



Jurors and Jury Trials in a Post-COVID World... Promoting Racial Diversity & Better Fact-Finding

NAPCO / NCSC Joint Webinar





Presenters:



Hon. Gregory Mize (ret.), Moderator
Judicial Fellow, Center for Jury Studies
National Center for State Courts



Hon. Pamela Gates
Civil Presiding Judge
Superior Court
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Webinar Guidelines

1. The Webinar is being video recorded.
It will be available, along with the PowerPoint slide deck and reference materials on NAPCO's website: napco4courtleaders.org
2. Audience Interaction is encouraged: Type Comments/Questions in the "Q & A Box"
3. You are encouraged to take the ideas and information presented as aids in prompting changes and developing strategies for improved jury racial diversity and juror fact-finding.



DISCUSSION TOPICS

1. How should court leaders champion the creation of a fair cross section of eligible citizens to serve on jury duty?
2. What can court leaders do to nurture more representative jury pools?
3. Do BATSON challenges regarding peremptory exclusions really promote balanced juries?
4. How has today's polarized environment affected jurors and their ability to fairly and impartially deliberate?
5. How do jurors as fact-finders develop consensus about the truth today?



What can Court Leaders Do to Nurture More Representative Jury Pools?

Jury Representativeness Throughout the Jury Process – Maricopa County AZ - CY2019

Criminal Jury Representativeness Throughout the Jury Process

Race and Ethnicity	Responded to Summons ¹		Reported for Service - Panel Cancelled		Jury Venire		Released for Cause or Hardship		Peremptory Challenge						Mathematically Ineligible		Empaneled Jurors	
									Defense		Prosecution		Total Peremptory Challenges					
	#	%	#	%	#	%	#	%	#	%	#	%	#	%	#	%		
White	61,639	78.6%	3,491	76.1%	23,861	76.6%	13,326	74.2%	1,980	86.5%	1,762	74.9%	3,742	80.6%	2,977	79.2%	3,816	80.0%
Other/Missing	9,168	11.7%	626	13.7%	4,064	13.0%	2,637	14.7%	176	7.7%	330	14.0%	506	10.9%	429	11.4%	492	10.3%
Black/African American	3,483	4.4%	210	4.6%	1,317	4.2%	746	4.2%	42	1.8%	137	5.8%	179	3.9%	154	4.1%	238	5.0%
Asian	2,860	3.6%	174	3.8%	1,332	4.3%	904	5.0%	67	2.9%	67	2.8%	134	2.9%	135	3.6%	159	3.3%
American Indian/Alaskan	905	1.2%	62	1.4%	422	1.4%	253	1.4%	22	1.0%	48	2.0%	70	1.5%	50	1.3%	49	1.0%
Native Hawaiian/Pacific	320	0.4%	23	0.5%	146	0.5%	103	0.6%	3	0.1%	9	0.4%	12	0.3%	16	0.4%	15	0.3%
Total	78,375	100%	4,586	100%	31,142	100%	17,969	100%	2,290	100%	2,353	100%	4,643	100%	3,761	100%	4,769	100%
Hispanic (any Race)	14,222	18.1%	963	21.0%	6601	21.2%	4187	23.3%	325	14.2%	520	22.1%	845	18.2%	721	19.2%	848	17.8%

