. 12, 2019).

11. The Eastern District of Pennsylvania “comprises the counties of Berks, Bucks, Chester, Delaware, Lancaster, Lehigh, Montgomery, Northampton and Philadelphia.” *Eastern District of Pennsylvania*, U.S. MARSHALS SERV., <http://www.usmarshals.gov/district/pa-e/general/area.htm> [http://perma.cc/5ZJD-9XAG] (last visited Mar. 12, 2019).

of *all* demographic groups. While there are numerous benefits to a diverse jury pool, there are several barriers that courts face when attempting to promote jury diversity, which can loosely be categorized as those related to the processes used by courts to obtain panels of qualified jurors and those idiosyncratic to jurors themselves.

A. *The Importance of Juror Diversity*

First, courts must take steps to address jury diversity because it promotes the Sixth Amendment ideal that each jury should reflect the community from which it is drawn and serve as that community's conscience. In the landmark case of *Taylor v. Louisiana*,<sup>12</sup> the United States Supreme Court held that the Sixth Amendment guarantees the right to have "a jury drawn from a fair cross section of the community."<sup>13</sup> While the Sixth Amendment does not guarantee the right to have a jury comprised of a specific composition,<sup>14</sup> it sets forth the ideal that courts should empanel juries representative of the larger community. In addition to this ideal, juries are also commonly thought of as the "conscience of the community."<sup>15</sup> Through their verdicts and judgments, juries should reflect the community's sense of justice and fairness.<sup>16</sup> However, to truly fulfill this function, the jury must genuinely reflect a cross section of the community and be representative of the community at large.

As our communities continue to diversify,<sup>17</sup> jury diversity in jury pools and panels is becoming a more pressing concern for courts. If courts do not focus on ensuring their juries are reflective of the communities they serve, they fail to live up to their Sixth Amendment obligations. Thus, courts should strive to promote jury diversity to achieve our nation's constitutional ideals as well as accurately reflect the thoughts and opinions of the broader community.

Second, courts must continue to focus on improving jury diversity because empirical data shows that jury diversity increases the quality of verdicts and

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12. 419 U.S. 522 (1975).

13. *Taylor*, 419 U.S. at 526–27, 530 ("We accept the fair-cross-section requirement as fundamental to the jury trial guaranteed by the Sixth Amendment and are convinced that the requirement has solid foundation."); *see also* U.S. CONST. amend. VI.

14. *See* *United States v. Smith*, 247 F. App'x 321, 323 (3d Cir. 2007) ("[The fair cross section requirement] does not provide a right to any particular jury composition or ratio." (citing *Taylor*, 419 U.S. at 528)).

15. Nancy S. Marder, *Juries, Justice & Multiculturalism*, 75 S. CAL. L. REV. 659, 660 (2002).

16. *Id.*

17. Press Release, U.S. Census Bureau, *The Nation's Older Population Is Still Growing*, Census Bureau Reports (June 22, 2017), <http://www.census.gov/newsroom/press-releases/2017/cb17-100.html> [<http://perma.cc/EC4D-WD5N>] ("Nationally, all race and ethnic groups grew between July 1, 2015, and July 1, 2016."); Bill Chappell, *Census Finds a More Diverse America, As Whites Lag Growth*, NPR: THE TWO-WAY (June 22, 2017, 9:25 AM), <http://www.npr.org/sections/thetwo-way/2017/06/22/533926978/census-finds-a-more-diverse-america-as-whites-lag-growth> [<http://perma.cc/LFV8-AEWA>] ("Asian and mixed-race people are the two fastest-growing segments of the U.S. population . . . Both groups grew by 3 percent from July 2015 to July 2016. In the same 12 months, the non-Hispanic white population grew by just 5,000 people.").

provides for more just results.<sup>18</sup> While there remains debate as to whether jury diversity is necessary to the fair and impartial administration of justice,<sup>19</sup> in *Taylor*, the Supreme Court further articulated that excluding women from the jury pool violates a defendant's right to have a jury drawn from a fair cross section of the community.<sup>20</sup> In his dissent, Justice William Rehnquist set forth the view that jurors are interchangeable—regardless of their background—so long as they are able to objectively and impartially decide the issues in the case.<sup>21</sup> This view has been referred to as the “reasonable person” view of the jury pool and focuses on the “impartiality” of the jury pool, rather than its “representativeness.”<sup>22</sup> The reasonable person view of the jury pool continues to be a driving force in the jury selection process as some courts continue to focus on potential jurors' impartiality.<sup>23</sup>

To some extent, the reasonable person view of the jury venire may be intellectually appealing. Objectivity is, and should remain, a touchstone of the administration of justice. However, focusing solely on impartiality would be a mistake. In my view, courts should be concerned not only with the integrity of Lady Justice's blindfold but the inner lens through which she sees the evidence. More concretely, as the hypothetical described in the Introduction intimates, two wholly “impartial” jurors can observe the same evidence through different cultural prisms and reach diametrically opposite conclusions. Rather than ignore these differences and the discussions during deliberations they are sure to spark, courts should harness the well-documented benefits of diversity by adopting policies that value *both* impartiality and diversity.<sup>24</sup>

For years, scholars have studied the effect of increased jury diversity on deliberations and trial outcomes. These studies consistently demonstrate that diversity has a positive impact on deliberations, regardless of whether the

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18. See *infra* notes 25–43 and accompanying text.

19. Marder, *supra* note 15, at 662–63.

20. *Taylor v. Louisiana*, 419 U.S. 522, 537 (1975) (“Accepting as we do, however, the view that the Sixth Amendment affords the defendant in a criminal trial the opportunity to have the jury drawn from venires representative of the community, we think it is no longer tenable to hold that women as a class may be excluded or given automatic exemptions based solely on sex if the consequence is that criminal jury venires are almost totally male.”).

21. See *id.* at 541–43 (Rehnquist, J., dissenting) (discussing a juror's lack of prejudice and bias as the central concern to determining whether a defendant receives a jury comprised of a fair cross section of the community).

22. Marder, *supra* note 15, at 664–65.

23. See *id.* at 665 & n.31 (discussing the Seventh Circuit's opinion in *United States v. Raszkievicz*, 169 F.3d 459, 466 (7th Cir. 1999), which stated that “the main purpose of the fair cross-section requirement is that the defendant get the benefit of an impartial jury”).

