



# Supreme Court of Wisconsin

DIRECTOR OF STATE COURTS

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A. John Voelker  
Director of State Courts

August 24, 2007

Hon. J. B. Van Hollen  
Attorney General  
114 East, State Capitol  
Madison, WI 53707-7857

RE: Jury selection methods

Dear Attorney General Van Hollen:

I am requesting guidance from your office on whether Wisconsin law permits summoning a larger number of jurors from certain geographic areas to ensure that the racial and ethnic makeup of the jurors who actually serve reflects a representative cross-section of the county.

In April 2006, an all-white jury acquitted three Milwaukee police officers of beating a biracial man. In response to public concern, Chief Judge Brennan asked the Chief Judges' Jury Subcommittee<sup>1</sup> to consider whether Milwaukee could use a jury selection method designed to increase the number of jurors from underrepresented racial and ethnic groups by over-summoning jurors from certain geographic areas (sometimes called "stratified jury selection" in the literature). The goal would be to offset the higher rate of undeliverable summonses, unreturned questionnaires, and jurors who fail to appear.

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Based on an analysis performed by a member of my staff, the subcommittee concluded that Wisconsin statutes and case law require the random selection of jurors drawn from a representative sample of the community, chosen from the source lists defined by statute.<sup>2</sup> Despite some limited precedent elsewhere, the subcommittee concluded that Wisconsin law does not permit stratified jury selection. Chief Judge Brennan concluded she was constrained by state law from pursuing this solution, and instead has taken steps to increase minority service on juries by increasing response rates to the jury summons.<sup>3</sup>

<sup>1</sup> The Committee of Chief Judges is a standing committee staffed by my office. The Jury Subcommittee was formed in 2000 to look at the full range of jury-related issues.

<sup>2</sup> This memorandum, dated May 19, 2006, is attached.

<sup>3</sup> The Chair of the Milwaukee County Board of Supervisors also asked the County Department of Audit to review the jury selection process in Milwaukee County and see what modifications might be made. The audit investigation resulted in an extensive report found at <http://www.county.milwaukee.gov/display/displayFile.aspx?docid=7878&filename=Groups+cntyAudit/report0709.pdf>. The Chief Judge's efforts to increase response rates are described in an addendum to the audit report.

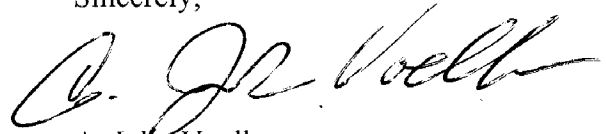
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The names of potential jurors are currently drawn from a list provided by the Department of Transportation under Wis. Stats. §756.04(5), and we have worked with DOT over the years to make that list as current and as representative as possible. The Chief Judges' Jury Subcommittee has recommended that §756.04(5)(a) be revised to supplement the DOT list with source lists that update addresses more frequently (tax, voter, child support, hunting & fishing licenses, and unemployment compensation), thus cutting down on undeliverable summonses. The new lists also take advantage of statewide computer databases that can be cross-matched to eliminate duplicate names. These recommendations will be submitted to the Wisconsin Supreme Court this fall as a proposed Supreme Court Rule. However, the proposed rule does not include any change to the randomness requirements of the current statutes that would allow stratified summoning by geographic area.

The stratified jury selection issue continues to be a matter of interest for the Chief Judge in Milwaukee. Accordingly, we would like to know whether your office believes this to be an option under current statutes and case law.

Thank you for your assistance with this matter. If you need further information, please contact Marcia Vandercook, 267-7335.

Sincerely,



A. John Voelker  
Director of State Courts

cc: Sheryl Gervasi  
Committee of Chief Judges  
Chief Judge Kitty Brennan  
Clerk of Circuit Court John Barrett