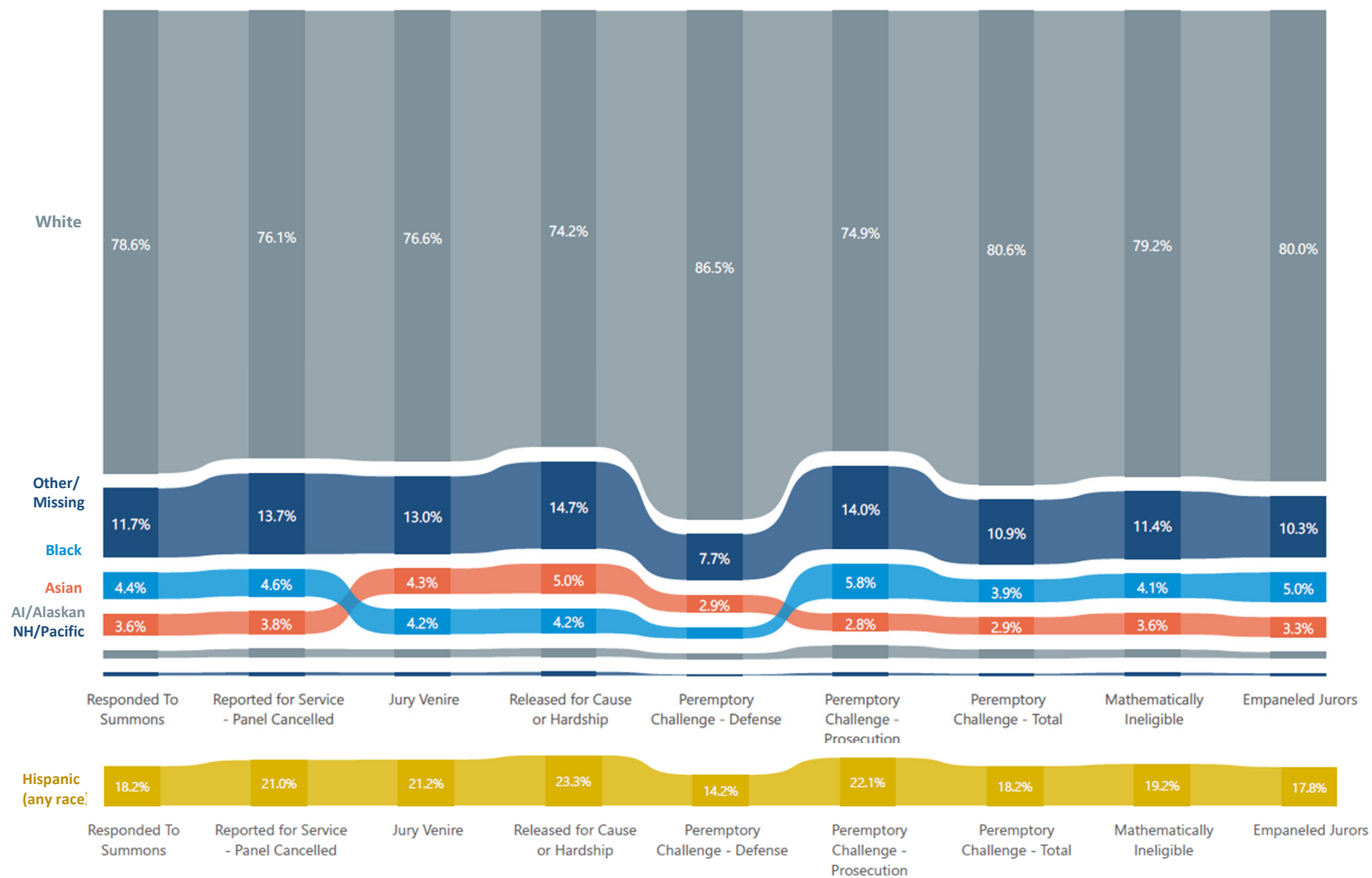
¹Not specific to criminal trials.

