

Gus J. Solomon Inn of Court, Group 4 (February, 2008) Jury Pool Diversity: Fact or Fiction

Analysis of Clackamas County Jury Pool Construction (May 13, 2005)

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To: Laura Graser, Esq.
From: Richard F Rankin, JD
President
Date: May 13, 2005

Re: Clackamas County Jury Pool Construction

This discussion is based on two brief meetings with Clackamas County Courthouse staff. One focused on the production of summonses with Patti Holland (Court Operations Supervisor) and Joe Dodge (Tech Support Specialist) attending. The other meeting dealt with processing responses to summonses with Patti Holland and Jan Chapin (Jury Coordinator) present. A general schematic of the jury pool construction process is presented in Attachment A.

Summons Production

The Judicial Department of the State of Oregon, late in the calendar year, requests lists of prospective jurors from two sources: 1) the Oregon Department of Motor Vehicles (DMV), and 2) the voter registration lists from each of Oregon's thirty six counties. The two lists are merged and the combined list is processed to eliminate duplicate entries – two entries for a person who is both a registered voter and a licensed driver. The resulting list is divided into a Master List for each county.

Each source list is understandably incomplete, even the combined list is incomplete. Some eligible citizens have neither registered to vote nor obtained a driver's license or DMV ID card.

The elimination of duplicate entries is an inexact process. The use of nicknames is problematic and unconventional nicknames are a source of additional problems. Using gender, date of birth, address, and other information may serve to increase accuracy but there is a fundamental trade-off. Cast too broad a net for duplicates and you eliminate people from the list that are not a duplicate. No summons is mailed to these individuals. Cast too narrow a net and duplicates are retained. These people are twice as likely to receive a summons as the people with only one entry on the merged list.

At any given time the information in both sources is outdated. A current address is essential because the summons is mailed. If someone fails to update addresses with the county voter registrar and/or the DVM then a summons may not be mailed to a person's current address. For the many duplicates on the merged list, the addresses from the DMV records may differ from those of the voter registrars. The most recently reported address must be selected and even then it may be outdated.

The DMV Application does not specifically request county of residence but does request residential address. Geographic Information Systems (GIS) can provide county of residence from an address but it is not known whether this action is performed with the

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county of residence subsequently recorded in the DMV system. If this process does not occur and no corresponding record is present in the voter registration data then an accurate county of residence may not be available. (Zip codes are unreliable for determining county of residence because they do not respect county borders.)

The voter registration form requests information about previous registration. Presumably the county of previous registration is informed of the new registration and the old record is purged. Absent a mechanism for a county to routinely communicate a new registration to counties of previous residence, a registrant could remain in the data of their previous county of residence. Aging registrants out of the voter registration rolls may help but would not completely solve this problem.

Without knowing the details of duplication removal, purging of voter registration rolls, validity of addresses, and other factors it is difficult to speculate on the nature and extent of the incompleteness of the merged list, duplicates that are retained, address inaccuracies, and the like.

This approach, though having obvious shortcomings, is nonetheless typical of any system that takes data collected for one purpose and uses it for a different purpose. (Here DMV and voter registration data are used for jury pool construction.) In particular, people who change residences more frequently are more likely to have problems in the resulting Master Lists. Mobile populations tend to have a variety of attributes that differ from more stable populations. Some of these attributes are among those specifically cited in the Oregon Revised Statutes related to jury pool composition (ORS 10.030).

The county determines the number of prospective jurors to receive a summons based on anticipated term and/or special case needs. The randomly selected summonses are produced and mailed by the Oregon Department of Administrative Services (DAS).

Response to Summons

As discussed above, some addresses are not current. The mailed summons for these people may not be forwarded and properly delivered so no response can be expected.

Responses to summonses are received by the Jury Coordinator via telephone, fax, mail, and email. Each response is recorded in a computerized database by the Clackamas County Jury Coordinator. A follow-up summons is sent by DAS to all non-respondents on a specified, subsequent date.

Many people respond to either the initial or follow-up summons while some people do not respond at all. Anecdotal evidence suggests that people who are not employees of a business have disincentives to serve on a jury as do some whose employer is not supportive of the employee's jury service. The nature and extent of these obstacles to Clackamas County jury service are not well researched.

We know the two groups differ in that the people in one group respond and those in the other group do not. One can speculate that the two groups also differ on other attributes, some of which may be related to those specified in the ORS. An effort to examine who fails to respond and why they chose not to respond could allow modification of the summons process to obtain more complete participation by eligible citizens of the county.

Those responding to the summons may: be ruled ineligible by ORS, be excused based on the statute or have their service deferred. The Clackamas County computer system records the status of each responding individual. Analysis of these records could provide some insight into who will not serve at this time and why they are deemed ineligible, excused or deferred. If warranted, recording requests from prospective jurors and responses by the court with greater specificity would result in the court evaluating requests and responding more consistently to requests for excusal or deferment. More detailed and targeted coding of court responses would build a richer database for future evaluation of this aspect of the jury pool construction process. The development of model requests for excusal/deferment and the proper court response to each model request would further improve consistent treatment of prospective jurors.

Summary and Comments

The computerized production of the county Master Lists from DMV and voter registration lists has obvious shortcomings. Short of establishing some other resource to provide more accurate and up-to-date information on the eligible population in a county, the present system will have to suffice. There may be some value in attempting to improve the quality of the two source lists for their secondary use in jury pool construction.

It is the non-response and excused or deferred groups where the system of constructing the jury pool can be significantly influenced by summons recipients and courthouse staff. Obtaining a higher summons response rate could result in a jury pool that better represents the eligible county population. A survey of non-respondents could provide insight into steps that might be taken to improve overall response rates. Providing better guidance to court staff for handling and consistently processing people that are excused and deferred could also result in an improved system.

Patti Holland sent you a memo dated June 18, 2004. Attached to that memo was a "Revised Procedures for Jury" discussion dated May 7, 2004. This constitutes a step in the right direction by echoing the statutory verbiage on jury pool excusals and deferments. As a result of this and other efforts, the Clackamas County jury pool today may be improved over the pool we surveyed in 2003.

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Attachment A: JURY POOL CONSTRUCTION SCHEMATIC