24. See, e.g., Leslie Ellis & Shari Seidman Diamond, *Race, Diversity, and Jury Composition: Battering and Bolstering Legitimacy*, 78 CHI.-KENT L. REV. 1033, 1045–48 (2003) (finding that jury diversity promotes the sense of a fair trial); Marder, *supra* note 15, at 687, 694 (finding that gender diversity has a positive impact on the tone and thoroughness of deliberations); Samuel R. Sommers, *On Racial Diversity and Group Decision Making: Identifying Multiple Effects of Racial Composition on Jury Deliberations*, 90 J. PERSONALITY & SOC. PSYCHOL. 597, 600–12 (2006) (finding that racially diverse juries deliberated longer and considered a wider range of information than racially nondiverse juries).

diversity is race based, gender based, age based, or otherwise. As discussed further below, these studies demonstrate the importance of maintaining a diverse jury pool as diverse juries (1) lead to fewer errors, (2) engage in more thorough deliberations, and (3) eliminate biases and prejudices during the deliberation process.<sup>25</sup> What is more, data shows that having just one diverse juror in the jury pool—not even on the final empaneled jury—can increase equity and fairness in the administration of justice.<sup>26</sup>

From a public relations perspective—which is an important consideration given how much the judiciary’s power is derived from its perceived legitimacy—racially diverse juries provide the appearance of fairer adjudications. In a 2003 study on how jury diversity affects the perception of the legal system, researchers found that when participants in the study were provided with the description of a trial involving an all-white jury and a black defendant, the participants perceived the guilty verdict to be less fair than when they were provided with a scenario involving a mixed-race jury.<sup>27</sup> A similar study conducted in 2002 further found that jurors who deliberated in a diverse jury reported that they were more satisfied with the deliberations and their verdict.<sup>28</sup> Thus, jury diversity increases the perception of fairness within the legal system.

Empirical studies have found that gender and age diversity improve the tone and thoroughness of deliberations, which suggests not only a more positive experience for jurors but also a greater likelihood that a verdict will be based on more thorough deliberations.<sup>29</sup> A 2003 study that focused on the effect of gender and age on jury deliberations concluded that the gender composition of a jury had the most profound effect on its deliberations.<sup>30</sup> Specifically, the study revealed that as gender diversity increased, the tone of the deliberations became less hostile and more harmonious.<sup>31</sup> Jurors became more supportive of each other’s opinions and thoughts.<sup>32</sup> Less contentious deliberations, in turn, suggest

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25. See, e.g., Ellis & Diamond, *supra* note 24, at 1045–48 (finding that jury diversity promotes the sense of a fair trial); Marder, *supra* note 15, at 687, 694 (finding that gender diversity has a positive impact on the tone and thoroughness of deliberations); Sommers, *supra* note 24, at 600–12 (finding that racially diverse juries deliberated longer and considered a wider range of information than nonracially diverse juries).

26. See, e.g., Shamena Anwar et al., *The Impact of Jury Race in Criminal Trials*, 127 Q.J. ECON. 1017, 1035 (2012) (comparing conviction rates in cases that had no black people in the jury pool with those that had at least one black person in the jury pool).

27. Ellis & Diamond, *supra* note 24, at 1043–48.

28. Marder, *supra* note 15, at 701 (finding that “jurors on gender and age diverse juries are more satisfied with their deliberations, verdict, and jury experience”).

29. See, e.g., Andrea Hickerson & John Gastil, *Assessing the Difference Critique of Deliberation: Gender, Emotion, and the Jury Experience*, 18 COMM. THEORY 281, 290–303 (2008) (“[J]urors felt slightly less satisfied with their jury experience when seated in evenly mixed juries, but a clear female-majority jury was the most likely to report both higher overall satisfaction and better treatment by fellow jurors.”); Marder, *supra* note 15, at 687–700 (finding that gender diversity has a positive impact on the tone and thoroughness of deliberations, and increased the jurors’ perception that deliberations were more thorough).

30. Marder, *supra* note 15, at 700.

31. *Id.* at 701.

32. *Id.*

that verdicts will hew closer to the evidence—and not any impermissible basis, such as interpersonal conflicts between and among the jurors. Accordingly, it appears that greater gender and age diversity allow for more thorough and complete deliberations.

Finally, with respect to racial diversity, studies have concluded that greater racial diversity results in a more thorough deliberative process and brings fairness to the trial process.<sup>33</sup> In 2006, a study using mock jurors sought to better understand the effects of racial diversity in juries.<sup>34</sup> The study found that racially diverse juries “deliberated longer and considered a wider range of information than” racially nondiverse juries.<sup>35</sup> The study further determined that the thoroughness in deliberations resulted from a symbiotic interaction between racially diverse jurors.<sup>36</sup> For example, in diverse mock juries, black jurors added unique perspectives based upon their own experiences, and in response, white jurors “raised more case facts, made fewer factual errors, and were more amenable to discussing race-related issues.”<sup>37</sup> The study ultimately concluded that, notwithstanding the “moral or Constitutional ideal” that juries should be diverse and inclusive, racial diversity is “an ingredient for superior performance.”<sup>38</sup>

Likewise, a 2012 study led by a Duke University researcher found that racial diversity within the jury pool increases fairness within the legal system.<sup>39</sup> The study, which looked at more than seven hundred felony trials between 2000 and 2010, found that all-white jury pools were significantly more likely to lead to convictions of black defendants than of white ones.<sup>40</sup> In criminal cases with no black jurors in the jury pool, black defendants were convicted 81% of the time, and white defendants were convicted 66% of the time.<sup>41</sup> However, when a single black juror was included in the pool—prior to the court empanelling the jury—this gap was nearly eliminated, and conviction rates were nearly identical for both groups of defendants—71% for black defendants and 73% for white defendants.<sup>42</sup> Therefore, as a wide breadth of empirical evidence demonstrates, jury diversity has a great impact on deliberations and outcomes within the legal system, and courts must continue to focus on improving jury diversity to enhance outcomes within the legal system.<sup>43</sup>

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33. See, e.g., Anwar et al., *supra* note 26, at 1026–50; Sommers, *supra* note 24, at 601–10.

34. Sommers, *supra* note 24, at 597–612.

35. *Id.* at 606.

36. *Id.* at 606–08.

