Memorandum

Date: June 23, 2020
To: Clients of Trial Strategies
From: Jim Stiff
Re: Jury panels during the COVID-19 pandemic

During the past several weeks I have had a number of conversations with clients about what we might see as jury trials resume during the pandemic. Here is what I have been telling clients.

Before the COVID-19 pandemic, judges around the country were questioning why their jury panels were not representative of the communities from which they are drawn. For example, in Texas, Hispanic and Latino residents are often underrepresented on jury panels. In a recent San Francisco, CA trial, naturalized citizens comprised more than 35 percent of the jury panel even though only 14 percent of San Francisco residents are naturalized citizens. In Birmingham, AL we found that African Americans were underrepresented on federal jury panel. Even with the most inclusive sampling process, the representativeness of any jury panel is dependent on the compliance of those who are summoned for service. While employment and economic conditions may cause some jurors to disregard a jury summons, a strong sense of civic duty among naturalized citizens in San Francisco may have motivated them to comply.

As courts around the country are exploring options for conducting jury trials, there is a legitimate concern about the representativeness of jury panels, particularly in venues with diverse populations. What should we expect when people are once again summoned for jury service as the courts begin to reopen?

- Courts should anticipate jury summons compliance rates to be extremely low until a vaccine is widely available. It is unreasonable to compel people to serve if they believe that jury service will place them at risk for contracting the virus.
• Non-compliance with jury summons will exacerbate the problem of non-representative jury panels. People who comply with a jury summons during the pandemic are likely to be different from those who do not comply.

• Anticipate a more hardship requests among those who show up for jury service.

• People of color have been disproportionately affected by the virus. They are more likely to contract the virus, suffer serious complications, and experience unemployment or underemployment as a result of the virus. Expect people of color to be more concerned about the health and economic effects of jury service. As a result, they may be further underrepresented on jury panels until the pandemic subsides.

• Women traditionally assume primary responsibility for health care issues in families and they are more likely to be concerned about contracting the virus than men. Expect that women will be more likely to avoid jury service than men.

• Wearing a mask has become politically divisive. Conservative jurors are less concerned about contracting the virus and are less likely to wear a mask than liberal jurors. As a result, liberal jurors are more likely to avoid jury service than conservative juries.

Taken together, these factors suggest that until a vaccine is widely available, conservative white men will be overrepresented on jury panels while women, people of color, and liberal residents will be underrepresented. These effects should be most apparent in urban communities where there is a considerable amount of economic and ethnic diversity. Venues that are more rural and homogenous are less likely to see a marked increase in the non-representativeness of jury panels.

A recent survey by the Tillotson Law Firm examined the attitudes of Dallas and Houston residents toward jury service. Mark Curriden summarized those findings in an article for The Texas Lawbook and reported similar concerns about the representativeness of jury panels during the pandemic. Moreover, the survey found that 40 percent of the respondents indicated that they would be “very angry” if they were called for jury service at this time. I expect that the survey findings will generalize to other urban areas in the country.

If you have questions about the implications of COVID-19 for your case or would like assistance preparing for an upcoming trial, please do not hesitate to contact me. In the meantime, I trust that you and your families are safe.