Civil Jury Representativeness Throughout the Jury Process

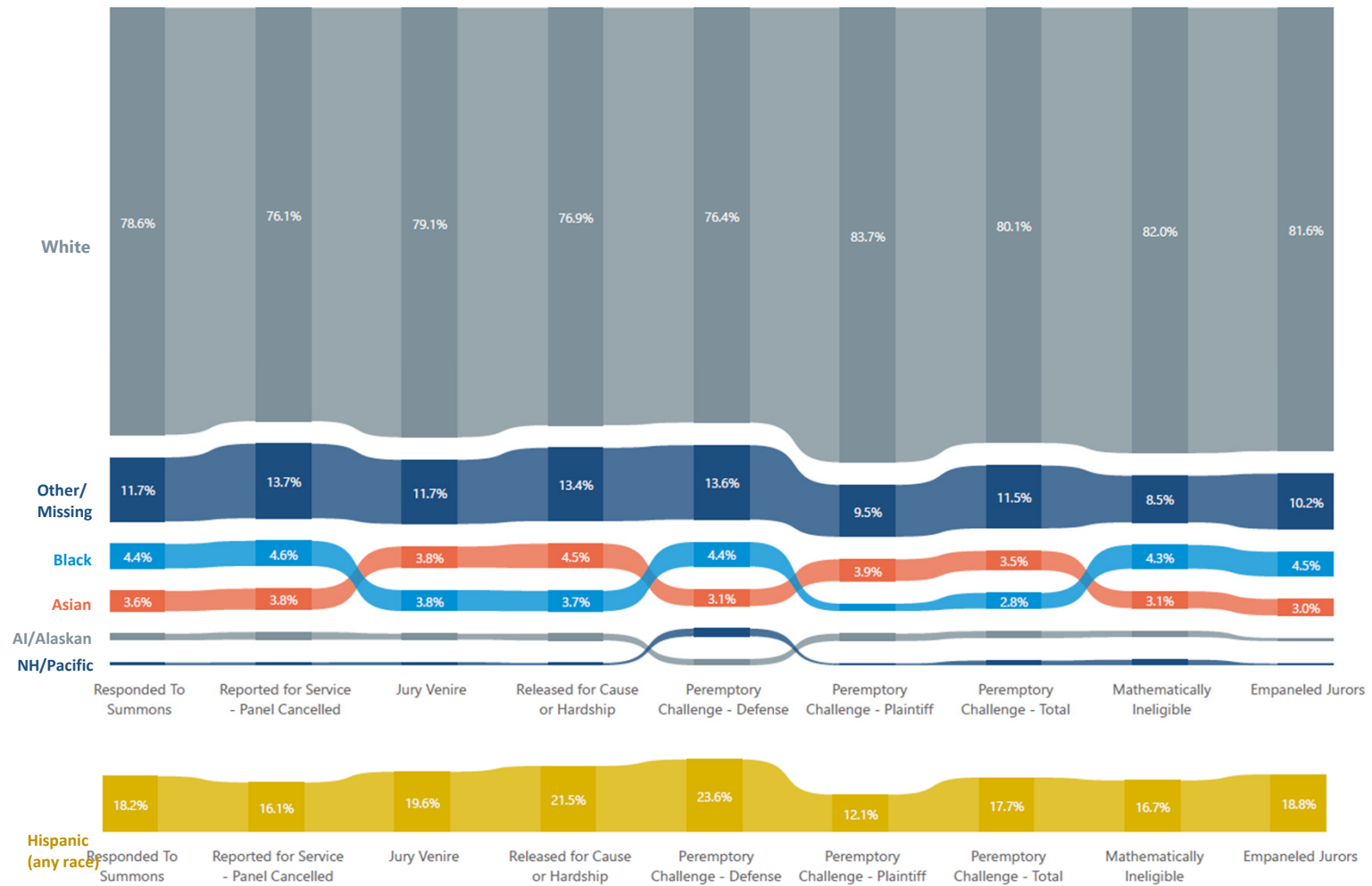
Race and Ethnicity	Responded to Summons ¹		Reported for Service - Panel Cancelled		Jury Venire (Total)		Released for Cause or Hardship		Peremptory Challenge						Mathematic ally Ineligible		Empaneled Jurors	
									Defense		Plaintiff		Total Peremptory Challenges					
	#	%	#	%	#	%	#	%	#	%	#	%	#	%	#	%		
	White	61,639	78.6%	198	83.9%	3,502	79.1%	1,686	76.9%	275	76.4%	318	83.7%	593	80.1%	588	82.0%	635
Other/Missing	9,168	11.7%	20	8.5%	519	11.7%	294	13.4%	49	13.6%	36	9.5%	85	11.5%	61	8.5%	79	10.2%
Black/African American	3,483	4.4%	8	3.4%	168	3.8%	81	3.7%	16	4.4%	5	1.3%	21	2.8%	31	4.3%	35	4.5%
Asian	2,860	3.6%	9	3.8%	169	3.8%	98	4.5%	11	3.1%	15	3.9%	26	3.5%	22	3.1%	23	3.0%
American Indian/Alaskan	905	1.2%	1	0.4%	47	1.1%	26	1.2%	4	1.1%	5	1.3%	9	1.2%	8	1.1%	4	0.5%
Native Hawaiian/Pacific	320	0.4%	0	0.0%	23	0.5%	8	0.4%	5	1.4%	1	0.3%	6	0.8%	7	1.0%	2	0.3%
Total	78,375	100%	236	100%	4,428	100%	2,193	100%	360	100%	380	100%	740	100%	717	100%	778	100%
Hispanic (any Race)	14,222	18.1%	38	16.1%	868	19.6%	471	21.5%	85	23.6%	46	12.1%	131	17.7%	120	16.7%	146	18.8%