37. *Id.* at 606.

38. *Id.* at 608.

39. Anwar et al., *supra* note 26, at 1017–55.

40. *Id.* at 1026–50.

41. *Id.* at 1032.

42. *Id.*

43. It is important to note the empirical evidence does not suggest that jury diversity is beneficial because nondiverse juries are incapable of rendering fair and impartial verdicts, nor that it leads to more acquittals; rather, the empirical data demonstrates that the advantage of jury diversity is its ability to promote deliberation between jurors and strengthen the public perception of legal

Jury diversity is also valuable for its power as a tool of civic engagement. More specifically, improving jury diversity is one of the many ways of ensuring a diverse range of citizens (1) directly participate in government action and (2) are empowered to engage in other civic processes. Our country was founded on the basic principle of popular sovereignty—meaning its citizens hold the ultimate power over the government.<sup>44</sup> To achieve this goal of popular sovereignty, participation of each citizen is a necessary predicate.<sup>45</sup> Apart from voting in elections, however, there are limited opportunities for citizens to directly influence government action. Jury service is the exception to this general rule and one of the few activities in which a citizen can directly impact government action.<sup>46</sup>

Initially, being a juror provides citizens the unique opportunity to directly influence government activity by acting as a significant check on governmental power and increasing the accountability of government officials. In civil cases, the jury prevents “judicial autocracy.”<sup>47</sup> By removing the factfinding process from the judge’s purview, juries help offset any bias that may be introduced through a judge’s personal preferences.<sup>48</sup> In criminal cases, the jury limits not just the judge’s authority but also the power of the executive branch, whose constitutional obligation is to enforce the laws, and the legislative branch, whose constitutional obligation is to draft and enact those laws.<sup>49</sup> From ascertaining whether the government has met its burden of proof to jury nullification when the government overreaches and tries to apply an unjust law to a set of facts—individual jurors can decide the case against the collective wishes of *all three branches* of the government.<sup>50</sup> Furthermore, if diverse jurors face structural or institutional barriers to socioeconomic prosperity or view the justice system as corrupt, jury service is their firsthand opportunity to hold individuals, entities, or the government accountable.<sup>51</sup> Thus, jury diversity is key to ensuring each

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determinations—which the legal system relies on for its legitimacy.

44. See Michael A. Dawson, Note, *Popular Sovereignty, Double Jeopardy, and the Dual Sovereignty Doctrine*, 102 YALE L.J. 281, 282–83 (1992) (“In the United States, government derives its authority ‘from the consent of the governed’ and maintains its legitimacy through the participation of the people in a representative democracy.” (footnote omitted) (quoting THE DECLARATION OF INDEPENDENCE para. 2 (U.S. 1776))).

45. See *id.*

46. See *Why Jury Trials Are Important to a Democratic Society*, NAT’L JUD. COLL., <http://www.judges.org/uploads/jury/Why-Jury-Trials-are-Important-to-a-Democratic-Society.pdf> [<http://perma.cc/95KH-NKJD>] (last visited Mar. 12, 2019) (“Serving on a jury is the most direct and impactful way for citizens to connect to the constitution. It is more active and participatory than voting. Citizens can help perpetuate our system of laws, and stabilize our democracy.”).

47. Sheldon Whitehouse, *Restoring the Civil Jury’s Role in the Structure of Our Government*, 55 WM. & MARY L. REV. 1241, 1266–72 (2014).

48. *Id.* at 1266.

49. See ANDREW GUTHRIE FERGUSON, *WHY JURY DUTY MATTERS: A CITIZEN’S GUIDE TO CONSTITUTIONAL ACTION* 139–42 (2012).

50. See *id.*

51. *Id.* at 141–42.

member of the community has the opportunity to directly participate in governmental action.

Moreover, jury service also facilitates engagement in other civic processes as empirical data shows a correlation between jury service and voting. A 2014 study found that jurors who participate in a jury that is required to reach a unanimous verdict or a civil jury of twelve are significantly more likely to vote after their jury service.<sup>52</sup> The same study found that jurors deciding criminal cases or cases involving organizational defendants—as opposed to individual defendants—likewise experience a boost in voting behavior.<sup>53</sup> Because of the significant boost in voting associated with jury service, jury diversity is fundamental to facilitating the democratic process and empowering citizens to further engage in the democratic process. Consequently, by ensuring jury pools are representative of the community, courts can promote civic engagement in all communities by aiming to increase jury diversity. Despite the importance and numerous benefits of jury diversity outlined above, it remains an elusive goal for many courts.

### B. *The Challenges of Achieving Jury Diversity*

The vast majority of Americans consider jury service to be an integral component of good citizenship.<sup>54</sup> Yet a substantial portion of citizens called to serve—diverse or otherwise—never report for duty.<sup>55</sup> The reasons for this lack of participation fall into two rough categories: (1) process-related barriers and (2) juror-centric barriers. Process-related barriers include certain procedural steps that a court uses to summon its jury: the use of mailed summonses, despite evidence that individuals living in urban areas tend to be more diverse and move more frequently than their suburban or rural peers; the prevailing prohibition on jury service by individuals charged with or convicted of felonies; and the use of

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52. Valerie P. Hans et al., *Deliberative Democracy and the American Civil Jury*, 11 J. EMPIRICAL LEGAL STUD. 697, 709–13 (2014).

53. *Id.*; see John Gastil et al., *Civic Awakening in the Jury Room: A Test of the Connection Between Jury Deliberation and Political Participation*, 64 J. POL. 585, 585, 593 (2002) (finding “citizens who served on a criminal jury that reached a verdict were more likely to vote in subsequent elections”).

54. See PEW RESEARCH CTR., PUBLIC SUPPORTS AIM OF MAKING IT ‘EASY’ FOR ALL CITIZENS TO VOTE 8 (2017), <http://www.people-press.org/wp-content/uploads/sites/4/2017/06/06-28-17-Voting-release.pdf> [<http://perma.cc/Q7KD-LTB8>] (noting that 67% of individuals surveyed agreed with the statement, “[s]erving on a jury is part of what it means to be a good citizen”); see also John Gramlich, *Jury Duty Is Rare, but Most Americans See It as Part of Good Citizenship*, PEW RESEARCH CTR. (Aug. 24, 2017), <http://www.pewresearch.org/fact-tank/2017/08/24/jury-duty-is-rare-but-most-americans-see-it-as-part-of-good-citizenship/> [<http://perma.cc/5DR8-LDC9>] (“The chances of serving on a jury in any given year are small, but most Americans still see it as part of being a good citizen.”).

