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### Jury study raises hackles in city

#### Prosecutor objects to report of disparities between Baltimore, suburban trials

By Julie Bykowicz

Sun Reporter

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An Abell Foundation report that found disparity between the verdicts of Baltimore jurors and their suburban counterparts has infuriated the city's top prosecutor.

After reading a March draft of the report, which recommends the creation of a regional jury pool, Baltimore State's Attorney Patricia C. Jessamy called the study "potentially divisive" and asked in a letter to Abell President Robert C. Embry Jr. that it "be shelved" or its recommendations reworked.

"Disparities in Jury Outcomes - Baltimore City vs. Three Surrounding Jurisdictions - An Empirical Examination" was supposed to come out in April. Four months later, Abell has yet to publish it. Embry said in a recent interview that the delay has nothing to do with Jessamy's concerns.

Embry said Abell sought to study the issue of jury disparity because "the issue had been raised to us many times of whether it is difficult to convict people in the city."

"We wondered if it was true and why," he said.

In the March draft of the Abell report, which was obtained by The Sun, Shawn Flower of Choice Research Associates said she examined 293 cases from July 1, 2005, to June 30, 2006. That included all jury trials in Anne Arundel, Baltimore and Howard counties, and a random sample of jury trial cases from the city.

Among the findings: In the three counties, 45 percent of defendants were convicted and 27 percent acquitted. The remaining 28 percent were convicted of some charges and acquitted of other charges. Those numbers were different in Baltimore, where 23 percent were convicted, 43 percent acquitted and 34 percent given "combination verdicts."

Conviction rates also vary between the city to the counties depending on the charges. In the city, 57 percent of drug defendants and 57 of defendants charged with personal offenses (such as murder, assault or robbery) were convicted. Those numbers in the counties were 95 percent and 69 percent, respectively.



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After tabulating that data, Flower developed a probability formula to predict the likelihood of a conviction. The "starkest difference," she wrote, was that jurors in nearby counties are 30 times more likely than their city counterparts to convict a defendant of the most serious charge against him. The probability of a conviction on the top count is 2 percent in the city and 63 percent in the counties, the report says.

Jessamy said in a recent interview that she questions the usefulness of a report about city conviction rates that does not "go behind the numbers to figure out why something is happening."

"We analyze cases not from a statistical standpoint but from a realistic standpoint," she said. "We look at how we can address issues that negatively impact on outcomes, things like better training attorneys and police."

Apart from Jessamy, other city officials who read the March draft, including Baltimore Circuit Court Administrative Judge Marcella A. Holland, questioned the researcher's methodology and conclusions. In an e-mail to Embry, which the judge provided to The Sun, she said she was concerned that using data from the city and the counties was "really comparing apples vs. oranges."

"We believe the report is very flawed and needs a lot of work, if it is to be released as a definitive study on jury disparities," she wrote, referring to herself and two other judges who reviewed it.

Embry said Jessamy's stance did not delay the study's release.

"It's a function of what's backed up before it," he said, noting that studies on the Chesapeake Bay and college scholarships are slated to come out first. The jury disparity researcher also was away most of the summer, and "we haven't been pressing her on it," he said.

Flower, a former policy analyst with the Maryland State Commission on Criminal Sentencing Policy, defended her work in a response to Holland and Jessamy, which Abell released to The Sun. Flower said that University of Maryland professor Raymond Paternoster vetted her study. Paternoster was commissioned by the state in 2003 to conduct a study on death penalty.

When calculating the probability of future convictions, Flower said, she accounted for differences among the jurisdictions by using statistical controls and U.S. Census data.

"It is the combination of all of these factors which allows me to say with confidence that given the data limitations, many of the differences among the jurisdictions have been accounted for," she wrote in the draft report.

Using her research, Flower proposed ways to bring parity to the decisions of juries and recommended that the jurisdictions make data more descriptive, comprehensive and accessible.

She wrote that the disparity in jury outcomes might be explained by "population characteristics and socioeconomic factors" and said the state should explore the concept of a regional jury pool to "neutralize city residents' negative perceptions of the criminal justice system."

"Generally speaking, citizens in the three comparison jurisdictions tend to be more advantaged in all respects than those in Baltimore City - they are better educated, are wealthier and are more likely to own their own homes," she wrote. Prospective jurors in the counties "are also less likely to suffer from the structural disadvantage and social disorganization which often results in the higher incidence of crime

and victimization from crime."

In her letter to Embry, Jessamy condemned Flower's theories about Baltimore jurors and her suggestion of a regional jury pool - a concept she called "extreme and I believe unconstitutional."

"I am simply appalled that in the name of science and research, you reach a conclusion that because a large number of city residents [live in poverty and among crime], they are incapable of performing their civic duty," she wrote.

Flower also angered Jessamy by theorizing that city prosecutors charge "more aggressively than other jurisdictions, choosing to pursue the highest charge possible and allowing either the jury or the plea-bargaining process to find the balancing point that would equalize the punishment of the defendant to fit the crime."

Jessamy called this "preposterous" and requested that it be removed from the final report.

Flower said last week that she just returned from a lengthy trip overseas and that the Abell Foundation officials told her they are revising her draft to make it less technical and easier for the general public to read and digest. She said she anticipates that the final report will be out soon. Embry did not give a date of release.

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