¹Not specific to criminal trials.

Criminal Jury Representativeness Throughout the Jury Process – Maricopa County AZ CY2019



Civil Jury Representativeness Throughout the Jury Process – Maricopa County AZ CY2019





BEYOND BATSON

Ensuring Jurors Reflect Their Community

Judge Veronica Galván



GR 37 WASHINGTON STATE

- Purpose: Eliminate the unfair exclusion of jurors based on race or ethnicity
- Scope: Applies in ALL jury trials
- Objection: May be made by the party OR the court
- Response: Party exercising challenge must articulate reason
- Determination: If the court determines that an OBJECTIVE OBSERVER could view race or ethnicity as a factor in the use of the challenge, then the challenge SHALL be denied. The court need not find PURPOSEFUL discrimination.



Nature of Observer

- An objective observer is:
- Aware that implicit, institutional and unconscious biases, in addition to purposeful discrimination have resulted in the unfair exclusion of potential jurors in Washington State.



(H) PRESUMPTIVELY INVALID REASONS FOR A PEREMPTORY CHALLENGE

Because historically have been associated with IMPROPER discrimination in jury selection in Washington State.

- (i) Having prior contact with law enforcement officers;
- (ii) Expressing a distrust of law enforcement or a belief that law enforcement officers engage in racial profiling;
- (iii) Having a close relationship with people who have been stopped, arrested, or convicted of a crime;
- (iv) Living in a high-crime neighborhood;
- (v) Having a child outside of marriage;
- (vi) Receiving state benefits; and
- (vii) Not being a native English speaker.



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(I) RELIANCE ON CONDUCT


1. sleeping, inattentive, or
2. staring or failing to make eye contact;
3. exhibiting a problematic attitude, body language, or demeanor; or
4. provided unintelligent or confused answers.

Party must provide reasonable notice to the court and the other parties so the behavior can be **VERIFIED** and addressed in a timely manner. – Outside the presence of the jury.


A lack of corroboration by the judge or opposing counsel verifying the behavior SHALL invalidate the given reason for the peremptory challenge.

State v. Berhe – Juror Bias

- When explicit or implicit racial bias is a factor in a jury's verdict, the defendant is deprived of the constitutional right to a fair trial by an impartial jury.
- Unlike isolated incidents of juror misbehavior, racial bias is a common and pervasive evil that causes systemic harm to the administration of justice. Also, unlike other types of juror misconduct, **RACIAL BIAS IS UNIQUELY DIFFICULT TO IDENTIFY.**
- Courts must carefully control the inquiry when it has been alleged ... as a factor in a jury's verdict. It is essential to ensure that the jurors are not tainted by improper questioning that is likely to elicit defensive responses and impede the fact-finding process.
- ... before deciding whether to hold an evidentiary hearing, thoroughly consider the evidence and conduct further inquiry ...



Why Are Racially Diverse Juries Important?

- Legitimacy
 - Integrity
 - Respect for the Rule of Law
 - Perception
- 



How has Today's Polarized Environment Affected Jurors and Their Ability to Fairly and Impartially Deliberate?

310
Jury
Deliberation
In Progress

**How do Jurors as
Fact-finders develop
Consensus about the
Truth Today?**

**Closing
Thoughts**

DISCUSSION



Next NAPCO Webinar:
Thursday, June 17, 2021 – 3 p.m. EDT

***Presiding Judge / Court Executive Officer
Governance and Leadership Responsibilities...
“Guidelines for Effective Teambuilding”***

<https://napco4courtleaders.org/>