55. See THE FIRST JUDICIAL DIST. OF PA., *supra* note 7, at 2 (“Depending upon the year, between 36% and 42% of Philadelphia residents who are mailed a summons fail to respond.”); see also Maxine Bernstein, *Judges Cracking Down on People Who Snub Jury Duty*, AP (May 21, 2017), <http://www.apnews.com/62b279c38615469fb9bee505c9c66ff5> [<http://perma.cc/2TP6-LFA5>] (“The average failure-to-appear rate for jurors in state courts is 9 percent nationwide, but some courts have no-show rates as high as 50 percent.”).

voter registration rolls to populate the jury pool.<sup>56</sup> On the other hand, juror-centric barriers are challenges unique to each individual juror, such as working for an employer who is unwilling or unable to compensate an employee while the employee is serving or negative attitudes toward the justice system.<sup>57</sup>

The first process-related barrier concerns the manner in which potential jurors are called to the courthouse to serve.<sup>58</sup> Despite myriad modern methods of communication, potential jurors are still summoned by mail.<sup>59</sup> This presupposes not only that potential jurors diligently update the address associated with their voter registration, which is used to populate the jury pool, but also that courts frequently update the lists from which they obtain jurors' addresses. In more transient communities (i.e., communities with fewer socioeconomic resources, which are more likely to be diverse) the result is that fewer individuals are likely to receive a summons even if it is sent in a proportion equal to their suburban and rural neighbors.<sup>60</sup> Put another way, individuals in more transient communities, who tend to be people of color, are less likely to receive their summonses because they move more frequently than their white peers in the suburbs or rural areas.<sup>61</sup> This may help explain why, at least in my experience, trial pools in the Eastern District of Pennsylvania—home to one of the largest

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56. See *infra* notes 58–71 and accompanying text for a discussion on process-related barriers to jury participation.

57. See *infra* notes 72–81 and accompanying text for a discussion on juror-centric barriers to jury participation.

58. See Paula Hannaford-Agor, *Systemic Negligence in Jury Operations: Why the Definition of Systemic Exclusion in Fair Cross Section Claims Must Be Expanded*, 59 DRAKE L. REV. 761, 782 (2011) (“Nationally, an average of 12% of jury summonses are returned by the United States Postal Service marked ‘undeliverable,’ which is the single biggest factor contributing to decreased jury yields. Some undeliverable summonses are due to inaccurate addresses, *but the vast majority are simply out-of-date because the person has moved to a new residence.*” (emphasis added) (footnotes omitted)); see also William Caprathe et al., *Assessing and Achieving Jury Pool Representativeness*, JUDGES’ J., Spring 2016, at 16, 18 (“Undeliverable rates that are substantially higher than the 12 percent average suggest that the master jury list has become stale, potentially excluding disproportionate numbers of minorities and people with lower socioeconomic status who are more likely to migrate.”).

59. See 28 U.S.C. § 1866(b) (2018) (permitting the summoning of jurors by personal service “or by registered, certified, or first-class mail addressed to such person at his usual residence or business address”); see also U.S. DIST. COURT FOR THE E. DIST. OF PA., PLAN FOR THE RANDOM SELECTION OF GRAND AND PETIT JURORS 5 (2017) [hereinafter E.D. PA., JURY PLAN], <http://www.paed.uscourts.gov/documents/jury/Jury%20Plan.pdf> [<http://perma.cc/7MHT-5QM4>] (“Upon drawing the names or numbers from a master jury wheel, the Clerk shall mail to every person whose name is drawn therefrom, a juror qualification form . . .”).

60. See WILLIAM J. CAPRATHE, STATE TRIAL JUDGES CONFERENCE, ARE YOUR JURY POOLS REPRESENTATIVE OF THE COMMUNITY? 6 (2012), [http://www.americanbar.org/content/dam/aba/administrative/state\\_trial\\_judges/stj\\_checklist\\_jurypool.pdf](http://www.americanbar.org/content/dam/aba/administrative/state_trial_judges/stj_checklist_jurypool.pdf) [<http://perma.cc/ADN5-RVWW>] (“Nationally, jury yield averages about 50 percent—that is, half of all jury summonses result in persons who are qualified and available for jury service. Jury yields tend to be lower in urban areas than in rural areas.”); see also THE FIRST JUDICIAL DIST. OF PA., *supra* note 7, at 6 (“[L]ower juror response can be traced to the mobility of urban populations.”).

61. See HIROSHI FUKURAI ET AL., RACE AND THE JURY: RACIAL DISENFRANCHISEMENT AND THE SEARCH FOR JUSTICE 22 (James Alan Fox & Joseph Weis eds., 1993); see also THE FIRST JUDICIAL DIST. OF PA., *supra* note 7, at 6 (“[L]ower juror response can be traced to the mobility of urban populations.”).

and most diverse cities in the United States, ringed by several less densely populated counties—appear to be whiter, older, and from the district’s more suburban and rural counties.<sup>62</sup>

Another process-related hurdle to greater diversity in jury panels is the impact of statutory exclusions on service by citizens convicted of felonies.<sup>63</sup> Federal law, like the law of the vast majority of states, categorically disqualifies individuals with pending felony charges or felony convictions from serving on federal juries.<sup>64</sup> This exclusion prevents communities of color from participating in jury service because people of color tend to be charged and convicted of felonies at a greater rate than their white peers (even as the gap in the total number of minority and white prisoners begins to narrow).<sup>65</sup> For example, in

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62. My experience is mirrored in courts around the country. *See, e.g.*, Lynne Baab, Opinion, *Jury Duty in Seattle: Am I in 1930s Mississippi?*, SEATTLE TIMES (Jan. 26, 2018, 12:01 PM), <http://www.seattletimes.com/opinion/jury-duty-in-seattle-am-i-in-1930s-mississippi/> [http://perma.cc/49LC-QNMU] (“In stark contrast to the ethnic diversity I see on Seattle’s streets, I saw very little in the jury room. . . . The defendant was an African-American man. The judge and jury were white, as were the bailiff, court recorder, prosecutor, defense attorney and three of the four witnesses.”); Chris Daniel, *Why Juries Don’t Reflect the Demographics of Harris County*, HOUS. CHRON. (Aug. 3, 2012, 8:08 PM), <http://www.chron.com/opinion/outlook/article/Why-juries-don-t-reflect-the-demographics-of-3761368.php> [http://perma.cc/4RHR-TBNU] (finding that juror requirements favor older, college-educated white individuals); Brandon E. Patterson, *Chicago Is 31 Percent Black, But There’s Only One Black Juror at This Chicago Cop’s Murder Trial*, MOTHER JONES (Sept. 14, 2018, 6:00 AM), <http://www.motherjones.com/crime-justice/2018/09/chicago-jason-van-dyke-jury-selection-murder-trial-2/> [http://perma.cc/T2YA-AHPS] (discussing the jury selection process that led to the selection of one black juror for a murder trial in Chicago, where 31% of the population is black).

63. *See* Brian C. Kalt, *The Exclusion of Felons from Jury Service*, 53 AM. U. L. REV. 65, 113–14 (2003) (“Reducing the representation of black men on juries by thirty percent without dissent is difficult to imagine, but felon exclusion does just that. . . . The imposition of civil disabilities is a legislative choice, not a requirement, and trumpeting the formal neutrality of their criteria ‘allow[s] self-serving, subjective statements of non-discrimination to trump racial reality.’” (alteration in original) (quoting Jeffrey S. Brand, *The Supreme Court, Equal Protection, and Jury Selection: Denying That Race Still Matters*, 1994 WIS. L. REV. 511, 622)).

64. 28 U.S.C. § 1865(b)(5) (deeming all individuals eligible for jury service unless, inter alia, the citizen “has a charge pending against him for the commission of, or has been convicted in a State or Federal court of record of, a crime punishable by imprisonment for more than one year and his civil rights have not been restored”); *see also* MARGARET COLGATE LOVE ET AL., COLLATERAL CONSEQUENCES OF CRIMINAL CONVICTIONS § 2:4 (2018–19 ed. 2018) (“A majority of states and the federal government impose a permanent ban on jury service for all convicted felons. A minority of states permit individuals convicted of felony offenses to regain the right to serve on a jury automatically following release from prison or completion of the sentence or a prescribed period of time thereafter.” (footnote omitted)); Kalt, *supra* note 63, at 150–57 (“[T]he clear majority rule, used by the federal government and thirty-one states, is to exclude felons from juries for life, unless their rights have been restored pursuant to discretionary clemency rules.”); Restoration of Rights Project, *50-State Comparison: Loss and Restoration of Civil Rights & Firearms Rights*, COLLATERAL CONSEQUENCES RESOURCE CTR., <http://www.cresourcecenter.org/state-restoration-profiles/chart-1-loss-and-restoration-of-civil-rights-and-firearms-privileges/> [http://perma.cc/2F87-VKQV] (last visited Mar. 12, 2019) (describing a fifty-state survey of laws pertaining to the impact of a felony conviction on various civil rights, including the right to jury service).

65. John Gramlich, *The Gap Between the Number of Blacks and Whites in Prison Is Shrinking*, PEW RESEARCH CTR. (Jan. 12, 2018), <http://www.pewresearch.org/fact-tank/2018/01/12/shrinking-gap-between-number-of-blacks-and-whites-in-prison/> [http://perma.cc/KS59-7N79].

2016 there were 1,608 black prisoners sentenced to incarceration for one or more years (the legal definition of a felony) for every 100,000 black adults, and 856 Hispanic inmates sentenced to prison for one or more years for every 100,000 Hispanic adults.<sup>66</sup> By contrast, there were only 274 white prisoners sentenced to prison for one or more years for every 100,000 white adults.<sup>67</sup> These numbers indicate that the rate of black and Hispanic incarceration for felonies was several times higher than the same rate among white defendants. On a nationwide basis, this means that black and Hispanic individuals are denied the right to serve on a jury because of their offense status at a rate substantially greater than their white peers.

The method courts use to obtain their lists of potential jurors may also contribute to less-than-full participation in the jury system by diverse communities. The federal courts (and many state courts) rely, at least in part, on information culled from voter registration lists.<sup>68</sup> The use of these lists assumes that all communities register to vote in proportion to their presence in the population. However, there is evidence that such an assumption may be faulty—diverse communities may have lower rates of voter registration, the ultimate result of which is that such communities are underrepresented at both the polls *and* in the jury box.<sup>69</sup> This concern is a longstanding one that has inspired jurisdictions to experiment with supplemental sources of potential juror information.<sup>70</sup> Such innovations include drawing potential jurors from utility records, driver's license records (an innovation tried in this district and later abandoned after it was found to have exacerbated the problem), and records linked to the provision of social services.<sup>71</sup>

Beyond process-related barriers, jury diversity is hindered by various situations unique to each juror. The first is the potential economic hardship that jury service may cause. Assuming diverse jurors are selected from the master list, receive their summonses, and are qualified to serve, they must also overcome the financial hardship wrought by the interruption to their employment. Although forty-nine states and the federal government prohibit an employer from terminating an employee for taking time off to serve on a jury,<sup>72</sup> in many states—

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66. *Id.*

67. *Id.*

68. Julie A. Cascino, Note, *Following Oregon's Trail: Implementing Automatic Voter Registration To Provide for Improved Jury Representation in the United States*, 59 WM. & MARY L. REV. 2575, 2583 (2018).

69. *Id.* at 2578–79 (“Due to the low registration rates of these groups, voter rolls often do not accurately represent the proportion of eligible minority, low-income, or young voters in a specific community. Accordingly, jury pools are less representative of that community as well.” (footnote omitted)).

70. *Id.* at 2579 (detailing how states have pulled names for jury lists from tax rolls and motor-vehicle records).

71. Alexander E. Preller, *Jury Duty Is a Poll Tax: The Case for Severing the Link Between Voter Registration and Jury Service*, 46 COLUM. J.L. & SOC. PROBS. 1, 42–48 (2012) (containing a fifty-state survey of sources of juror information that identifies states using voter registration lists, as well as tax, utility, motor vehicle, and other social service records to create their lists of potential jurors).

72. *Id.* at 13.

including Pennsylvania—a private employer need not pay an employee for time spent serving on a jury.<sup>73</sup>

In the handful of states that do require private employers to pay employees while on jury duty, the law oftentimes requires employers to pay only what amounts to a small fraction of the employee’s wages.<sup>74</sup> Where jurors receive compensation from the court, the payments are often inadequate to make up for the lost wages and fail to take into account other incidental costs, like securing childcare or transportation to and from the courthouse (although some jurisdictions do reimburse such travel costs). Federal courts pay jurors up to \$50 per day for the first ten days of trial and up to \$60 per day for each day thereafter.<sup>75</sup> In Pennsylvania courts, however, compensation for jury service is fixed at \$9 per day for the first three days of service and \$25 per each day thereafter.<sup>76</sup> Although the loss of a few days’ income may be inconsequential to certain demographic groups, it poses a greater impediment to adults of color, whose median household incomes, on a national basis, hover between 61% and 77% of their white peers.<sup>77</sup> Although beyond the scope of this Article, I believe

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73. See, e.g., N.J. STAT. ANN. § 2B:20-17 (West 2019) (prohibiting an employer from “penaliz[ing] an employee with respect to employment . . . because the employee is required to attend court for jury service,” but not requiring compensation for time lost to jury service); 42 PA. STAT. AND CONS. STAT. ANN. § 4563(a) (West 2019) (“Nothing in this section [addressing the protection of employment of grand and petit jurors] shall be construed to require the employer to compensate the employee for employment time lost because of such jury service.”).

74. See ALA. CODE § 12-16-8(c) (West 2019) (stating that “any full-time employee shall be entitled to his or her usual compensation received from such employment” while serving on a jury); COLO. REV. STAT. ANN. § 13-71-126 (West 2019) (“All regularly employed trial or grand jurors shall be paid regular wages, but not to exceed fifty dollars per day unless by mutual agreement between the employee and employer, by their employers for the first three days of juror service or any part thereof.”); CONN. GEN. STAT. ANN. § 51-247(a) (West 2019) (“Each full-time employed juror shall be paid regular wages by the juror’s employer for the first five days, or part thereof, of jury service.”); LA. STAT. ANN. § 23:965(B)(1) (West 2019) (“Any person who is regularly employed in the state of Louisiana shall, upon call or subpoena to serve on a state petit or grand jury, or central jury pool, be granted a leave of absence by his employer, of up to one day, for that period of time required for such jury duty.”); MASS. GEN. LAWS ANN. ch. 234A, § 48 (West 2019) (“Each regularly employed trial or grand juror shall be paid regular wages by his employer for the first three days, or part thereof, of juror service.”); NEB. REV. STAT. ANN. § 25-1640 (West 2019) (“Any person who is summoned to serve on jury duty shall not be subject to . . . loss of pay . . . as a result of his or her absence from employment due to such jury duty, upon giving reasonable notice to his or her employer of such summons.”); N.Y. JUD. LAW § 519 (McKinney 2019) (“Any employer may . . . withhold wages of any such employee serving as a juror during the period of such service; provided that an employer who employs more than ten employees shall not withhold the first forty dollars of such juror’s daily wages during the first three days of jury service.”); TENN. CODE ANN. § 22-4-106(b) (West 2019) (stating that “the employee shall be entitled to the employee’s usual compensation received from such employment” while serving on a jury).

75. 28 U.S.C. § 1871(b)(1) (2018) (“A juror shall be paid an attendance fee of \$50 per day for actual attendance at the place of trial or hearing.”); *id.* § 1871(b)(2) (“A petit juror required to attend more than ten days in hearing one case may be paid . . . an additional fee, not exceeding \$10 more than the attendance fee, for each day in excess of ten days on which he is required to hear such case.”).

76. 42 PA. STAT. AND CONS. STAT. ANN. § 4561(a).

77. KAYLA FONTENOT ET AL., U.S. CENSUS BUREAU, P60-263, INCOME AND POVERTY IN THE UNITED STATES: 2017, at 2 (2018), <http://www.census.gov/content/dam/Census/library/publications/>

courts must continue to advocate for legislatures to increase juror pay and for employers, who enjoy the protections of our legal system, to refrain from penalizing employees called to serve.

Finally, individual attitudes toward the fairness of the justice system may negatively impact diversity. In 2017, Pennsylvania’s First Judicial District, which encompasses Philadelphia, conducted an informal survey of Philadelphians and identified “[l]ack of trust in the criminal justice system” as one of the reasons potential jurors fail to respond to summonses to appear for service in that court.<sup>78</sup> That attitude is not isolated to Philadelphia.<sup>79</sup> For example, Brando Simeo Starkey, an associate editor for *The Undeclared*—an ESPN publication that covers the intersection of sports, race, and culture—wrote an article discussing his jury duty experience and quoted a black prosecutor’s description of some of his community’s views on jury duty:

“[Some black] people think that whatever they do, it’s not going to matter. They think the system isn’t designed for them. So when you’ve got a bunch of people thinking that the system is rigged or the system is fixed anyway, then it’s almost like, what difference does it make? It’s only set up to keep the black man down.”

. . . “If you start acting like that about the system, thinking that you need a complete separate system for yourself, you become part of the problem. And it’s nothing better than being an obstructionist. . . . They tell themselves, ‘I don’t care what ends up happening. You know it’s set up against black folks, so why does anything matter what I say or what I do?’”<sup>80</sup>

The hostility described in Simeo Starkey’s article may also explain why some diverse jurors resist jury service.<sup>81</sup>

The extent to which these macroproblems impact the Eastern District of Pennsylvania, specifically, is a question ripe for academic study. As previously

2018/demo/p60-263.pdf [http://perma.cc/L8SZ-TR5D] (noting that the estimated median income in 2017 was \$40,258 for black households, \$50,486 for Hispanic households, and \$65,273 for white households).

78. THE FIRST JUDICIAL DIST. OF PA., *supra* note 7, at 5–6.

79. See, e.g., Brando Simeo Starkey, *Black Folk Must Stop Trying To Avoid Jury Duty*, UNDEFEATED (Oct. 4, 2017), <http://theundefeated.com/features/black-folk-must-stop-trying-to-avoid-jury-duty/> [http://perma.cc/46JF-Z649]; Andrew Tilghman, *Is There Justice if Most Who Report for Jury Duty Are White, Affluent?*, HOUS. CHRON. (Mar. 6, 2005, 6:30 AM), <http://www.chron.com/news/houston-texas/article/Is-there-justice-if-most-who-show-for-jury-duty-1949599.php> [http://perma.cc/87HV-K92R] (“District Clerk Charles Bacarisse . . . urged those who criticize the criminal justice system to view jury duty as an opportunity. ‘There are a lot of people in the African-American community that don’t feel that the system serves them very well, but I would say to them, ‘Don’t turn your back on it. Come down here and change it.’””).

80. Starkey, *supra* note 79 (alteration in original) (second omission in original) (quoting an anonymous “black Southern prosecutor”).

81. In *Batson v. Kentucky*, 476 U.S. 79 (1986), the Supreme Court recognized the prosecution’s use of a peremptory challenge to strike a potential juror on the basis of race violates a defendant’s constitutional rights. *Batson*, 476 U.S. at 86. Although an analysis of *Batson*’s impact on the role of race in jury selection is beyond the scope of this Article, the decision’s perceived weakness may contribute to the negative attitudes described above.

noted, however, Pennsylvania's First Judicial District—comprising the City and County of Philadelphia and situated within the Eastern District—recently conducted an investigation into its own jury system.<sup>82</sup> This investigation found that in zip codes with the lowest summons response rates more than 60% of individuals self-identify as black and almost 20% self-identify as Hispanic.<sup>83</sup> Also of note, individuals who had received summonses but did not respond identified several of the issues explained above as their reasons for not participating: “[i]ssues with [potential jurors’] jobs,” “[l]ow juror pay,” and “[l]ack of trust in the criminal justice system” dampen juror participation in Philadelphia courts.<sup>84</sup> Although limited to a single county, Philadelphia's findings suggest these problems may also affect jury service in the federal system.

## II. CHANGES WITHIN THE EASTERN DISTRICT OF PENNSYLVANIA

To understand the changes the Eastern District of Pennsylvania has implemented, it is first necessary to review the process of creating a jury pool and the distinct jury selection mechanisms the court employs. Our process was guided, in part, by the Jury Selection and Service Act (JSSA). Congress enacted the JSSA in 1968<sup>85</sup> to standardize the process used by federal courts in selecting juries and to promote minority representation.<sup>86</sup> The JSSA applies not only to criminal defendants but to “all litigants in Federal courts entitled to a trial by jury.”<sup>87</sup> The JSSA states, in relevant part, that “[i]t is the policy of the United States that all litigants in Federal courts entitled to trial by jury shall have the right to grand and petit juries selected at random from a fair cross section of the community in the district or division wherein the court convenes.”<sup>88</sup> A “fair cross section” of the district's population is “a jury drawn from a pool broadly representative of the community as well as impartial in a specific case.”<sup>89</sup>

The JSSA also requires district courts to “devise and place into operation a written plan” specifying how the court will select its grand and petit, or empaneled, jurors from a fair cross section of the community in the district where the court convenes to achieve the JSSA's objectives.<sup>90</sup> The jury plan must include information about management of the jury selection process, source lists (i.e., names that a court uses to select jurors), and procedures for selecting names from the source list.<sup>91</sup>

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82. See THE FIRST JUDICIAL DIST. OF PA., *supra* note 7, at 2.

83. *Id.* at 6–7.

84. *Id.* at 5–6.

85. Jury Selection and Service Act of 1968, Pub. L. No. 90-274, 82 Stat. 53 (current version at 28 U.S.C. §§ 1861–1869).

86. See H.R. REP. NO. 90-1076, at 3 (1968).

87. See 28 U.S.C. § 1861 (2018).

88. *Id.*

89. Thiel v. S. Pac. Co., 328 U.S. 217, 227 (1946) (Frankfurter, J., dissenting).

90. See 28 U.S.C. §§ 1861–1863.

91. See *id.* § 1863(b); see also JODY GEORGE ET AL., FED. JUDICIAL CTR., HANDBOOK ON JURY USE IN THE FEDERAL DISTRICT COURTS 2, 7–8 (1989), <http://www.fjc.gov/sites/default/files/2012/JuryUse.pdf> [<http://perma.cc/6BDT-R5HE>].

After a district court develops a jury selection plan, the jury selection process involves four basic steps.<sup>92</sup> First, the district court creates a master jury wheel, which is a “randomly drawn list or computer file of names that a court uses in selecting jurors” to create a broad pool of potential jurors from a fair cross section of the community.<sup>93</sup> Next, it creates a qualified jury wheel, “from which the court can randomly select persons to summon for jury service.”<sup>94</sup> After a qualified jury wheel is created, prospective jurors are selected and summoned to court from the qualified jury wheel.<sup>95</sup> Finally, a jury is empaneled after voir dire.<sup>96</sup> Voir dire is the process whereby judges and lawyers question prospective jurors to elicit responses that can be used to determine whether a prospective juror could not or would not serve without bias or prejudice in a particular case.<sup>97</sup>

In the Eastern District of Pennsylvania, our jury plan provides that county voter registration lists from all nine counties in the Eastern District are to be used as source lists to create the master wheel.<sup>98</sup> The jury plan then provides for a two-step process to select jurors.<sup>99</sup> In the first step, the jury administrator draws random names from the master wheel and mails these individuals a jury qualification questionnaire to elicit information that helps the court to determine whether an individual qualifies for jury service under the JSSA.<sup>100</sup> To be legally qualified for jury service in federal court, the JSSA provides that an individual must be a United States citizen, be at least eighteen years of age, reside primarily in the judicial district for one year, be proficient in English, have no disqualifying mental or physical condition, and as discussed earlier, never have been charged with a felony punishable by imprisonment for more than one year or have any felony conviction unless the individual’s civil rights have been legally restored.<sup>101</sup> Individuals who meet these qualifications and return a completed questionnaire compose the qualified jury wheel.<sup>102</sup> In step two of the process, when jurors are needed for assignment to a grand or petit jury, the jury administrator mails summonses to report for jury service to individuals randomly selected from the qualified jury wheel.<sup>103</sup> Jury panels or venires are then drawn to individual cases from those who report to the court.<sup>104</sup>

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92. GEORGE ET AL., *supra* note 91, at 2–3.

93. *Id.* at 2.

94. *Id.* (emphasis omitted).

95. *Id.* at 3.

96. *Id.*

97. *Id.*

98. See E.D. PA., JURY PLAN, *supra* note 59, at 1–2.

99. See *id.* at 4–5. Other courts follow what is termed a “one-step” process, which combines the qualification and summoning steps by sending the qualification questionnaire and the jury summons in the same mailing. See 28 U.S.C. § 1878(a) (2018) (providing district courts with the option to implement “a one-step summoning and qualification procedure”).

100. See E.D. PA., JURY PLAN, *supra* note 59, at 5.

101. 28 U.S.C. § 1865(b).

102. See E.D. PA., JURY PLAN, *supra* note 59, at 10–11.

103. See *id.*

104. See *id.* at 11 (“The Clerk shall prepare a separate list of names so drawn and assigned to

Although a lack of juror diversity will not be clear to the presiding judge or litigants until a jury is empaneled, to effectively ensure that juries are representative of the community, steps need to be taken when the jury pool itself is being assembled.<sup>105</sup> To ensure our jury plan fosters a representative jury pool, a Jury Diversity Subcommittee was convened to determine if the court could take any affirmative steps to increase jury diversity in our district. The Subcommittee proposed several recommendations, four of which were ultimately adopted.<sup>106</sup>

The first three recommendations were structural changes. First, we added more names from the source list (i.e., the voter registration list) to our master wheel, increasing the size of our master wheel from 167,792 names to 347,163. Generally, a larger and more inclusive master wheel leads to a wheel that better represents the various characteristics of the community, allowing for a more representative wheel overall.<sup>107</sup> This enhancement was both simple and cost effective, as it did not require our jury administrator to undertake any additional tasks and was easy to implement.

Second, we increased the frequency with which the court conducts change of address checks to remove names of those who have passed away, changed addresses, or moved out of the district to help ensure that questionnaires are being sent to the correct addresses, which will hopefully reduce the number of juror questionnaires returned as undeliverable. Previously, the Eastern District of Pennsylvania verified addresses of those on its qualified wheel once every two years through the United States Postal Service's system of updated addresses, referred to as the National Change of Address Linkage (NCOA<sup>Link</sup>). We now verify these addresses every six months. While not everyone who moves will notify the Postal Service of their change of address, more frequent address checks will lead to a more accurate and up-to-date address database for all potential jurors on the qualified wheel, including black people and other people of color, who, as noted, tend to be more mobile.<sup>108</sup>

Third, when a juror qualification questionnaire is not returned, another one is sent in its place. Specifically, the jury plan now provides that if a reasonable period of time has passed after the Clerk's Office has received a questionnaire as undeliverable, a second questionnaire is to be mailed, at random, to a different address in the same zip code.<sup>109</sup> By resending questionnaires to individuals located in the same zip code, as opposed to the same county, the court hopes to maintain geographic proportionality and representation. While this change does

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each grand and petit jury panel."); *see also* GEORGE ET AL., *supra* note 91, at 35 ("Upon court order, the clerk or jury staff select names of prospective jurors from the qualified wheel at random. Staff then place the names on either grand or petit jury panels and summon the prospective jurors for jury service.").

105. *See* CAPRATHE, *supra* note 60, at 1.

106. The Jury Diversity Subcommittee and Professor Jonah B. Gelbach are recognized and commended for their contribution to making these changes happen in our district.

107. *See* CAPRATHE, *supra* note 60, at 5.

108. *See* FUKURAI ET AL., *supra* note 61, at 22.

109. *See* E.D. PA., JURY PLAN, *supra* note 59, at 5.

require more resources, the potential benefit of a more racially representative qualified wheel, and possibly one that is fully representative, far outweighs any additional resource concerns.

The final recommendation we adopted concerns a community outreach and education program. With the assistance of community members from grassroots organizations, religious institutions, nonprofits, law firms, the media, and the local court, we are developing and implementing a strategic and vigorous community outreach and education program to educate potential jurors about the importance of jury duty. These individuals have been involved in many meetings in our courthouse over the last year to develop this plan to target potential jurors, educate them about the importance of jury service and the Eastern District of Pennsylvania's jury selection process, and encourage them to serve on juries. Through our efforts, potential jurors will also be encouraged to submit address updates to the NCOA<sup>Link</sup> database and register to vote. Specific outreach efforts may include posters, public service announcements, social media campaigns, and educational events delivered by celebrity influencers, former jurors, and clergy members. It is anticipated that we will execute this outreach and education program in the spring or summer of 2019.

Implementing these four Subcommittee recommendations will hopefully contribute to a jury pool that is more representative of the Eastern District of Pennsylvania. Beyond reaching an ideal, a representative pool will bring the benefits of diversity to this district. It is thus my hope that our jury selection plan and changes to our jury selection process help to create juries in our district that are more representative and, ultimately, fairer. Since the implementation of these changes to our jury selection process, judges in our district have reported an increase in the number of people of color who are on their jury panels. I have also seen the change firsthand. For example, in my most recent criminal jury trial, I was pleased to see that the seated jury included two black jurors, two Asian jurors, and one Hispanic juror. These reports, albeit anecdotal, are correlated to the changes we have implemented and lead me to believe that the Eastern District of Pennsylvania is taking steps in the right direction to ensure that the juries within its district represent its community.

#### CONCLUSION

In his majority opinion in *Taylor v. Louisiana*, Justice Byron White wrote: "When any large and identifiable segment of the community is excluded from jury service, the effect is to remove from the jury room qualities of human nature and varieties of human experience, the range of which is unknown and perhaps unknowable."<sup>110</sup> As the Supreme Court recognized then, and as is true today, jury diversity and inclusion strengthen our legal system and promote the fair administration of justice. Nevertheless, jury diversity remains a complex issue for courts to solve. While our court has implemented new initiatives to promote jury diversity within the Eastern District of Pennsylvania, the court cannot ensure

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110. *Taylor v. Louisiana*, 419 U.S. 522, 532 n.12 (1975) (quoting *Peters v. Kiff*, 407 U.S. 493, 503 (1972)).

juries truly reflect their communities on its own because the strength of our jury system depends on people's engagement with the system. It is thus crucial to promote jury diversity and foster community engagement that encourages active participation in the legal system. For the integrity of our legal system, we must all strive to do better—as officers of our courts, members of our communities, and citizens of our country.